By Catarina Távora & Sara Frazão*
Miranda & Associados

# Gabonese Hydrocarbons Code An Expected Change

With crude flowing since 1957, Gabon has been experiencing for more than a decade a decrease in its oil production due to the aging of fields. This factor, together with the contraction of the economy and the sharp drop in oil prices, led to a call for the implementation of measures to attract interest and investment from both major petroleum companies, as well as from industry newcomers.

In this respect, three specific measures are noteworthy. Firstly, the enactment of the new Hydrocarbons Code in 2014, which repealed the former applicable rules, but has not been as promising as the industry would expect, as we will further herein explore. The second measure was the launching of the 11$^{th}$ licensing round in 2015-2016 which, due to the apparent lack of interest by investors, ended up being cancelled. The third one was Gabon re-joining the Organization of the Petroleum Exporting Countries (OPEC) in July 2016. Gabon had become a full member of OPEC in 1975 but terminated its membership in 1995.

The 2014 Hydrocarbons Code is known to have been first drafted in 2011, but was only approved three years later, by means of Law No. 011/2014, of August 2014. However, today, three years after its enactment and six years after its first draft, the macro-economic context in which the 2014 Hydrocarbons Code is being applied is substantially different from the one that dictated the rules drafted years ago, at the time when a crude barrel hit $100.

In May 2017, the Head of State publically announced that the 2014 Code was no longer attractive to investors, indicating that it would be revised, a task that falls upon the current Minister of Petroleum, Pascal Hoagni Amboure, appointed in January 2017 to replace Etienne Dieudonné Ngoubou and reappointed on August 21 when the President reshuffled the Government.

A revision of the 2014 Hydrocarbons Code will likely lead to an increase of interest by international oil companies (IOC) for Gabon. Due to the paradigm shift in the sector, different provisions could be revisited to captivate foreign interest and foster potential new ventures. Here are a few suggestions mainly focused on production sharing contracts (PSC) which are the standard petroleum agreements in the country.


Under the Hydrocarbons Code, the State does not give itself much flexibility in terms of the exploration and production periods that can be agreed with investors. The initial exploration period is six years, with extensions and renewals subject to a maximum cap of eight years. No additional extensions to the exploration period are foreseen. In turn, the duration of the production period is 10 years, being the contractor is allowed a maximum of two renewals of five years each. Upon expiration of the production period, the contractor is granted a statutory preferential right to negotiate a new PSC. Yet, the contractor's preemptive right must be exercised two years prior to the expiration of the relevant Exclusive Production Authorization (EPA) and the negotiations towards the execution of a new contract must be concluded prior to that expiration.

The Code provides that EPAs for gaseous hydrocarbons are granted for a 15-year period and can be renewed twice, each time for five years, but the possibility of longer periods for exploration are not contemplated.

In respect of the State and the National Oil Company (NOC) participation, the 2014 Hydrocarbons Code sets forth that the Gabonese

State is entitled to have a minimum equity interest of 20% in the share capital of any company applying for or holding an EPA. Moreover, a PSC must provide for a minimum 20% carried interest for the State, but the parties are free to agree on a higher interest. Additionally, PSCs must give Gabon Oil Company (the NOC) the right to acquire a maximum PSC interest of 15%.

Source: Brian Ecton

*Streets of Gabon*

Another interesting feature of the 2014 Hydrocarbons Code is that petroleum contracts may be executed by IOCs; however, EPAs can only be granted to a Gabonese company, which means that foreign companies have to incorporate local subsidiaries for development and production. However, in practice, local incorporation may be unavoidable after a maximum period of four years from the date of registration of an IOC's branch because of Article 120 of the Uniform Act relating to Commercial Companies and Economic Interest Groups (UACC) of the Organization for Harmonization of Business Law in Africa, which is directly applicable in Gabon. The Code could at least expressly provide that during the exploration period IOCs can maintain a branch in Gabon without the need for any authorization from the Minister in charge of trade benefiting from a derogation from Article 120, which is permissible under the UACC.

Also, assignments, changes of control, direct or indirect assignments or transfers of the rights and obligations of a member of a contractor group are subject to the prior approval of the Minister of Petroleum. Moreover – and similarly to other hydrocarbon-producing countries – in case of direct or indirect transfers or assignments to third parties (i.e. non-affiliated parties), the Gabonese State has a preemptive right to acquire the relevant participating interests. The State's preemptive right must be exercised within 60 days as of the date of receipt of the request thereof, and failure to issue a reply within said timeframe entails a tacit waiver of such right.

The Code does not give the State much flexibility to negotiate cost recovery since it provides for maximum cost recovery percentages of 65% for conventional areas and 75% for deep and ultra-deep offshore areas. Cost recovery is subject to ring-fencing. The contractor has the right to recover recoverable petroleum costs paid in respect of a production zone (field) exclusively from the production originating from that field. When multiple fields have been granted to the contractor within the same PSC, the contractor can recover its recoverable petroleum costs related to those fields from the production generated by such fields. Exploration costs can only be recovered from the production generated by existing fields if they were incurred prior to the approval of the last field.

Similarly, flexibility for the State to negotiate its profit oil entitlement is limited. The Code provides for minimum percentages for the State's profit oil share of 55% for conventional areas and 50% for deep and ultra-deep offshore areas. However, under a PSC the State can accept another production sharing computation method recognized by the oil industry.

Two special contributions are required under the Code: (i) a contribution for investment diversification[1], of 1% of the contractor's turnover during production; and (ii) a contribution for investment in hydrocarbons[2] of 2% of the contractor's turnover during production. The Code specifically provides that the rates of these special contributions can be amended by regulations. Only up to 75% of the sums paid (or of the tax-deductible charges) in respect of these contributions are recoverable.

In respect of abandonment, the Hydrocarbons Code requires companies conducting petroleum operations in the country to set a 'site rehabilitation fund' by opening an account with the Central Bank or with a Gabonese bank or financial institution. Failure to comply with this obligation may trigger penalties, including termination of the relevant authorization to carry out petroleum-related activities.

Despite privileging the stability of the rules governing upstream activities, the oil industry would no doubt welcome an amendment to the foregoing provisions with the purpose of promoting and protecting their investments in the country. It is now a time to wait and see when and how the Government decides to improve the Hydrocarbons Code with a view to foster investment in the country's industry and create the necessary conditions for an inversion of the petroleum production decrease tendency of the past decade.

About the Authors

*Catarina Távora is a Partner and Global Head of the Energy Group at Miranda & Associados. She has more than 15 years of experience advising oil & gas companies in setting up and carrying out their operations in Africa. Sara Frazão is an Associate and a member of the Energy Group at Miranda & Associados and regularly advises on oil & gas matters in Africa. Catarina and Sara may be contacted at Catarina.Tavora@mirandalawfirm.com and Sara.Frazao@mirandalawfirm.com.*

1 *"Provision pour investissement diversifié".*
2 *"Provision pour investissement en hydrocarbures".*