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Law . Tax

Conducting oil and gas activities in the Republic of Congo

Laws and regulations

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

Law no. 24-94 dated 23 August 1994 relating to the Hydrocarbon Code (the '**Hydrocarbon Code**') governs the prospecting, research, exploitation and transportation of oil and gas in the Republic of Congo.

There have been plans to reform the Hydrocarbon Code, but to date no new proposal has been put forward for consideration.

Decree no. 2008-15 dated 11 February 2008 determines the procedure for the granting of oil permits.

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

The Ministry of Hydrocarbons and the Department of Hydrocarbons are the government authorities primarily responsible for the regulation of oil and gas activity in the Republic of Congo.

The *Société Nationale des Pétroles du Congo* ('**SNPC**') is the national oil company of the Republic of Congo which manages the country's oil and gas resources.

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?

Any private company, foreign or local, which is considered by the Ministry of Hydrocarbons to have financial and technical capacity to operate prospecting, research, exploitation and transportation activities, can become a licensee. The granting of an oil and gas permit is generally made by tender.

Technical capacity is determined by: (i) the experience of the company in oil and gas activities; (ii) the transfer of knowledge; and (iii) the extent of the minimum work programme to be undertaken.

Financial capacity is evaluated by considering: (i) the financial engagement to be undertaken; (ii) the financial statements of the company for the last 3 years; and (iii) the extent of the minimum work programme to be undertaken.

Approval of the Ministry of Hydrocarbons is required.

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)?

As stated above the company must obtain the approval of the Ministry of Hydrocarbons.

Licensing

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

Legal

According to the Hydrocarbon Code, the prospecting, research, exploitation and transportation of oil and gas in the Republic of Congo are subject to the obtaining of permits.

In order to carry out oil research and exploitation activities, a Production Sharing Agreement ('PSA') must be entered into with the Government. The PSA will state the obligations of each party.

Fiscal

The prospecting, research, exploitation and transportation activities are subject to the following taxes:

- **Corporate Tax:** At a rate of 35%. It is calculated in accordance with profits made each year. After 5 years, this rate can change and will be determined after discussion between the Government and the company;
- **Proportional mining royalty:** At a rate of 15% for liquid hydrocarbon. For natural gas, it is determined by the Government after consultation with the holder of the Licence. This mining royalty must be paid by no later than the 20th of each month; and
- **Land Tax:** Only research and exploitation activities are subject to the payment of this annual fee, which should be paid by no later than 20 January. The tax is calculated based on CFAF 3000 per km² for research permits and USD 800 per km² for the exploitation permit.

Furthermore, the licensee must pay a bonus to the Government, the amount of which is stated in the decree granting the permit.

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 prospection authorisation:** A prospection authorisation is issued by an order of the Ministry of Hydrocarbons.
- **Research permit for oil and gas activity:** Following a tender, a research permit is granted by decree from the council of ministers and based upon a report from the Ministry of Hydrocarbons.

The procedure to apply for an oil and gas permit is detailed as follows:

- The Ministry of Hydrocarbons launches an invitation to a restricted tender in the local and international gazette. The invitation to tender states the area concerned, the periods of withdrawal and submission of the documents for the tender, a technical memorandum, the amount of the fees for the withdrawal of the submitted documents, the amount of the guarantee corresponding to the value of the activity to be carried out under the research permit, the applicable law and the regulatory framework.
- Any company which is interested in tendering for a permit to the area submits its proposal.
- The administration of the Ministry of Hydrocarbons (the '**Administration**') informs any company which has submitted a proposal that it will proceed with the analysis and evaluation of the received tender ('**Financial and Technical Evaluation**').
- The result of the Financial and Technical Evaluation will be published in the local and international gazette.
- The Administration notifies all the retained companies.
- The Administration will proceed to a public investigation in order to check the information on the technical and financial capacity of each retained company.

The timing for obtaining a research permit is stated in the invitation to tender. It also depends on the evaluation of the proposals received.

The decree which grants the research permit must be signed, at the latest, 30 days after the evaluation process has completed.

- **Exploitation permit for oil and gas activity:** The exploitation permit is granted by decree taken during a council of ministers and based upon the recommendation of the Ministry of Hydrocarbons.

The granting of an exploitation permit leads to the cancellation of the research permit.

What is the customary duration of the relevant Licence?

There are 3 types of Licence:

- The prospection authorisation is valid for 1 year, renewable several times for the same period;
- Research permits for oil and gas activity are granted for an initial period of 4 years and are renewable for further periods of 3 years with a maximum of two renewals permitted; and
- The duration of exploitation permits for oil and gas activity depend on the duration of the activity to be carried out, however the initial term should not exceed 20 years. At the end of this term, the exploitation permit can be extended by decree for a maximum period of 5 years.

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 has a right to participate in the research and exploitation activity with the holder of the Licence through a PSA or through another oil contract. The PSA determines the obligations of the Government and the holder of the Licence. The SNPC will act on behalf of the Government.

The PSA specifies the proportion of oil production, which will be linked to the reimbursement of the expenses ('**Cost Oil**') incurred by the company, in accordance with the operating activity. However, the Hydrocarbon Code provides that this proportion of production should not exceed 60% or 70% of the annual oil production. This rate depends on the scale of the activities.

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

The Government does not have the right to participate in the operatorship.

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?

Prior approval by the Ministry of Hydrocarbons is required for any assignment of interest, assets or obligations in respect of the oil activities of the company, as well as any acts which can cause a change of control.

The Hydrocarbon Code does not provide specific information relating to timing and costs of obtaining such approval by the Ministry of Hydrocarbons.

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?

There are no pre-emptive rights reserved to the Government.

Economic Support

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

The Hydrocarbon Code does not specifically state that parental guarantees are to be provided by oil and gas companies. However, it states that as a condition precedent to the granting of the Licence, the company must prove that it has the financial and technical capacity to perform prospecting, research, exploitation and transportation activities in oil and gas.

In addition, before beginning any prospecting, research or exploitation activity, the company must take out insurance policies with an insurance institution within the Republic of Congo. This insurance will cover any risks relating to the oil and gas activity, provided that the insurance institution has the means to guarantee these risks.

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

Insurance policies with an insurance institution within the Republic of Congo are required to cover any risks relating to the oil and gas activity.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

Any company wishing to abandon the exploitation activity before the expiration of the permit is required to obtain approval of the Ministry of Hydrocarbons.

The company must inform the Ministry of Hydrocarbons at least 6 months before the planned termination of the oil exploitation.

Any termination of an exploitation activity for a period of 1 year can lead to the cancellation of the oil permit.

Security deposits are required in respect of any abandonment.

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