

## Algeria: Recent Regulatory Changes

*“What a difference a year makes...”<sup>1</sup>*

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In July 2005, the Algerian government promulgated a new legislative regime for the petroleum sector, Law No. 04-05 of 28 April 2005 (the **Hydrocarbons Law**), and the resulting deregulation/liberalisation and international investors welcomed improved fiscal and operational terms.<sup>4</sup> Now, barely a year later – a year which does not witness increases in petroleum prices on the same scales as the period from 2001, when the Hydrocarbons Law was first proposed, to 2005, when it was promulgated - the Algerian government has done an about-face on one crucial aspect of the Hydrocarbons Law and re-vested Sonatrach with a majority (at least 51%) participation right in all petroleum contracts and petroleum transportation projects.

This step back will be accomplished through new measures that were approved by the Algerian Cabinet on 10 July 2006<sup>5</sup>. They will be incorporated in a document designed to amend the Hydrocarbons Law (the **Amendment**) but the actual legal instrument that will be used to implement the changes is not yet clear<sup>6</sup>. The instrument might be a Presidential Ordinance (*ordonnance présidentielle*) instead of a formal amendment. A Presidential Ordinance would not have to be discussed by Parliament, but it would require approval from Parliament.

This Article focuses on Sonatrach's participation right. The Amendment contains other important changes that have not been addressed in this Article, including the creation of a new tax on windfall profits from petroleum contracts.

### Sonatrach Participation before the Hydrocarbons Law

Before the Hydrocarbons Law came into force, Law No. 86-14 of 19 August 1986 Concerning Activities of Prospection, Exploration, Exploitation and Pipeline Transportation of Hydrocarbons (the **Old Law**) governed petroleum operations in Algeria. Under the Old Law, Sonatrach was a mandatory majority (at least 51%) participant in each petroleum contract and each petroleum transportation project from the date the contract was entered into. It is important to note that Sonatrach's role in the Algerian petroleum industry was different during this era – it functioned both as the state participant in commercial activities in the oil and gas sector and as the regulatory authority. During this era it was easier to reconcile the mandatory 51% participation with Algeria's desire to attract foreign investment – as the regulator, Sonatrach could use its majority participating interest to control operations and thereby regulate oil companies active in Algeria.

### Sonatrach Participation under the Hydrocarbons Law

In July 2005 the Hydrocarbons Law came into force. The Hydrocarbons Law recognised the evolving character of Sonatrach's role in the Algerian and international petroleum industry. It made Sonatrach a commercial entity and relieved Sonatrach of the public sector (regulatory) responsibilities that were “provisionally” entrusted to Sonatrach under the Old Law. At this time, the Algerian government also began encouraging Sonatrach to compete domestically and internationally for petroleum projects. This new domestic and international commercial focus was reflected in the Hydrocarbons Law.

In conjunction with Sonatrach's change of roles, the Hydrocarbons Law also reduced the scope of Sonatrach participation in upstream ventures from a mandatory 51% to an optional 20% to 30%. Sonatrach can exercise this option to participate for a limited period after ALNAFT approves the development plan for the discovery made under the relevant petroleum contract. Previously, Sonatrach's participation was from the signing of the petroleum contract and, as a result, Sonatrach had greater involvement and could participate in exploration operations. The Hydrocarbons Law clearly reduced Sonatrach's influence, involvement and privileged position.

Sonatrach's public sector responsibilities were assumed by l'Agence Nationale de Contrôle et de Régulation des Activités dans le domaine des Hydrocarbures (**ARH**) and l'Agence Nationale pour la Valorisation des Ressources