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COTE D'IVOIRE

A Rising Oil & Gas Star in West Africa

Côte d'Ivoire has been in the news lately. After years of devastating civil wars and political turmoil, the country has finally been living an era of peace and prosperity. Since the end of the post-electoral crisis of 2011, Alassane Ouattara's presidency has been stable and recently engaged in dialogue with the opposition.

Most are convinced that the October 2015 elections will occur peacefully and that the current President will secure re-election for another five-year term. The country's economic perspectives are good, the business climate is attractive, and the President has pledged to further spur growth by investing in energy and infrastructure to sustain the current GDP annual growth rate of almost 10%. In these past four years, the economy of the world's largest cocoa producer has been expanding faster than any other sub-Saharan African nation.

Although Côte d'Ivoire's economy is based largely on agriculture, there has been increased attention on the country's oil and gas industry. Some actually believe that the oil and gas sector will play a strategic role for Côte d'Ivoire in the future given the promising opportunities for offshore deep and ultra-deep water exploration and drilling. Approximately 80% of the country's offshore acreage remains unexplored and the Ivorian government has set an ambitious goal of producing 200,000 barrels per day by 2020, which is more than five times the current average production.

Oil resources were found in Côte d'Ivoire in the 70s, and oil production started in the 80s. However, around a decade later, some international oil companies (IOCs) left the country due to rising production costs, unprofitable profit-sharing contracts, or political instability. The current stability prospects and technological advances have made them reconsider the commercial viability of Côte d'Ivoire's oil and gas resources. Hence, the Ivorian government invited a number of IOCs to bid for available offshore oil acreage, including seven ultra-deep water blocks during a road show conducted in Houston in October 2014. Some negotiations have already been successfully concluded and others may follow.

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The Ivorian Petroleum Code is overall quite flexible and does not require specific public tender procedures, leaving the government discretionary powers to directly negotiate and enter into petroleum contracts with IOCs of its choice. Further, the Petroleum Code allows various types of petroleum contracts, including concession contracts, production sharing contracts, or other type of contracts if appropriate, namely risk service contracts. In practice, however, the government has been using only production sharing contracts (PSCs). Although there is no model PSC prescribed by law, the Ivorian government typically uses a standard form as starting point and accepts to negotiate some of its terms and conditions.

PSCs are signed on behalf of the government by the President, which in turn has delegated signature powers to three ministers: the Minister of Petroleum, the Minister in charge of Budget, and the Minister of Economy and Finance.

In practice, a team at the Hydrocarbons General-Directorate (DGH) has been trained to discuss and negotiate PSCs. Although these are not legally required to be ratified or published and are therefore not made available to IOCs, PSCs signed in the past are seen as precedent. It is difficult to depart from such precedents unless there are reasonable and well-founded arguments to do so.

PSCs may be entered into with both Ivorian and foreign companies provided that they have a permanent establishment in Côte d'Ivoire for the duration of the contract, either through a locally incorporated company or through a registered branch. The Center of Promotion of Investments (CEPICI) has created a "one-stop" service desk to facilitate the incorporation of a company and the registration of a branch in the country. All administrative procedures related to the creation and operation of a local company or branch can be made at CEPICI´s front desk, which then coordinates with the tax and labor authorities, as well as with the trade registry, which allows investors to save time and money.

The Petroleum Code stipulates that signature and production bonuses may be requested and their amounts can be freely negotiated. PSCs can also freely set forth the percentages of cost oil and profit oil as there are no legally prescribed thresholds. Such split may vary depending on whether it relates to crude oil or natural gas production. Also, the government can agree to give the contractor group an uplift of annual development expenditures (with or without financial costs) to encourage operations in deep offshore areas. In addition to the general taxes and levies due under the applicable Tax Code, the contractor must pay taxes and fees as determined in the relevant PSC, but is exempt from certain charges, such as VAT. This VAT exemption also applies to subcontractors. Both contractors and subcontractors also benefit from duty exemptions on imports made for the petroleum operations and contractors are entitled to export their hydrocarbon production free from any export duties and taxes.

Exclusive exploration authorizations are typically granted for an initial period of three years and can be renewed twice for periods of two years, or three years for deep-sea areas. However, if the authorization expires before the end of the exploration drilling works, or where more time is required to evaluate a potential discovery, the exploration authorization can be extended beyond these periods. On the date of each renewal, there is a relinquishment of the exploration perimeter in accordance with rates negotiated under the relevant PSC, typically 25% of the exploration area (this can be lower, as there is no minimum percentage required by law). If a deposit is considered commercially exploitable, the contractor is entitled to an exclusive exploitation authorization, which has a maximum 25-year period, renewable once for a maximum period of ten years. Extension beyond renewals must be requested 12 months before expiration of the validity period.

The state is very involved in the oil and gas industry, not only through the DHG, which negotiates PSCs and monitors the sector's activities, but also through Petroci, the state-owned oil company founded in 1975. Petroci acquired two onshore petroleum fields in the State of Mississippi in 2001 and 2003 to, among other things, gain practical experience as an operator and increase its production. Also, Petroci holds a minority stake in all of Côte d'Ivoire's producing fields and almost all of the country's licensed blocks, and is a party to any petroleum contract signed by the Ivorian government. Although there are no legal thresholds, Petroci's participating interest in petroleum contracts typically ranges between 10% to 15%, and additional interests may be negotiated. Joint operating agreements must be notified in advance to the government. Assignments of oil interests as well as other transactions resulting in a change of control in the contractor, whether to third parties or to affiliates, are subject to the government's express prior approval, without which such assignments and transactions shall be deemed null and void. Yet, transfers among parties to a PSC are subject to mere notification to the government, although this exception does not apply to the role of operator.

Although there are no quotas requiring the hiring of Ivorian nationals, the National Employment Agency (AGEPE) should be informed of any existing job vacancy in Côte d'Ivoire, and such vacancy must be made public. Only if the vacancy hasn't been fulfilled by an Ivorian national within one month can the employer hire an expatriate to fill the job position in question. Since the law contains mechanisms to ensure that no foreign worker is hired to perform a job if there is an available national worker with the required qualifications and experience, mandatory quotas are somewhat unnecessary. However, PSCs can require IOCs to have a specific percentage of their workforce composed of Ivorian nationals.

Further, both IOCs and their subcontractors must give preference to Ivorian companies for construction, supply and service contracts under equivalent conditions of price, quality, capacity, safety, environmental performance, delivery times and payment. IOCs are also expected to draw-up, conduct, and finance training programs for their Ivorian workforce, as well as for public officials employed by the Hydrocarbons Administration, in amounts agreed with the government in the PSC, and to allocate a minimum amount per year for the performance of social projects. Finally, IOCs are required to sell their production with priority to the local markets in the terms and conditions provided for in the relevant PSC.

By way of conclusion, IOCs are taking a renewed interest in the offshore oil and gas resources of Côte d'Ivoire, and, as stability returns to a country wracked by a decade of turmoil, the country is well poised to become known for its interesting oil and gas potential. The Petroleum Code, adopted in 1996 and amended in 2012, can be an effective tool for attracting investment from IOCs as many of its provisions are quite flexible, and allow room for discussion and negotiation of PSCs.

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