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REPUBLIC OF CONGO

SLOWLY BUT SURELY REVERSING OIL PRODUCTION DECLINE

The Republic of Congo is one of Africa's mature oil producers and has been in play since the 1960s. Oil reserves are estimated to be as high as three billion barrels, and despite the trend that we have been witnessing of declining oil production, output has increased in recent years. This is largely thanks to Total's Moho Nord deep offshore project being brought on stream in early 2017. The project's output is expected to reach 350,000 bpd this year, making the country the third largest oil producer in sub-Saharan Africa behind Nigeria and Angola. The Congo's economy is deeply oil-dependent, with the oil sector accounting for about 65% of the GDP, 85% of government revenue, and more than 90% of exports.

2016 was looked at with great anticipation. Early that year the President was reelected, without significant political instability or civil turmoil, and putting an end to the lethargy that is typical in pre-election periods. A new Hydrocarbons Code was enacted to repeal the outdated predecessor that had been in force more than 20 years, and a licensing round was launched with eight offshore blocks in deep and ultra-deep waters, along with five onshore blocks being put on offer. In part, these efforts were aimed at attracting newcomers to the Congolese oil industry, and to a limited extent the Congo was successful in doing so. However, the expectations that were created and the momentum that began to be gained did not entirely yield the results that had been anticipated.

Realizing this, the Congo is stepping up to its continued challenges, has become since June 2018 the fifteenth member of OPEC (and the seventh African nation to join the oil cartel), is in talks with the IMF over a financial assistance program, promoted the then-incumbent CFO of Société Nationale des Pétroles du Congo (SNPC, the Congolese NOC) to CEO, appointed a new General Director of Hydrocarbons (who spent her entire career in the sector, working for private companies), and is preparing a draft Gas Code to streamline the legal and tax framework of its gas value chain.

Within the ongoing challenges, Congo has also just launched the second stage of the 2016 licensing round. The 2016 Hydrocarbons Code will be the backdrop of the licensing round and June 30, 2019 has been slated as the deadline for the submission of offers. The terms of reference for each of the 18 blocks put on offer are already available (5 onshore blocks in the Cuvette Basin, 3 onshore blocks in the Coastal Basin, 5 offshore blocks in shallow waters, and another 5 offshore blocks in deep and ultra-deep waters). According to well-informed sources, an encouraging number of formal expressions of interest have already been tendered – including by international players looking at investing in the Republic of Congo for the first time.

Ideally, these efforts would also include the preparation and enactment of the long-awaited regulations of the Hydrocarbons Code, which left a significant number of critically important issues to be addressed in ancillary statutes, such as the payment and management of the funds for abandonment and restoration, local content, and the tax and customs regime.

Pending such regulations, here is a snapshot of the features of the framework instituted by the 2016 Hydrocarbons Code which may be deemed the most significant for those contemplating investing in the Congolese oil industry (or just seeking more in-depth information on the currently-applicable legal regime):

- SNPC is the exclusive concessionaire of petroleum mineral titles – in the form of exploration permits or production permits, granted by the Council of Ministers upon proposal of the Minister of Hydrocarbons – meaning that IOCs and private Congolese petroleum companies will have to associate themselves with SNPC to conduct petroleum operations. A minimum participating interest of 15% is reserved by law to SNPC, which is 'carried' by the other members of the contracting group of companies;

- Petroleum contracts have to be either a PSC or a services agreement, whose models are approved by the Council of Ministers;

- As a condition for their effectiveness, petroleum contracts negotiated and signed with a contracting group of companies must be submitted to the approval of both chambers of Parliament;

- While for the exploration phase the operator is authorized to merely register a branch in the Congo, it will be required to incorporate a local company for the production phase;

- Any provisions in the petroleum contracts found to be in contravention with the Hydrocarbons Code are deemed to be null and void;

- Unless otherwise authorized by the Minister of Hydrocarbons, a minimum participating interest of 15% in the contracting group of companies (which can rise up to 25% in certain cases) is reserved for private Congolese petroleum companies. This participating interest is in addition to that reserved for SNPC, but unlike the latter it is not carried;

- In terms of fiscal and para-fiscal charges, the Hydrocarbons Code provides that, in respect of the PSCs to be entered into there under, a 15% royalty shall apply on oil net production and a 5% royalty shall apply on gas net production (the former may, in the case of production in waters deeper than 500 meters, be reduced to 12%). As for the maximum cap for cost oil, it is 50% of net production, although in specific situations (e.g. deep-water projects or recourse to very expensive technology) said cap may be raised up to 70%. Also worth mentioning is that the State's minimum share in the profit oil for each calendar year will be 35%. As to the income tax rate, it may be set in the petroleum contract within the limits defined in the General Tax Code;

- Each member of the contracting group of companies is to provide a corporate guarantee by the ultimate parent company, or a first demand bank guarantee, in favor of the State, covering the minimum work obligations for exploration, which is to be provided under such conditions and within such deadlines as are to be defined in a Decree of the Council of Ministers;

- With certain operational exceptions being allowed in accordance with best industry practice, and unless otherwise permitted by prior special authorization of the Minister of Hydrocarbons, flaring of associated gas is prohibited; and

- A provision for abandonment must be made pursuant to an abandonment plan, with the abandonment funds so collected being deposited in an escrow account with the *Caisse des Dépôts et Consignations*.

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Ravaged by a dip in prices and production since 2014, the Congo has managed to buck the trend and is set to become the third biggest oil producer in sub-Saharan Africa this year, with the new developments in progress expected to further boost production to 400,000 bpd by 2020. To a significant extent, this has been backed by Total's and ENI's flagship projects, two companies which the Congolese authorities label as historic partners and whose bearing on the local marketing is not expected to change anytime soon. Still, and especially owing to the country's recent accession to OPEC, the Congo is keen on liberalizing the sector and on bringing in new players, in particular those interested in investing in marginal fields.

These are all encouraging indications that the Congo is heading the right way. Slowly, some might say, but surely.

About the Authors

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