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Conducting oil and gas activities in Gabon

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. 011/2014 dated 28 August 2014 (the '**2014 Hydrocarbons Law**') which came into force on 15 September 2014.

Due to the general nature of the 2014 Hydrocarbons Law, most of the specific provisions governing petroleum exploration and production are included in production sharing contracts ('**PSCs**').

Uniform Acts, in particular the OHADA Companies Act, 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 Gabon is a Member State, apply to companies carrying out oil and gas activities in Gabon.

Oil and gas activities are subject to **Exchange Control Regulations** applicable within the Economic and Monetary Community of Central Africa (*Communauté Economique et Monétaire de l'Afrique Centrale* or '**CEMAC**').

Additionally, Decree no. 0673, dated 16 May 2011 ('**Decree 673**') regulating foreign direct investments in key economic sectors in Gabon is applicable in particular to exploration and production.

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

The main institutions of the Gabonese hydrocarbons sector include:

- Government of Gabon (the '**State**');
- Ministry of Mines, Petroleum and Hydrocarbons (*Ministère des Mines, du Pétrole et des Hydrocarbures* or '**MPH**');
- Ministry of the Economy and Foreign Investments (*Ministère de l'Économie et les Investissement Étrangers* or '**Economy Minister**');
- Gabon Oil Company (*Société Nationale d'Hydrocarbures* or '**GOC**'), established in August 2011;
- Advisory commissions: the National Commission on Petroleum Products Prices (*Commission Nationale Des Prix des Produits Pétroliers* or '**CNPPP**') and the Petroleum Revenue Monitoring Commission (*Commission de Suivi des Recettes Pétrolières* or '**COSUREP**'); and
- Regulatory agency: the 2014 Hydrocarbons Law creates a regulation authority. This role is exercised by the Department of Hydrocarbons (*Direction Générale des Hydrocarbures* '**DGH**') acting under the supervision of the MPH, which is the Government authority primarily responsible for the development and regulation of the oil industry in Gabon. The creation of a new regulation authority in charge of petroleum products prices was announced in the final communiqué of the Council of Ministers on 29 January 2015. Details are yet to be finalised.

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 2014 Hydrocarbons Law, contractors can operate, unlike under the previous law, through a branch during the exploration phase and have to incorporate a local subsidiary and open a local bank account to carry on production activities.

In addition, pursuant to the OHADA Companies Act which is directly applicable in Gabon, 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)?

According to Decree 673, foreign investment in the exploration and production of hydrocarbons is subject to the prior approval of the Economy Minister who must approve or disapprove the investment within a 2 month period from the receipt of the request. In the absence of any response within this period the investment is deemed to be approved.

Pursuant to Exchange Control Regulations, any investment exceeding CFAF 100 million must be declared to the Economy Minister at least 30 days before the transfer of funds to Gabon. Failing such declaration, a fine equal to 20% of the investment may be applied.

Local content requirements are also expressly included in the 2014 Hydrocarbons Law and must be reflected in PSCs. The relevant undertakings relate to:

- Training commitments;
- Promotion of communities projects and projects with significant social impact;
- Promotion of research and development projects and of technology transfer to Gabonese enterprises;
- Preference for local employees and commitment to progressively replace foreign employees (in practice the ratio of 80% of Gabonese employees has already been imposed by trade-unions); and
- Priority to Gabonese sub-contractors who employ at least 80% of Gabonese employees.

Licensing

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

Legal

Contractors are granted rights to explore, develop and produce oil and gas by obtaining both an authorisation from the State and entering into a contract with MPH defining the terms of such authorisation. Details of the relevant authorisations are as follows:

- **Prospecting authorisation** (*autorisation de prospection*) under which the holder is entitled, on a non-exclusive basis, to perform preliminary surface prospecting works. This authorisation is granted for a non-renewable 18 month period;
- **Exclusive exploration authorisation** (*autorisation exclusive d'exploration*) under which the holder is entitled to perform exploration works. This authorisation is granted on an exclusive basis for a maximum of 8 years (initial 6 year period with the possibility of a maximum of two 1 year renewals); and
- **Exclusive development and production authorisation** (*autorisation exclusive de développement et d'exploitation*) under which the holder is entitled to perform production works on an exclusive basis. This authorisation may only be to a Gabonese legal entity owning a bank account in Gabon. The production period is fixed at 10 years (15 years for gas) with the possibility of two renewal periods of up to 5 years each.

The 2014 Hydrocarbons Law refers to the following 5 types of contracts for upstream activities which may either be granted by tender procedure or by direct negotiations with the MPH:

- **Service contracts** (*Contrat de services*) under which geological and geophysical activities are conducted on behalf of the State. Disclosure by the contractor of its results is subject to prior approval of the MPH. Transfer or disposal of the rights and obligations arising from this contract is subject to the prior approval of the MPH;
- **Technical assessment contract** (*Contrat d'évaluation technique*) under which the contractor performs preliminary surface prospecting works in the surface area covered by a non-exclusive prospecting authorisation. This contract is concluded for a non-renewable 18 month period. Transfer or disposal of the rights and obligations arising from this contract is forbidden;
- **Exploration contract** (*Contrat d'exploration*) under which the State grants an exclusive exploration right in the surface area covered by an exclusive exploration authorisation. An exclusive exploration authorisation is granted for a maximum of 8 years (initial 6 year period with the possibility of a maximum of two 1 year renewals). Any commercial discovery must be notified

by the contractor within a 6 to 12 month period. Such discovery will confer a preferential production right within a 1 year period. It entitles the contractor to enter into negotiations with the MPH to be granted an exclusive development and production authorisation and a production sharing contract. Transfer or disposal of the rights and obligations arising from the exploration contract is subject to the approval of the MPH and the State is granted a pre-emptive right;

- **Production sharing contract** (*Contrat de production et de partage de production*) under which the State grants an exclusive development and production right in the surface area covered by an exclusive development and production authorisation. The production period is fixed at 10 years (15 years for gas) with the possibility of two renewal periods of up to 5 years each. Transfer or disposal of the rights and obligations arising from this contract is subject to the approval of the MPH and the State is granted a pre-emptive right; and
- **Exploration and production sharing contract** (*Contrat d'exploration et 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 exploration period must not exceed 8 years (initial 6 year period with the possibility of renewal). The production period is 10 years (15 years for gas) with the possibility of two renewal periods of up to 5 years each. Transfer or disposal of the rights and obligations arising from this contract is subject to the approval of the MPH and the State is granted a pre-emptive right.

A standard form for each contract will be provided by ministerial order.

All petroleum contracts require prior approval by the relevant department of the State. They also have to be signed by the MPH, counter-signed by the Economy Minister and approved by decree, except for service and technical assessment contracts.

Contracts entered into and permits granted under the previous hydrocarbon law remain in full force and effect until they expire. However, since the entry into force of the 2014 Hydrocarbons Law, they may not be extended.

The 2014 Hydrocarbons Law expressly includes a right to renegotiate the PSCs in case of hardship as defined in that law.

Rights arising from the above mentioned authorisations cannot be subject to division, transfer, farm-out, transmission or security.

Fiscal

Contractors are subject to taxes and other contributions under the Gabonese tax code, the 2014 Hydrocarbons Law and the relevant petroleum contract:

- **Bonuses:** bonuses are usually negotiated on the signing of PSCs and are not deductible for the purposes of corporate income tax calculations. Bonuses must be paid at every stage (signing, moving to production phase, extension or renewal, amendment, performance achievement).
- **Surface area royalty:** surface area royalty cannot be less than CFAF 50 per hectare, per year for the exploration phase and CFAF 5,000 per hectare, per year for the production phase. Implementation and deductibility will be set by regulation.
- **Proportional mining royalty:** proportional mining royalty is based on the total extracted production set in PSCs and is negotiated between 13% and 17% for conventional areas and between 9% and 15% for deep offshore. This royalty is not deductible for the purposes of corporate income tax calculations.
- **Corporate income tax:** corporate income tax is due on profits at the rate of 35% applicable to oil activities.
- **VAT:** hydrocarbons activities, as well as goods and services purchased locally or imported from a list of providers approved by the State are exempt from VAT.
- **Customs:** the CEMAC customs regime is applicable. Imports exclusively related to prospecting and exploration are exempted from customs duties. A reduced rate of 5% applies to imports related to production. Approved subcontractors are also entitled to the special customs regimes.
- **Transfer duty:** transfer of an interest in a PSC, shareholdings or a change of control are subject to a transfer duty of 3% of the real value of the rights transferred in addition to capital gains tax. An exemption applies for inside group transfers.
- **Financial contributions for diversified and hydrocarbons investments ('PID' or 'PIH'):** respectively 1% and 2% of the annual turnover, 75% of the PID or PIH is cost recoverable.
- **Contributions to support funds:** contributions to various support funds are provided for and are to be specified by regulation.
- **Rehabilitation fee amounts:** new provisions have been introduced in the 2014 Hydrocarbons Law with respect to the establishment of a rehabilitation fund.

In addition to the above fiscal regime, Gabon has a prescribed system for revenue sharing in relation to production activities:

- Profit oil cannot be less than 55% of total production in conventional areas and 50% in deep offshore. Other calculation methods may be negotiated with the State;
- Costs oil is limited to 65% in conventional areas and 50% in deep offshore; and
- Contractors have the obligation to supply the domestic market with a defined part of their production pursuant to the terms provided by regulations.

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 Gabonese petroleum sector is granted to companies having the required technical and financial capabilities, either by tender procedure or by direct negotiations with the MPH.

The MPH initiates and undertakes the tendering procedure. Modalities for such procedures remain to be defined by regulation.

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 2014 Hydrocarbons Law includes several provisions regarding State participation in PSCs and in the company applying for or holding an exclusive production authorisation. The main provisions dealing with state participation in the 2014 Hydrocarbons Law are:

- **State participation in PSCs:** a 20% interest in each PSC shall automatically be allocated to the State. All costs and risks associated with that interest are to be carried by the contractor. An additional participation may be negotiated, at normal market conditions, between the contractor and the State;
- **State participation in production shareholding:** the State is entitled to purchase no more than 20% of the share capital of any company applying for or holding an exclusive production authorisation at normal market conditions; and
- **GOC's participation:** GOC is entitled to acquire a maximum of 15% in both PSCs at normal market conditions.

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

Petroleum operations may be carried out by the State itself or through third parties, in particular through GOC.

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?

The rights under technical assessment contracts cannot be transferred to third parties. All other assignment transfers of rights in the contracts described within the 2014 Hydrocarbons Law are subject to the prior approval of MPH.

Any change of control in a company is now expressly deemed to be an assignment and is subject to the approval of the MPH and subject to the State pre-emptive right.

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 State is granted a pre-emptive right in relation to assignment of exploration contracts, production contracts and joint exploration and production contracts.

The State pre-emptive right must be exercised within 60 days of notification by the transferor and does not apply to transfer between affiliates.

Economic support

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

Neither the previous hydrocarbons law nor the 2014 Hydrocarbons Law requires a parent company guarantee where one or several of the companies forming the contractor entity are subsidiaries of an oil company. However, PSCs generally include an ultimate parental guarantee to be given in the form attached to the PSCs.

Security interests to be provided will be governed by the provisions of the OHADA Uniform Act organising Securities, applicable in Gabon.

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

Securities in respect of work commitments are not expressly provided for in the 2014 Hydrocarbons Law. However, such securities or other types of securities may be negotiated in the PSCs.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

The 2014 Hydrocarbons Law restates the obligation on companies to submit and comply with impact studies, environmental management plans and decommissioning and rehabilitation plans. Submissions are to be made to MPH.

In addition, the 2014 Hydrocarbons Law now provides for an obligation on contractors pay to an annual rehabilitation fee amount dedicated to a local rehabilitation fund for abandonment works. These payments are held in a ring fenced bank account by the MPH.

Contractors also have information duties towards employees and authorities and local communities within the surrounding areas about the risks and hazards of their activities.

Moreover, the 2014 Hydrocarbons Law creates an obligation of subscribing a local insurance covering 25% of the estimated amount of risks of future liability.

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