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INVESTING in GABON
Grabbing the Opportunity

The sharp drop in oil prices over the last months, which caused the price of the barrel to fall to around USD 50, has been a wake-up call for host governments, petroleum companies, service providers and other stakeholders to embrace change, promote new ideas and breathe fresh results. In Gabon, the effects of the drop in oil prices have been intensified by over a decade of reduced oil production due to the aging of fields. This situation, along with other endogenous factors, seems to be leading the Gabonese government to pursue ways to revamp its hydrocarbons sector.

In 2010, following the *Deepwater Horizon* disaster in the Gulf of Mexico, the Gabonese government was forced to cancel the licensing round for access to acreage in deep and ultra-deep waters in order to ensure "security and environmental guarantees." In 2013, Gabon's 10th licensing round was launched for 42 available blocks and 18 applications were received. Thirteen bidders were able to directly negotiate with the government and the tender resulted in the award of nine deep offshore blocks in August 2014.

With 127,784 sq km (50.41%) of acreage licensed and 125,723 sq km (49.59%) of open acreage according to official sources, Gabon has recently launched its 11th licensing round. The government is putting out to tender five deepwater oil blocks (Blocks E12, E14, F12, F13 and G14) located in the South Gabon Salt Basin.

The tender will be governed by the Hydrocarbons Code (Law No. 11/2014, of August 28, 2014, as amended), which replaced the previous rules dating back to the 1970s. Unlike the former statute, which only contained around 20 articles setting forth the basic principles and general rules applicable to upstream petroleum operations, the new statute now has 260 articles and applies to upstream, midstream and downstream activities.

In practice, the new statute codified all relevant matters that were typically addressed in petroleum contracts and which, most of the time, were not backed-up by mandatory statutory provisions. This meant that depending on each contract, the terms and conditions imposed on petroleum companies could vary greatly, although a customary standardization effort existed.

The Hydrocarbons Code contains detailed regulatory, tax, customs and foreign exchange rules and petroleum companies may now carry out petroleum operations by means of five different types of contracts (service contracts, technical evaluation agreements, exploration contracts, production sharing agreements, and exploration and production sharing contracts). Lately, however, the State has preferred production sharing contracts.

The exploration phase under production sharing contracts must be of six years, but contracts can allow its extension up to a maximum of eight years, while the production phase shall be of 10 years and can be renewed for a five-year period twice.

Article 82 of the Code dictates that production sharing contracts must provide for a minimum participating interest for the State of 20%, which must be carried throughout exploration. Pursuant to Article 84 of the Code, a production sharing contract should enable the National Oil Company – *Société Nationale des Hydrocarbures du Gabon* – to purchase for market price a maximum participating interest of 15%. Under Article 4 of the Code, the State can also negotiate the direct or indirect acquisition of a participation in the share capital of any company engaged in the production of hydrocarbons.

Cost recovery and production sharing terms are negotiable within the limits set forth by the Code. Article 86 sets forth a cost recovery ceiling of 75% for deep and ultra-deep zones and Article 87 establishes a minimum profit oil share for the State of 50% for the same areas.

With a new statutory regime for the petroleum sector in place, and the recent gas discoveries (e.g. the Leopard Marin offshore last October), together with new oil producing fields on stream (e.g. the North Tchibala offshore), the Gabonese government disclosed three ways to keep the attractiveness of the tender for national and foreign investors[1]. The first is reducing the operating costs applied to oil and gas services to maintain the same levels of production. The second is reviewing the economics of the oil and gas projects to guarantee a win-win partnership between the government and oil companies. The third is adapting the fiscal and legal terms to the fluctuation of crude oil prices.

The Terms of Reference for the bid will likely include a profile of the company's financial strengths and technical expertise in deep water, company environmental practices, oil spill response experience and policy, anti-piracy policy, social responsibility policy, and local content policy. Work commitments for the exploration phase, the signature bonus and the production bonus, as well as the contributions for social projects are expected to be negotiable items. Also, according to official sources, the acquisition of seismic data from CGG is a condition for a company to be eligible to submit a bid.

Combining a CAPEX decrease with the growing regulatory burdens and shareholders' activism is not an easy task to accomplish. At a time when petroleum companies are cutting their exploration budgets (in some cases by 30%), reducing operating costs is the main objective for operators and their partners. Therefore, the Terms of Reference for the tender, which are still unknown, will surely be decisive for the success of this licensing round.

Bearing in mind the current macroeconomic context and the volatility in commodity prices, the Gabonese government will likely be more open to negotiations with potential investors (to those already acting in the country and to new-comers). Therefore, E&P companies, particularly those that have traditionally been interested in conventional areas may see Gabon as an opportunity to grab. At least for this round, they can do so until March 2016. At present, the opening of bids and classification of bidders is expected for March 31, 2016. With all negative forecasts anticipating that oil prices will remain low over the next years, this particular tender may be seen as a risk too high for international oil companies to bear. Yet, the biggest opportunities typically arise from times of crisis.

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[1] *See the Ministry of Petroleum and Hydrocarbons' speech at the 22nd Africa Oil Week, available at https://www.gabon11thround.com.*