

## Legal Update

### Recent news in the Oil & Gas Sector

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September 3<sup>rd</sup>, 2018

#### **Amendments to the Terms of Reference of the Permanent Competitive Procedure – 2018, of the National Hydrocarbons Agency**

On August 24, 2018 the National Hydrocarbons Agency ("**ANH**") published Addendum No. 2 to the Terms of Reference ("**TOR**") of the so-called **Permanent Competitive Procedure - 2018**, approved by the ANH through Agreement 004 of August 6, 2018. To see our bulletin on the TOR, click [here](#). The terms in uppercase will have the meaning assigned to them in the TDR.

This amendment, together with that made through Addendum No. 1 to the TOR, of August 14, 2018, are of great importance within the competitive procedure since they allowed interested companies to postulate areas to the ANH for inclusion in the list of areas, before the pre-qualification phase ends. The ANH calls this new instance "postulation of areas."

The ANH may include the areas postulated by interested companies to the list of areas "*Determined, Delimited and Classified by the Board of Directors of the ANH.*" In addition, Addenda No. 2 clarifies that the pre-qualification phase shall begin when the ANH publishes the areas it will offer in the context of the 2018 Permanent Competitive Procedure.

Through Addendum No. 1, ANH established that the postulation of an area will not generate any right in favor of the company making the postulation until it complies with all necessary phases for it to be declared as First Bidder, in accordance with the TOR. In addition, Addendum No. 1 clarifies that the response term granted to the ANH will only begin on the date (a) the pre-qualification period expires, if the proposal is submitted before the expiration of said period, or (b) a complete application is filed with the ANH, if the proposal is submitted after the pre-qualification period ends. Addendum No. 2 established, however, that the 30-business days term granted to the ANH for the delimitation, determination and classification of the postulated area will begin from the publication of Addendum No. 2; that is, from August 24, 2018. Consequently, this term ends on October 5, 2018.

Considering Addendum No. 2 to the TOR, companies interested in postulating areas must take into account the following:

- An Economic Proposal for the postulated area can only be presented if the Proponent has been pre-qualified by the ANH.

- The requirements established in Section 3.3.2 of the TDR regarding the minimum information content to be submitted to the ANH and the requirements applicable to the Data Room the interested company must make available to the ANH.
- The Minimum Exploratory Program and the Minimum X participation (expressed as a percentage), shall be set by the ANH within the 30 business days following the filing of a complete application, once the ANH has determined, delimited and classified the area. Subsequently, the interested party will have a term of 15 business days to pre-qualify, counted from the date the ANH sets the Minimum Exploratory Program and Minimum X participation requirements.
- The qualified interested company will have a 5-business day term, counted from the date of notice of pre-qualification, to present its Proposal and Bid Guarantee.
- Once the ANH has validated the Bid Guarantee and the interested company has filed an envelope with its Economic Proposal, the ANH will have a 5-business day term to recognize the pre-qualified interested company as the First Bidder, after which the ANH shall continue the procedure of publishing the area and informing interested third parties that a proposal in respect to said area has been filed, to allow said third parties to qualify and present their offers for said area.

These modifications to the TDR are an important novelty and respond to the great interest the industry has shown in respect to the 2018 Permanent Competitive Procedure.

Please do not hesitate to contact us in case you have questions or comments. We will be pleased to discuss and review the topics that you consider appropriate.

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For more information, contact one of the following lawyers:

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