Regional Developments

CÔTE D'IVOIRE

OFFSHORE POTENTIAL: OPPORTUNITIES AND LEGAL FRAMEWORK

Introduction

After a decade of civil unrest, Côte d'Ivoire has finally been living an era of peace and prosperity. In the past four years, the economy of the world's largest cocoa producer has been expanding faster than any other sub-Saharan African nation, and most are convinced that the current President will secure re-election for another five-year term in the upcoming October 2015 elections. 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. The IMF forecasts over 7.5 per cent average growth through to 2017.

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 believe that the oil and gas sector will play a strategic role for Côte d'Ivoire in the future given the promising opportunities in offshore deep and ultra-deep waters.

Offshore opportunities

Côte d'Ivoire's offshore acreage ranges between 80–150km wide and extends west from the coast into the sea up to areas that are more than 3,000m deep. The great majority of the country's offshore acreage remains unexplored.

In October 2014, during a roadshow conducted in Houston, the Ivorian government invited a number of international oil companies (IOC) to bid for available offshore oil acreage, including seven ultra-deep water blocks. Two of these ultra-deep blocks have already been awarded to a major IOC, one is under negotiation, and apparently the other four blocks are still open to negotiation.

In the 1950s, the discovery of bitumen in the Eboïnda region prompted oil research in Côte d'Ivoire. During the next decades, various initiatives of the then Secretary of State in charge of mining fostered IOCs to conduct oil exploration activities in the Ivorian basin. The Bélier and Espoir oil producing fields were discovered at that time.

Today, the major offshore blocks under production are blocks CI-27 (Foxtrot gas field), CI-40 (Baobab field), CI-26 (Espoir field), and CI-11 (Lion and Panthere fields).

The CI-27 offshore block, which is operated by Foxtrot International (majority-owned by French group Bouygues) is the country's biggest-producing natural gas field. The Foxtrot and Mahi fields, located very close to the shore, have already allowed for the construction of a pipeline and provide the majority of natural gas to three major power plants in the country. . The completion of the development of the Marlin oil and gas field and nearby Manta gas field discovered elsewhere in the block is expected towards mid-2015. In March 2015, RAK Petroleum, who owns one-third of Foxtrot through Mondoil Enterprises, announced that the Marlin well drilled on the same block flowed gas and oil. A declaration of hydrocarbons discovery was submitted to the Ministry of Petroleum and Energy and an evaluation and appraisal program should follow shortly.

The Baobab field, located in block CI-40, approximately 65km south-west of Abidjan, has been under production since 2005 and is operated by oil independent firm Canadian Natural Resources (CNR), which holds a 57.6 per cent interest in the project. CNR also holds a majority interest in block CI-26 where the promising oil producing Espoir field is located.

In 2013, the Nigerian oil and gas company Afren sold its 47.8 per cent interest in block CI-11 to Petroci for US $26.5 million. However, Afren has concluded negotiations with the government for other offshore blocks (CI-523 and CI-525), signaling confidence in Côte d'Ivoire's offshore potential.

In April 2014, Total, the French oil major, struck oil at its CI-514 offshore block, one of four in the country in which Total holds a stake and the first find in the "frontier" San Pedro basin. There were also recent discoveries from UK's Tullow Oil in June 2014 and US Vanko Energy in December 2014. All of these offshore blocks are in the same basin as Western Ghana, home to recent deep water discoveries in the Jubilee deep offshore block, which is currently the object of a maritime boundary dispute between Ghana and Côte d'Ivoire, subject to arbitration. Given Ghana's large oil and gas findings in the Jubilee field, Côte d'Ivoire's exploration blocks bordering the maritime border with its western neighbor are drawing increasing interest from a number of IOCs. In fact, certain discoveries in deep water blocks in western Ghana suggest that the rich oil deposits discovered thereextend into Côte d'Ivoire.

In light of this offshore activity, it is reasonable to assume that Côte d'Ivoire's output of crude oil should increase in the near future. Hence, the Ivoirian government has been giving priority to upstream oil and gas exploration in offshore blocks.

Legal framework

The principal Ivorian laws governing oil and gas exploration are Law No.96-669, of August 29, 1996, as modified by Order No.2012-369, of April 18, 2012 (the Petroleum Code) and Decree No.96-733, of September 19, 1996, on the general rules for the application of the Petroleum Code (the Application Decree).

Petroci

The Ivorian State is involved in the oil and gas industry, not only through the *Direction Générale des Hydrocarbures* (DGH), which negotiates petroleum contracts and monitors the sector's activities, but also through Petroci, the state-owned oil company which was created in 1975. 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, which enables the company to take a very active role in the energy sector. Although there are no legal thresholds, Petroci's equity in oil and gas contracts typically ranges between 10 per cent to 15 per cent, and additional interests may be negotiated. Its recent acquisitions in several blocks are part of Petroci's mandate to develop the energy sector and to support the discovery of more oil and gas assets in collaboration with its IOC partners. Also, Petroci acquired two onshore petroleum fields in the US State of Mississippi in 2001 and 2003 to, among other things, gain practical experience as an operator and increase its production.

Oil exploration and production licensing

The Petroleum Code is overall quite flexible and leaves discretionary powers to the competent governmental authority who declares oil and gas blocks open for negotiation to either: (i) directly negotiate and enter into petroleum contracts for those blocks with IOCs of its choice that request such negotiation; or (ii) launch a tender offer for the award of those blocks. Further, the Petroleum Code allows various types of petroleum contracts, including concession contracts, production sharing contracts (PSCs), or other type of contracts if appropriate, namely risk service contracts. In practice, however, to date the Ivorian government has only used PSCs to award oil and gas blocks.

Production-sharing contracts negotiations

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 DGH has been trained to discuss and negotiate PSCs. Although the law does not impose the use of a standard model PSC, the Ivorian government typically uses the same standard form and PSCs signed in the past are seen as precedent. Nevertheless, different PSC terms and conditions can be negotiated.

Corporate structure

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 Centre 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. This "one-stop" procedure should allow investors to save time and money.

Fiscal terms

The fiscal regime applicable to the petroleum industry in Côte d'Ivoire is laid down in the 1963 General Tax Code, but PSCs also contain tax clauses. Contractors are subject to corporate income tax on their net profits (the general tax rate provided in the law is 25 per cent) and a ring-fencing principle applies. Yet, the government can agree to give IOCs an uplift of annual development expenditures (with or without financial costs) to encourage operations in deep offshore areas. Also, except for the 25 per cent corporate income tax, PSCs can stipulate a range of fiscal incentives and exempt IOCs from the general taxes and levies such as VAT. However, 15 per cent of the production portion must be paid to a petroleum fund and the Petroleum Code stipulates that signature and production bonuses may be requested. However, 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.

Both contractors and subcontractors are also granted 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.

Exploration and production authorisations

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. If a deposit is considered commercially exploitable, the contractor is entitled to an exclusive authorization for production, which applies for a period of twenty five years, renewable once for a maximum period of up to 10 years.

Ownership and confidentiality

The Petroleum Code and the Application Decree are silent with respect to the ownership of any data and information obtained, acquired or derived as a result of the petroleum operations. However, under the Petroleum Code, IOCs are required to furnish any such data and information to the government, and to keep it confidential in accordance with applicable law and the relevant PSC. Typically, PSCs require the parties to keep this data and information confidential and not disclose it to third parties at least for a given period although selected third parties who undertake to keep it confidential may have access to it.

Côte d'Ivoire adhered to the Extractive Industries Transparency Initiative (EITI) in 2006, became an EITI candidate country in 2008, and today is an EITI member country. This involves the production of comprehensive EITI reports that include full disclosure by the Ivorian government of extractive industry revenues and of all material payments received from IOCs. The IC EITI report for 2012 was submitted by Moore Stephens, an independent auditor, in December 2014 and is publicly available information. In this respect, Order No.2012-369,of 18 April 2012, which modified the Petroleum Code, provides for the following two new requirements: (i) IOCs that have signed a PSC must conform to the EITI transparency principles and produce the necessary declarations in the context of their activities in Côte d'Ivoire; and (ii) the *Official Gazette* in Côte d'Ivoire must publish any signed petroleum contracts (as far as we know, this has never happened in practice) and payments made by IOCs to the Ivorian government.

Inspections

Pursuant to the Petroleum Code, the Ivorian government is entitled to carry out inspections during the petroleum operations. For such purpose, IOCs are required to provide authorities with means to access the hydrocarbons sites and facilities, as well as all information relating to the operations. The procedures for the government's inspection are established in the Application Decree. Under the Application Decree, government authorities may visit from time to time the operator's facilities to carry out an inspection. The operator may however be informed prior to the inspection.

Assignments, transfers and changes of control

The Petroleum Code sets forth that 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, and to the conditions set forth in the PSC. In the absence of such prior approval, such transactions shall be deemed null and void. Pursuant to the Application Decree, transfers among parties to a PSC do not require such prior approval and are subject to mere notification to the government.

Local content

Local content requirements in Côte d'Ivoire to favor local businesses are quite reasonable when compared to those of other African countries. Under the Petroleum Code, both IOCs and their sub-contractors are merely required to give preference to Ivorian companies in awarding construction, supply and service contracts under equivalent conditions of price, quality, capacity, safety, environmental performance, delivery times and payment.

Requirements to protect national workers are understandably more demanding. The Petroleum Code was modified in April 2012 to include, among other things, a new local content general principle pursuant to which IOCs and their sub-contractors shall not only preferably employ Ivorian citizens with appropriate qualifications for their operations, but 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 relevant PSC, and to allocate a minimum amount per year for the performance of social projects. The Petroleum Code does not specify minimum or maximum amounts for such training programs.

As a final note, 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 typically require IOCs to have a specific percentage of their workforce composed of Ivorian nationals.

Disputes

Disputes arising out of or in connection with petroleum contracts can be resolved through arbitration and PSCs invariably include international arbitration clauses. Côte d'Ivoire ratified the 1991 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and is a party to the International Center of the Settlement of Investment Disputes Convention. It has also concluded bilateral investment treaties with different States.

Conclusion

By way of conclusion, the oil industry is taking a renewed interest in 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 government has shown willingness to become increasingly competitive, as it aims to keep oil and gas exploration going and production increasing. 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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