FINANCIAL GUARANTEES FOR DECOMMISSIONING: UPDATES NECESSARY TO MITIGATE THE RISK EXPOSURE OF BRAZILIAN SOCIETY

Marcelo Vítor Martins de Meneses, Universidade de São Paulo, +55 31 998686825 – mmeneses@usp.b

# Overview

Given the scenario of uncertainty regarding the future economic viability of the oil and natural gas industry, and the possibility of international liability in the event of non-execution of decommissioning activities, countries have promoted the updating of their regulations on financial guarantees that ensure resources for the decommissioning of production facilities. Among these countries is Brazil, which in 2021 published a resolution establishing new procedures related to decommissioning guarantees. This article then presents the main international conventions and guidelines related to offshore decommissioning that have motivated oil-producing countries to seek mechanisms to protect their citizens regarding the cost of decommissioning. Next, it is discussed how the issue has been treated in Brazil in terms of regulation and what are the first results obtained in the process of presenting decommissioning guarantees that took place in 2023.

**Methods**

The article makes a historical analysis seeking to discover the evolution of international regulations related to the topic of decommissioning offshore platforms. Furthermore, through analysis of documents available on the National Petroleum Agency (ANP) website, it is narrated how the issue of decommissioning came to be dealt with in Brazil and the current status of Brazilian regulations. Finally, based on the ANP documents, we seek to present an overview of the decommissioning guarantees offered to the ANP to discuss which guarantee modalities have been used most by the oil companies. Based on this analysis, questions will be raised about the effectiveness of such guarantees in the event of an oil company's default at the time of decommissioning.

# Results

The results demonstrate that the United Nations Convention on the Law of the Sea, celebrated in 1982, motivated countries to adopt stricter rules regarding decommissioning guarantees. Under international law, the signatory countries of the convention became responsible for non-compliance due to the abandonment or disuse of offshore oil and natural gas production facilities.

Regarding Brazilian regulation, it innovated by presenting a mathematical model that determines the annual value to be guaranteed for each producing field, taking as input for the calculation information on reserves, the cost of decommissioning, and the remaining contract period. Through the use of this model, contractors have the possibility of reducing the value to be guaranteed, when compared to the total cost of decommissioning a field's facilities.

Another difference between Brazilian regulation and international standards is the acceptance by the ANP of the use of financial guarantees that do not generate financial burdens for oil companies, such as the parental company guarantee and the term of commitment. If, on the one hand, such modalities increase the attractiveness of exploration projects in Brazil, on the other hand, they introduce risks for the decommissioning stage.

**Conclusions**

Faced with the possibility of liability, as a result of non-compliance with international conventions regarding the abandonment or disuse of offshore oil and natural gas production facilities, many countries have updated their regulations on decommissioning, aiming to internalize the negative environmental externalities linked to the oil industry. Petroleum.

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Among these countries is Brazil, which, through the National Agency of Petroleum, over the last few decades, has promoted regulatory updates, in order to make the obligations related to end-of-contract activities more rigid and clear.

This commitment was achieved with the publication of ANP Resolution No. 854/21, which established the procedures related to the presentation of decommissioning guarantees to the Agency. However, it was only at the end of 2023 that the regulations became fully applicable, making all oil companies obliged to guarantee the decommissioning of their fields.

Therefore, there is still little information made available by the ANP about the effectiveness of the new regulation. In particular, a detailed analysis of the risks posed to the oil industry related to the possibility of the companies themselves (or companies related to them) to guarantee themselves through a production pledge, corporate guarantee or decommissioning commitment is necessary.

Furthermore, another innovation brought by the Brazilian resolution, the possibility for companies to guarantee annually an amount considerably lower than that necessary to decommission the facilities of a production field, needs to undergo a more detailed economic examination, as the presence of such a device weakens the ability to use the guarantees to cover the costs of decommissioning activities in unlikely situations of devaluation of the price of a barrel of oil or even the international community limiting the production of this hydrocarbon.

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