



Conducting oil and gas activities in the Democratic Republic of Congo ('DRC')

Laws and regulations

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

The main legislation governing petroleum activities is Law no. 15-012 dated 1 August 2015 (the '**Petroleum Code**'), for which implementation regulations are yet to be published.

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 the DRC is a member State, apply to companies carrying out oil and gas activities in the DRC, especially the OHADA Companies Act.

Regulations adopted by the Economic Community of Central African States (*Communauté Economique des Etats de l'Afrique Centrale* or '**CEEAC**'), the Common Market of Eastern and Southern Africa ('**COMESA**'), and the Southern African Development Community ('**SADC**') may apply to companies carrying out oil and gas activities in the DRC.

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

The main institutions of the DRC hydrocarbons sector include:

1. Ministry of Hydrocarbons (Ministère d'Hydrocarbures or '**MH**'); and
2. COHYDRO (Société Nationale d'Hydrocarbures), the National Hydrocarbons Company ('**NHC**'), established in August 1999.

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 the DRC is required to hold a Petroleum Contract. Foreign contractors must incorporate a local company to carry out exploration and production activities in DRC.

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.

Local content requirements are also expressly included in the Petroleum Code. The relevant undertakings relate to:

1. Giving preference to local subcontractors provided they offer equivalent technical and commercial experience;
2. Hiring, in priority, skilled local employees;
3. Financing and establishing training programmes for local employees; and
4. Funding sustainable community development projects.

Modalities remain to be provided for by way of regulation.

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 authorisations from the State, and by entering into a contract with the MH which defines the terms of such authorisations. Details of the relevant authorisations are as follows:

- 1. Prospecting authorisation** (*autorisation de prospection*). The holder of a prospecting authorisation is entitled to perform preliminary surface prospecting works, on a non-exclusive basis. The authorisation is granted for a 12 month period and is renewable once for an additional 6 month period. It does not confer any preferential rights to its holder to enter into a Petroleum Contract. Prospecting results are disclosed to and belong to the MH. The transfer of rights and obligations arising from such authorisation is prohibited.
- 2. Exploration authorisation** (*droit d'exploration*). An exploration authorisation is granted on an exclusive basis for an initial 3 year period (4 year period in case of difficult access to sedimentary basins), renewable twice for additional 3 year periods. At each renewal, the holder must relinquish 50% of the area covered by the authorisation. Commercial discovery entitles the holder to be granted a production right, subject to the approval of a development plan.
- 3. Production authorisation** (*droit d'exploitation*). Such authorisation is granted for a maximum period of 20 years, and is renewable once for a further 10 year period.

The Petroleum Code refers to the following 2 types of contracts for upstream activities:

- 1. Production Sharing Contract** (*contrat de partage de production* or 'PSC'). The State grants an exclusive exploration right to the contractor and, in case of a discovery, an exclusive production right. The contractor assumes financial and operating risks, and production is shared with the State in accordance with the Petroleum Code and the PSC.

- 2. Service Contract** (*Contrat de services à risques ou contrat d'assistance technique*). The contractor is not entitled to any portion of the production. Therefore the contractor is paid for the performed services, and is reimbursed for incurred petroleum costs.

Petroleum Contracts must be signed by the MH and the Minister of Finance after deliberation of the Council of Ministers. Entry into force is subject to approval by means of presidential ordinance. Contracts are published in the Official Gazette and on the MH's website. In addition, the DRC implements the principles of the Extractive Industries Transparency Initiative.

Contracts entered into and authorisations granted under the previous Hydrocarbons Law (Ordinance-Law no. 81-013 dated 2 April 1981) remain in full force and effect. Upon expiry and if a renewal is requested, such contracts and authorisations become governed by the Petroleum Code.

Fiscal

Contractors are subject to taxes and other contributions under the Petroleum Code and the relevant Petroleum Contract. Blocks are categorized under 4 tax zones depending on their geological and environmental properties. The Petroleum Code refers to many tax provisions of subsequent regulations which remain to be published.

- 1. Bonuses:** a bonus is due at:
 - (i) the signing of the Petroleum Contract and any amendments;
 - (ii) registration of the exploration authorisation;
 - (iii) renewal of the exploration and production authorisations; and
 - (iv) first production.
- 2. Surface area royalty:** an annual surface area royalty is due as follows:
 - (i) Exploration: 100 USD/km²
 - (ii) Production: 500 USD/km²
- 3. Production royalty:** a production royalty is based on the wellhead production volume and is calculated on a net-back basis, depending on the tax zone at the following minimum rates:
 - (i) Zone A: 12.5%
 - (ii) Zone B: 11%
 - (iii) Zone C: 9.5%
 - (iv) Zone D: 8%
- 4. Special tax on expatriate salaries and personal tax on local salaries:** a tax is levied on the remuneration of expatriate and local workers.
- 5. VAT:** VAT applies to local consumption during the production phase.
- 6. Transfer duty:** transfer of petroleum rights are subject to payment of a transfer duty.

7. **Customs:** imports of approved goods exclusively related to petroleum operations are exempted from customs duties. Also, exports of produced hydrocarbons, exports of samples and re-exports of imported goods are exempt from customs duties. Nevertheless, a statistical tax applies.
8. **Community support provision:** an annual provision of 0.5% of contractor's profit oil is allocated to the funding of sustainable community development projects.
9. **Training contribution:** an annual contribution is allocated to the training of DRC nationals.
10. **Abandonment deposit:** a rehabilitation fee must be regularly deposited during the whole production period into a ring-fenced account jointly held by the MH and the contractor at the Central Bank.

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

1. **Cost stop:** the amount of recoverable costs is limited to an annual cost stop, depending on the tax zone and up to the following maximum levels:
 - (i) Zone A: 55%
 - (i) Zone B: 55%
 - (ii) Zone C: 60%
 - (iii) Zone D: 65%
2. **Excess oil:** excess oil is equally shared between the State and the contractor, irrespective of the tax zone.
3. **Profit oil:** profit oil is allocated to the State, depending on the tax zone and according to the following minimum rates:
 - (i) Zone A: 45%
 - (i) Zone B: 40%
 - (ii) Zone C: 40%
 - (iii) Zone D: 35%
4. **Super profit oil:** all super profit oil is allocated to the State when the oil price exceeds the highest cap mentioned 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 DRC petroleum sector is granted to companies having the required technical and financial capabilities. A tender procedure is initiated by the MH whereby the selection is made based on technical and financial criteria and then approved by the Council of Ministers before blocks are awarded to the selected bidders. The contracting entity vis-à-vis the State is comprised of one or more DRC or foreign legal entities in association with the NHC.

What is the customary duration of the relevant Licence?

Please refer to the 'Legal' section above for information on the duration of relevant authorisations.

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 takes part of petroleum operations through the NHC which is entitled to a minimum non-transferable 20% participation. Terms of such participation are reflected in the relevant Petroleum Contract. Furthermore, the NHC takes no part in the exploration costs which are solely borne by the private entity.

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

The State may participate as operator through the NHC 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 of rights and obligations as well as authorisations and permits arising from Petroleum Contracts is subject to:

1. completion of the minimum work programme by the contractor;
2. the prior approval of the MH; and
3. the assignee demonstrating its technical and financial skills to the MH.

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 the event of assignment of petroleum rights.

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 companies forming the contracting entity are subsidiaries of an oil company. Such guarantee may be a negotiated term in the Petroleum Contract.

Unless otherwise provided for in the Petroleum Contract, security interests are governed by the OHADA Uniform Act organising securities, applicable in the DRC.

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

Securities in respect of work commitments are not expressly provided for in the Petroleum Code. However, such securities or other types of securities may be required under 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 provides for the obligation to include environmental provisions in the Petroleum Contract, in particular environmental impact studies and management plans.

In addition, the Petroleum Code provides for a rehabilitation fee borne by contractors and dedicated to a local rehabilitation fund for abandonment works. Such payments are made to a ring-fenced bank account at the Central Bank jointly held by the MH and the contractor.

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