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Conducting oil and gas activities in Senegal

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. 98-05 dated 8 January 1998, as amended by Law no. 2012-32 dated 31 December 2012, and implementing decree no. 98-810 dated 6 October 1998, (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**').

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 Senegal is a Member State, apply to companies carrying out oil and gas activities in Senegal, 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 Senegalese hydrocarbons sector include:

— Ministry of Energy (*Ministère de l'Énergie* or '**ME**');

- Department of Hydrocarbons (*Direction des Hydrocarbures et des Combustibles Domestiques* or '**DGH**'), acting under the supervision of the ME, is the Government authority primarily responsible for the development and regulation of the oil and gas industry in Senegal;
- National Council of Hydrocarbons (*Comité National des Hydrocarbures* or '**CNH**') advises the Government on questions regarding the hydrocarbons sector and regulates petroleum prices; and
- The *Société des Pétroles du Sénégal* ('**PETROSEN**') the national company for oil operations, established in 1981.

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 Senegal 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 Senegal, 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)?

There is no limitation on foreign investment in the Petroleum Code. Local and foreign investments are treated equally.

Foreign direct investments need only be declared to the Ministry of Economy and Finance 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, quantity and delay;
- Hiring priority skilled local employees; and
- Establishing an annual training programme for local employees.

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

- **Non-exclusive prospecting authorisation** (*autorisation de prospection d'hydrocarbures*) which entitles the holder to perform preliminary surface prospecting works on a non-exclusive basis. Results must be disclosed to the ME. The prospecting period is fixed at a maximum of 2 years. The prospecting authorisation does not confer any preferential right to a Petroleum Contract for the contractor;
- **Exclusive exploration permit** (*permis de recherche d'hydrocarbures*) which entitles the holder to perform exploration works. This permit is granted for an initial period of up to 4 years with two to three renewal periods of up to 3 years each permitted. Each election to renewal is accompanied by a requirement to relinquish a portion of the surface area. Results must be disclosed to the ME. In the event of a proven

commercial discovery, the contractor is entitled to apply for a production concession. Where a potentially commercial discovery is made, contractors may be granted a retention period not exceeding 3 years for liquid hydrocarbons and 8 years for gaseous hydrocarbons;

- **Exclusive interim production authorisation** (*autorisation d'exploitation provisoire*) under which an existing exploration permit holder may be granted an interim production right for a maximum of 2 years within the exploration period; and
- **Production concession** (*concession d'exploitation d'hydrocarbures*) under which the holder is entitled to perform petroleum activities as defined in the concession contract. The concession is granted for an initial period of 25 years with the possibility of a single 10 year renewal.

Transfer or disposal to third parties of the rights and obligations arising from authorisations or permits is subject to prior approval of the ME.

The Petroleum Code refers to the following 4 types of Petroleum Contracts for upstream activities:

- **Exploration contract** (*convention attachée à l'octroi d'un permis de recherche*) under which the contractor is granted an exclusive right to perform exploration works in the surface area covered by an exploration permit. An exploration contract is granted for an initial period of up to 4 years with two to three renewal periods of up to 3 years each;
- **Concession contract** (*concession d'exploitation d'hydrocarbures*) confers exclusive rights and obligations to conduct those oil operations that are defined within the contract. Concession holders assume all financial and operating risks and may dispose of the production in accordance with the terms of the contract. The concession contract is granted for an initial period of 25 years with the possibility of a single 10 year renewal;
- **Exploration and production service contract** (*contrat de services à risques de recherche et d'exploitation d'hydrocarbures*) under which the Government grants an exclusive exploration right and, in case of a discovery, an exclusive right of production. The holder is not entitled to a portion of the production but is remunerated in cash for its exploration and production services; and
- **Production sharing contract** (*contrat de partage de production*) under which the Government 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 Government in accordance with the contract.

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

- Duration of the contract and the relevant authorisations or permits including renewal periods and relinquished areas;
- Exploration work commitments and the relevant securities relating to those commitments;
- Exploration and production conditions;
- Situations relating to cancellation of an exploration permit or withdrawal of a production concession;
- Tax and financial provisions (as approved by the Ministry of Economy and Finance);
- Local preference and local training commitments;
- Restrictions on transfer and assignment;
- State participation provisions;
- Obligations on the contractor to disclose information, documents and samples to the ME;
- Production ownership and sharing;
- Transfer of facilities, equipment and land to the Government on termination or expiration;
- Abandonment measures and environmental provisions including environmental management plans; and
- Stability, applicable law and dispute resolution clauses.

A model contract is provided by the Government to serve as a basis for negotiations.

Petroleum Contracts must be signed by the ME (and approved by the Ministry of Economy and Finance with respect to tax and financial provisions) and approved by the President of the Republic of Senegal. Concluded Petroleum Contracts are published in the Official Gazette.

Transfer or disposal of the rights and obligations arising from Petroleum Contracts are also subject to prior approval of the ME. Approval is deemed granted where no response to the request for approval is received within 60 days of its filing.

Fiscal

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

- **Surface area royalty:** an annual surface area royalty is due as set out in the production sharing contract or in the exploration and production service contract;
- **Production royalty:** concession contract holders are subject to a royalty on the value of the forecast total of hydrocarbons produced as set out in the concession contract. The production royalty is to be paid in cash at rates determined as follows:

- Liquid hydrocarbons exploited onshore: 2% to 10%;
- Liquid hydrocarbons exploited offshore: 2% to 8%; and
- Gaseous hydrocarbons exploited onshore or offshore: 2% to 6%.

- **Additional petroleum tax:** holders of exploration contracts, exploration and production service contracts or production sharing contracts are subject to an additional petroleum tax based on the profitability of the petroleum operations covered by the relevant contract;
- **Profit oil and cost oil:** profit oil and cost oil are negotiated in the production sharing contract. Production costs are recoverable from cost oil;
- **Corporate income tax:** corporate income tax is due on profits at the rate of 30%;
- **VAT:** VAT is due at a rate of 18%;
- **Customs:** WAEMU and ECOWAS applies the customs rates specified in the community regulations and a common external tariff is generally applicable to imports and exports from and to Senegal. Imports exclusively related to prospecting and exploration are exempted from customs duties. A temporary regime applies to imports related to production. Exports of petroleum products are not subject to export duties; and
- **Stamp duties:** stamp duties apply to petroleum companies.

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 Senegal 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 ME.

Before being signed by the ME, a Petroleum Contract must be approved by the Ministry of Economy and Finance with respect to tax and financial provisions. Approval is deemed granted where no response to the request for approval is received within 15 days of its filing.

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

Any mechanism for the Government'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 Government may participate directly or through Government 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 ME. Approval is deemed to be granted where no response to the request for approval is received within 60 days of its filing.

The Petroleum Code is silent on the issue of change of control and corporate sales.

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 Government with a pre-emptive right. A right of pre-emption in favour of the Government 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 Senegal.

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.

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.

The terms relating to the transfer of facilities, equipment and lands to the Government may be set out in the Petroleum Contract.

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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