I. Avoid Surprises
   A. Diligently Identify, Investigate and Analyze all Benefits, Risks and Other Aspects of the Deal

II. Follow the Money
   A. Plan How to Get in the Deal, Achieve Objectives and Get Out of the Deal
   B. Have Alternative Plans

III. Clarify and Document Conditions, Rights, Obligations, Liabilities and Other Terms to Monetize

IV. Ultimately – Remove/Reduce Risk
I. Title Risk
   A. Will the Investor Have Clear Title To and Use of the Area?

II. Technical Risk
   A. Will a Discovery Be Made?

III. Commerciality Risk
   A. Will the Discovery Be Commercially Viable?
   B. Will the Investor Have the Right to Exploit the Discovery?

IV. Financing Risk
   A. Will the Investor / Project Be Able to Obtain Financing?
V. Completion Risk
   A. Will the Development Be Completed on Time and Within Budget?

VI. Operation Risk
   A. Will Production Achieve Projected Rates and Duration?

VII. Market Risk
   A. Will Proceeds of Production Realize Forecast Demand and Price?

VIII. Legal Risk
   A. Will Applicable Laws and Contracts Be Honored?
IX. Socio-Economic and Political Risk
   A. Will Host Government Provide Stable Investment Regime and Physical Security?
   B. Will Investor Be Able to Mitigate the Risks of Expropriation, Inconvertibility and Political Violence?
I. HOME COUNTRY LAWS
II. TREATIES, CONVENTIONS AND INTERNATIONAL AGREEMENTS
III. BOUNDARY DISPUTES
IV. LAND OWNERSHIP
V. NATIONALIZATION/EXPROPRIATION
VI. EXPORT ROUTES
VII. HOST COUNTRY LEGISLATION
VIII. SPECIAL ISSUES (SOME RANDOM THOUGHTS)
HOME COUNTRY LAWS

EXAMPLES:

I. Sanctions
II. Disallowance of Tax Benefits/Credits
III. Licensing (Export of Commodities and Technical Data)
IV. Anti-Boycott
V. Anti-Corruption
EXAMPLES:

I. Sanctions (United Nations)
II. Anti-Corruption (United Nations, OEDC, World Bank, etc.)
III. Arbitration (UN Convention, ICSID Convention, etc.)
IV. Tax
V. Environmental Protection
VI. Bilateral Investment Treaties, etc.

VII. Trade Agreements

VIII. Investment Protection (MIGA, OPIC, etc.)

IX. Export Credit Agencies (Export-Import Bank, etc.)

X. Multilateral Lending Agencies (International Finance Corporation, etc.)
I. Identification of Boundary Disputes (Prior to Entry)
   A. Reference Books
   B. Geographer’s Office (State Department)
   C. Press

II. Identification of Boundary Disputes (After Entry)
   A. Energy Ministry
   B. Local Counsel

III. Effect of Boundary Dispute on Area of Interest
   A. Contract Area
   B. Access to Export Outlets
I. Sources of Information
   A. Energy Ministry
   B. Local Counsel
   C. Land Use and/or Property Laws

II. Ownership and Use of Surface Within Contract Area
   A. State-Owned Surface
   B. Mixed-Ownership of Surface (State and Privately Owned)
   C. Private Use of State-Owned Surface
III. Permissible Use and Consumption of Surface During Petroleum Operations

IV. Ownership and Use of Surface Outside Contract Area
   A. Easements, Rights-of-Way
   B. Access to Export Outlets

V. Acquisition of Right to Use Privately Owned Surface
   A. Government Often Able to Acquire Right
      1. Negotiation
      2. “Eminent Domain”
B. Displaced or Injured Owner—Payment Issues
   1. Amount
   2. Source

C. Responsibility for Acquisition
   1. Government
   2. Contractor, With Government Assistance

VI. Restrictions on Use, Regardless of Ownership
A. National Parks, Etc.
B. Burial Grounds, Religious/Sacred Areas
C. Areas of Historical Significance
D. Military Grounds
I. The Right to Nationalize/Expropriate Investments Within a Country’s Borders is Generally Recognized Under International Law as an Attribute of the Country’s Sovereignty

II. It is also, however, Generally Recognized Under International Law that Nationalization or Expropriation is to Be Accomplished Within Certain Guidelines
A. Action Taken for a Public Purpose
B. Action is Non-discriminatory
C. Action Accompanied by Just Compensation

III. History, if any, of Nationalization/Expropriation
A. Petroleum Industry or Industry Assets
B. Compliance with International Standards
C. Compensation
D. Disputes
1. Unresolved
2. Resolved
   A. Negotiation
   B. Arbitration
E. Sources of Information
1. State Department (Desk Officer)
2. Commerce Department (Desk Officer)
3. Press
4. General Reference Materials
IV. Contractual Restrictions on Nationalization or Expropriation

A. Agreement not to Exercise Right

B. Not Unanimously Accepted Principle

C. Restriction Must Be Specific and Clear
   1. Generally accepted by those who accept the principle of contractual restriction
   2. Typical stabilization of contract clause is not sufficient

D. Creates Opportunity to Specify or Clarify Compensation Required
I. Desirable to Export Production
   A. Title Often Taken Only Upon Export
   B. Payment Typically in U.S. Dollars
   C. Less Subject to Host Country Control and Restrictions

II. Identify Possible Export Outlets (Typically Ports) in the Country

III. Consider Alternatives for Transportation of Production From the Contract Area to the Export Outlet
IV. In Landlocked Situations, Identify Possible Method of Access to Export Outlets in Bordering Countries
   A. Agreement With Bordering Countries for Access to Seaports or Other Export Outlets
   B. Use by Contractor of Rights Under Such an Agreement
I. Caution
   A. Difficult to Locate
   B. Difficult to Determine Whether All Pertinent Documents Have Been Located
   C. May Be Conflicting
   D. May Be Unclear and Ambiguous
   E. May Be Poorly Translated, If at All
   F. If Necessary, Seek Assistance
      1. Local Experts—Lawyers, Bankers, Accountants, Local Companies
      2. Responsible Government Agency/Authority
II. Pertinent Legislation

A. Constitution
B. Petroleum Legislation
C. Exchange Control Act
D. Customs Act
E. Income Tax Act
F. Companies Act
G. Others Not Discussed—Investment, Labor, Immigration, Environmental, Health and Safety Laws
I. Review of Legislation Must Begin With Constitution
   A. Most Fundamental Law
   B. All Other Laws Emanate From Constitution
      1. Authorized by Constitution
      2. Consistent With Constitution
   C. Determine Whether Petroleum Legislation Will Be Encumbered by Requirements of the Constitution
II. Pertinent Subjects

A. Ownership of Petroleum Resources
B. Contractual Arrangements Pursuant to Which Petroleum Resources May Be Developed
C. Development of Petroleum Resources by Foreign Entities
PETROLEUM LEGISLATION

I. After the Constitution, Petroleum Legislation Is the Most Important Host Country Legislation
   A. Must Not Contradict Constitution
   B. May Not Exceed Authority Granted in Constitution

II. Type of Legislation
   A. General Foreign Investment Legislation
   B. General Natural Resources Legislation
   C. Specific Petroleum Legislation
PETROLEUM LEGISLATION (CONTINUED)

III. Ownership of Petroleum Resources
IV. Types of Contractual Arrangements
V. Development of Petroleum Resources by Foreign Entities
VI. Authority to Act As Contracting Party for the State
VII. Procedure for Entering Into Contractual Arrangement
VIII. Approvals Required
IX. Local Participation or Carry
X. Dictation of Contractual Terms by Legislation
XI. Prescription of Model Form Contract
XII. Petroleum Regulations Authorized
I. Three Issues Typically Addressed
   A. Ability to Obtain and Freely Use Hard Currency Proceeds From Sales of Petroleum
   B. Ability to Move Capital Into and Out of Host Country to Pay Costs of Operations
   C. Rate of Exchange for Currency Conversion
   D. Sources of Assistance
      1. Finance Ministry
      2. Central Bank
      3. Energy Ministry
      4. Local Bankers
      5. Local Counsel
II. Use of Export Sales Proceeds
III. Proceeds From Internal Sales
IV. Reporting Requirements for Disposition of Proceeds
V. Taxation on Disposition of Proceeds
VI. Accounts (Allowed or Required)
VII. Reporting Requirements for Accounts
VIII. Minimum Hard Currency Requirements
IX. Local Expenditures (Currency and Location)
X. Payments to Foreign Contractors, Subcontractors and Suppliers
XI. Payments to Expatriate Employees (Currency, Location and Right to Repatriate/Remit)
XII. Exchange Rate
I. Affects Ability to Move Equipment, Materials and Goods (Including Petroleum) Into and Out of the Host Country

A. Country Must Balance Desire to Protect Local Industry and to Generate Additional Revenue Against Detrimental Effect of Onerous Regime

B. Sources of Assistance
   1. Customs Service
   2. Finance Ministry
   3. Energy Ministry
   4. Local Counsel
II. Export of Production
III. Import of Equipment, Materials and Goods
IV. Export of Imported Items
I. A Great Benefit to the Local Economy Is the Tax Revenue Generated by Petroleum Operations
   A. Country Must Balance Its Desire to Maximize Tax Revenue Against Detrimental Effect of Onerous Tax Regime
   B. Sources of Assistance
      1. Taxing Authority
      2. Finance Ministry
      3. Energy Ministry
      4. Local Accountants
      5. Local Counsel
II. Applicability of General Tax Code
III. Creditability for Tax Purposes
IV. Exemption From Income Taxation
V. Tax Rates Based on Entity Used
VI. Contractors/Subcontractors
VII. Expatriate Employees
VIII. Other “Taxes”
I. Qualifications to Conduct Business
   A. Options
      1. Local Incorporation
      2. Registration of Branch
   B. Sources of Assistance
      1. Companies Registrar
      2. Energy Ministry
      3. Local Counsel

II. Form of Investment Generally Required for Foreign Investment
III. Specific Type of Entity Required for Petroleum Activities
IV. Local Ownership or Content Requirements
V. Local Agent Required
VI. Local Officers and/or Directors Required
VII. Procedures and Fees for Incorporating or Registering
I. Contract/Agreement Diligence
II. Customary Practices (Variance from Legal Requirements?)
III. Foreign Sovereign Immunity/Act of State Doctrine
IV. Host Country Law as Governing Law of Contract
V. Dispute Resolution
VI. Stability Clauses
VII. Requirements for Transfer of Contract
VIII. Requirements for Transfer of Entity (Change In Control)
IX. Environmental Liability
X. Human Rights Violations
XI. Access to Services and Infrastructure

SPECIAL ISSUES
(SOME RANDOM THOUGHTS)