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Petroleum law in Gabon: New petroleum code confirmed (again) and delayed (again)

The Republic of Gabon has recently confirmed that a new petroleum code is being prepared, with the intention that it is likely to come into force by January 2015.

The indicative content and timing of implementation of the new petroleum code raises some potential concerns for existing and future investors. This briefing outlines the drivers for change in the regulatory regime and concerns arising out of some of the terms that are understood to be proposed and the suggested timing of their coming into effect.

Background to the proposed changes

- Despite focused efforts to diversify the economy, the exploitation of hydrocarbons remains critical for Gabon. As at the end of 2012, it was estimated that Gabon had 2 billion barrels of proven oil reserves, the fifth largest in Sub-Saharan Africa, and the oil and gas industry still accounts for up to 75 per cent of the country's export revenue.

- Faced with a decline in production levels, the Republic of Gabon first identified the need for a more competitive and detailed regulatory and contractual regime applicable to the exploration and exploitation of hydrocarbons as long ago as 2007. Political pressure has also led to a desire to improve the local content aspects of the regime.

- From an investor perspective, recent licensing rounds have been criticised for lacking transparency, with the majority of interests awarded as a result of individual negotiations between the Government and oil and gas companies. Gabon joined the Extractive Industries Transparency Initiative in 2004, but was delisted in February 2013.

- It is against this backdrop that the Republic of Gabon vowed to introduce a new petroleum code to address the flaws in the existing regime – that is, create a more transparent regime, on terms attractive to investors, while at the same time ensuring that sufficient value is preserved for the State and local communities.

The initial analysis

- Ironically, given that one of its underlying objectives is transparency, there is a lack of clarity about the content of the proposed new code. There are indications that the following key elements are likely to be contained within the code:
  - **Local equity participation rights**: of most significance is the report that the code will allow the recently formed National Oil Company – the Gabon Oil Company – to take a 15 per cent equity stake in all assets;
  - **Local content obligations**: the code may limit the number of foreign workers employed in the Gabonese oil and gas industry – perhaps a 10 per cent limit – with provisions designed to ensure that managerial roles may be reserved to Gabonese nationals;
  - **Reduction in gas flaring**: the Petroleum Minister has been quoted as stating that: "the aim is to be able to reduce gas flaring to the strict minimum, by up to 90 per cent … and to re-use this gas for the needs of industry, mainly for electricity production and subsequently for petrochemicals and the production of ore."; and
  - **Transparency**: the Government has said that it will set up a new agency to publish company and government data on the production volumes and tax contributions of mining and oil

- firms, as well as information on equity interests granted to companies and detailed reserves estimates.

- Arguably the biggest concern amongst existing investors is whether the new terms, particularly any right to equity participation, are intended to be retrospective – this remains unclear.

Timing

- The announcement comes at a time when the Gabonese Government is due to start negotiating the terms of new production sharing agreements as part of awarding new deep/ultra-deep offshore exploration blocks. It seems somewhat illogical, and potentially damaging to the negotiation process, to be running this process now with a new regime (the details of which remain unclear) potentially applying to those new PSAs less than one year after they have been entered into.

- More broadly, there are a number of other examples around the world where delays in implementation of proposed revisions to regulatory regimes have, on their own, acted as a significant deterrent to investment. Nigeria, for example, has seen a material reduction of investment in its upstream industry connected with the delays and lack of clarity surrounding its Petroleum Industry Bill – legislation which is intended to increase Nigeria's take and control significantly. It is hoped that Gabon does not follow a similar path.

We will continue to keep you updated. If you would like to discuss the contents of this update, please do not hesitate to get in contact.

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