EQUATORIAL GUINEA

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

Equatorial Guinea (EG) is in west central Africa. EG is endowed with abundant oil and gas resources, accounting for over USD 14 billion in U.S. investment. The general investment climate in EG, however, is undermined by corruption and a burdensome, inefficient bureaucracy. International watchdog organizations give EG one of the world's lowest rankings in various global indices including corruption, transparency, and ease of doing business. These poor ratings underscore the challenging environment in which businesses operate.

The Government of the Republic of Equatorial Guinea (GREG) is seeking investment in several sectors: agribusiness; fishing; energy and mining; chemicals, petrochemicals, plastics and composites; travel/tourism; and finance. Most of these sectors are fairly undeveloped. The Equatoguinean domestic market is small, with a population of less than one million, although EG is a member of the Central African Monetary and Economic Union (CEMAC) sub-region, which is home to over 50 million people. The zone has a central bank and a common currency – the Central African Franc (CFA).

Following rapid economic growth in the early 2000s spurred by the discovery of oil a decade earlier, growth has slowed in recent years as operational oil fields have matured. With the drop in oil prices in 2015, EG has extended the timelines for completing infrastructure projects to balance its budget. EG is nearing completion of the first phase of the Horizon 2020 social development plan, which emphasized infrastructure construction. Now EG has some of the region's best roads and other essential infrastructure including development of its ports. In February 2014, the GREG announced plans to improve the ease of doing business by creating a one-stop-shop for investors and entrepreneurs, and creating a body to solve business disputes and a government co-investment fund of USD 1 billion. The fund is said to be in place, but the other measures have not been implemented. Although certain tax exemptions have been instituted to attract investment, those exemptions are strictly scrutinized with the decrease in the oil prices. Recent commercial disputes have involved delayed or non-payment by the GREG to American firms for goods and services already delivered.

The EG judicial system is not independent from its executive authority; The President is the Chief Magistrate. Corruption throughout the government, including the judiciary, makes it difficult for U.S. businesses to protect their investments and raises the risk of doing business in Equatorial Guinea. Occasionally business disputes are treated as criminal cases.

U.S. citizens do not require visas to enter EG, but visas can be very difficult to obtain for third-country nationals, and generally require a letter of invitation from the GREG, which can take months to obtain. Residency permits are expensive and can be similarly difficult to obtain and renew. The customs authority suffers from similar delays and is plagued by corruption.

Despite the many challenges, U.S. businesses which are expected to strictly comply with Foreign Corrupt Practices Act (FCPA) requirements have had success in the hydrocarbons sector, and some U.S. businesses have found rewards in other sectors. While Equatorial Guinea offers U.S. businesses diverse investment opportunities, potential investors should consider the inherent risks and hurdles associated with doing business in EG as part of their business strategies.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The Government of the Republic of Equatorial Guinea (GREG) is actively soliciting foreign investment. A new law has been passed to make it easier to invest in EG by establishing a “one-stop-shop” for investors and simplifying the process to register a business. The law is expected to be implemented shortly.

Other Investment Policy Reviews

In the past three years, the GREG has not conducted an investment policy review through the Organization for Economic Cooperation and Development, the World Trade Organization, or the United Nations Conference on Trade and Development.

Laws/Regulations of Foreign Direct Investment

Foreign investment is regulated by the following laws: Law No. 7/1992, Law No. 2/1994, Decree No. 54/1994, and Decree 127/2004. Other regulations may also pertain to foreign investment and apply to specific industries. Law enforcement and judicial decisions are not reliable or consistent. The judicial branch is heavily influenced by the executive branch, as the President is also the Chief Magistrate of the Republic.

Industrial Promotion

In August 2014, President Obiang hosted an investment forum in Washington, D.C., intended to attract U.S. companies to EG. This forum followed on the heels of an economic diversification symposium held in February 2014 in EG targeted at attracting foreign investment in key sectors to help the country diversify from its economic reliance on the hydrocarbons sector. Sectors targeted by the forum included agribusiness; fishing; energy and mining; chemicals, petrochemicals, plastics & composites; travel/tourism; and finance.

Limits on Foreign Control

Decree 127/2004 stipulates that shareholder capital firms and companies operating in the petroleum sector must have Equatoguinean shareholders. Foreign companies or companies created by foreigners are required to have at least 35 percent of share capital held by Equatoguinean partners. Equatoguinean partners must also account for one third of the representatives on the Board of Directors. In some sectors, investments must be part of public-private partnerships with a government entity.

Privatization Program

Equatorial Guinea has not implemented a privatization program.

Screening of FDI

Statutorily, investment permits are approved by the Minister of Economy, Planning and Public Investments.

The new state entity, Holdings Equatorial Guinea 2020, was created to help guide diversification efforts. This entity is expected to ultimately serve as a hub for foreign investors. For now, however, investors still work with relevant ministries to negotiate contracts. Larger deals may rise to the Presidential level. U.S. investors may reach out to the Embassy of Equatorial Guinea in the United States for guidance and connection to the appropriate ministry.

Competition Law

Equatorial Guinea does not have an agency that actively enforces any competition laws. Equatorial Guinea is a member of the Organization for the Harmonization of Business Laws in Africa (OHADA), and thus OHADA competition laws apply in the country.

Investment Trends

Recent contracts in the hydrocarbons sector generally include less favorable terms than contracts negotiated in past years.

Clearing imported goods and supplies can be a slow and onerous process due to bureaucratic requirements.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	N/A	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	165 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	N/A	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 14,320	data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

Foreign Exchange

Decree No. 54/1994 provides the right to freely transfer convertible currency abroad at the end of each fiscal year. International money transfers are occasionally delayed due to limited financial services.

Local currency is not widely available outside of the Central African Franc (CFA) zone, but can be obtained relatively easily in country. Equatorial Guinea operates almost entirely on a cash economy. Credit cards are used primarily by visitors or wealthy citizens at international hotels, and not by the general population.

Remittance Policies

There have been no recent changes or plans to change investment remittance policies.

EG is a member of the Task Force against Money Laundering in Central Africa (GABAC), an entity in the process of becoming a FATF-style regional body.

3. Expropriation and Compensation

Law No. 7/1992 states that the government will not expropriate foreign investments except when acting in the public interest and with fair, just, and proper compensation. The government does not generally nationalize or expropriate foreign investments, although a Spanish investor's property was confiscated in 2013. The government has an extensive record of expropriating locally-owned property, frequently offering little or no compensation.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Law No. 7/1992 states that disputes that cannot be resolved through direct negotiation by the involved parties shall be referred to Equatoguinean courts. Either party can also submit the dispute to international arbitration. Foreign investors are asked to declare their desired international arbitration venue in their initial application to invest in EG. Arbitration must take place in a neutral location with Spanish as the official language of the arbitration.

The government does not always comply with international agreements that it has signed or international legal decisions.

Bankruptcy

Equatorial Guinea has adopted the business laws of the Organization for the Harmonization of Business Laws of Africa (OHADA), including the law pertaining to bankruptcy.

Investment Disputes

Recent investment disputes have centered on non-payment of investors or contractors by the government, or state-owned enterprises. There are few established local mechanisms to compel the government to pay investors, and the Embassy has limited capacity to intervene.

International Arbitration

The OHADA Uniform Act on Arbitration rules would apply where the seat of arbitration is in Equatorial Guinea.

ICSID Convention and New York Convention

Equatorial Guinea is not a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention - also known as the Washington Convention), although Law No. 7/1992 states that international arbitration may utilize ICSID as the basis of procedure. Equatorial Guinea is not a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

Duration of Dispute Resolution

In practice, disputes are generally handled in direct communication with the relevant government ministry. The government is frequently slow to respond. Decisions often have to be made at the ministerial or presidential level. Local judicial decisions and enforcement are inconsistent and do not necessarily rely on a system of precedent.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Equatorial Guinea is not a member or observer of the World Trade Organization.

Investment Incentives

Law No. 2/1994 offers the following investment incentives, in the form of deductions from taxable income: 50 percent of the amount paid to Equatoguinean staff in wages and 200 percent of the cost of training Equatoguinean staff. In February 2014, the government also announced a co-financing fund intended to partner with new foreign investment projects.

Research and Development

There are no restrictions on funding foreign participation in government-financed research and development programs.

Performance Requirements

The government specifies a minimum percentage of employees who must be Equatoguinean ranging from 70-90 percent, but does not consistently enforce this requirement. The Ministry of Mines, Industry, and Energy is considering a new national content decree for the hydrocarbons sector, which would require that Equatoguineans hold certain supervisory/management positions. However, that decree is still in the draft stage and has not been made public.

U.S. citizens do not require visas to enter EG. However, obtaining letters of invitation and visas for third country nationals can be difficult and time-consuming. Residency permits, which are required for all long-term residents, can be difficult to renew and are expensive, frequently expiring before the new permit can be issued.

Foreign investors are required to have a percentage of domestic content in goods and technology.

Data Storage

Internet service providers, whether local or foreign, have not been required to turn over source code or provide access to surveillance. At present, there are no requirements pertaining to maintaining data storage within the country.

6. Right to Private Ownership and Establishment

See “Limits on Foreign Control” in section 1.

7. Protection of Property Rights

Real Property

Foreign investors are not permitted to own land or property, but can lease from the government or others. Property rights are generally recognized and enforced, although a substantial portion of the population does not have formal title to their land. Traditional use rights are frequently disputed. Those disputes are generally raised before the parliament. More information about the process of registering property can be found in the World Bank’s Doing Business Report: http://www.doingbusiness.org/data/exploreeconomies/equatorial-guinea/.

Intellectual Property Rights

Equatorial Guinea is a member of the African Intellectual Property Organization (OAPI). Intellectual property protections fall under the Council of Scientific and Technological Research of Equatorial Guinea (CICTE). Equatorial Guinea does not report on seizures of counterfeit goods. Legal structures are weak and intellectual property rights enforcement is rare. Equatorial Guinea joined the World Intellectual Property Organization (WIPO) in 1997. For additional information on treaty obligations and points of contact at CICTE, please see WIPO’s country profiles at: http://www.wipo.int/directory/en/.

Resources for Rights Holders

Embassy Contact:

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For a list of local lawyers, see: http://malabo.usembassy.gov/service/list-of-lawyers.html

8. Transparency of the Regulatory System

Labor laws are published and are publicly available. Regulations are not consistently applied. Foreign companies are expected to follow every detail of the labor law or face penalties. Enforcement of the labor law on national companies is far less strict.

Bureaucratic procedures are neither streamlined nor transparent, and can be extremely slow for those without connections.

Proposed laws and regulations are not published in draft form for public comment, but are sometimes informally shared with representatives of specific industries.

9. Efficient Capital Markets and Portfolio Investment

The small banking sector can provide limited financing to businesses. Capital markets are virtually non-existent.

Money and Banking System, Hostile Takeovers

Equatorial Guinea is a member of the Economic and Monetary Community of Central African States (CEMAC) and shares a regional Central Bank (BEAC) with other CEMAC members. Members have ceded regulatory authority over their banks to CEMAC. The Government of Equatorial Guinea is also a member of the Banking Commission of Central African States (COBAC) within CEMAC.

10. Competition from State-Owned Enterprises

There are currently a few state-owned enterprises (SOEs) in the energy and mining, and information and communication sectors. The state-owned oil company, GEPetrol, has preferential right of joint ownership in the oil sector.

OECD Guidelines on Corporate Governance of SOEs

The managing directors for the SOEs are chosen by the president. The SOEs report to the relevant ministry. SOEs are not required to adhere to the OECD Guidelines on Corporate Governance. Arbitration of investment disputes in domestic courts typically favors SOEs.

Sovereign Wealth Funds

The Fund for Future Generations is Equatorial Guinea's sovereign wealth fund, established in 2002. There is little transparency about its management.

11. Corporate Social Responsibility

Many U.S. firms operating in Equatorial Guinea have well-developed corporate social responsibility (CSR) programs. The Ministry of Mines, Industry, and Energy has established industry-specific regulations that mandate minimum rates of CSR contributions in the sectors it manages. These rates may increase under a new draft regulation that is being considered. American oil and gas companies tend to exceed those mandated CSR requirements. Most firms from other countries do not have substantial CSR programs. The government has expressed appreciation for the U.S. companies' efforts and recognized the positive role of U.S. firms.

There are NGOs operating in the country that work in fields in which CSR takes place, often as partners with the companies, but do not fulfill a monitoring role.

OECD Guidelines for Multinational Enterprises

The GREG encourages foreign enterprises to follow generally accepted CSR principles.

12. Political Violence

There have not been recent instances of political violence. President Obiang has been in power since 1979; as such, Equatorial Guinea does not have an established track record of transfer of power. The next presidential elections are expected to take place in 2016.

13. Corruption

Equatorial Guinea has strict laws against corruption, but they are not enforced. Corruption is very common in EG. American companies operating in EG adhere to the constraints of the FCPA. U.S. firms are concerned about corruption as it pertains to government procurement, award of licenses and concessions, and dispute settlement.

EG's greatest concerns in terms of money laundering and terrorism financing are cross-border currency transactions and the illegal international transfer of money by companies or corrupt individuals. Widespread corruption, at times involving the highest levels of the government, is a primary catalyst for money laundering and other financial crimes. Diversion of public funds and corruption are widespread in both commerce and government, particularly as regards the use of proceeds from the extractive industries, including oil, gas, and timber, and infrastructure projects, the most likely sources of laundered funds.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

EG is not a party to the United Nations Convention against Corruption.

Resources to Report Corruption

There is no "watch dog" organization operating in Equatorial Guinea that monitors corruption.

14. Bilateral Investment Agreements

Equatorial Guinea has signed Bilateral Investment Treaties (BITs) with China, Ethiopia, France, Morocco, Portugal, Russian Federation, South Africa, Spain and Ukraine.

Bilateral Taxation Treaties

Equatorial Guinea does not have a bilateral investment treaty with the United States. The Bilateral Taxation Treaties with France and Spain are currently in force.

15. OPIC and Other Investment Insurance Programs

There are no OPIC programs in Equatorial Guinea.

16. Labor

Local unskilled labor is readily available. The local supply of skilled labor is limited, however. Professional-level English is not common. Youth unemployment is widespread. A high percentage of the workforce is in the informal economy. There is a shortage of individuals trained to work in the oil and gas industry as well as in business administration. The oil and gas sector sponsors training programs. The government sponsors students for short and long-term international training and academic programs. The government requires that companies hire a specified percentage of nationals. Employers must make extensive severance payments even when employment demands fluctuate due to market conditions.

Although the law recognizes workers' rights to establish unions, affiliate with unions of their choice, and bargain collectively, freedom of association and the right to collective bargaining are not protected. Union formation is effectively blocked by a provision that stipulates unions must have at least 50 members from a specific workplace to register. As the government continues to place practical obstacles before groups seeking to organize, such as not allowing groups to register legally, the Union Organization of Small Farmers continued to be the only legal operational labor union. Most often those seeking to organize were co-opted into existing party structures by means of pressure and incentives. There is no law prohibiting anti-union discrimination.

The law broadly acknowledges the right to engage in strikes, but there is no implementing legislation defining legitimate grounds for striking. No law requires the reinstatement of workers fired for union activity. In practice, unions are usually not allowed to organize. There have been no legal strikes in the country since independence. Occasionally, both local and foreign workers engaged in temporary protests or “go slows” (work slowdowns and planned absences), which Ministry of Labor officials resolved peacefully through negotiations or fines on employers. Labor disputes are typically heard by the parliament and its decisions generally favor the employee.

Local government enforcement of labor laws is mostly focused on preventing companies from employing undocumented immigrants. The government has regulations to monitor health and safety standards and an inspection force, but enforcement is ineffective. Undocumented migrant workers remain vulnerable to exploitation and abusive working conditions.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

Luba Freeport, the Port of Bata, and the K5 Oil Centre have tax free status.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	N/A		2013	15,581	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	N/A		2013	2,616	http://bea.gov/international/factsheet/factsheet.cfm?Area=438
Host country's FDI in the United States ($M USD, stock positions)	N/A		2013	5	http://bea.gov/international/factsheet/factsheet.cfm?Area=438
Total inbound stock of FDI as % host GDP	N/A		2013	16.8%	

Table 3: Sources and Destination of FDI

The majority of FDI in Equatorial Guinea concerns the oil sector, followed by the forestry and fishing sectors. The United States is the main investing country followed by Italy and France. Foreign direct investment position data for Equatorial Guinea are unavailable.

Table 4: Sources of Portfolio Investment

Portfolio investment data for Equatorial Guinea are unavailable.

19. Contact for More Information

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