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PETROLEUM (EXPLORATION AND PRODUCTION) ACT

CHAPTER 308

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CHAPTER 308

PETROLEUM (EXPLORATION AND PRODUCTION) ACT

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CHAPTER 308**PETROLEUM (EXPLORATION AND PRODUCTION) ACT**

[Date of assent: 31st October, 1984.]

[Date of commencement: 16th November, 1984.]

An Act of Parliament to regulate the negotiation and conclusion by the Government of petroleum agreements relating to the exploration for, development, production and transportation of, petroleum and for connected purposes

[L.N. 192/1984, Act No. 19 of 1985.]

1. Short title

This Act may be cited as the Petroleum (Exploration and Production) Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**block**” means a block constituted as provided by section 7;

“**contractor**” means the person with whom the Government concludes a petroleum agreement;

“**crude oil**” means—

- (a) all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure;
- (b) asphalt and ozokerites; and
- (c) the liquid hydrocarbons known as distillate or condensate or natural gas liquids obtained from natural gas by condensation or extraction;

“**natural gas**” means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas, and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

“**petroleum**” means mineral oil and includes crude oil, natural gas and hydrocarbons produced or capable of being produced from oil shales or tar sands;

“**petroleum agreement**” means the agreement, contract, or other arrangement between the Government and a contractor to conduct operations in accordance with the provisions of this Act;

“**petroleum operations**” means all or any of the operations related to the exploration for, development, extraction, production, separation and treatment, storage, transportation and sale or disposal of, petroleum up to the point of export, or the agreed delivery point in Kenya or the point of entry into a refinery, and includes natural gas processing operations but does not include petroleum refining operations.

3. Property in petroleum

All petroleum existing in its natural condition in strata lying within Kenya and the continental shelf is vested in the Government, subject to any rights in respect thereof which, by or under any other written law, have been or are granted or recognized as being vested, in any other person.

4. Petroleum operations

(1) No person shall engage in any petroleum operations in Kenya without having previously obtained the permission of the Minister in such manner, in such form and on such terms as are prescribed by this Act and by regulations made thereunder.

(2) All petroleum operations shall be conducted in accordance with the provisions of this Act, the regulations made thereunder and the terms and conditions of a petroleum agreement.

(3) The Government may conduct petroleum operations either—

- (a) through an oil company established by the Government to conduct those operations; or
- (b) through contractors in accordance with petroleum agreements; or
- (c) in such other manner as may be necessary or appropriate.

(4) Subject to this Act and the regulations made thereunder, the Government may authorize a contractor to engage in petroleum operations within a specified area, in accordance with the terms and conditions set out in the petroleum agreement.

(5) Notwithstanding the provisions of this section, the Government may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than petroleum operations within an area which is the subject of a petroleum agreement, provided that the prospecting, mining and the other operations shall not interfere with petroleum operations.

5. Powers of the Minister

(1) The Minister may, on behalf of the Government, negotiate, enter into and sign petroleum agreements with a contractor and petroleum agreements shall, subject to the provisions of this Act, be in the prescribed form.

(2) For the purpose of obtaining geological information, the Minister may grant non-exclusive exploration permits, in respect of areas specified therein, under which a person may enter upon an area and prospect and carry out geological and geophysical surveys.

(3) The Minister—

- (a) shall make available model petroleum agreements to potential contractors as a basis for the negotiation for petroleum agreements;
- (b) shall negotiate petroleum agreements with potential contractors by such procedures as secure the most favourable conditions for the Government, except that the Minister may cause any investigations, negotiations or consultations to be made or carried out as he considers necessary before entering into a petroleum agreement and may reject any application made by a potential contractor if satisfied that the rejection is in the best interest of the Government;

- (c) shall supervise petroleum operations carried out under a petroleum agreement;
- (d) may take any action, decision, or give any permission or consent or exercise any other control as may be necessary or desirable for the purposes of this Act or the regulations made thereunder.

(4) The powers of the Minister under this Act to sign or revoke a petroleum agreement shall be exercised by him or a person specially authorized by him in writing.

6. Regulations

(1) Subject to this Act, the Minister may make regulations for or with respect to—

- (a) the opening of areas for petroleum operations;
- (b) the terms and conditions applicable to the grant of exploration permits under section 5(2);
- (c) the manner in which applications may be made for petroleum agreements;
- (d) the periods of time for exploration and production;
- (e) the minimum exploration work and expenditure obligations to be fulfilled by a contractor;
- (f) the fees or any other payments to be made by the contractor under a petroleum agreement;
- (g) the procedures for the assignment of rights and obligations of a contractor under petroleum agreements;
- (h) the registration of contractors;
- (i) the manner in which reports, data, information and accounts shall be submitted by the contractor;
- (j) the procedures of inspection and control of a contractor's operations;
- (k) the conduct of petroleum operations, conservation of petroleum resources and measures relating to safety, environmental protection and the avoidance of waste, pollution and accidents;
- (l) procedures regarding the revocation or termination of petroleum agreements.

(2) Notwithstanding subsection (1), the Minister may make regulations which he considers necessary for giving effect to the provisions of this Act.

7. Constitution of blocks, etc.

(1) For the purposes of this Act, the Minister may, by notice in the *Gazette*, divide Kenya and the continental shelf into numbered areas, and each area shall be described as a "block".

(2) The Minister may reserve blocks to be exploited by the Government.

(3) The Minister may require a contractor to relinquish portions of a block to which a petroleum agreement relates in the manner specified in the agreement.

8. Financial and technical ability of contractors

The Government shall enter into petroleum agreements only with contractors who have the financial ability, technical competence and professional skills necessary to fulfil the obligations under the petroleum agreement.

9. General terms and conditions of petroleum agreements

(1) Notwithstanding any other written law and subject to this Act, there shall be implied in every petroleum agreement an obligation on the contractor to—

- (a) perform certain minimum work and incur certain minimum expenditure during the course of exploration operations;
- (b) report the discovery of the existence of any petroleum to the Minister;
- (c) present to the Minister a development plan in respect of any commercial field and promptly take all steps that are reasonable to develop and produce that field;
- (d) present to the Minister a work programme and budget for each year of operation;
- (e) keep accurate books of accounts and records of petroleum operations;
- (f) conduct petroleum operations in accordance with sound professional and technical skills and adopt measures necessary for the conservation of petroleum and other resources and the protection of the environment and human life;
- (g) give preference to the employment of and training of Kenyan nationals in petroleum operations;
- (h) give preference to the use of products, equipment and services locally available;
- (i) indemnify the Government against all claims made by third parties, in respect of any injury, damage or loss caused by, or resulting from, the conduct of any operations carried out by the contractor or subcontractors pursuant to the provisions of any petroleum agreement;
- (j) furnish such other information and reports concerning petroleum operations as the Minister may require.

10. Access to private land

(1) Where a contractor intends to enter upon any private land for the purposes of conducting petroleum operations, he shall give not less than forty-eight hours' notice of his intention to the occupier, and if practicable to the owner, of the land and shall, if required by the owner or occupier, give security in such sum and by way of such means as the Minister may direct for meeting any compensation payable under subsection (2).

(2) Whenever, in the course of carrying out petroleum operations, any disturbance of the rights of the owner or occupier of private land, or damage to the land, or to any crops, trees, buildings, stock or works therein or thereon is caused, the contractor shall be liable on demand to pay to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(3) If the contractor fails to pay compensation when demanded under subsection (2), or if the owner or occupier is dissatisfied with the amount of compensation offered to him, the owner or occupier may, within six months of the date on which the demand or offer is made, take proceedings before a court of competent jurisdiction for the determination and recovery of compensation (if any) properly payable under subsection (2).

(4) For the purpose of this section, “**private land**” means land privately owned and land the subject of a grant, lease or licence from the Government.

11. Training fund

(1) There shall be established a training fund for the purpose of training Kenyan nationals in petroleum operations.

(2) All moneys raised by the contractors as a training contribution shall be paid into the training fund.

(3) No money shall be withdrawn from the training fund except as may be authorized by the Minister.

(4) All moneys from the training fund shall be used only for the purpose for which the fund is created.

(5) For the purposes of this section, the training contribution shall be such amount as is specified in the petroleum agreement.

[Act No. 19 of 1985, Sch.]

12. Repeals

The Mineral Oil Act (Cap. 307) and the Oil Production Act (Cap. 308) and regulations made thereunder are repealed.
