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Conducting oil and gas activities in Ivory Coast

Laws and regulations

List the main legislation governing petroleum exploration and production activity in your country.

The main legislation relating to petroleum activities is Law no. 96-669 dated 29 August 1996, as amended by Ordinance no. 2012-369 dated 18 April 2012, and implementing decree no. 96-733 dated 19 September 1996 (the '**Petroleum Code**').

Due to the general nature of the Petroleum Code, most of the specific provisions governing petroleum exploration and production are included in petroleum contracts ('**Petroleum Contracts**') which implement the principles of the Extractive Industries Transparency Initiative.

Uniform Acts adopted by the Organisation for the Harmonisation of Business Law in Africa (*Organisation pour l'Harmonisation en Afrique du Droit des Affaires* or '**OHADA**'), of which Ivory Coast is a Member State, apply to companies carrying out oil and gas activities in Ivory Coast, especially the OHADA Companies Act.

Oil and gas activities are subject to exchange control regulations applicable within the West African Economic and Monetary Union ('**WAEMU**') and the Economic Community of West African States ('**ECOWAS**').

Identify the Government, regulatory and/or oversight bodies principally responsible for regulating oil and gas activities.

The main institutions of the Ivorian hydrocarbons sector include:

- Ministry of Mines, Petroleum and Energy (*Ministère Du Pétrole et de L'énergie* or '**MMPE**');

- Department of Hydrocarbons (*Direction Générale des Hydrocarbures* or '**DGH**') acting under the supervision of the MMPE, which is the government authority primarily responsible for the development and regulation of the oil and gas industry in Ivory Coast;
- Interdepartmental Petroleum Commission ('**CIP**') in charge of the technical review of applications for petroleum authorisations and Petroleum Contracts;
- Centre for the Promotion of Investments in Ivory Coast (*Centre de Promotion des Investissements en Côte d'Ivoire* or '**CEPICI**') in charge of advising the Government on questions regarding the implementation of the Petroleum Code; and
- *Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire* or ('**PETROCI**') the national company for oil and gas operations, established by decree in 1975.

Entry requirements

What are the registration requirements for becoming a licensee of an oil and gas production sharing contract/licence/concession ('Licence') in your country? For instance, is it necessary to incorporate a subsidiary, or register a branch?

According to the Petroleum Code, any contractor carrying out petroleum activities in Ivory Coast is required to hold a Petroleum Contract. Contractors may operate through a local subsidiary for the whole duration of the Petroleum Contract or through a branch.

Pursuant to the OHADA Companies Act which is directly applicable in Ivory Coast, any foreign company having registered a branch must transform such branch into a local company after a maximum of 4 years (i.e. an initial 2 year period, renewable once for a further 2 years).

Are there any foreign investment approval requirements or restrictions when commencing business in your country (e.g. a minimum local shareholding in the entity undertaking the activity)?

Neither the Investment Code of 7 June 2012 nor the Petroleum Code establishes limitations on foreign investment. Local and foreign investments are treated equally.

Foreign direct investments must be declared to the Ministry of Economy and Finances in order to allow dividends and other income from the investment to be expatriated.

Local content requirements are also expressly included in the Petroleum Code and must be reflected in Petroleum Contracts. The relevant undertakings relate to:

- Giving preference to local companies for construction, supply and services contracts, provided they offer equivalent conditions of quality, price, quantities and delay;
- Hiring priority skilled local employees; and
- Establishing and financing a training programme for local employees and for public officials employed by the petroleum administration.

These local content obligations apply to both contractors and sub-contractors.

Licensing

Identify the main fiscal/legal model granting rights to explore and produce oil and gas.

Legal

Contractors require authorisation from the State to carry out oil and gas activities, the terms of which are included within a Petroleum Contract between the contractor and the State. Details of the relevant authorisations are as follows:

- **Non-exclusive prospecting authorisation:** (*autorisation de reconnaissance d'hydrocarbures*) Entitles the holder to perform preliminary surface prospecting works on a non-exclusive basis. Results must be disclosed to the MMPE. The prospecting period is fixed at a maximum of 1 year with one renewal period of up to 1 year permitted. The prospecting authorisation does not confer any preferential right to a Petroleum Contract for the contractor. Transfer or disposal of the rights and obligations arising from this authorisation is forbidden;
- **Exploration authorisation:** Exploration permits under concession contracts (*permis de recherche d'hydrocarbures*) and exclusive exploration authorisations under production sharing contracts (*autorisation exclusive d'exploration*) are granted

for a maximum period of 3 years with two renewal periods as set out in the relevant concession or production sharing contract. In either case exploration authorisations and permits may not exceed 7 years (or 9 years in deepwater zones). The relevant contract (see below) provides for relinquishment obligations of the authorisations at each renewal stage;

- **Exclusive appraisal authorisation:** (*autorisation exclusive d'évaluation*) Granted to a contractor in the event a discovery is made. The duration of the exclusive appraisal authorisation will be set out in the production sharing contract; and
- **Production authorisations:** Production concessions under concession contracts (*concession d'exploitation*) and exclusive production authorisations under production sharing contracts (*autorisation exclusive d'exploitation*) are granted for a maximum period of 25 years with one renewal period of up to 10 years as set out in the relevant contract.

The Petroleum Code refers to the following 3 types of Petroleum Contracts for upstream activities:

- **Concession contract** (*contrat de concession attachés à l'octroi de titres miniers d'hydrocarbures constitués par des permis de recherche et les concessions d'exploitation*) is entered into prior to the grant of an exploration permit and confers rights and obligations during exploration and, in case of a discovery, during production. The concession contract holder assumes financial and operating risks and may dispose of the production in accordance with the contract;
- **Production sharing contract** (*contrat de partage de production*) under which the State grants an exclusive exploration right and, in case of a discovery, an exclusive right of production. The contractor assumes financial and operating risks. Production is shared with the State in accordance with the contract; and
- **Service contract** (*Contrat de services à risques*) under which the contractor has no entitlement to any portion of the production but is remunerated in cash for its services and reimbursed its petroleum costs.

Petroleum Contracts are all negotiated with the MMPE and contain all dispositions applicable to the relevant exploration and/or production phase, including:

- Exploration area;
- Duration of the contract and the relevant authorisations or permits including renewal periods and relinquished areas;
- Work and investment commitments and relevant securities;
- Transportation rights;
- Production ownership and sharing;

- State participation;
- Tax and customs regime;
- Transfer and assignment;
- Environment, health and safety and rehabilitation of sites;
- Local preference and local training commitments;
- Abandonment obligations including abandonment deposit; and
- Stability, force majeure, applicable law and dispute resolution clause.

A model contract may be provided by the MMPE to serve as a basis for negotiations.

Petroleum Contracts must be signed by the President of Ivory Coast or its duly authorised representative and are published in the Official Gazette.

Transfer or disposal of the rights and obligations arising from Petroleum Contracts is subject to notification to and prior approval of the MMPE.

Fiscal

Contractors are subject to taxes and other contributions under the General Tax Code, the Petroleum Code and the relevant Petroleum Contract, including:

- **Fixed entry fees:** fixed entry fees are due as follows and become payable at the conclusion of each award or transaction:
 - Block award: CFAF 35,000,000;
 - Prospecting authorisation: CFAF 50,000,000;
 - For each exploration period: depending on the period, ranging from CFAF 40,000,000 to 75,000,000;
 - Appraisal authorisation: CFAF 75,000,000;
 - Exclusive production authorisation: CFAF 500,000,000;
 - Block transfer value below CFAF 500,000,000: CFAF 70,000,000;
 - Block transfer value between CFAF 500,000,001 and CFAF 1,000,000,000: CFAF 100,000,000;
 - Block transfer value between CFAF 1,000,000,001 and CFAF 1,500,000,000: CFAF 150,000,000;
 - Block transfer value between CFAF 1,500,000,001 and CFAF 2,000,000,000: CFAF 200,000,000;
 - Block transfer value higher than CFAF 2,000,000,000: CFAF 250,000,000; and
 - Block renunciation: CFAF 100,000,000.
- **Bonuses:** the amount and number of bonuses are generally negotiated within the Petroleum Contract. The Petroleum Code sets out a signature bonus, payable 30 days after the signing of the Petroleum Contract and a production bonus, payable 30 days after the last day of the production test. Bonuses are not recoverable;
- **Surface area royalty:** an annual surface area royalty as described in the Petroleum Contract is payable no later than the 10th day of the year;
- **Proportional mining royalty:** a monthly proportional mining royalty is based on the total extracted production as set out in the concession contract and is due to be paid in cash or in kind;
- **Profit oil and cost oil:** profit oil and cost oil are negotiated in the Petroleum Contract. Additional cost oil may be negotiated for deepwater operations. Cost oil is recoverable;
- **Corporate income tax:** corporate income tax is due on profits at the rate of 25%;
- **Withholding taxes:** distribution of dividends is exempt from taxation;
- **VAT:** goods and services related to petroleum activities are exempted from VAT;
- **Customs:** WAEMU and ECOWAS applies customs rates specified in the community regulations. Imports of materials exclusively related to petroleum activities are exempt from customs duties. Subcontractors are also entitled to the special customs regime. Personal and domestic goods of non-resident workers of companies holding a Petroleum Contract are exempt from customs duties. Exports of petroleum products are not subject to export duties;
- **Stamp duties:** stamp duties apply to contractors involved in the petroleum activities; and
- **Abandonment deposit:** holders of a production authorisation are required to deposit abandonment costs as specified under the Petroleum Contract.

In addition to the above, a Petroleum Contract may offer specific tax incentives to the contractor.

Contractors may have obligations to supply the domestic market a defined portion of their production, the level of which will be defined in the Petroleum Contract.

Please outline the procedure to apply to the Government for an interest in a Licence in your country. Please include details of cost and timing for obtaining such interest.

Access to the petroleum sector in Ivory Coast is granted to companies having the required technical and financial capabilities. Block awarding is decided by the Government on a discretionary basis either by tender procedure or by direct negotiations with the MMPE.

Complete applications are submitted to the CIP through the CEPICI. An approved application entitles the applicant to enter into negotiations with the MMPE and be awarded either a Petroleum Contract or a prospecting authorisation.

In the case of production sharing contracts or Service contracts, successful negotiations lead to immediate signature and entry into force unless otherwise agreed. As regard concession contracts, the exploration permit is delivered 15 days after its signature by decree, such signature being the date of entry into force of the concession contract.

What is the customary duration of the relevant Licence?

See the Legal section above for details of durations for the relevant Licences.

Does the Government have any right to participate and be carried in the Licence? If so, please describe the extent of this entitlement.

Is there any mechanism for recovery of carry costs?

The State may, pursuant to the terms of the relevant Petroleum Contract, participate directly or through State owned entities in petroleum operations. The Petroleum Code does not include any minimum rate regarding State participation in the company applying for or holding a Petroleum Contract.

Any mechanism for the State's costs to be carried and the mechanism for recovering those costs will be set out in the Petroleum Contract.

Does the Government have any right to participate in the operatorship of the Licence?

As above, the State may participate as operator directly or through State owned entities in petroleum operations.

Assignment

What Government and/or regulatory approvals are required for the acquisition of oil and gas interests held under a Licence (whether by asset or corporate sale/change of control)?

If any, what are the timing requirements and costs of obtaining such Government and/or regulatory approvals?

Transfer or disposal of the rights and obligations arising from Petroleum Contracts and authorisations or permits is subject to notification to and prior approval of the MMPE. The Petroleum Code specifies that any change of control of the company holding a Petroleum Contract is subject to notification to and prior approval by the MMPE.

Are there any pre-emptive rights reserved to any Government entities in the event of a proposed assignment of an interest held under a Licence? If so, what are the terms upon which such entities are allowed to acquire the interest?

The Petroleum Code does not provide the State with a pre-emptive right. A right of pre-emption in favour of the State may, however, be negotiated in the Petroleum Contract.

Economic support

Are parental guarantees or other economic supports commonly required to be provided by oil and gas companies?

The Petroleum Code does not require a parent company guarantee where one or several of the companies forming the contractor entity are subsidiaries of an oil company. However such guarantee may be negotiated in the Petroleum Contract.

Security interests to be provided will be governed by the provisions of the OHADA Uniform Act organising securities, applicable in Ivory Coast.

Are security deposits required in respect of work commitments or otherwise?

During the exploration period, securities in respect of work commitments are required by the Petroleum Code to be included in the Petroleum Contract.

The value of these securities and any requirement on bodies to provide the assistance are to be set out in the Petroleum Contract.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

The Petroleum Code requires abandonment and rehabilitation obligations to be included in the Petroleum Contract. In particular, the holder of a production authorisation shall deposit abandonment costs as specified under the Petroleum Contract.

Facilities, equipment and lands required for production may be transferred free of charge to the Government.

In addition, the Petroleum Code provides for the obligation to include environmental provisions, in particular environmental management plans, in the Petroleum Contract.

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