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## A New Landscape for the Electricity Sector in Ivory Coast Opportunities for Foreign Investors

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**The Government of Ivory Coast is reforming the institutional and legal framework of the electricity sector with a view to attracting additional investments from the private sector and building a competitive economy.**

Although Ivory Coast is one of the most prosperous countries in Western Africa, the country has faced political and social unrest over the last decade affecting both the economy and the level of foreign investments. The political situation has now stabilised with a new President elected in 2010 but the country is in dire need of infrastructure. In this context, the new Government is reforming some key sectors with a view to attracting investments from the private sector and building a competitive economy.

This is the case for the electricity sector as the Government intends to develop several projects, including thermal and hydropower generation facilities and electricity transmission networks. This creates tremendous opportunities for the private sector and foreign investors. A strategic committee under the authority of the Ministry of Mines and Energy has been set up to promote and manage the implementation of these projects. The Government has also completed several reforms to the institutional and legal framework of the electricity sector and will face the stimulating challenge of trying to make Ivory Coast the centre of the Western African Power Pool<sup>1</sup>.

### Objective: Become the Leading Sub-Saharan Africa Electricity Market by 2030

Rich with local natural gas resources and an installed capacity of 1,202 MW, Ivory Coast is already an important electricity producer and exporter which has previously supplied neighbouring Benin, Burkina Faso, Ghana, Mali and Togo. Electricity export contracts were honored during the recent period of crisis earning the country a reputation as a reliable supplier. The installed capacity includes 604 MW generated by 6 hydroelectric facilities and 210 MW and 288 MW respectively generated by the gas-fired plants from existing independent power producers (“**IPPs**”), CIPREL and AZITO which use Ivorian domestic natural gas. In contrast to other IPPs in the region, such IPPs reached financial close without major difficulties with leading commercial banks and development financial institutions such as IFC, AFDB and FMO.

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<sup>1</sup> The Western African Power Pool (WAPP) is a specialized institution of the Economic Community of West African States (ECOWAS) aiming to integrate the national power systems operations into a unified regional electricity market in order to provide ECOWAS member states with stable and reliable electricity supply at modest costs. The mission of the WAPP is to encourage all participating power utilities to adopt common rules of practice for power system planning, network design/dimensioning, project development, power system operation, operational reliability and system protection.

However, similarly to its neighbouring countries, Ivory Coast experienced power cuts and load shedding at the end of year 2010 resulting from both a reduction in power production capacity and from a strong increase in electricity demand.

To remedy these issues, Ivory Coast has taken several measures since 2010, including importing an additional 55 MW capacity from Ghana, commissioning a temporary 70 MW gas-fuelled power plant operated by AGGREKO and amending AZITO and CIPREL IPPs' concession agreement to expand their respective capacity from 288 MW to 420 MW and from 210 MW to 432 MW.

Ivory Coast is aiming at meeting the continuous strong growth of domestic demand for electricity and becoming the leading Sub-Saharan Africa electricity market by 2030 by relying on its existing IPP experience and its significant untapped reserves of domestic natural gas estimated at 1,726 billion cubic feet (49 million cubic metres).

## Opportunities for Private Sector and Foreign Investors: Over 60 Projects to be developed

The contemplated projects include:

- increasing thermal production capacity with the construction of:
  - a 150 MW combined cycle thermal power plant by an IPP in a location to be announced (2012);
  - a 330 MW combined cycle thermal power plant by an IPP located in Treichville (Abidjan) (2012);
  - a 450 MW combined cycle thermal power plant located in Abatta (near Abidjan) (2012); and
  - four (4) 450 MW combined cycle thermal power plants by IPPs in locations to be announced (2016 and 2021).
- increasing hydropower capacity with the construction of:
  - a 270 MW hydropower plant located in Soubré (2012);
  - four (4) hydropower plants located on the Sassandra river for a total of 580 MW (2016); and
  - a 150 MW hydropower plant located in Aboisso Comoé (2021).
- increasing transmission network infrastructure to achieve national and regional interconnection with Mali in 2012 and with Ghana, Guinea, Liberia and Sierra Leone in 2016.
- developing renewable energy with:
  - an 8 MW biogas plant in Abidjan;
  - waste-to-energy projects in the districts of Abidjan and Yamoussoukro;
  - rural electrification by photovoltaic solar panel; and
  - biomass projects.

## Achievements and Challenges: Reforming the Institutional and Legal Framework

### New Energy Code

The Ivorian electricity sector is currently governed by law n°85-583 dated 29 July 1985 organising the production, transmission and distribution of electricity in Ivory Coast (the “**Electricity Law**”) and decree n°98-725 dated 16 December 1998 restructuring the electricity sector. The Electricity Law provides for a State monopoly on transmission, distribution, import and export of power. Such activities are conducted by the private entity<sup>2</sup> *Compagnie Ivoirienne d'Electricité* (“**CIE**”) in its capacity as public service concessionaire designated by the State, in its capacity as electricity sector licensing authority, pursuant to decree n°90-1389 dated 25 October 1990. CIE is also acting as the off-taker of the electricity generated by the two IPPs in Ivory Coast pursuant to a power purchase agreement which comprises a “take or pay” provision.

The Ministry of Mines and Energy, in collaboration with the Ministry of Economy and Finance, has recently submitted a draft new energy code to the Government. This draft energy code provides for the creation of a reinforced national energy regulatory authority endowed with coercive powers and of an Ivorian agency for energy efficiency and renewable energy (*Agence pour la maitrise de l'énergie et des énergies nouvelles et renouvelables*). The energy code is also contemplating the adoption of a model concession agreement for distribution and transmission, the modification of the tariff system and the introduction of a tax exemption regime favorable to foreign investors. The code is expected to be adopted later this year.

### Winding Up of the Former National Electricity Companies, SOGEPE and SOPIE

Ivory Coast comprised two national electricity companies both created in 1998, SOGEPE (*Société de Gestion du Patrimoine du secteur de l'Electricité*) which was in charge of managing the State's electricity assets including State investments in the electricity sector and revenues from leasing such assets and SOPIE (*Société d'Opération Ivoirienne d'Electricité*), which was to supervise the management of the electricity supply and the design and construction of electricity projects on behalf of the State.

The Government has considered that SOGEPE and SOPIE have failed to meet their objectives and that their activities overlapped with each other's and with those of ANARE (*Autorité Nationale de Regulation du Secteur de l'Electricité*). As an illustration, SOPIE, which was in charge of investments, did not control the financial resources generated by the sector and SOGEPE, which was responsible for the management of such financial resources, did not have the technical capacity to assess the investment opportunities which could be pursued.

### Creation of a New National Electricity Company, CI-ENERGIES

Accordingly on 21 December 2011, the Government approved decrees n°2011-470 and n°2011-471 winding up SOGEPE and SOPIE. The decrees were published in the State Official Gazette n°02 dated 30 January 2012. Concomitantly, pursuant to decree n°2011-472, the Government created a new electricity company named Energies de Côte d'Ivoire (CI-ENERGIES). ANARE will continue to act as regulator with reinforced powers to supervise the stakeholders in the sector, ensure the protection of consumer interests and the settlement of disputes.

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<sup>2</sup> The shareholders of CIE are: Finagestion (a subsidiary of Emerging Capital Partners) (54%), the State of Côte d'Ivoire (15%), private Ivorian investors (26%) and the CIE's employees FCP fund (5%).

CI-ENERGIES is a 100% state-owned company governed by the provisions of the OHADA Uniform Act relating to Commercial Companies (OHADA law is the set of uniform commercial laws which is currently applied in 16 civil law African countries including Ivory Coast) having the same business purpose as SOPIE and which has also been vested with other powers previously exercised by both SOPIE and SOGEPE, in particular:

- planning of supply and demand for electricity in coordination with the Ministry of Mines and Energy;
- managing investments for the expansion, reinforcement and renewal of the transmission system and rural electrification network;
- managing all elements forming public and private lands, works and equipments comprising the assets and property of the State;
- supervising the design and construction works relating to infrastructure, buildings and equipments of the electricity sector;
- monitoring operational management of the services put in concession;
- managing on behalf of the State the concession fees pursuant to the public service delegation agreement for generation, transmission, distribution, import and export of electricity; and
- the consolidated financial accounts bookkeeping and controlling the financial equilibrium of the electricity sector.

CI-ENERGIES is currently being incorporated and registered with the Ivorian Company Registry.

## Conclusion

Building on its ongoing reforms, significant track record for developing IPP projects and its potential for exploiting domestic natural gas reserves, Ivory Coast intends to double the existing installed power capacity and respond to the growing population needs. The political and economic situation is now stable and, with the first reforms being implemented, Ivory Coast offers tremendous future opportunities inviting the private foreign investors to accompany it in this process. The recent reform of the OHADA Uniform Act relating to Securities will also provide additional tools to assist with the bankability of the projects that are to be developed. We will continue to monitor the reforms of the electricity sector including any development relating to a public-private partnership draft law currently under review and whether it will have an impact on the sector.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or:

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