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UNITIZATION



Overview

At the time the O&G blocks are being delimited, the exact extent and location of the natural resources existing in the subsoil is unknown; as a result, it may later be discovered that a reservoir straddles over multiple blocks. In order to address such cases, the so-called "*rule of capture*" doctrine was originally developed in the United States, giving the contractors full rights to the hydrocarbons produced, even if such production resulted from a reservoir extending beyond the contracted area.

With the rule of capture, oil exploration became an unregulated race with the drilling of several wells, resulting in a sudden decrease in the reservoir pressure, early and high water production and, lastly, in a strong decrease in the recovery factor of the reservoirs.

Only in the beginning of the 20th century, has the doctrine of "*correlated rights*" emerged, introducing a duty of reciprocity among the contractors, which should engage in a more efficient production and split the production in accordance with the extent of the volumes accumulated in each area.

For this purpose, a production unitization procedure must be followed by the involved parties, which may result in the execution of a Unitization Agreement (in Brazil, "*Acordo de Individualização da Produção*"). The unitization procedure is particularly relevant in Brazilian Pre-salt due to the geological characteristics of the province, the blocks demarcation that occurred decades ago and the magnitude of the reservoirs, which make it prone to the existence of shared reservoirs. As of the date of this issue, 10 Unitization Agreements have been approved and executed within the Pre-salt areas, with another 8 currently under evaluation.

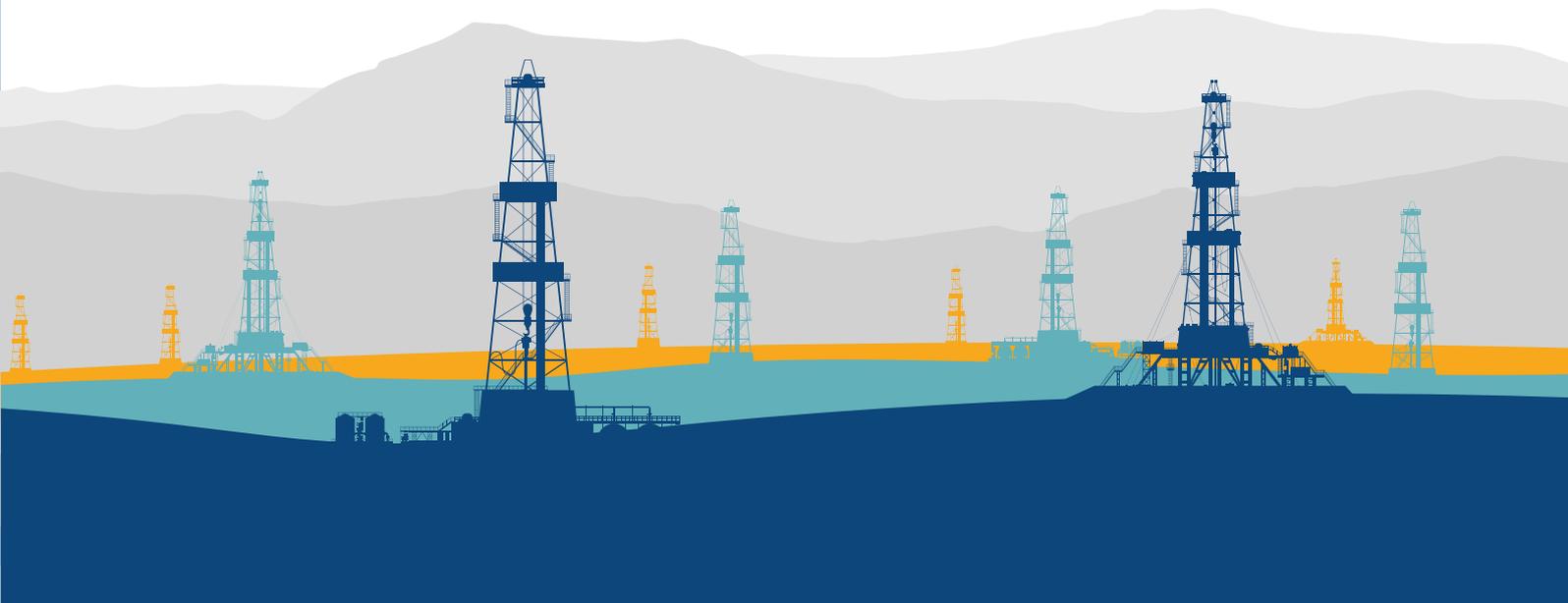


Unitization in Brazil

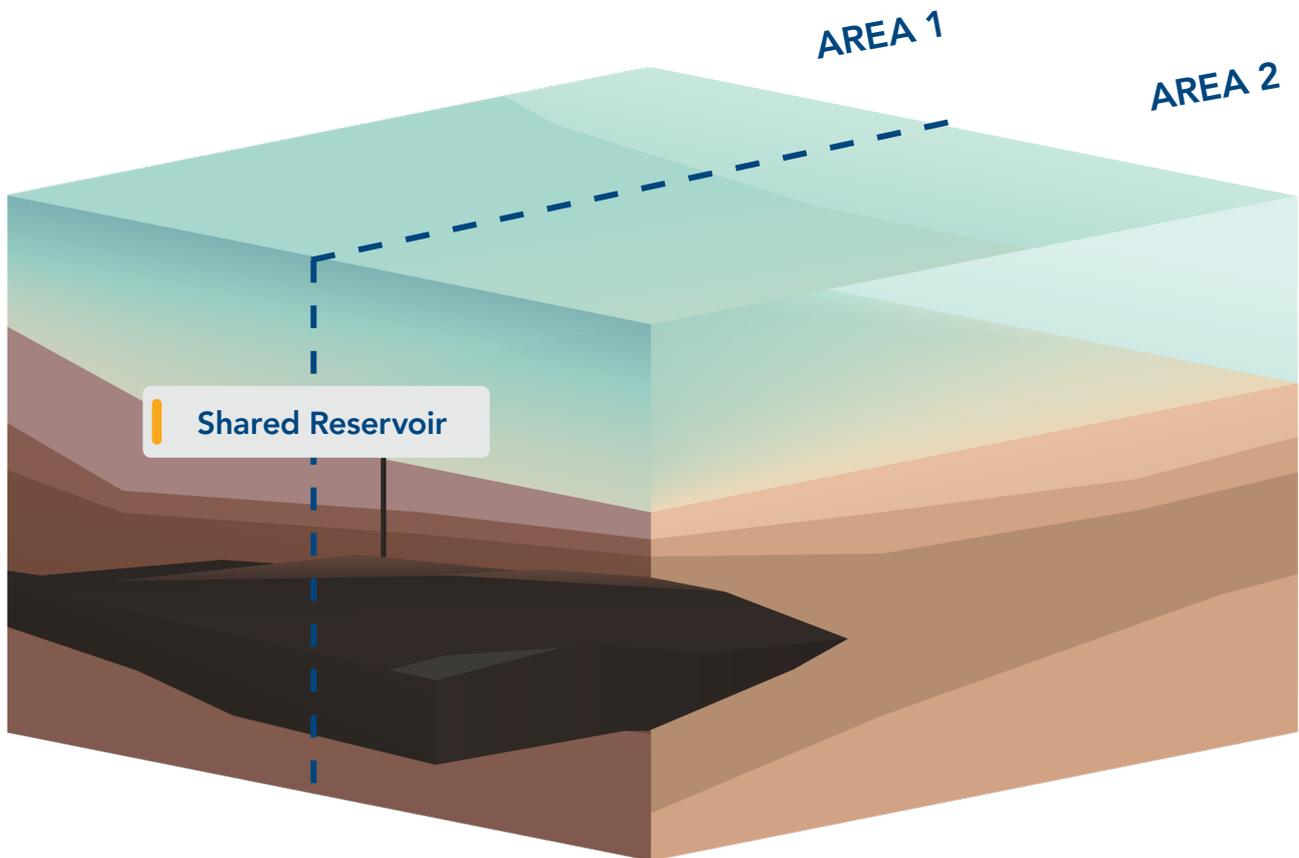
Unitization in Brazil is governed by Law No. 12,351/2010 (the Production Sharing Law), which obliges the contractor to negotiate an Unitization Agreement if a reservoir is located in more than one block awarded under the Concession or Production Sharing Regime. The National Agency of Petroleum, Natural Gas and Biofuels (ANP) further regulated the subject under Resolution No. 25/2013, currently Resolution No. 867/2022 (RANP 867/2022) and expanded the scope of application of its rules to the transfer of rights regime.

Brazilian law considers so important the Unitization institute that, if the parties fail to reach an agreement, the ANP itself can establish its terms, based in a technical report. This makes Brazil one of the countries that applies the compulsory unitization. The E&P contracts also reflect the obligation of contractors to proceed with the Unitization in case a shared reservoir is identified.

According to RANP 867/2022, once the possibility of a shared reservoir is verified, the operator must promptly communicate it to the ANP. If the ANP understands that the existence of a shared reservoir is possible, it will notify the interested parties to confirm or deny this possibility, within 180 days. If the possibility of a shared reservoir is confirmed, an Unitization Agreement will be negotiated between the involved contractors and will be submitted to ANP's analysis and possible approval.



Possible Scenarios



Contracted Area

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Different Contractor

Unitization Agreement among different Parties

If the reservoir extends to one or more areas contracted by different contractors, or even to a different consortium with the same concessionaires, the relevant parties must execute an Unitization Agreement.

In case the parties fail to reach an agreement within the applicable deadline, the ANP would determine the distribution of rights and obligations, within 120 days from the expiration of the period for such negotiation. Afterward, ANP will notify the parties to execute an Unitization Agreement, under penalty of termination of the contract of the party that refuses. Such Unitization Agreement must be submitted to ANP, which may approve or reject it within 60 (sixty) days from its receipt.



Contracted Area

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Same Contractor

Unitization Commitment

If the reservoir extends to one or more areas contracted by the same contractor/concessionaires, or even to the same consortium (in the same proportion), the relevant parties must execute a mere Unitization Commitment (“*Compromisso de Individualização da Produção*”), following the procedure above, but with simpler requirements, because there is no need to negotiate with other parties. In this case, the Unitization Commitment to be submitted to the ANP must be accompanied by the studies and conclusions that led to the determination of the tract participations.



Contracted Area

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Non-contracted Area

Unitization Agreement with PPSA/ANP

If the reservoir extends to one or more non-contracted areas, the Federal Government, represented by Pré-sal Petróleo S.A. (“PPSA”) (if the block is located in the Pre-salt or strategic areas) or by ANP (if the block is not located in the Pre-salt or strategic areas), must execute an Unitization Agreement with the relevant contractor/concessionaire. The Unitization Agreement entered into with the Federal Government will be binding to the future contractor/concessionaire, upon execution of an amendment to the original Unitization Agreement.

In such cases, the contractor/concessionaire must submit a preliminary proposal to the ANP to evaluate the extension of the shared reservoir, based on the available information, and ANP will have 180 days to decide how the extension of the reservoir to the non-contracted area will be calculated. While there is no contract for the non-contracted area, the same parameters adopted for the adjacent contracted area must be adopted.

Contractual Aspects

Minimum Content

The Production Sharing Law, as complemented by RANP 867/2022, established the minimum content of the Unitization Agreement and Unitization Commitment, as follows:

Unitization Agreement	Unitization Commitment
<ul style="list-style-type: none"> (i) identification of the shared reservoir; (ii) definition of the unit area, with delimitation of polygons; (iii) appointment of shared unit; (iv) allocation of the parties' rights and obligations (v) tract participations in the shared reservoir; (vi) parties' participating interests in the shared reservoir; (vii) redetermination procedure; (viii) local content rules and minimum commitments; (ix) payment of government takes; (x) term of the unitization agreement; (xi) dispute resolution mechanisms" and (xii) the development plan of the shared reservoir. 	<ul style="list-style-type: none"> (i) identification of the shared reservoir; (ii) tract participations in the shared reservoir; (iii) local content rules and minimum commitments; and (iv) payment of government takes.

Local Content

ANP Resolution No. 833/2020 established rules for determining local content in the exploration and development phases, of the shared reservoir. In the exploration phase, local content commitments must comply with the provisions originally established in each contracted area. In the development phase, the local content commitment will follow the criterion of election, by the contractors, of the local content clause of one of the contracts involved, being expressly forbidden the option of contract clauses without minimum percentages of local content.

In such cases, the minimum local content in the development phase will be the product of the multiplication between (i) the percentage of the original oil equivalent of the shared reservoir under the areas whose contracts establish minimum percentages of Local Content; and (ii) the global percentage of Local Content of the development stage established in the contract whose Local Content clause has been elected.

Legal Framework

Law No. 12,351/2010: establishes the Pre-Salt Polygon, the Production Sharing regime, as well as general provisions on unitization.

CNPE Resolution No. 08/2016: establishes guidelines for unitization procedures in situations where oil and natural gas reservoirs extend into non-contracted areas.

CNPE Resolution No. 07/2017: establishes guidelines for defining local content commitments in unitized areas.

ANP Resolution No. 833/2020: regulates the local content criteria to be adopted in unitization agreements, unitization commitments and in the annexation of areas.

ANP Resolution No. 867/2022: regulates the unitization procedure, according to Law No. 12,351/2010, establishing minimum requirements for the Unitization Agreement/Unitization Commitment, its deadlines and procedures for its submission and approval.



Contact Us

We will continue to monitor this topic and keep you informed.



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