

THE REGULATION OF THE PETROLEUM INDUSTRY IN BRAZIL

Law no. 9.478 of August 6, 1997

Veto Notice

Deals with the national energy policy, activities related to the oil and gas monopoly, creates the National Council for the Energy Policy (Conselho Nacional de Política Energética) and the National Petroleum Agency (Agência Nacional do Petróleo) and makes other provisions.

AS THE PRESIDENT OF THE REPUBLIC, I let it be known that the Congress decrees and I sanction the following:

Chapter I

ON THE PRINCIPLES AND OBJECTIVES OF THE NATIONAL ENERGY POLICY

Art 1 - The national policies for the rational utilization of the energy sources will aim at the following objectives:

- I - preserving the national interests;
- II - promoting development, expanding the labor market, and making the most of energy resources;
- III - protecting the consumer interest with respect to price, quality and availability of products;
- IV - protecting the environment and promoting the conservation of energy;
- V - guaranteeing the supply of petroleum products throughout the national territory, pursuant to the par 2 of art 177 of the Federal Constitution.
- VI - promoting the increase of natural gas use on an economic basis;
- VII - identifying the most adequate solutions for the supply of electric energy in the various regions of the country;
- VIII - utilizing alternative energy sources through the economic use of available resources, and applicable technologies;
- IX - promoting free competition;
- X - attracting investments in energy production;
- XI - promoting the growth of the country's competitiveness in the international market;
- XII - increasing the contribution of **biofuels** in the national energy matrix, on the basis of economic, social and environmental terms. (Wording of Law no. 11.097, 2005)

Chapter II

ON THE NATIONAL COUNCIL OF ENERGY POLICY

Art 2 - The National Council of Energy Policy, created herewith, linked to the Presidency of the Republic, presided over by the Minister of Mines and Energy, is responsible for proposing to the President of the Republic national policies and specific measures intended to:

I - promote the rational utilization of the country's energy resources, in accordance with the principles specified in the preceding Chapter and the provisions of the applicable legislation;

II - guarantee, in terms of regional characteristics, the supply of energy resources to the country's most remote areas or those of difficult access, submitting the specific measures to the National Congress, whenever they imply the creation of subsidies;

III - periodically review the energy matrices applied to the various regions of the country, considering the conventional and the alternative sources, and the available technologies;

IV - establish directives for specific programs, such as the use of natural gas, coal, thermo-nuclear energy, **biofuels**, solar energy, wind energy and energy derived from other alternative sources (Wording of Law no. 11.097, 2005);

V - establish import and export directives, so as to meet with the needs of local consumption of petroleum and its products, of natural gas and condensate and to ensure adequate functioning of SINEC (the National System for Fuel Reserves) and compliance with the Annual Plan for Strategic Fuel Stocks, dealt with in art 4 of Law no. 8.176 (dated February 8, 1991);

VI - propose the adoption of measures to guarantee that the national electricity demand is met, taking into consideration the long, medium, and short term planning along with the possibility of recommending undertakings that should have priority in calling for bids and in implementation, at all times giving due regard to strategic effects and public interest, in a manner that such projects will ensure optimum compatibility between tariff rate and reliability of the Electrical System. (Included according to Law no. 10.848, 2004)

Par 1 - For the performance of its duties, the National Council of Energy Policy will rely on the technical assistance of the regulatory entities of the energy sector.

Par 2 - The National Council of Energy Policy will be regulated by Presidential Decree, which will determine its composition and manner of functioning.

Chapter III

ON THE TITLE AND THE MONOPOLY OF PETROLEUM AND NATURAL GAS

Section I

On the Exercise of the Monopoly

Art 3 - The Federal Government owns the petroleum, natural gas and other fluid hydrocarbon accumulations existing in the national territory, which includes the onshore area, the territorial waters, the continental shelf, and the exclusive economic zone.

Art 4 - The following activities, referred to in art 177 of the Federal Constitution, are a monopoly of the Federal Government:

I - the exploration for - and production of petroleum and natural gas and other fluid hydrocarbon accumulations;

II - the refining of petroleum of domestic and foreign origin;

III - the import and export of basic products and by-products, resulting from the activities referred to in the preceding items; and

IV - the maritime transportation of crude oil of domestic origin, or of basic products of oil produced in Brazil, as well as the transportation through pipelines, of crude oil, its products and natural gas.

Art 5 - The economic activities referred to in the previous article will be regulated and inspected by the Federal Government and may be carried out, through concession or authorization, by enterprises established under the Brazilian laws, having their headquarters and administration in Brazil.

Section II

On the Technical Definitions

Art 6 - For the purpose of this Law and its regulation, the following definitions will apply:

I - Petroleum: all and any liquid hydrocarbon in natural state, such as crude oil and condensate;

II - Natural gas or gas: any hydrocarbon which remains in gaseous state under normal atmospheric conditions, produced directly from petroleum or gas reservoirs, including wet, dry and residual gas and rare gases;

III - Petroleum Products: products derived from the refining of petroleum;

IV - Basic Products: main liquid or gaseous products, referred to in art 177 of the Federal Constitution, to be defined by the ANP;

V - Refining: set of processes aiming at transforming petroleum into petroleum products;

VI - Treatment or Processing of Natural Gas: set of operations aiming at its transportation, distribution and utilization;

VII - Transportation: the conveyance of petroleum and its products, or natural gas, by means of, or over, a route considered as being of general interest;

VIII - Transfer: moving of petroleum, its products, or natural gas, by means of, or over, a route considered as being of the specific and exclusive interest of the owner or the operator of the facility;

IX - Sedimentary basin: a depression in the Earth crust, where sedimentary rocks, which can bear petroleum or natural gas, associated or not, are accumulated;

X - Reservoir: geological feature with specific properties, bearing petroleum or gas, associated or not;

XI - Accumulation: Reservoir, already identified, which can possibly be put into operation;

XII - Prospect: geological feature, mapped as a result of geophysical studies and geological interpretation, where the degree of knowledge can justify exploratory drilling, aiming at finding petroleum or natural gas;

XIII - Block: part of a sedimentary basin, formed by a vertical prism of indeterminate depth, with a polygonal surface defined by the geographical coordinates of their vertices, where petroleum and natural gas exploration and production activities are carried out;

XIV - Petroleum or Natural Gas Field: area in which petroleum or natural gas can be produced, starting from a continuous reservoir or from more than one reservoir, at variable depths, including existing production facilities and equipment;

XV - Exploration: set of operations or activities carried out to evaluate areas, aiming at the discovery and identification of petroleum and natural gas accumulations;

XVI - Production: coordinated operations, required for the production of petroleum or natural gas from an accumulation and the preparation to move it;

XVII - Development: set of operations and investments intended to guarantee the viability of production activities in an petroleum or gas field;

XVIII - Commercial Discovery: a discovery of petroleum or natural gas under conditions which, at market prices, allows the return of development and production investments;

XIX - Petroleum Industry: the whole economic activities related to exploration, development, production, refining, processing, transportation, import and export of petroleum, natural gas and other fluid hydrocarbons and their

products;

XX - Distribution: the selling wholesale to the retailer chains or to major consumers of fuels, lubricants and bottled liquefied gas made by specialized enterprises, under the terms of the applicable laws and regulations;

XXI - Resale: the retailing of fuels, lubricants and bottled liquefied gas, made by service stations or dealers, under the terms of the applicable laws and regulations;

XXII - Distribution of Pipelined Household Gas: local commercialization services of pipelined gas to the end-users, to be carried out exclusively by the States, either directly or through concession, under the terms of par 2, art 25 of the Federal Constitution;

XXIII - Natural Gas Storage: the storage of natural gas in suitable natural or man-made reservoirs;

XXIV - **Biofuel**: a fuel produced from renewable biomass for use in internal combustion engines or, in accordance with regulations, for other types of energy generation, that could partially or totally substitute fossil fuels; (Introduced by Law no. 11.097, 2005)

XXV - Bio-diesel: a fuel produced from renewable bio-mass for use in pressure-ignition internal combustion engines or, in accordance with regulations, for other types of energy generation, that could partially or totally substitute fossil fuels; (Introduced by Law no. 11.097, 2005)

Chapter IV

THE NATIONAL AGENCY OF PETROLEUM, NATURAL GAS AND BIOFUELS (Wording of Law no. 11.097, 2005)

Section I

On the Institution and its Role

Art 7 - The **National Agency of Petroleum, Natural Gas and Biofuels** - ANP is hereby created as an integral entity of the Indirect Federal Administration, under special autarchic regime, as a regulatory agency for the industry sectors concerning petroleum, natural gas and their products and **biofuels**, affiliated with the Ministry of Mines and Energy. (Wording of Law no. 11.097, 2005)

Single Par - The ANP will have its headquarters and forum in the Federal District and main offices in the city of Rio de Janeiro, and may install regional administration offices.

Art 8 - The purpose of the ANP will be to promote regulatory measures, contracting and monitoring economic activities inherent to the petroleum, natural gas and **biofuels** industries, being responsible for: (Wording of Law no. 11.097, 2005)

I - implementation, within the scope of its duties, of the national policy for petroleum, natural gas and **biofuels** contained in the national energy policy, under the terms of Chapter I of this Law, with special attention to guaranteeing supplies of petroleum and natural gas products and **biofuels**, throughout Brazilian territory, and protecting the interests of consumers with regard to price, quality and availability of those products; (Wording of Law no. 11.097, 2005)

II - promote studies aiming at delimiting blocks, for the purpose of granting concessions for the exploration, development and production activities;

III - regulate the execution of geological and geophysical surveys, applied to hydrocarbon exploration, aiming at the collection of technical data for the commercialization, under a non-exclusive basis;

IV - elaborate the bidding rounds announcements and promote the bidding processes for the concession of exploration, development and production activities, signing the relevant contracts and inspecting their performance;

V - authorize the refining, processing, transportation, import and export activities, under the terms established by this Law and its regulation;

VI - establish criteria for the calculation of the fees for the transportation via pipelines and define their values, in the

cases and in the form established by this Law;

VII - supervise, either directly or by means of conventions with State and Federal District departments, the activities comprised by the petroleum, natural gas and **biofuels** industry, including the application of administrative and pecuniary sanctions provided by Law, regulation or contract; (Wording of Law no. 11.097, 2005)

VIII - substantiate the processes regarding declarations of public interest, aiming at the expropriation and the institution of easements of areas essential to petroleum and natural gas exploration, development, and production, construction of refineries, pipelines and terminals;

IX - cause compliance with best practices in conservation of petroleum and natural gas and their products and of **biofuels**, rational utilization of those items and conservation of the environment; (Wording of Law no. 11.097, 2005)

X - foment the research and the development of new technologies for exploration, production, transport, refining and processing;

XI - organize and maintain archives of information and technical data related to those petroleum, natural gas and **biofuels** industry regulated activities; (Wording of Law no. 11.097, 2005)

XII - consolidate annually the data on petroleum and natural gas domestic reserves provided by the companies, and be responsible for their disclosure;

XIII - monitor/supervise correct functioning of the National System for Fuel Stocks (Sistema Nacional de Estoques de Combustíveis - SINEC) in compliance with the Annual Plan for Strategic Fuel Stocks, dealt with in art 4 of Law no. 8.176, dated February 8, 1991;

XIV - cooperate with other authorized entities of the energy sector in relation to matters of common interest, including technical assistance to the National Council of Energy Policy (CNPE);

XV - regulate and authorize the activities related to the domestic supply of fuels, inspecting them directly or through agreements with the Federal Government, States, Federal District or Municipalities;

XVI - regulate and authorize activities related to production, import, export, storage, stocks, distribution, resale and commercialization of bio-diesel, monitoring/supervising such activities, directly or by means of agreements with Federal, State, District and Municipal bodies; (Introduced by Law no. 11.097, 2005)

XVII - demand that establishments within regulatory jurisdiction submit information related to the operations of production, import, export, refining, improvement, treatment, processing, transportation, transfer, storage, stocks, distribution, resale, disposal and commercialization of products subject to ANP regulation; (Introduced by Law no. 11.097, 2005)

XVIII - specify the quality of the products of petroleum and natural gas and of **biofuels**. (Introduced by Law no. 11.097, 2005)

Art 9 - Besides the assignments established in the previous article, the ANP shall take over, as soon as it is implemented, the attributions of the National Department of Fuels - DNC, related to the activities of distribution and resale of petroleum products and alcohol, under the terms of art 78.

Art 10 - If, in exercising its duties, the ANP becomes aware of facts that could be interpreted as violations of economic nature, it shall immediately notify CADE - the Administrative Council for Economic Defense and the Secretariat for Economy Rights at the Ministry of Justice, so that those entities may adopt appropriate measures within the scope of applicable legislation. (Wording of Law no. 10.202, dated 20.2.2001)

Single Par - Independently of any notification mentioned in the caption of this article, CADE - the Administrative Council for Economic Defense shall inform the ANP, within 24 hours from the publishing act, the details of any decision regarding sanction due to economic policy violations committed by companies or inspectors exercising activities related to local distribution and sale of fuels, in order that the ANP can apply legal measures under its jurisdiction. (Single Par introduced by Law no. 10.202, dated 20.2.2001)

Section II

On the Organizational Structure of the ANP Autarchy

Art 11 - The ANP will be directed by a collegiate board composed of one General Director and four Directors;

Par 1 - One General-Solicitor will complete the organizational structure of the ANP.

Par 2 - The members of the board will be appointed by the President of the Republic, after having their names approved by the Federal Senate, as per item f, III, art 52 of the Federal Constitution.

Par 3 - The members of the board will serve non-coterminous mandates of four years, renewal of the appointment being permitted under the terms of art 75 of this Law.

Art 12 - (VETOED)

I - (VETOED)

II - (VETOED)

III - (VETOED)

Single Par - (VETOED)

Art 13 - (Repealed by Law no. 9.986, dated 18.7.2000)

I - (Repealed by Law no. 9.986, dated 18.7.2000)

II - (Repealed by Law no. 9.986, dated 18.7.2000)

III - (Repealed by Law no. 9.986, dated 18.7.2000)

Art 14 - After the end of his/her term, a former director of the ANP will be precluded for a period of twelve months as from the date of his/her dismissal, from rendering any type of service, either direct or indirect, to an enterprise with activity in the petroleum industry or distribution.

Par 1 - During the preclusion, the ex-director that has not been dismissed under the terms of art 12 will be entitled to continue rendering services to the ANP or to any entity of the Direct Administration of the Federal Government, with remuneration equivalent to the management level he held previously.

Par 2 - The ex-director who violates the preclusion foreseen in this article will be guilty of influence peddling and subject to legal penalties.

Section III

On the Income and the Assets of the ANP Autarchy

Art 15 - The income of the ANP will be derived from:

I - the amounts allocated in the General Budget of the Federal Government, special credits, transference and agreed transference of funds thereto assigned;

II - the parcels of the government participation referred to in items I and III of art 45 of this Law, pursuant to the operational needs of the ANP, as listed in the Budget approved.

III - the revenues derived from agreements or contracts signed with entities, organs or enterprises, except those mentioned in the previous item;

IV - the donations, legacies, subsidies, and other resources possibly thereto assigned;

V - the product from the emoluments, duties and fines foreseen in the relevant legislation, the amount obtained from the sales and rentals of movable assets or real estate, as well as those deriving from the sale of data and technical information, including for bidding purposes, except those referred to on par 2 of art 22 of this Law.

Art 16 - The resources derived from the government participation foreseen in item IV of art 45, under the terms of art 51, must be used to support the expenses of the ANP, for the execution of the activities foreseen in this Law.

Section IV

On the Decision-Making Process

Art 17 - The ANP Decision-making process must obey principles of legality, impersonality, morality, and publicity.

Art 18 - The deliberative sessions of the board of directors of the ANP, aiming at resolving disputes between economic agents, and between them and consumers and users of goods and services of the petroleum industry, must be public, their

electronic recording being permitted, and the acquisition of copies by the interested parties being guaranteed.

Art 19 - The initiative of bill of law or the alteration of administrative norms affecting the rights of economic agents, consumers or users of goods and services of the petroleum industry, must be preceded by a public hearing, convoked and directed by the ANP.

Art 20 - The **bylaws** of the ANP will establish the procedures to be adopted for the solution of conflicts among economic agents and among economic agents and consumers, emphasizing conciliation and arbitration.

Chapter V

ON THE EXPLORATION AND PRODUCTION

Section I

On the General Provisions

Art 21 - All rights to petroleum and natural gas exploration and production on the national territory, therein included the onshore area, the territorial sea, the continental shelf, and the exclusive economic zone, are federal property, and must be administered by the ANP.

Art 22 - The technical assets, formed by data and information on the Brazilian sedimentary basins, are also considered an integral part of the national petroleum resources, to be collected, maintained and administered by the ANP.

Par 1 - *Petróleo Brasileiro S.A.* - PETROBRAS shall transfer to the ANP the available information and data on Brazilian sedimentary basins, as well as those on petroleum or natural gas exploration and production activities obtained as the result of the monopoly carried out until the publication of this Law.

Par 2 - The ANP shall establish criteria for remunerating PETROBRAS for data and information referred to in the previous paragraph that will be utilized by the interested parties, with faithful observance to the provisions contained in art 117 of Law no. 6.404, dated December 15, 1976, with alterations introduced by Law no. 9.457, dated May 5, 1997.

Art 23 - The petroleum and natural gas exploration, development and production activities must be carried out through concession contracts, preceded by tender, as established by this Law.

Single Par - The ANP shall define the blocks to be an object of concession contracts.

Art 24 - The concession contracts must comprise two phases: exploration and production.

Par 1 - The exploration phase will also include the appraisal activities of eventual discoveries of petroleum or natural gas, with the purpose to assess their commerciality.

Par 2 - The production phase will also include the development activities.

Art 25 - Only enterprises complying with the technical, economic and legal requirements established by the ANP may obtain a concession to explore for- and produce petroleum and natural gas.

Art 26 - The concession implies, as for the concessionaire, his/her obligation to explore, at his/her own expense and risk, and in case of success, produce petroleum or natural gas in a given block, entitling it to the property of the goods once produced, subject to the relevant fiscal burdens and legal or contractual participations.

Par 1 - In the case of successful exploration, the concessionaire shall submit the relevant development and production plans and projects to the approval of the ANP.

Par 2 - The ANP shall issue its opinion on the plans and projects submitted within the maximum term of 180 (one hundred and eighty) days.

Par 3 - If the term established in the previous paragraph is expired without decision of the ANP, the relevant plans and projects must be deemed approved.

Art 27 - In case of fields extending over adjoining blocks, operated by other concessionaires, the parties involved shall agree on the unitization of the production.

Single Par - In case of non-agreement within the maximum period established by the ANP, the ANP shall, based on an arbitrator's award, determinate how the rights and the obligations to the blocks will be equitably allocated, based on the applicable general law principles.

Art 28 - The concession will be extinguished:

I - by the expiration of the contractual term;

II - by agreement between the parties;

III - by reasons for termination foreseen in the contract;

IV - at the end of the exploration phase, if no commercial discovery has been made, as defined in the contract;

V - during the exploration phase, if the concessionaire exercises the option to withdraw from and return the areas, where, according to his judgment, investments in development are not justified.

Par 1 - The return of areas, as well as the reversion of facilities, will not imply any expenses whatsoever for the Federal Government or for the ANP, nor do they entitle the concessionaire to any indemnity for services, wells, buildings and returned goods, which must become a property of the Federal Government, and will be administered by the ANP, as per item VI of art 43.

Par 2 - In any case of extinction of the concession, the concessionaire shall, on his/her own account, remove the equipment and goods, which are not an object of reversion, and will be obliged to repair or indemnify damages arising out of his/her activities, and carry out any environment recovery ordered by the authorized entities.

Art 29 - The transfer of the concession contract is permitted, as long as the object and the contractual conditions are preserved and the new concessionaire conforms to the technical, economical and legal requirements established by the ANP, pursuant to art 25.

Single Par - The transfer of the contract must be subject to the previous and explicit authorization given by the ANP.

Art 30 - The contracts for exploration, development and production of petroleum or natural gas are not applicable to any other natural resource. The concessionaire is obliged to inform the ANP, promptly and exclusively, about any such discovery.

Section II

On the Specific Norms for the Current Activities

Art 31 - PETROBRAS shall submit to the ANP, within 3 (three) months from the publication of this Law, its program of exploration, development, and production, containing information and data providing:

I - knowledge of the production activities in each field, whose delimitation may include an area for technical safety;

II - knowledge of the exploration and development activities, informing, in this case, the costs incurred, the investments made, and the schedule of future investments in each block where prospects have been defined.

Art 32 - PETROBRAS will have confirmed its rights on each one of the fields actually in production on the effective date of this Law.

Art 33 - On the blocks in which, on the effective date of this Law, PETROBRAS has made commercial discoveries or made investments in exploration, it may, considered its capacity to invest, including through financing, continue the exploration and development activity, for a period of 3 (three) years, and in case of success, continue the production activities.

Single Par - The ANP, after evaluating the financial capacity of PETROBRAS and the data and the information pursuant to art 31, shall approve the blocks where the activities referred to in this article may continue.

Art 34 - After fulfillment of the provisions of art 31, and within one year from the effective date of this Law, the ANP will sign with PETROBRAS, without the need of the tender procedure foreseen in art 23, concession contracts regarding the blocks which meet the conditions established in arts 32 and 33. The Agency shall then define, in each one of the contracts, the due participations, under the terms established in Section VI.

Single Par - The concession contracts referred to in this article must comply, as applicable, with the general norms established in the previous Section, and the provisions of Section V of this Chapter.

Art 35 - The blocks not covered by a concession contract made in accordance with the previous article, and those where exploration proved to have been unsuccessful, or those not contracted with the ANP, in due time, will be the object of a tender by the ANP, aiming at new concession contracts, under the general norms established in the previous Section.

Section III

On the Bidding Announcement

Art 36 - The bidding round for the grant of concession contracts, referred to in art 23, must be subject to the provisions of this Law, to the regulations to be issued by the ANP, and to the relevant bidding announcement.

Art 37 - The bidding announcement will be accompanied by the basic draft of the pertinent contract, and must obligatorily indicate:

I - the block, object of the concession, the duration estimated for the exploration phase, the investments, and minimum exploratory programs;

II - the requirements to be satisfied by the bidders, as per art 25, and the criteria for pre-qualification, whenever this procedure is adopted;

III - the minimum governmental takes, as per art 45, and the landowners fees, as per art 52;

IV - the list of documents required and the criteria to be followed for the evaluation of the technical capacity, the financial capacity, and the legal status of the parties, as well as for the technical and economical-financial evaluation of the bid;

V - the explicit indication that the concessionaire will be responsible for the indemnities due to expropriations or easements necessary for the carrying out of the contract;

VI - the place, date and time, in which the data, studies, and remaining elements and information required for the preparation of the proposal, as well as its acquisition cost, must be furnished to the interested parties;

Single Par - The duration of the exploration phase, referred to in item I of this article, must be estimated by the ANP, in terms of the level of available information, of the characteristics, and location of each block.

Art 38 - When the participation of companies in consortium is allowed, the bid announcement must contain the following requirements:

I - evidence of commitment, public or private, of formation of the consortium, signed by the consortium companies;

II - appointment of the leader company responsible for the consortium and for the carrying out of the operations, without excluding the responsibility of each one of the other participants in the consortium.

III - presentation, by each one of the participants in the consortium, of the documents required for evaluation of the technical, economic and financial qualification of the consortium;

IV - prohibition against the participation of the same company, either as a member of another consortium or individually, in the bidding round for the same block;

V - granting of a concession to the winning consortium of the bidding process subject to the proper file of the consortium constitutive instrument, in accordance with the provisions of the single paragraph of art 279 of Law no. 6.404, dated December 15, 1976.

Art 39 - The announcement must contain the requirement that the foreign company bidding individually or through a consortium, shall submit together with the proposal, and in a separate envelope:

I - evidence of technical capacity, financial good standing and judicial and fiscal regularity, under the terms of the regulation to be issued by the ANP;

II - complete documentation of its corporate acts, and evidence of being organized and functioning regularly under the laws of its home country;

III - appointment of a legal representative before the ANP, duly empowered to carry out acts and assume responsibilities related to the bidding process and the proposal presented;

IV - commitment, if successful, to form an enterprise according to the Brazilian laws, with headquarters and administration in Brazil.

Single Par - The signature of the concession contract must be subject to the effective fulfillment of the commitment

undertaking according to the item IV of this article.

Section IV

On the Judgment of the Bidding Process

Art 40 - The judgment of the bidding process must identify the most advantageous proposal, according to objective criteria established in the bid announcement, and must obey principles of legality, impersonality, morality, publicity, and equality between the bidders.

Art 41 - Besides other criteria explicitly established in the announcement regarding the bidding process, the following aspects must be considered:

I - the general work program, the proposed exploration activities, duration, minimum investment amounts, physical-financial schedules;

II - the governmental takes as per art 45.

Art 42 - In case of a tie, the bid must be decided in favor of PETROBRAS, provided it is not bidding in consortium with other enterprises.

Section V

On the Concession Contract

Art 43 - The concession contract must duly reflect the conditions of the announcement and the winner proposal, and must have the following essential clauses:

I - the definition of the block object of the concession;

II - the duration of the exploration phase and the conditions for its extension;

III - the work program and the amount of investment foreseen;

IV - the obligations of the concessionaire regarding participations, as per Section VI;

V - the indication, as the case may be, of the guarantees to be provided by the concessionaire regarding the compliance of the contract, including the investments committed to each phase;

VI - the rules on returning and abandonment of areas, including the removal of equipment and facilities, and the reversion of goods;

VII - the procedures for follow up and inspection of the operations of exploration, development and production, and auditing of the contract;

VIII - the obligation of the concessionaire to present to the ANP reports, data and information regarding the activities performed;

IX - the procedures related to the transfer of the contract, pursuant to art 29;

X - the rules for the solution of controversies relating the contract and its performance, including conciliation and international arbitration;

XI - the cases of termination and extinction of the contract;

XII - the penalties applicable in case of non fulfillment by the concessionaire of the contractual obligations.

Single Par - The contractual conditions for an extension of the exploration phase, as per item II of this article, will be established as to guarantee the relinquishment of a percentage of the block, at discretion of the ANP, and the increase of fee in respect of the occupation of the area, pursuant to the single par of art 51.

Art 44 - The contract must establish that the concessionaire is obliged to:

I - adopt in all operations the required measures for conservation of the reservoirs and other natural resources, for the safety of people and equipment and for the preservation of the environment;

II - immediately report the discovery of any accumulation of petroleum, natural gas, other hydrocarbons or minerals to the ANP;

III - make the appraisal of the discovery, under the terms of the program submitted to the ANP, presenting a report on its commerciality, and informing its interest in developing the field;

IV - submit to the ANP, the development plan of any field declared commercial, including investments schedule and estimates;

V - be liable for the acts of its agents and indemnify any damage deriving from the exploration and production activities contracted, reimbursing the ANP or the Federal Government for any burdens they might incur, in respect of any claims arising out from acts of the concessionaire's responsibility;

VI - adopt the best practices of the international petroleum industry and comply with the applicable norms, technical and scientific procedures, including appropriate recovery techniques, aiming at the production rationalization, and control of reserves depletion.

Section VI

On the Takes

Art 45 - The concession contract must dispose on the following government take, foreseen in the bidding announcement:

I - signature bonus;

II - royalties;

III - special participation;

IV - fees for the occupation or retention of area.

Par 1 - The governmental participations foreseen in items II and IV must be obligatory.

Par 2 - The revenues derived from the government participations as defined in the caption of this article, to be allocated to entities of the federal public administration, according to the provisions of this Law, must be kept in the Federal Government Single Account, until they are destined to the respective programs.

Par 3 - The financial surplus balance from the entities of the federal public administration referred to in the previous paragraph, settled in balance sheet of each fiscal year, must be transferred to the National Treasury.

Art 46 - The minimum value of the signature bonus will be established in the bidding announcement and must be equal to the payment offered in the proposal for obtaining the concession and must be paid on the signature of the contract.

Art 47 - The royalties must be paid monthly, in local currency, as from the date of the start up of the commercial production of each field, in an amount corresponding to 10% (ten per cent) of the production of petroleum or natural gas.

Par 1 - Considering the geological risks, production expectations, and other pertinent factors, the ANP may define, on the relevant bidding announcements, the reduction of the royalties established in the caption of this article, down to a minimum of 5% (five per cent) of the production.

Par 2 - The criteria for the computation of the value of royalties must be established by Presidential Decree, based on the market prices for petroleum, natural gas or condensate, on the specification of the product and on the location of the field.

Par 3 - The gas flared impairing its commercialization, and the loss of product occurred under the responsibility of the concessionaire, must be included in the total production volume for calculation of the royalties due.

Art 48 - The *royalty* quota value provided for in the concession contract, representing five per cent of the production, corresponding to the minimum amount referred to in par 1 of the previous article, must be apportioned according to criteria stipulated by Law no. 7.990, dated December 28, 1989.

Art 49 - The *royalty* quota value in excess of the five per cent of production must be apportioned as follows:

I - when production occurs onshore or in lakes, rivers, lake or river islands:

a) 52.5% (fifty-two point five per cent) to the States where the production occurs;

b) 15% (fifteen per cent) to the Municipalities, where the production occurs;

c) 7.5% (seven point five per cent) to the Municipalities that are affected by the operations of landing or shipment of petroleum and natural gas, according to the conditions and criteria to be established by the ANP;

d) 25% (twenty-five per cent) to the Ministry of Science and Technology, for financing scientific research and technology development programs applied to petroleum, natural gas and **biofuels** industry. (Wording of Law no. 11.097, 2005)

II - when production occurs on the continental shelf:

a) 22.5% (twenty-two point five per cent) to the States fronting the production area;

b) 22.5% (twenty-two point five per cent) to the Municipalities fronting the production areas;

c) 15% (fifteen per cent) to the Navy Ministry, to meet the requirements of inspection and protection of the production areas;

d) 7.5% (seven point five per cent) to the Municipalities that are affected by the operations of landing or shipment of petroleum and natural gas, according to the conditions established by the ANP;

e) 7.5% (seven point five per cent) for the build up of a Special Fund, to be distributed among all States, Territories, and Municipalities;

f) 25% (twenty-five per cent) to the Ministry of Science and Technology, for financing scientific research and technology development programs applied to petroleum, natural gas and **biofuels** industry. (Wording of Law no. 11.097, 2005)

Par 1 - Of the total resources destined to the Ministry of Science and Technology, a minimum of 40% (forty per cent) must be applied in programs for promoting the qualification and the scientific and technologic development of the Northern and Northeast Regions;

Par 2 - The Ministry of Science and Technology shall administer the programs supporting scientific research and technology development foreseen in the caption of this article, with the technical assistance of ANP, fulfilling the provision of item X of art 8, and through agreements with the universities and research centers of the Country, according to norms to be defined by Presidential Decree.

Art 50 - The announcement and the contract must establish that, in case of large production volume or great profitability, a special participation will be due, subject to regulatory terms by a Presidential Decree.

Par 1 - The special participation must be applied on the gross revenue of production, after the deduction of royalties, exploration investments, operational costs, depreciation, and taxes foreseen in the current legislation.

Par 2 - The resources from the special participation must be distributed as follows:

I - 40% (forty per cent) to the Ministry of Mines and Energy, of which 70% (seventy per cent) will be for financing geology and geophysics studies and services applied to prospecting for fossil fuels, to be promoted by the ANP, under terms of sub items II and III of art 8 hereto, and by the MME, 15% (fifteen per cent) for payment of the costs of planning studies for expansion of the energy system and 15% (fifteen per cent) for financing studies, researches, projects, activities and services for basic geological surveys on Brazilian territory; (Wording of Law no. 10.848, 2004)

II - 10% (ten per cent) to the Ministry of Environment, of Hydrous Resources and of the Legal Amazon Region, destined to the development of studies and projects related to the protection of the environment and to the recovery of environment damage caused by the petroleum industry activities;

III - 40% (forty per cent) to the State, where the onshore production occurs, or which fronts the continental shelf where production occurs;

IV - 10% (ten per cent) to the Municipality where the onshore production occurs, or which fronts the continental shelf where production occurs.

Par 3 - The studies referred to in the item II of the previous par shall be developed by the Ministry of Environment of Hydrous Resources with technical assistance of the ANP, under the provisions of item IX of art 8.

Art 51 - The announcement and the contract will determine the payment due for the occupation or retention of the area to be made yearly, based on a square kilometer or fraction basis of the block area, under the terms of the regulation through a Presidential Decree.

Single Par - The amount of the payment for occupation or retention of the area will be increased by a percentage to be established by the ANP, whenever the exploration period is extended.

Art 52 - The concession contract of an onshore block must also contain a clause determining a payment to the

landowners, a participation equivalent in local currency to a variable percentage between 0.5% (zero point five per cent) and 1.0% (one per cent) of the value of petroleum or natural gas production, according to the ANP's criteria.

Single Par - The participation referred to in this previous article must be distributed proportionally to the production taking place on properties regularly demarcated on the surface of the block.

Chapter VI

ON THE REFINING OF PETROLEUM AND PROCESSING OF NATURAL GAS

Art 53 - Any enterprise or consortium of enterprises, which meet the requirements of art 5, may submit to the ANP a proposal, enclosing the relevant project, to build and operate refineries and processing units and storage facilities of natural gas, as well as to expand their capacity.

Par 1 - The ANP shall establish the technical, economical and legal requirements to be complied with by the proponents, and those regarding environment protection, industrial safety and safety of people.

Par 2 - Once the requirements of the previous paragraph are fulfilled, the ANP shall issue the authorization pursuant to item V of art 8, defining its object and its entitlement.

Art 54 - The transfer of the entitlement of the authorization is permitted, after the previous and explicit approval by the ANP, as long as the new holder of the entitlement complies with the requirements established in par 1 of the previous article.

Art 55 - Within 180 (one hundred and eighty) days, from the publication of this Law, the ANP shall issue the relevant authorizations for existing refineries and natural gas processing units, confirming their titles and rights.

Single Par - The authorizations referred to in this article must be subject to the provisions of art 53, concerning transfer of title and expansion of the capacity of facilities.

Chapter VII

ON THE TRANSPORTATION OF PETROLEUM, PETROLEUM PRODUCTS AND NATURAL GAS

Art 56 - Any enterprise, or consortium of enterprises complying with the provisions of art 5, may receive authorization from the ANP to build facilities and to carry out any kind of transportation of petroleum and petroleum products, and natural gas, either for the internal supply or for import or export.

Single Par - The ANP shall issue norms on the eligibility of interested parties, and the conditions for the authorization and transfer of its title, observing the fulfillment of the requirements for environment protection and traffic safety.

Art 57 - Within 180 (one hundred and eighty) days from the publication of this Law, PETROBRAS and the other enterprises that own equipment and facilities for maritime and pipeline transportation will receive from the ANP the relevant authorizations, ratifying their title and their rights.

Single Par - The authorizations mentioned in this article must obey the norms established in the single par of the previous article, as to the transfer of the title and the expansion of capacity of facilities.

Art 58 - Any interested party may use the transportation pipelines and the maritime terminals now existing or to be built, through adequate remuneration to the owner of the facilities.

Par 1 - The ANP shall establish the value and payment manner of the adequate remuneration between the parties

involved, in case they fail to reach an agreement. The ANP shall also check whether the agreed value is compatible with the market price.

Par 2 - The ANP shall regulate the priority to be attributed to the owner of the facilities to handle its own products, aiming at the optimum utilization of the transport capacity by the available means.

Art 59 - Transfer pipelines will be reclassified by the ANP as transport pipelines, under the provisions of this chapter, in case there is proven third parties' interest to use them.

Chapter VIII

ON THE IMPORT AND EXPORT OF PETROLEUM, PETROLEUM PRODUCTS, AND NATURAL GAS

Art 60 - Any enterprise or consortium of enterprises complying with the provisions of art 5 of this Law may obtain authorization of the ANP to import and export petroleum, petroleum products, natural gas and condensate.

Single Par - The carrying out of activities referred to in the caption of this article must obey the CNPE (National Energy Policy Council) directives, with special regard to those items related to compliance of the provisions of art 4 of Law no. 8.176, dated February 8, 1991, and must comply with all other pertinent legal and regulatory standards.

Chapter IX

ON PETROBRAS

Art 61 - Petróleo Brasileiro S.A. - PETROBRAS is a corporation ("sociedade de economia mista") affiliated with the Ministry of Mines and Energy. Its objective is the exploration, production, refining, processing, commerce and the transportation of petroleum from wells, petroleum-shale or other rocks, of petroleum products, of natural gas and other fluid hydrocarbon, as well as any other related or similar activities, as defined by law.

Par 1 - The economic activities referred to in this article will be carried out by PETROBRAS under free competition with other enterprises, within market conditions, observing the transition period foreseen in Chapter X and the other principles and directives of this law.

Par 2 - PETROBRAS may carry out; directly or through its subsidiaries, associated or not with third parties; any of the activities listed in its **bylaws**, outside the Brazilian territory .

Art 62 - The Federal Government shall maintain the share holding control of PETROBRAS, through the ownership and possession of a minimum of 50% (fifty per cent) of the shares plus one, of the voting capital.

Single Par - The PETROBRAS share capital is divided into ordinary shares with voting rights, and preferential shares, without voting rights, all of them are book entry shares, as described in art 34 of Law no. 6.404, dated December 15, 1976).

Art 63 - PETROBRAS and its subsidiaries are hereby authorized to form consortia with national or foreign enterprises, either as leader or not, aiming at the expansion of its activities, the gathering of technologies, and the expansion of investments applied to the petroleum industry.

Art 64 - For the strict fulfillment of the activities foreseen in its **bylaws**, within the petroleum industry, PETROBRAS is hereby authorized to establish subsidiaries, which may associate with other enterprises, either with majority or minority participants.

Art 65 - PETROBRAS shall establish a subsidiary with the specific duty of building and operating its pipelines, sea terminals and fleet for the transportation of petroleum, natural gas and their products. Such subsidiary may make associations with other enterprises, with majority or minority participation.

Art 66 - PETROBRAS may transfer to its assets any securities and amounts received by any of its subsidiaries, arising out from the National Privatization Program, through due reduction on its participation on the share-hold equity of the subsidiary.

Art 67 - The acquisition of goods and the contracting of services by PETROBRAS must be preceded by a simplified bidding procedure, to be defined by Presidential Decree.

Art 68 - For the preparation of proposals to participate in bidding preceding the concessions dealt with in this law, PETROBRAS may subscribe pre-contracts, by sending out invitation letters, in order to secure prices and commitments of delivery of goods and services.

Single Par - The pre-contracts must contain a *juris et de jure* resolatory condition clause, to be applied, without penalty or indemnity, in case another bidder be declared winner, and must be submitted, a posteriori, to the consideration of the external control and inspection bodies.

Chapter X

ON THE FINAL AND TRANSITORY DISPOSITIONS

Section I

On the Transition Period

Art 69 - During the transition phase, which will extend to not later than December 31, 2001, price adjustments and revisions for basic petroleum and natural gas products, as practiced by producer-units or processing-units, must be put into effect according to specific directives and parameters established, jointly, by the State Ministers for Finance and for Mines and Energy. (Wording of Law no. 9.990, 2000)

Art 70 - During the transition period mentioned in the previous article, the ANP shall establish criteria for the import of petroleum, of its basic products, and of natural gas, compatible with the criteria of liberation of prices, foreseen in the same provision.

Art 71 - The petroleum and natural gas products that are raw materials for the petrochemical industry, must have the same treatment foreseen in arts 69 and 70, aiming at the competitiveness of the sector.

Art 72 - During the period of 5 (five) years, as from the publication of this Law, the Federal Government shall guarantee, by means of the ANP, to the private refineries operating in the Country, excluded from the Federal monopoly, under the terms of art 45 of the Transitory Constitutional Dispositions, operational and economic conditions, based on current criteria applicable to the refining activity.

Single Par - Within the time limits provided for in this article, the following will be observed:

I - (VETOED)

II - the refineries oblige themselves to submit to the ANP their plan of investments, aiming at the technological modernization and the expansion of productivity of their respective refining plants, looking forward to increasing the production, and consequently reducing the subsidies that are provided to them.

III - The ANP shall evaluate periodically the degree of competitiveness of each one of the private refineries and the carrying out of its plan of investments and the consequent reduction of subsidies related to each one of them.

Art 73 - Until the expiration of the transition period established in art 69, the prices of the basic products practiced by PETROBRAS may take into consideration the burdens derived from the subsidies applicable on the activities carried out by the company.

Single Par - With the exception to the conditions and terms established in the previous article, any subsidy upon the prices of the basic petroleum products, within the period foreseen in art 69, must be proposed by the CNPE and submitted to the approval of the National Congress, under the terms of the item II of art 2.

Art 74 - The Secretary of the Treasury Department shall proceed with a complete survey of all reciprocal debits and credits of the Federal Government and PETROBRAS, encompassing the various accounts for reciprocal obligations and subsidies, including those related to the one termed the "Petroleum, Petroleum products and Alcohol" account, instituted

by Law no. 4.452, dated November 5, 1964, and the complementary legislation, indemnifying the Treasury for minimum legal dividends to reconcile outstanding balances since promulgation of Law no. 6.404, dated December 15, 1976.

Single Par - Until the end of the transition period, the balance of this account must be settled by the debtor. The Federal Government of Brazil, if debtor, may settle the debt by issuing National Treasury bonds.

Section II

On the Final Dispositions

Art 75 - In the composition of the first Board of Directors of the ANP, in order to implement the transition to the system of non-coincident mandates, the General Director and two other Directors shall be appointed by the President of the Republic, through indication made by the Minister of Mines and Energy, respectively with mandates of three, two, and one year, while two Directors shall be appointed according to the provisions in pars 2 and 3 of art 11.

Art 76 - The ANP may contract specialists to carry out specific jobs in the technical, economic, and legal areas, on limited projects and duration, without the need to comply with the bidding requirements in the cases foreseen in the applicable legislation.

Single Par - (Repealed by Law 10.871, 2004)

Art 77 - The Government shall promote the installation of the CNPE and shall establish the ANP through the approval of its regimental structure, until 120 (one hundred and twenty) days, from the publication of this law.

Par 1 - The regimental structure of the ANP must include commissioned and extra-remunerated offices, existent in the National Fuels Department (DNC).

Par 2 - (VETOED)

Par 3 - As long as the ANP is not implemented, its duties under this law must be carried out by the Ministry of Mines and Energy.

Art 78 - Once the ANP is implemented, the National Fuels Department (DNC) will be extinct.

Single Par - The assets, obligations, rights, and revenues of DNC must be transferred to the ANP.

Art 79 - The Government is hereby authorized to re-deploy, transfer or utilize the budget credit balances of the Ministry of Mines and Energy, for the implementation and maintenance of the ANP. It may also use as resources the budget allotments for its activities, observing the same sub-projects, sub-activities, and expenditure groups foreseen in the current budget law.

Art 80 - The provisions of this law will not affect previous rights of third parties, through contracts made with PETROBRAS, under the laws in force, and will not invalidate acts carried out by PETROBRAS and its subsidiaries in conformity with their **bylaws**, which must be adjusted as required by this law.

Art 81 - The dispositions of this law are not applicable to the installation and equipment for the carrying out of local services of pipelined gas distribution, referred to in par 2 of art 25 of the Federal Constitution.

Art 82 - This Law will be in force on the date of its publication.

Art 83 - All provisions to the contrary, including those of Law no. 2.004, dated October 3, 1953, are hereby repealed.

Brasília, August 6, 1997, 176th year of the Independency and 109th year of the Republic

FERNANDO HENRIQUE CARDOSO

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This text does not substitute the published one in the D.O.U. of August 7th, 1997.

Note: Please note that while every effort was made for accuracy in the translation of technical and legal terms, this is not a notarized legal or official translation of Brazil's Regulatory Law and is only meant to give a good general idea of the Law.

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