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## POLICY & LEGISLATION

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# NEW SENEGAL OIL & GAS LEGISLATION Snapshot and Hot Topics

**B**y all accounts, Senegal is among Africa's most stable countries. It has been so since its independence from France in 1960, with as little as three major political transitions (all of them peaceful). It has a dynamic and diversified economy, and annual economic growth has been above 6% since 2015 – with projections putting it at around 7% in the coming years, just as in 2017 and 2018. The country's democratic institutions are strong, and Senegalese civil society is not only politically engaged but also eco-conscious.

Senegal has been on the radar of oil & gas companies for more than 60 years, but only recently has the full extent of its oil and gas reserves emerged. Further to the huge discoveries made in 2014-2016, gas production is on track to commence in 2021 and oil is expected to start to be produced in 2022. But the great expectations in the government and among the people that this could be an overnight bonanza are being prudently managed – including by the President of the Republic, a geological engineer who knows and understands the industry, and who worked many years for Petrosen (the Senegalese NOC, of which he was CEO 2000-2001), and previously served as Minister of Energy between 2001 and 2003.

A word of caution for the private stakeholders as well: the days of attracting investment at any price, if they ever existed in Senegal, are over. The country is taking it slow and is in it for the long run, keen to avoid the Dutch disease and to give transparency a better chance to take hold – while ensuring a more equitable distribution of the benefits, safeguarding the environment, and creating opportunities for the local population and businesses.

The cornerstone(s) of the legal backdrop of these exciting times in Senegal are the recently-enacted Petroleum Code and the related industry-specific Local Content Law. Whereas the former was long awaited and replaces its 1998 predecessor, the latter is a fresh statute instituting and imposing detailed, stringent and perhaps overly ambitious local content requirements, a critical topic nowadays on which the now-repealed 1998 Petroleum Code and the petroleum contracts entered into thereunder were largely silent.

Clearly, a closer look at the most relevant features of this important legislation is in order.

### Petroleum Code

- Unlike what we see happening in other jurisdictions, the Senegalese NOC is not the exclusive concessionaire of petroleum mining rights, and these rights may be granted to national or foreign legal persons possessing the required technical and financial capabilities – in the form of a prospecting authorization or a mining title (i.e. an exploration authorization, a provisional exploitation authorization or an exclusive exploitation authorization). Exploitation authorizations may only be granted to legal persons organized under Senegalese law;

- The State reserves the right to participate through the NOC in the operations, by partnering up with the holders of a prospecting authorization or of the petroleum contract (a risk service agreement, or more typically a PSC) pertaining to the relevant mining title. PSCs are negotiated by the Minister of Hydrocarbons, approved by Decree and published in the Official Gazette;

- The NOC is reserved a minimum carried interest of 10% during the exploration and development phases, and has an option to increase it up to 20% in the development and exploitation phases (without this additional interest being carried);


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- Petroleum blocks are awarded by competitive tendering procedure or direct consultation, in terms to be defined in implementing regulations;

- The minimum work program pertaining to an exploration authorization (which is granted for an initial period of up to 4 years, and may be renewed 2 times for up to 3 years each time) is defined in the PSC, and these commitments must be covered by a bank guarantee from an internationally reputed bank;

- Any discovery of hydrocarbons is to be notified to the Minister of Hydrocarbons within 48 hours. If the discovery indicates the existence of a commercially exploitable deposit, appraisal works shall be carried out and the commercial nature of the discovery



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established – upon which, an exclusive exploitation authorization is applied for (the application must include a development plan, the template of which will be defined in a future statute). In turn, if the deposit is not commercially exploitable immediately but could so become in the future, a retention period of up to 2 years for liquid hydrocarbons and up to 5 years for gaseous hydrocarbons may be granted;

- The granting of an exclusive exploitation authorization (for a maximum initial period of 20 years, renewable once only for an additional period of up to 10 years) entails the cancellation of the exploration authorization within the relevant discovery area, but the latter remains in force until its expiry outside of said area;

- Production is shared between the State and the contractor as provided in the PSC. The annual cost oil cap is 55% (onshore operations), 60% (shallow offshore), 65% (deep offshore), and 70% (ultra-deep offshore). The State's minimum share of the profit oil is 40%, and it varies according to an "R" factor sliding scale;

- The rates of the royalty on the net production of liquid hydrocarbons are 10% (onshore), 9% (shallow offshore), 8% (deep offshore), and 7% (ultra-deep offshore), and for gaseous hydrocarbons (regardless of where they are exploited) it is 6%. This royalty is payable in kind or in cash at the State's discretion;

- Production shall be allocated on a priority basis to the satisfaction of the country's domestic consumption requirements, with the transfer price reflecting the international market price. Upon these requirements being satisfied, production may be freely exported subject to a custom duty;

- Corporate income and the assignment of interests are taxed under the General Tax Code. An annual surface fee is also payable during the exploration phase;

- During exploration, appraisal and development, certain materials, supplies, machinery and equipment, spare parts and consumables not produced or manufactured in Senegal are exempt from customs duties and charges, except the Statistical Fee and the Community Contributions. Both the contract holders and their subcontractors benefit from this exemption, and in the case of temporary importation for subsequent re-exportation, the above items are declared under a total suspension of importation duties and charges;

- Mining titles are assignable and transferable, in certain cases being subject to the prior approval of the Minister of Hydrocarbons. The same applies to certain transfers of shares in a member of the contractor – or in a company directly or indirectly controlling a member of the contractor – if it results in a change of control. Any such change of control is to be notified to the Minister of Hydrocarbons;

- The FX regulations in force in Senegal (in particular, those enacted by the UEMOA) apply to the operations carried out under the Petroleum Code, with both the contract holders and their subcontractors benefitting from (i) the right to take out abroad the loans required for their in-country activities, (ii) the free movement of the funds pertaining to the

payments made within the scope of their current operations, (iii) the right to transfer the amounts required to settle contractual debts in connection with their operations in Senegal, and (iv) the right to transfer the proceeds (e.g. interest and dividends) of the capital invested, subject to the prior approval of the Minister of Hydrocarbons and the Minister of Finance. The amounts of the loans and the proceeds of the export sales may not, however, be kept abroad and must be repatriated;

- Whereas infringements of the applicable laws and regulations are subject to the jurisdiction of the Senegalese courts, disputes arising out of a petroleum contract may be settled through consultations, good offices, mediation, conciliation, arbitration or any other mechanism, jurisdictional or otherwise, agreed upon between the parties;

- Petroleum contracts may also include a stabilization clause, but changes in law in terms of employment, personal safety, control of the petroleum operations or environmental protection are excluded there from;

- Pre-existing contracts remain valid and preserve their legal framework, with the rights relating to the renewal of the mining titles and the granting of exploitation authorizations being grandfathered.

### Local Content Law

- It applies to any contractor, subcontractor, service provider and supplier engaging in oil & gas-related activities;

- This Law institutes the National Local Content Monitoring Committee (CNSCL), whose terms of organization and operation will be later defined in a specific statute. This is the entity to which local content plans are to be submitted;


- These plans must describe the company's activities, detail the goods, services and competencies required for the carrying-out thereof, and address the promotion of Senegalese capital and companies, and of employment and training, the promotion and use of local goods and services, the transfer of technology and know-how, and the promotion of research and development;

- Among others, the local content plans are to specify the measures taken to allow national employees to acquire the qualifications and expertise required to progressively replace the foreign staff, and describe the progress made in terms of the use of the local workforce, as well as the job-creation and capacity-building initiatives carried out;

- On condition that they have the required competencies, Senegalese citizens shall be afforded priority in hiring, with non-qualified jobs being primarily offered to the residents of the local communities;

- The goods and services relating to oil & gas activities shall be supplied and provided by Senegalese companies, although foreign suppliers and service providers may be retained when no Senegalese companies are capable of supplying and providing them under comparable conditions;

- Competitive tendering procedures must be launched for the procurement of goods and services, and the CNSCL's prior approval

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must be obtained for any goods and services to be procured other than through a competitive tendering procedure. These procedures are to be launched through an electronic platform, whose organization and operation shall be later defined in a specific statute;

- Also to be governed in a specific statute is the classification of the oil & gas activities as following under the exclusive, mixed, and non-exclusive regimes: the first relates to the activities in respect of which the State reserves the right to grant exclusive authorizations (presumably to Senegalese companies); the second to those requiring an association between a foreign company and a local company; and the third groups the activities with a low local content potential;

- Insurance and reinsurance policies and financial services must be taken out with and procured from insurance companies and financial institutions licensed and established in Senegal, to the extent of their capabilities;

- The Local Content Law also instituted the Local Content Development Support Fund, which is tasked with implementing the local content strategy. Just as the CNSCL's terms of organization and operation, the terms of financing and operation of this Fund will also be later defined in a specific statute;

- Failure to comply with the local content obligations may trigger the termination of the petroleum contract, fines, the non-recovery of the costs (for contractors), and the exclusion from the procurement platform and the prohibition to enter into oil & gas-related contracts (for subcontractors, service providers and suppliers);

- This industry-specific Local Content Law is immediately applicable, but as far as existing contracts are concerned, only to the extent it does not compromise the stabilization provisions thereof. A maximum 12-month grace period for compliance may be afforded by the CNSCL in certain cases.


Senegal overcame the first challenge to become a serious player in the African oil & gas industry: it discovered game-changing resources, is prudently managing expectations, and enacted a fresh legal framework with which it believes a fair balance will be struck between the attractiveness and competitiveness of its oil & gas sector in the eyes of foreign investors, and the protection and advancement of the Senegalese people's interests in terms of economic and social development. But in the path to joining the regional league of oil and gas producers, there is still a lot of ground to cover – and it involves building an industry almost from scratch, including in terms

of the Government's capacity to handle the growing volume of regulatory work.

One of the key principles expressly provided for in the new industry-specific Local Content Law is realism – and this might well be a word to keep in mind, irrespective of where we are, how we look to the Senegalese oil & gas sector, and what hopes we have to participate in and contribute to its development and consolidation.

There are reasons for concern, in particular owing to the quite significant number of (new) policies, standards and requirements whose detailed regulation was left for subsequent statutes – from the procedures for the award of blocks to the organization and operation of the CNSCL, from the electronic platform for the procurement of goods and services to the classification of the oil & gas activities into the exclusive, mixed and non-exclusive regimes, from the participation of Senegalese investors in the share capital of the subcontractors to the template of the development plans.

But there are also reasons for optimism. The steps taken thus far seem to have been all in the right direction – the slow approach to the development and monetization of the assets, the creation in late 2017 of the National Oil and Gas Institute (an industry-sponsored academy for training, capacity-building and certification in the different fields of the industry, directed to both public officers and private technicians), the focus on transparency and on environmental protection, the commitment to devote a significant portion of the expected revenues to longer-term investment, and of course the revamping and updating of the applicable legal framework.

Senegal has a lot to learn from more mature oil-producing countries: bad (but also good) examples are everywhere – in the African continent and beyond. The country has been patiently and thoroughly case-studying and benchmarking these examples, and until now it seems to have done all the right things to follow the good examples and to avoid the bad. If it continues doing so, it is unquestionable that Senegal has all it takes to succeed in creating a thriving and inclusive oil and gas industry and to become itself an example to study and follow in years to come. 

#### About the Author

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