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Oil and Gas Exploration and Development in South East Europe: The Rules of the Game

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**McKenna Long
& Aldridge^{LLP}**

Recent developments in South East Europe point to the potential existence of huge recoverable oil and gas reserves offshore, which call for an immediate response by multinational oil companies seeking to establish a commercial presence in the area.

The likelihood that the Mediterranean will become a marine theater for oil and gas development operations in the next decade has urged Governments to engage in exploration projects in partnership with private stakeholders, while a new set of EU and national rules regulate a wide variety of issues in the upstream, midstream and downstream oil and gas sectors.

The discovery in the last decade of the Tamar, Leviathan and Block 12 gas offshore fields in deep waters of the South Eastern Mediterranean has resulted in close cooperation between Cyprus, Israel and other countries in the region. The start of production in these fields will inevitably alter the energy landscape worldwide. To date, extensive exploration projects in Western parts of Greece as well as the South and South Eastern Aegean Sea have produced data which indicate the potential presence of very large gas reserves in these areas, the development of which has become a priority for the Greek Government.

McKenna Long & Aldridge LLP ('MLA'), with over 575 attorneys worldwide, has consistently been at the forefront of developments in the oil and gas sector, and is in the unique position to supply multinational companies with specific and personalized advice on both EU and national legislation.

Being leaders in a number of disciplines relating to project finance (including projects under Islamic law), environmental law, contract drafting, public private partnerships, international commercial litigation and arbitration, corporate restructuring, and complex advocacy in the energy sector, our attorneys are uniquely positioned to assist you at every stage of your involvement in the broader area of the South Eastern Mediterranean.

Having established a track record in Greece and expanded our practice into bordering countries, MLA has excellent contacts with local governments, which enable it to handle every legal and regulatory aspect of the oil and gas exploration and production process.

I. EU Legal Framework

The EU legal framework regulating hydrocarbons at EU level consists of: (i) Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons ('Hydrocarbons Directive')¹, and (ii) Directive 2013/30/EU on the safety of offshore oil and gas operations ('Oil and Gas Safety Directive').²



1. The European Hydrocarbons Directive

The Hydrocarbons Directive represents the *lex specialis* vis-à-vis the EU's general public procurement legislation,³ and had to be transposed by EU Member States into their national laws by 1 July 1995.⁴ The Hydrocarbons Directive is premised on the principle that EU Member States must ensure the non-discriminatory access to and pursuit of activities relating to the exploration and production of hydrocarbons under conditions that encourage greater competition in this sector and thus favor the best prospection, exploration and production of EU Member States' resources.⁵

1.1 Non-discrimination, national security and reciprocity

Under the Hydrocarbons Directive, EU Member States have the power to determine the areas within their boundaries which are to be made available for the purpose of prospecting, exploring for and producing hydrocarbons.⁶ When such a determination has been made, no discrimination between entities may take place regarding the access to and exercise of such activities ('non-discrimination principle').⁷

However, EU Member States may, on national security grounds, deny an entity that is effectively controlled by third countries or third country nationals, the access to and exercise of the aforementioned activities ('optional national security clause').⁸

In addition, EU Member States may be authorized by the Council of the EU, at the Commission's initiative, to deny an authorization to an entity that is effectively controlled by nationals of a third country which does not grant EU-based entities, as regards the access to and exercise of these activities, a treatment comparable to that available in the EU to entities established in that same third country ('optional reciprocity clause').⁹

1.2 Alternative public tender procedures

The Hydrocarbons Directive requires EU Member States to adopt the necessary measures to ensure that authorizations are granted following a procedure in which all interested entities may submit an application.¹⁰

The public tender procedure may be initiated in two different ways:

1. at the competent authorities' request, through a notice inviting applications ('invitation to tender') to be published in the Official Journal of the European Union ('Official Journal') at least 90 days before the closing date for the applications;
2. following submission of an application by an interested entity through an invitation to tender to be published in the Official Journal and subject to the EU Member States' power to determine the areas within their boundaries which may be subject to the exercise of prospecting, exploring and production activities.¹¹ Interested entities, other than the entity at whose initiative the invitation to tender was published, shall have a minimum 90-day period, after the date of publication of the invitation to tender, to submit their own applications.¹²

In both situations, the notice must indicate the type of authorization at stake, the geographical area(s) in which to make an application and the time line for issuing the authorization.¹³

1.3 Exemption from public tender procedures

EU Member States may issue authorizations whilst being exempt from the obligation to initiate any of the above alternative public tender procedures where the area for which an authorization is sought is: (i) available on a permanent basis; (ii) has been the object of a previous procedure which did not result in the grant of an authorization; or (iii) has been relinquished by an entity.¹⁴ In order to enjoy such an exemption, the EU Member States must have published a notice in the Official Journal to convey the areas within their territory which are available for authorization

and where detailed information in this respect can be found.¹⁵

1.4 Authorization criteria

Authorizations must be granted on the basis of the following criteria: (i) the entities' technical and financial capability; and (ii) the way in which these entities plan to prospect, explore and/or bring into production the geographical area.¹⁶ Where applicable, the following additional criteria will be considered: (i) the price which the entity is prepared to pay for obtaining the authorization (if the authorization is put up for sale) and (ii) other relevant objective and non-discriminatory criteria (if considerations of the above criteria result in two or more applications having equal merit).¹⁷ The EU Member States' competent authorities may also account for any lack of efficiency and responsibility by the applicants in operations under previous authorizations.¹⁸ These criteria must be applied in a non-discriminatory way.¹⁹ They must be set out and published in the Official Journal prior to the start of the time period for the submission of authorization applications, unless such criteria were already published in the Member States' official gazettes, in which case a reference thereto in the Official Journal will suffice.²⁰

1.5 Conditions and refusal to award an authorization

All authorization decisions are subject to a series of minimum conditions laid down by the EU legislator. All public authorities' decisions to grant an authorization must be of a duration that does not exceed the period necessary to undertake the authorized activities subject to a possible prolongation for the sake of allowing the authorized activities to be completed.²¹ Furthermore, entities that have been granted an authorization do not have exclusive rights in the authorized geographical area for a period longer than

that necessary for the proper performance of the authorized activities.²² Finally, in the event that geographical areas are not divided based on a prior geometric division of the territory, the extent of each area must be determined *“in such a way that it does not exceed the area justified by the best possible exercise of the activities from the technical and economic points of view”*.²³

The EU Member States may also subject the access to and exercise and termination of activities concerned with the prospection, exploration and production of hydrocarbons to conditions and requirements such as the payment of a financial contribution or a contribution in hydrocarbons when justified by reference to ‘important public interests’ such as national security, public safety, public health, security of transport, environmental protection, the protection of biological resources, or the planned management of hydrocarbon resources.²⁴ The Court of Justice has ruled that environmental protection concerns may justify the requirement for a financial guarantee that may be used as compensation for the adverse effects which the concession activities generate.²⁵ When they take the form of a financial contribution or State participation, these conditions and requirements must be set out in a way that does not impede the independent management of the entities concerned.²⁶

The conditions and requirements, which apply to each type of authorization in accordance with the laws, regulations and administrative provisions in force at the time of submission of the application, must be made available to interested entities at all times.²⁷ The conditions and requirements may be contained in the authorization itself or have to be accepted prior to the issuance of the authorization.²⁸ They must be aimed only at ensuring the proper performance of the activities in the area for which an authorization is requested, and be applied in a non-discriminatory way.²⁹



Any changes thereto must be notified to all interested entities.³⁰

EU Member States may nevertheless decide to refuse to issue an authorization even after initiating one of the above public tender procedures provided that this decision is not adopted with a view to discriminating between entities.³¹

2. Oil and Gas Safety Directive

Contrary to the Hydrocarbons Directive that was partly based on the internal market harmonization legal basis, the Oil and Gas Safety Directive was exclusively based on an environmental protection legal basis.³² EU Member States must transpose this Directive by 19 July 2015.³³

The Commission has clarified that the Oil and Gas Safety Directive is in no way meant to amend the Hydrocarbons Directive that remains the main legal framework regulating the granting of licenses for exploration and production of hydrocarbons, but rather to reinforce public authorities' obligations in the course of the licensing process with a view to better evaluating the applicants' technical and financial capacity.³⁴

Under the Oil and Gas Safety Directive, the EU Member States' public authorities shall ascertain, in their assessment of the commercial entities' technical and financial capability, whether these entities can also guarantee "*continued safe and effective operations under all foreseeable conditions*".³⁵ They will have to determine, in their review of their financial capability, whether these applicants have sufficiently demonstrated that they can cover liabilities caused by major accidents.³⁶ The Directive also makes clear that entities obtaining an authorization qualify as liable operators under Directive 2004/35/EC³⁷ on environmental liability with regard to the prevention and remedying of environmental damage ('Environmental Liability Directive').³⁸

Any decision on the granting or transferring of licenses to undertake offshore oil and gas operations must account for the applicant's capability to satisfy the requirements applicable to the prospective activities.³⁹ The licensing authority's assessment of the applicant's technical and financial capability shall be based on a review of at least four factors: (i) the risk and hazards associated with the licensed area; (ii) the specific stage of offshore oil and gas operations; (iii) the applicant's financial capabilities (e.g., financial security) to cover liabilities (e.g., potential economic damage) that could arise from the undertaking of the offshore oil and gas operations; and (iv) available information regarding the applicant's safety and environmental performance.⁴⁰ No license (i.e., authorization) shall be issued unless the licensing authority has received sufficient evidence demonstrating "*that the applicant has made or will make adequate provision, on the basis of arrangements to be decided by Member States, to cover liabilities potentially deriving from the applicant's offshore oil and gas operations*".⁴¹

The licensing authority or the licensee must appoint the operator.⁴² In the event that the licensee appoints the operator, the licensing authority must be given advance notice.⁴³

Operators must ensure that they have adopted all suitable measures to prevent major accidents in offshore oil and gas operations.⁴⁴ They must continue to discharge their duties even if the actions or omissions leading or contributing to major accidents were attributable to their contractors.⁴⁵ Should a major accident arise, operators must adopt all suitable measures to mitigate its impact on human health and the environment.⁴⁶ They must ensure that offshore oil and gas operations are undertaken based on systematic risk management.⁴⁷

The drilling of an exploration well from a non-production installation may not commence unless and until the EU Member States' relevant authorities have ascertained that early and effective public consultation relating to the potential effects of planned offshore oil and gas operations on the environment has taken place.⁴⁸ EU Member States must at the very least inform the public about the planned operations and invite it to express its concerns and opinions before decisions are taken.⁴⁹

II. Greek National Law

As with all EU Member States' courts, Greek domestic courts must interpret their national laws, whether they pre-exist the adoption of the Hydrocarbons Directive or are specifically designed to transpose it, as much as possible in light of the wording and purpose of that Directive with a view to achieving the result(s) it prescribes.⁵⁰

The Greek Law on the Exploration and Development of Hydrocarbons (Law 2289/1995 as amended by Law 4001/2011) ('Hydrocarbons Law') transposes the Hydrocarbons Directive in the Greek Legal order and applies to natural or legal persons operating independently or under a joint venture and bearing the nationality of either an EU Member State or a third country. In the case of a third country natural or legal person,

the Hydrocarbons Law provides for the need for a reciprocity agreement between Greece and the contractor's State ('reciprocity clause') and empowers the Minister of Environment, Energy and Climate Change to veto the participation of a non-EU contractor in the procedure on national security grounds ('national security clause').⁵¹

The Hydrocarbons Law applies to exploration and development of liquid and gaseous hydrocarbons onshore and offshore, in areas over which the Greek State enjoys sovereignty or exercises sovereign rights pursuant to the provisions of the United Nations Convention on the Law of the Sea ('UNCLOS'), as ratified by Law 2321/1995.⁵² Although the Hydrocarbons Law states that the 200 nautical miles of the Exclusive Economic Zone may be granted to a maritime country pursuant to the UNCLOS⁵³ and refers to the need for middle lines in the determination of the corresponding exclusive economic zones between Greece and its bordering States, such a determination has been a complicated issue vis-à-vis neighboring countries that share maritime borders with Greece. The issue of scope is all the more important for concession proposals in contested areas in the Aegean Sea where both Greece and Turkey could claim ownership over potentially recoverable reserves.

1. Competent Authority

The Hydrocarbons Law provides for the establishment of a publicly-owned entity referred to as a 'Greek Hydrocarbons Administration Corporation', which will be representing the Greek State in all tender procedures provided for by the Hydrocarbons Law.⁵⁴ To date, this corporation has yet to be created due to budgetary restrictions. However, pursuant to a recent public announcement by the Greek Prime Minister, the official establishment of such a competent entity should be imminent.

Until the establishment of such a corporation, the Secretariat of Energy of the Greek Minister of Environment, Energy and Climate Change remains competent to oversee the relevant tender procedures. Even after the establishment of the corporation, the Minister for Environment, Energy and Climate Change will be in a position to influence the shaping of the applicable framework for oil and gas exploration and development in Greece. He is indeed empowered, together with any other competent Minister and through a Joint Ministerial Decision, to place additional requirements on the exercise of concession rights on national security grounds.

2. Three distinct procedures for concession awards

The Hydrocarbons Law provides for three distinct tender procedures, which constitute *lex specialis* vis-à-vis the Greek general public procurement rules, which may result in the award of a concession for the exploration and development of Greek oil and gas.⁵⁵

2.1. Invitation to tender

The Greek Hydrocarbons Administration Corporation, once established, may unilaterally designate which concession areas will be awarded to potentially interested contractors. Following approval by the Minister for Environment, the invitation must then be published in the Greek Official Gazette and sent for publication in the Official Journal. The deadline for submission of concession proposals concerning the above areas is set out in the invitation to tender, and may not be less than 90 days as of the publication date in the Official Journal.⁵⁶

2.2. Application by an interested entity

A company that has information about the potential existence of oil and gas reserves in Greece, either onshore or offshore, may submit an application, in Greek, to the



future Greek Hydrocarbons Administration Corporation, requesting the commencement of a tender procedure for an area defined in detail.⁵⁷ The application must contain a description of the area and of the actions that the company intends to undertake in order to successfully manage a proposed concession. However, the company is under no obligation to disclose the source of information supporting its application.

If the company's application is approved by the Greek Hydrocarbons Administration Corporation in cooperation with the Minister for Environment, Energy and Climate Change and the Ministerial Council, the former authority must publish an invitation to tender, as validated by the Minister for Environment, Energy and Climate Change, in the Greek Official Gazette and subsequently in the Official Journal. The deadline for submitting a concession proposal cannot be less than 90 days as from the later publication date.

2.3. 'Open door' procedure

The Minister for Environment, Energy and Climate Change must issue a public announcement in both the Greek Official

Gazette and the Official Journal regarding a particular area which has been permanently available or has been the object of a previous tender procedure that did not result in the signing of a concession agreement.⁵⁸ The announcement must contain the minimum requirements for the award of such concessions along with any information relevant to these areas. Concession proposals for these areas may be submitted by interested entities until the last business day of the first and second semester of each calendar year.⁵⁹

An open door procedure is currently taking place in Greece concerning areas of the Western and Northern part of the country (Ioannina, Katakolon, Thermaikos), which were the object of unsuccessful tender procedures in the past and where smaller quantities of oil were discovered during previous decades.

After the completion of this procedure, the interest will shift into deep offshore areas in South Eastern Crete, where available data point to the potential presence of considerable oil and gas reserves in Greek territorial waters.

III. MLA's Oil and Gas Practice and Notable Engagements

Attorneys at MLA possess unique skills and expertise on a variety of issues relating to the oil and gas sectors. MLA has represented major industry participants and Governments internationally, assisting them throughout all stages of oil and gas projects at the upstream, midstream and downstream level. Areas of expertise include: (i) exploration and production; (ii) project financing; (iii) refining, processing and storage; (iv) institutional and regulatory energy advocacy; (v) privatizations, M&A and energy companies restructuring; (vi) international dispute resolution; and (vii) environmental legislation.

1. Exploration and Production

MLA advises clients on concessions, leases, production sharing multilateral agreements, international joint operating agreements and other joint venture arrangements for hydrocarbon exploration and development. We are currently involved in the submission of concession proposals in Greece and are also engaged in similar procedures in neighboring countries. MLA's attorneys also advise clients on all aspects of contractual arrangements for short and long term assignments of oil and gas rights.

Examples of client matters in this area include:

- Filing applications with the Greek Minister of Environment, Energy and Climate Change on behalf of a US company requesting the determination of concession areas in Greece, thereby enclosing extensive concession proposals.
- Drafting and negotiating crude oil supply agreements in Nigeria.
- Obtaining dismissal of breach-of-contract claims seeking \$300 million in damages in connection with oil and gas exploration projects
- Obtaining clearances for Alaskan offshore oil and gas development.

2. Project Financing/Finance

We counsel Governments, international financial and credit institutions, as well as oil and gas companies on all project financing issues. In particular, MLA attorneys have extensive experience in drafting and negotiating contracts for oil and natural gas pipeline projects, and advise on a variety of relevant construction, maintenance and finance agreements.

Examples of client matters in this area include:

- Acting as legal advisor to a UK bank in connection with a hedged inventory transaction agreement in relation to transactions for the purchase of relevant commodity and a gasoil storage agreement.
- Advising a UK financial company in a complex financial transaction on the collateral on physical commodities stored in Belgium.
- Advising a major French energy company on a large scale guaranteed placement of carbon assets.
- \$130 million fund formation for a publicly held Houston-based oil exploration and production company investing capital in start-up and emerging growth companies, principally in the energy, energy services and energy transmission businesses.
- Multiple joint development agreements, distribution and development agreements and joint ventures for the development and commercialization of intellectual property for leading companies in the energy industry.
- Led the real estate, tax incentive, and project finance work for a 900 megawatt peaking facility, as well as extensive work on sales and use tax, including participation in securing an amendment to the state law to partially exempt purchases of gas used for generation of electricity from state sales and use tax.
- Advised on development and financing of 1,220 megawatt Combined-Cycle Electric Generating Station in Kiowa, OK, including extension of ERCOT Transmission Line from Kiowa, Oklahoma to Savoy, Texas.

- Advised Consumers Power Company on selected tax issues in connection with the conversion of its Midland Power Station from nuclear to gas-fired power source, transfer of its \$1 billion station to a joint venture partnership and recapitalization of related project debt.
- Advised an agency of a foreign government in the Near East in the process of being privatized with US participation on obtaining \$140 million in project financing from OPIC for the design, construction and operation of a new natural gas pipeline.
- 900 megawatt peaking facility, West Georgia. We lead the real estate, tax incentive, and project finance work, as well as extensive work on sales and use tax, including participation in securing an amendment to the state law to partially exempt purchases of gas used for generation of electricity from state sales and use tax.
- 1050 megawatt combined cycle facility, Sandersville, Georgia. This project also involved substantial negotiation over local tax incentives, real estate work and bond financing.
- 150 megawatt peaking facility. Baconton, Georgia. This project was in effect two separate projects with two different financing structures on the same site and posed many unique and difficult issues. We represented the two ownership units. Two of the six 25 megawatt units are owned by one entity and financed through the sale of bonds. The other four 25 megawatt units are owned by a separate entity, which in turn is owned in minority part by a large international energy company and supported through project finance provided by a large international bank. The six generating units share all of the common facilities (e.g. gas feeder

pipeline, fuel tanks, water system) as well as many of the permits. Documenting and financing two projects on the same site with different owners and different lenders required extensive negotiations and documentation. We were responsible for all aspects of this project, including all project documentation, such as tolling agreements, power purchase agreements, and gas transportation agreements, all permitting, and all financial advice. We continue to represent both ownership units in ongoing issues in connection with the operations of their projects and ensuing sales of capacity and energy.

3. Refining, Processing and Storage

We have been involved in a number of international projects at midstream level with focus on the contractual arrangements regarding the refining, processing and storage of oil and natural gas. Examples of client matters in this area include:

- Investment in, and exit from, petroleum development project in the Republic of Azerbaijan.
- Represented Sempra Energy (NYSE: SRE), the parent company for San Diego Gas & Electric and Southern California Gas, with respect to its Mexico projects. For its gas pipeline projects, we were involved in forming the Mexican joint venture companies and drafting the joint venture agreements. We also incorporated and managed the corporate compliance matters for the Mexican subsidiaries and handled immigration matters for US engineers and technicians who worked on the Mexican projects.
- Represented an energy company in the development of an Integrated Gasification Combined-Cycle (IGCC) plant with Carbon Capture and Storage (CCS) capability.

We provided real estate advice on the acquisition and development of the project plant site, transmission line and pipeline rights of way, as well as on the acquisition and development of the underground pore space needed for the deep underground storage of carbon dioxide (i.e., carbon capture sequestration).

- Represented of Atlanta Gas Light Company in regulatory complex litigation matter related to a plan for interstate pipeline capacity assets and out of state natural gas storage assets to serve the Georgia market and cost recovery regarding same, and approval for a new pipeline to access the Elba Island Offshore LNG facility.

4. Institutional and Regulatory Energy Advocacy

We work with governments and state-owned enterprises on privatizations, energy regulation production sharing legislation, and other petroleum legislative regimes. We have successfully led complex advocacy projects in the energy sector in the United States and in many EU Member States.

In Greece, we have managed the development of a sophisticated advocacy strategy in the pre-decision stage, which has: (i) enhanced the Greek authorities' confidence in a candidate company; (ii) familiarized the Greek authorities with the particulars of that company; and (iii) in the long term involves the company to a greater extent in oil- and gas-related projects.

We are also in a unique position to communicate with and approach crucial actors in the EU institutions, and have monitored and advocated in favor of a considerable number of oil and gas transfer multilateral agreements.

Examples of client matters in this area include:

- Providing strategic guidance to a petroleum trade association on US public policy. On the Association's behalf, we engage with Members of Congress and think tanks on the benefits of oil and natural gas to the US economy and energy security (MLA Canada-US Team, ongoing).
- Representing a Canadian oil and gas association on US public policy issues that could impact the association's members, including engaging with leading Members of Congress, the Executive Branch, think tanks and other trade associations on US policies that will encourage a more integrated North American market for crude oil and natural gas (MLA Canada-US Team, ongoing).
- Advising US sponsors on the feasibility and key legal and regulatory considerations of entering into equity joint ventures in Central America for financing, construction and operation of a \$400 million co-generation plant and an ethanol plant.
- Served as energy counsel to some 100 large industrial and commercial energy consumers, including steel, aluminum, cement, paper, automotive, food processors, and major manufacturing companies.
- Served as energy counsel to the government of Indonesia in Jakarta. Negotiations with independent power producers on power purchase and energy purchase agreements.
- Served as energy counsel on power purchase agreements relating to independent energy projects in Columbia, Brazil, Pakistan and Romania.

- Representing a trade association in its advocacy strategy concerning the EU renewable energy framework before the EU institutions and the EU member states.

5. Privatizations, M&A and Energy Companies Restructuring

Examples of our client matters in this area include:

- Advising both governments and private investor vehicles with regard to privatizations in the energy sector.
- Handling all aspects of major corporate transactions in the energy sector, and successfully handling oil and gas companies' mergers and restructuring.
- Handling the restructuring of a Dutch oil company's manufacturing plant in Belgium, dealing especially with the split of their catalyst manufacturing plan.
- Handling the restructuring of a major international chemical company.
- Multiple acquisitions of energy-related assets including wind power farms, co-generation facilities, oil and gas pipelines, interests in LNG facilities and refineries.
- Acquisition of 315 megawatt oil fixed simple-cycle power plant located on the Delmarva Peninsula, VA.
- Tenaska Trailblazer Energy Center. We served as the initial real estate counsel for the Tenaska Trailblazer Energy Center project, and were responsible for anonymously acquiring over 2,000 acres of land for the project. The Tenaska Trailblazer Energy Center will generate approximately 765 megawatts (MW) gross and 600 MW net, using best available supercritical steam, and pulverized coal technology. The Tenaska Trailblazer Energy Center, unlike any conventional coal-fueled power plant in the United States today, will be designed to capture 85 to 90 percent of the carbon dioxide produced by combustion and to deliver it via pipeline to Permian Basin oil fields for use in enhanced oil recovery (EOR) and ultimately, geologic storage.
- Representing Just Energy, one of North America's leading independent natural gas and electricity retailers and providers of green energy, in connection with its acquisition of Hudson Energy Services, a New Jersey-based and privately-held electric and natural gas provider and Fulcrum Retail Holdings, a Texas-based and privately-held retail electricity provider.
- Representing a private equity firm in connection with its acquisition of an oil and gas services firm.
- Representing investors of oil, gas, and mineral rights in a federal securities fraud investigation involving investments of \$8,000,000.
- Handling international coverage dispute relating to an alleged \$1 trillion in claims against the world's largest petroleum producer arising out of intentionally-set fires at oil fields in Kazakhstan and other countries in the Middle East during the Iraqi War.
- Acquisition, development and financing of 885 megawatt Combined-Cycle Facility in Scottsville, Virginia and related 14-mile water supply pipeline.
- Acquisition, development and financing of 845 megawatt Combined-Cycle Facility in Billingsley, Alabama and related 21-mile water supply pipeline.
- Acquisition, development and financing of a second 885 megawatt Combined-Cycle Facility in Billingsley, Alabama.

- Acquisition, development and financing of 900 megawatt peaking facility in west Georgia.
- Acquisition of six operating gas-fired power plants located in five states.
- Acquisition of three operating gas-fired power plants located in three states.
- Acquisition of 315 megawatt oil fired simple-cycle power plant located on the Delmarva Peninsula.

6. Litigation and International Dispute Resolution

We are heavily involved in all aspects of international dispute resolution in the oil and gas sectors, from international institutional and *ad hoc* commercial and investment arbitration to mediation. MLA attorneys have litigated complex cases before the US courts with regard to a wide spectrum of disputes in the energy sector. We are also experienced in national and EU litigation in disputes concerning European environmental law.

Examples of our client matters in this area include:

- Representing a major multinational oil company in a complex international arbitration.
- Representing a US oil company in ad hoc international arbitration proceedings in Athens, Greece with regard to a dispute over oil exploration rights in the Prinos and South Kavala oil and natural gas fields.
- Litigating before the Greek courts a challenge against the appointment by the Greek Government of an arbitrator in an ad hoc international commercial arbitration case.
- Representing a major international company in a wide scale international commercial litigation case before the



Dutch Courts in a dispute over exploration rights in various oil fields in Kazakhstan.

- Representing a multinational company before the Belgian administrative and criminal authorities in a case concerned with EU and Belgian chemical law.
- Representing companies before the European Chemicals Agency Board of Appeal.
- 1240 megawatt combined cycle facility Murray County Georgia. This project involved substantial litigation over an air permit as well as extensive real estate, bond financing, tax incentive and related efforts. It also involved substantial negotiations with the county regarding the taxes to be imposed.
- Representation of oil drilling company in various lawsuits and proceedings arising out of off-site disposal of oil field wastes.
- Representation of a major oil company in its attempt to force current owners of a service station to remediate a site and to establish the current owners' liability for gasoline and waste oil contamination, through a Court verdict that enjoined the owners to remediate, and a Court order requiring owners to pay the oil company's attorneys' fees.

- Representation of a major oil company in defense of a lawsuit brought by the owner of a neighboring property alleging gasoline contamination, through summary judgment in favor of the oil company.
- Lead litigation attorney, responsible for resolving 14,000 claims in one of the largest Chapter 11 Bankruptcy cases ever filed (Apex Oil Company and its 53 administratively consolidated related entities).
- *Consumer Defense Group v. Shell Oil, et al.*, California Court of Appeal, Fourth Appellate Dist., Div. 3 Case No. G034935 (2006) (unpublished opinion). Following a successful challenge to the complaint, plaintiff's appeal resulted in a ruling favorable to defendants: entities undertaking remedial activities at contaminated sites cannot, in general, be liable under the Proposition 65 discharge prohibition, absent allegation that contaminants were contained before or during remediation and then were knowingly discharged by the remediator.
- *Memry Corp. v. Kentucky Oil Technologies*, NV N. D. Cal. 2007 (Jury Trial -- breach of contract and inventorship).
- Obtained a defense verdict in favor of CIBC World Markets Corp. after a three-week trial in federal district court in Houston, Texas, in a lawsuit seeking over \$80 million in connection with the issuance of a fairness opinion to a failed oil and gas company.
- Defense of a federal court action involving an oil refinery explosion which resulted in over 120 depositions and a multi-million dollar settlement.
- Successfully defended Coral Energy Resources, LP, the then subsidiary of Royal Dutch Shell, in California's Natural Gas Class Action Litigation.
- *Crane Co v. Kitzinger*: Appeal to the Mississippi Supreme Court of a liability and seven figure punitive damage award for an accident involving a maritime elevator on an offshore oil platform. The Court reversed and remanded for a new trial on all issues.
- Represented SDG&E as co lead counsel with respect to its proposed Sundesert Nuclear Power Plant (1976-1978), with extensive administrative trials before the State PUC and State Energy Commission on transmission line corridors / rights of way.
- Lead trial attorney for US Borax, Canadian gas producers and other industrials in CPUC / FERC cases involving massive deregulation of natural gas industry in California, growth of cogeneration industry, and first FERC licensing of an interstate natural gas pipeline into California (1984-1991).
- Representation of oil drilling company in lawsuit seeking reimbursement for Superfund liability under CERCLA and contract law.
- Representation of large unsecured creditor in four separate Chapter 11 bankruptcies of natural gas marketers.
- Representation of Atlanta Gas Light Company in a regulatory complex litigation matter related to the encroachment by a municipal natural gas system into the certificate area of Atlanta Gas Light Company.
- Won more than \$50 million in claims on behalf of Fortune 500 government contractor in ICC arbitration against a European government for damages stemming from breach of a defense and security contract. Defeated more than \$200 million in set-offs brought against the company and secured a reversal of the termination of the contract

7. Environmental Legislation

We have built one of the most reputable environmental law practices in Europe and the US, assisting clients in every aspect of environmental law enforcement, ranging from compliance to litigation. We are experts in the environmental implications of oil and gas projects worldwide, and have advised energy companies with respect to their compliance with environmental laws in their international operation at both upstream and midstream levels. MLA advises major international chemical companies on regulatory environmental legislation concerning oil by-products. MLA has also operated a number of consortia for the registration and authorization of different chemical substances under the REACH Regulation.

Examples of our client matters in this area include:

- Won landmark victories in the case of *As You Sow v. Shell Oil Company*, resulting in a ruling that Proposition 65 cannot be enforced against out-of-state manufacturers of workplace chemical products.
- Represented Unisys in environmental insurance claims which exceeded more than \$100 million in environmental remediation costs from its former insurers.
- Represented Unisys in mass tort repetitive stress injury cases.
- Defended Unisys as the manufacturer of the steering system in a multi-billion dollar oil spill suit on the *Exxon Valdez*.
- Representing US private sponsors in a US-Central American joint venture company that is designing and implementing a vertically and horizontally integrated biofuel production operation that will own and operate all aspects of feedstock growth and supply, biofuel and byproduct processing and sales of biofuel product to the U.S. and Mexico.
- Conducting environmental due diligence in international M&A transactions (indicative examples include relevant work for underground mining companies in Germany, steel production line in Belgium, and polymer production acquisition of contaminated sites in several European countries).

Footnotes

¹Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospecting, exploration and production of hydrocarbons [1994] OJ L164/3.

²Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on the safety of offshore oil and gas operations and amending Directive 2004/35/EC [2013] OJ L178/66.

³Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors [2004] OJ L134/1; Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures

for the award of public works contracts, public supply contracts and public service contracts [2004] OJ L134/114.

⁴Hydrocarbons Directive, art 14.

⁵Ibid Preamble.

⁶Ibid art 2(1).

⁷Ibid art 2(2).

⁸Ibid art 2(2).

⁹Ibid art 8.

¹⁰Ibid art 3(1).

¹¹Ibid art 3(2).

¹²Ibid art 3(2)(b).

¹³Ibid art 3(2).

¹⁴Ibid art 3(3).

¹⁵Ibid art 3(3).

¹⁶Ibid art 5(1).

¹⁷Ibid art 5(1).

¹⁸Ibid art 5(1).

¹⁹Ibid art 5(4).

²⁰Ibid art 5(1).

²¹Ibid art 4(b).

²²Ibid art 4(c).

²³Ibid art 4(a).

²⁴Ibid art 5-6.

²⁵Case L-569/10 European Commission v. Poland, Judgement of 27 June 2013.

²⁶Ibid art 6(3).

²⁷Ibid art 5(2).

²⁸Ibid art 5(2).

²⁹Ibid art 5(4), 6(1).

³⁰Ibid art 5(3).

³¹Ibid art 3(6).

³²Oil and Gas Safety Directive, Preamble.

³³Ibid art 41(1).

³⁴Ibid Recital 10.

³⁵Ibid Recital 10.

³⁶Ibid Recital 10.

³⁷Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [2004] OJ L143/56.

³⁸Oil and Gas Safety Directive, Recital 11.

³⁹Ibid art 4(1).

⁴⁰Ibid art 4.

⁴¹Ibid art 4(4).

⁴²Ibid art 4(4).

⁴³Ibid art 4(4).

⁴⁴Ibid art 3(1).

⁴⁵Ibid art 3(2).

⁴⁶Ibid art 3(3).

⁴⁷Ibid art 3(4).

⁴⁸Ibid art 5(1).

⁴⁹Ibid art 5(2).

⁵⁰Case 14/83 *Von Colson* [1984] ECR 1891 [26]; Case C-106/89 *Marleasing* [1990] ECR I-4135 [8]; Case C-397-403/01 *Pfeiffer* [2004] ECR I-8835 [115]-[118].

⁵¹Hydrocarbons Law, art 4.

⁵²Ibid art 2.1.

⁵³Ibid.

⁵⁴Ibid art 2.2.

⁵⁵Ibid art 2.17.

⁵⁶Ibid art 2.17a.

⁵⁷Ibid art 2.17a.

⁵⁸Ibid art 2.18.

⁵⁹Each entity may submit proposals for more than one area.

Further Information

For further information please contact:



Nora Wouters
Partner, Brussels

2 Avenue de Tervueren
1040 Brussels
Belgium

T: 32.2.278.1215
F: 32.2.278.1200
nwouters@mckennalong.com



Allen B. Green
Partner, Washington, DC

1900 K Street NW
Washington, DC 20006

T: 202.496.7523
F: 202.496.7756
agreen@mckennalong.com



Ursula Schliessner
Partner, Brussels

2 Avenue de Tervueren
1040 Brussels
Belgium

T: 32.2.278.1224
F: 32.2.278.1200
uschliessner@mckennalong.com



William T. O'Brien
Partner, Washington, DC

1900 K Street NW
Washington, DC 20006

T: 202.496.7107
F: 202.496.7756
wobrien@mckennalong.com



Nicolas Croquet, PhD
Associate, Brussels

2 Avenue de Tervueren
1040 Brussels
Belgium

T: 32.2.278.1292
F: 32.2.278.1200
ncroquet@mckennalong.com



Jonathan A. Ballan
Partner, New York

230 Park Avenue
17th Floor
New York, NY 10169

T: 212.905.8304
F: 212.922.1819
jballan@mckennalong.com



Orestis Omran
Associate, Brussels

2 Avenue de Tervueren
1040 Brussels
Belgium

T: 32.2.278.1237
F: 32.2.278.1200
oomran@mckennalong.com



Richard L. Sigal
Partner, New York

230 Park Avenue
17th Floor
New York, NY 10169

T: 212.905.8335
F: 212.905.8388
rsigal@mckennalong.com

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