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Law . Tax

Conducting oil and gas activities in Guinea

Laws and regulations

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

Law L/2014/No/034/AN regulating the oil sector dated 23 December 2014 (the '**Petroleum Act**')

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

The upstream oil sector is under the supervision of the Ministry of Hydrocarbons (the '**Ministry**'), and is managed by two entities:

- The *Office Guinéen de Recherche et de Promotion Pétrolières* ('**OGRPP**'), which is in charge of the implementation of the Government's policy on research and production of hydrocarbons. It is the sole State authority in the field of exploration of liquid and gaseous hydrocarbons.
- The *Société Nationale du Patrimoine Pétrolier*, which is a public institution in charge of managing the oil wealth of the State ('**SNPP**').

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?

There are no restrictions on the ability of foreigners to own all or part of companies in any industry. Guinean law does

not distinguish between the quality of the shareholders of the company and the shares that the foreigners have in the company, the only requirement is that a shareholder is not subject to any prohibition, including incapacity or incompatibility under the Uniform Act on the Commercial General (Article 7 of Company Law).

The State can begin oil works either directly or through a national company. No one, except SNPP, can carry out oil operations if the State has not previously issued an authorisation for recognition of oil (*autorisation de reconnaissance*) or an oil contract ('**Oil Contract**').

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 Article 2 and 6 of Order A/95/3449 of 28 July 1995 governing the administrative procedure of the establishment of oil installations in Guinea, a certificate of technical validation and a certificate of compliance of the oil industry are required.

Licensing

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

Legal

The Petroleum Act states that any oil and gas deposits located in Guinean jurisdiction are held by the State, however the Government may grant permits (Oil Contracts) which confer exclusive rights to explore and produce petroleum and gas materials.

Oil Contracts shall include provisions to the following:

- Perimeter of the exploration permit or the contractual area;
- Duration of the contract and different periods of exploration and exploitation;
- Minimum work commitments for each exploration period;
- Bank guarantee for the minimum work commitments for each research period;
- Budgets regarding the rehabilitation plan;
- Terms and conditions of transfer of facilities at the end of the oil activities;
- Rights and obligations of the parties;
- Commercial discovery and development of the deposit;
- Property of the production and, if applicable, its distribution between the parties, remuneration and eventual repayment of the holder, determination of oil prices;
- Modalities for the participation of the Government or a national company, rules of the association with the holder;
- Financial, tax and customs clauses;
- Realisation of the contract in the various contingencies;
- Employment and training of the local workforce;
- Legal clauses on the applicable law, the stability of conditions, any event of force majeure and dispute settlement; and
- Terms of assignment and transfer of the Oil Contract.

Fiscal

The Petroleum Act has implemented the following tax obligation:

- **Corporate tax:** Oil Contract holders are subject to corporate tax derived from oil activities carried out within the territory of Guinea. If an Oil Contract holder has several Oil Contracts, the corporate tax is applied separately for each Oil Contract.
- **Tax on profits:** Taxable profit is the net income that is determined in accordance with the result of oil operations. The net income is established after deduction of all expenses incurred for the purposes of petroleum operations.
- **Value added tax:** Oil Contract holders are subject to the payment of VAT.

Holders of Oil Contracts are exempt from all other direct taxes of turnover relating to petroleum operations, including the production tax, the tax on business and stamp duty.

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.

The authorisation of hydrocarbons recognition:

Provides the holder with a right to undertake preliminary recognition work in a perimeter not covered by an Oil Contract. It is granted for a maximum period of one year.

When granted, an authorisation of hydrocarbons recognition research is subject to an order of the Ministry upon proposal of the OGRPP.

Any entity which intends to carry out mining exploration or exploration activity, is required to obtain authorisation from the relevant authorities through an international tender procedure or through a direct negotiation procedure with the State.

The hydrocarbons exploration authorisation:

— *International tender procedure:*

- A tender is open by a decree of the Chief of State on a proposition of the Ministry.
- Terms and conditions of the procedure are subject to the approval of the Ministry.
- The starting date and the place where the submission of the application shall be made are specified in specifications published at the OGRPP.
- After consideration of the offer, the identity of the selected tenderer shall be published at the OGRPP before the signing of the Oil Contract.

— *Direct negotiation:*

- A decree specifying the identity of the applicant and the concerned block is published at the OGRPP.
- The tender and the negotiation is made in respect of a template of an Oil Contract duly approved by the Chief of State and published at the OGRPP.
- At the end of the negotiation the OGRPP shall submit to the Ministry the template of the Oil Contract at least 30 days before signing.
- The Oil Contract must be jointly signed by the Ministry and the Ministry of Finance then ratified by the National Assembly. Once ratified, it is must be enacted by decree of the Chief of State and published in the Guinean Official Gazette. The effective date of the exploration authorisation is the date of publication of the Oil Contract in the Official Gazette.

The exploitation authorisation:

- In case of establishment of commercially exploitable deposit, the holder of the exploration authorisation (Oil Contract for exploration) can request an exploitation authorisation at the OGRPP. The applicant shall specify in this request the perimeter where the exploitation will be carried out and submit a development plan with the estimated costs for the development.

- The development plan and its costs are subject to the approval of the Ministry. It must include information relating to the description of the work to be performed, the schedule of the realisation of the exploitation activities, its costs, terms and conditions of the financing project, environmental and social impact assessment and a rehabilitation program.
- The granting of the exploitation authorisation is subject to an order following the adoption of the development plan.

What is the customary duration of the relevant Licence?

There are two types of authorisation: (i) exploration authorisation; and (ii) exploitation authorisation. An authorisation will expire automatically at the end of each term, unless certain conditions allowing it to advance to the next term have been fulfilled.

The exploration authorisation

The duration of an exploration authorisation or the exploration period of an Oil Contract is 8 years from the date of the effectiveness of the Oil Contract. The exploration period is split into three stages and the duration of each is defined in the Oil Contract. It includes an initial term and two eventual renewal stages. The 8 years may be extended if needed to allow the completion of any exploration drilling in progress.

The Oil Contract holder is required to notify the OGRPP within 30 days from the date of the closure of the research and submit a document specifying information on the discovery.

The Oil Contract holder may apply for an assessment authorisation (*autorisation d'évaluation*) to carry out assessment activities of the discovered hydrocarbons. It is issued for a maximum period of 18 months. An exceptional extension period of 6 months may be granted.

The exploitation authorisation

The duration of an exploitation authorisation is 25 years for the exploitation of crude oil and 30 years for the exploitation of natural gas but the Oil Contract may provide an additional duration for a maximum of 10 years if required by the Oil Contract holder and if there is feasibility of commercial production of hydrocarbons beyond the end of the initial period.

Before applying for an exploitation authorisation, a temporary authorisation of exploitation for 6 months can be issued to the Oil Contract holder to allow for the preparation of a development plan required for the exploitation.

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 reserves the right to participate, directly or through a local company, in oil operations. To the extent that it participates, the Government / local company shall bear its share of the expenses required for the oil operations. The form, terms and conditions of this participation are specified in the Oil Contract.

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

If the Government / local company participate in oil operations it will become a party to the joint operating contract, which specifies rights and obligations of each party in respect of the Oil Contract. It also provides rules to jointly undertake and monitor the oil activity.

The approval of the Ministry is required prior to the change of an operator.

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 assignment of any interest, right or obligation to a third party under an Oil Contract is subject to the prior consent of the Ministry under the conditions set in the Oil Contract. The form of the assignment agreement is subject to the approval of the Ministry.

The assignment of interests to an affiliate is subject to a simple notification to the Ministry, under the conditions set in the Oil Contract.

A change of control must be notified to the Ministry within the 10 days following its effective date.

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?

Pre-emption rights are recognised to the extent that they have been contractually agreed between the relevant parties. There are no state-imposed pre-emption rights.

Economic support

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

As a general rule, the oil and gas companies are required to have the technical and financial capacity to conduct oil operations.

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

An Oil Contract holder is responsible for any damages relating to the oil activities. As such, it is required to subscribe to an insurance policy at an entity performing insurance activities in Guinea.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

The Oil Contract holder may waive its rights to the Oil Contract under the conditions set out in the Oil Contract if it has fulfilled its contractual obligations.

The Oil Contract holder may also waive part of its research perimeter at anytime during the exploration period.

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