



www.gasandoil.com/ogel/

Issue : Vol. 5 - issue 2

Published : April 2007

This article is part of a special feature about **Unitisation** edited for Oil, Gas & Energy Law by:



Dr. Jim Ross

Ross Petroleum Limited
www.rosspetroleum.com

Editor-in-Chief

Thomas W. Wälde
twwalde@aol.com
Professor & Jean-Monnet Chair
CEPMLP/Dundee
Essex Court Chambers, London

© Copyright OGEL 2007
OGEL Cover v1.4

Oil, Gas & Energy Law Intelligence

New Developments in the Bolivian Hydrocarbons Legal System: First Unitization Regulation Enacted by D. Arias

About OGEL

OGEL (Oil, Gas & Energy Law Intelligence): Focusing on recent developments in the area of oil-gas-energy law, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting, including the oil-gas-energy geopolitics.

For full Terms & Conditions and subscription rates, please visit our website at www.gasandoil.com/ogel/.

Open to all to read and to contribute

Our aim is for OGEL to become the hub of a global professional and academic network. Therefore we invite all those with an interest in oil-gas-energy law and regulation to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

Please contact **Editor-in-Chief** Thomas Wälde at twwalde@aol.com if you would like to participate in this global network: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an OGEL-focused republication), but rather concise comments from the author's professional 'workshop'.

OGEL is linked to **ENATRES**, the electronic energy law, policy and economics information and discussion forum moderated by Thomas Wälde.

NEW DEVELOPMENTS IN THE BOLIVIAN HYDROCARBONS LEGAL SYSTEM:

First Unitization Regulation Enacted

By Darío Arias*

1. Introduction

To provide OGEL readers with a brief outlook on the new Bolivian unitization regulation enacted recently, we provide a short description of its structure and contents. Some comments are found at the end.

Much of Bolivian oil and gas regulations date back to 1996/7. A unitization regulation was initially part of these, but its enactment was delayed. As a result, unitization was mentioned in some previous norms (*e.g.* the regulation that approves Technical Norms for Exploration and Production, Supreme Decree N°24,689), and in the Shared Risk Contract (Exhibit B, Art. 3.3), which regulates relations between producers and the host-state. Since then, no specific unitization regulation or rules that regulate the exploitation of shared reservoirs has been promulgated.

Since 1999, first YPF (the Bolivian state-owned-company), which is in charge of oversight of upstream activities, and later, the Viceministry of Hydrocarbons, held extensive meetings with companies and experts to define this regulation's final terms. Unfortunately, changes in the body in charge of the drafting and coordination process, and intervention of companies which might be involved in shared reservoir issues caused some distortions in the new regulation.

Nevertheless, we believe the regulation is generally aligned with the main principles of the Bolivian regulation and adds a process that will ensure rational and efficient exploitation of shared reservoirs.

2. Scheme and Content

The norm was approved by Supreme Decree N°27,124, enacted on August 14, 2003. It contains 9 chapters and 26 articles, dedicated to regulate the following:

Chapter 1: Defines the regulation **scope and objectives**;

Chapter 2: Contains the **definitions** to be used in the regulation application. Some are redundant, defined elsewhere in the hydrocarbons regulation. The following specific terms are defined:

- Unitization Agreement
- Unitized Area
- Expert
- Distribution Factors
- Distribution Factors among Departments
- Coordinated Development Plan
- Shared Reservoir
- Adjacent Leaseholder

- Requesting Leaseholder
- Voluntary and Compulsory Unitization

Chapter 3: Sets forth the **notification** the Leaseholder must deliver to the Adjacent Leaseholder and to YPFB (the national oil company, which signs shared risk contracts on behalf of the Bolivian government) when the Leaseholder considers that a discovered reservoir extends beyond his Contract Area boundaries. Notification must contain a set of technical data and information, such as:

- Those applicable for commercial discoveries and areas retention
- Preliminary area delimitation which comprises the Shared Reservoir
- Reserves certification
- Technical support, with information from wells that merit the initiation of a unitization process
- Express will to accept arbitration in case of voluntary unitization failure

Chapter 4: Establishes the **procedures** to be followed in the case a Leaseholder considers a discovered reservoir straddles the limits of his Contract Area. It contemplates the following steps:

- Information trade between adjacent Leaseholders
- Voluntary Unitization
- Expert consultation in case of failure to agree
- Compulsory Unitization in case of rejection of expert's opinion or lack of consensus (Voluntary Unitization)

Curiously, the regulation does not contemplate that the arbitrators will be experts in these matters.

Chapter 5: States that while a unitization process is underway, Leaseholders are allowed to keep producing the reservoir in question. Nevertheless, some restrictions might be imposed (though that possibility was already in place before this regulations was enacted).

Chapter 6: Determines that if reservoirs extend into free areas (outside the boundaries of any current Shared Risk Contract), such free area must be let for bid, and the winning bidder has to unitize the shared reservoirs (following the procedures set forth in Art. 3) with the adjacent leaseholder. The regulation calls for unitization the moment a reservoir is understood to be shared, whether the adjacent lease is under contract or not.

Chapter 7: Execution and extension of the Unitization Agreement (whether voluntary or compulsory). This chapter mandates the content of said agreement, as follows:

- Agreement Exhibits
- Effective Date, (retroactive at the moment of notification under Art. 3)
- Questions related to royalties and land tax
- Term of validity, (until the final reservoir abandonment)
- Enlargement of the unitized area

Chapter 8: This chapter defines the **participation determination and re-determination criteria**. Leaseholders can use these criteria (without limitation):

- a) Hydrocarbons *in-situ*
- b) Technically recoverable hydrocarbons
- c) Adjusted recoverable reserves based on:

- Development costs
- Oil quality
- Production capacity of wells

Chapter 9: Finally, the regulation contains some **general dispositions:**

- Experts' costs distribution
- Reservoirs crossing departmental boundaries
- Reservoirs that extend beyond national territory
- Grandfathering dispositions for those agreements related to shared reservoirs executed before enactment of this regulation
- Functions and responsibilities of the Ministry of Mining and Hydrocarbons

3. Additional comments:

- An express reference to Art. 4 of the Hydrocarbons Law (intimately linked to the scope of the regulation and referring to rational exploitation and reserves conservations) of the Hydrocarbons Law was set aside.
- It is important to stress that the text always refers to shared reservoirs rather than shared fields (as a field might contain reservoirs that do not cross contract area boundaries); and reservoirs must be in production to initiate the process.
- The recognition of a shared reservoir calls for the unitization process. However an expert can issue an opinion that unitization is not necessary (or at least not at that time) to ensure rational reserves exploitation and conservation, (Art. 9).
- No other modalities of *cooperative agreements* (independent operation of separate ownership units without allocation of production) for a coordinated but non-unitized development were contemplated, apart from unitization *strictu sensu*, (*i.e.* joint operation of all or some portion of a producing reservoir, with allocation of production and costs between parties).
- YPFB always has to approve the unitization agreement. YPFB approval should have been reserved for the concomitant work plan prepared as a result of the unitization agreement.

Unitization is as yet untested in Bolivia. Due to the short period of time this regulation has been in force, no unitization processes have been submitted yet. As unitization develops, practical issues will undoubtedly arise and we will be able to determine failures and opportunities for improvements.

- - -

* The author is an Argentine lawyer, LL.M (Master) in Business Law (Universidad Austral), and LL.M (Master) in Mineral Law & Policy (CEPMLP, University of Dundee), worked for Repsol YPF and currently performs as E&P Legal Advisor at Petrobras Bolivia S.A. in Santa Cruz de la Sierra, Bolivia. darias@petrobras.com.bo /darioarias@hotmail.com