BELL GULLY

Legal and Regulatory Recent Developments affecting the Petroleum Industry

New Zealand Petroleum Conference
9-12 March 2008

David Coull
Bell Gully

BELL GULLY

Introduction

Some regulatory issues facing the industry

Recent court decisions of interest

Overseas investment and other transactional considerations

BELL GULLY

Minerals Programme for Petroleum 2005 (MPP) rewrite

- MPP should keep pace with industry developments/practice and be simple and clear
- should rewrite use approach taken in the Minerals Programme for Minerals Excluding Petroleum (effective 01/02/08)?

Regulatory issues for consideration

- carbon geosequestration
- strata permits
- unitization – inclusion of guidelines in the MPP
- permit allocation process – optimum approach
- extensions of existing exploration permits

Section 41 consents

- interpretation has created uncertainty and opened scope for legal challenge to agreements and transactions
- significant increase in the volume of applications for MED
- some guidance – recent High Court case and MED practice note
- solution is legislative amendment with policy considerations outlined in the Minerals Programme
- likely timing of amendment?
- important for industry participants to have certainty

Should s.41 consent be required?

Yes	No	?
Permit transfers	Petroleum spot sale contracts	JVOAs
Farm-in agreements	Storage contracts	Gas balancing agreements
Strata agreements	Drilling contracts	Acquisition of permit holding companies
Petroleum producer sales contracts	Ancilliary services contracts	IPOs
Overriding royalties	Access arrangements	
Net cash interest agreements	Security interests	

BELL GULLY

Recent court decisions of interest

Tap (NZ) Pty Ltd v Attorney-General

Decision concerned priority in time applications for an exploration permit

Tap filed a PIT application. Thereafter, Origin filed an application in respect of the same area

- MED considered the applications on a competitive basis and awarded the permit to Origin
- Tap sought judicial review of the decision

Tap (NZ) Pty Ltd v Attorney-General

Court reviewed the relevant sections of the MPP and found in favour of Origin

Three main points to note:

- court had regard to the fact the policy underlying the MPP was to encourage competitive bidding for permits
- industry participants should keep a close watch on the MED's website
- Tap should have applied for injunctive relief as soon as possible once it was aware applications were to be assessed competitively rather than waiting for the outcome of the application process

Bounty Oil & Gas v Attorney-General

Factual background

- Bounty held an exploration permit for offshore acreage in the Great South Basin
- the work programme required Bounty to acquire seismic data
- Bounty farmed out part of the permit and the farminee contracted with a third party to undertake the seismic work
- the seismic contractor was not paid and therefore terminated the seismic acquisition contract

The key issue was whether Bounty could excuse its failure to perform the work programme

Bounty Oil & Gas v Attorney-General

Court held the permit holder had not made reasonable efforts to remedy non-compliance with work programme conditions

- the permit revocation was "fully justified"
- the farm-in contracts Bounty entered into to perform its obligations under the permit were entirely within its control
- permit holder's obligation to ensure third party contractors performed obligations
- Bounty had not sought to pay the contractor when the farminee defaulted

Compare and contrast the MED approach to work programme commitments given shortage of drill rigs

MED relationship important

BELL GULLY

Overseas investment requirements

Overseas Investment Act 2005 requires certain investments by "overseas persons" to receive consent

Overseas investment consent will often be required for oil and gas projects and transactions undertaken by overseas persons

Transactions caught include:

- purchase of NZ assets where price > $100m
- purchase of a NZ company where the price > $100m or the company has > $100m of assets in New Zealand
- establishing a NZ business where expenditure to start that business > $100m
- purchase or lease of "sensitive" or "special" land

"Sensitive land" includes non-urban land more than 5 ha in size, foreshore and seabed, conservation land and historic places

BELL GULLY

International transactions

Change of control transactions undertaken entirely offshore previously treated as outside the scope of the legislation and did not require consent

Under the 2005 legislation, offshore transactions where an overseas company acquires shares in another overseas company that has NZ operations require consent where:

- the value of the NZ assets of the company (and its 25% or more subsidiaries) exceed $100 million; or
- the portion of the overall purchase price attributable to the NZ assets exceeds $100 million; or
- there is “sensitive land” involved

Key point is that the NZ overseas investment legislation may apply where the transaction occurs entirely offshore and only connection to NZ is assets located in NZ

BELL GULLY

OIO process considerations

Timing of the consent process

- workload of OIO has resulted in longer processing times
- “non-land” consent application: 6-8 weeks
- “land” consent applications: 12-16 weeks

Detailed application process – key to quick turnaround is to put in a good initial application

Applications can be made on a confidential basis; but note ability for third parties to request information under the Official Information Act

BELL GULLY

OIO process considerations

Consent criteria differs for acquisition of business assets and sensitive land; sensitive land requires demonstrable benefit to NZ

New consent criteria ⇨ will the investment maintain NZ control of strategically important infrastructure on sensitive land

- became law last week
- what is “strategically important infrastructure”?

Note also recent changes to Takeovers Code and insider trading laws