



# Legislation for Exploration and Production of Oil and Natural Gas

**Law 9478**, of August 6, 1997, regulates the national energy policy, creates the National Energy Policy Council (Conselho Nacional de Política Energética — CNPE) and the National Agency of Petroleum, Natural Gas and Biofuels (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis — ANP).

**Law 12276**, of June 30, 2010, authorizes the Union to directly assign to Petrobras, with due compensation, the activities of research and production of oil, natural gas and other fluid hydrocarbons in areas that contain up to 5 billion barrels of oil equivalent.

**Law 12304**, of August 2, 2010, authorizes the Executive Branch to create the state-run enterprise Pré-Sal Petróleo S.A (PPSA).

**Law 12351**, of December 22, 2010, regulates the exploration and production of oil, natural gas and other fluid hydrocarbons, under the production share regime, in the Pre-salt polygon and other strategic areas; it establishes the Social Fund and amends provisions of Law 9478.



National Agency of Petroleum,  
Natural Gas and Biofuels – ANP

Legislation for Exploration  
and Production of Oil and Natural Gas

Article 177 of the Federal Constitution .....	page 3
Law 9478, of August 6, 1997 .....	page 5
Law 12276, of June 30, 2010 .....	page 50
Law 12304, of August 2, 2010 .....	page 57
Law 12351, of December 22, 2010 .....	page 65

This is not a certified legal or official translation. It does not substitute the original, in Portuguese, published the day after their signature in Diário Oficial da União, the Brazilian government's official gazette.



**FROM THE BRAZILIAN FEDERAL CONSTITUTION:**

**ARTICLE 177**  
**(Modified by Constitutional Amendments**  
**9/1995, 33/2011 and 49/2006)**

Article 177. The following are the monopoly of the Union:

I – prospecting and exploitation of deposits of petroleum and natural gas and of other fluid hydrocarbons;

II – refining of domestic or foreign petroleum;

III – import and export of the products and basic by-products resulting from the activities set forth in the preceding items;

IV – ocean transportation of crude petroleum of domestic origin or of basic petroleum by-products produced in the country, as well as pipeline transportation of crude petroleum, its by-products and natural gas of any origin;

V – prospecting, mining, enrichment, reprocessing, industrialization, and trading of nuclear mineral ores and minerals and their by-products, with the exception of radioisotopes whose production, sale, and use may be authorized under a permission, in accordance with letters b and c of item XXIII of the head paragraph of article 21 of this Federal Constitution.

Paragraph 1. The Union may contract with stateowned or with private enterprises for the execution of the activities provided for in items I through IV of this article, with due regard for the conditions set forth by law.

Paragraph 2. The law referred to in paragraph 1 shall provide for:

I – a guarantee of supply of petroleum products in the whole national territory;

II – the conditions of contracting;

III – the structure and duties of the regulatory agency of the monopoly of the Union.

Paragraph 3. The law shall provide with respect to the transportation and use of radioactive materials within the national territory.

Paragraph 4. The law which institutes a contribution tax of intervention in the economic domain regarding activities of importation or sale of petroleum and petroleum products, natural gas and its by-products, and fuel alcohol shall include the following requirements:

I – the contribution rate may be:

a) different for each product or use;

b) lowered and restored to its original level by an act of the Executive Branch, and the provision of Article 150, III, b , shall not apply thereto;

II – the proceeds from the collection of the contribution shall be allocated:

a) to the payment of price or transportation subsidies for fuel alcohol, natural gas and its by-products, and petroleum products;

b) to the financing of environmental projects related to the petroleum and gas industry;

c) to the financing of transportation infrastructure programs.

**LAW 9478 OF AUGUST 6, 1997**  
**DOU (Official Federal Gazette) of August 7, 1997**

Regulates the national energy policy, activities related to the oil and gas monopoly, creates the National Energy Policy Council (Conselho Nacional de Política Energética) and the National Agency of Petroleum, Natural Gas and Biofuels (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis) and makes other provisions.

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

**CHAPTER I**

**PRINCIPLES AND OBJECTIVES  
OF THE NATIONAL ENERGY POLICY**

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

- I – to preserve national interest;
- II – to promote development, grow labor market and valorize energy resources;
- III – to protect consumers' interest with respect to price, quality and availability of products;

- IV – to protect environment and promote energy conservation;
- V – to ensure supply of oil by-products nationwide, pursuant to Paragraph 2 of article 177 of the Federal Constitution;
- VI – to promote the increase of the use of natural gas on an economic basis;
- VII – to identify the most adequate solutions for the supply of electric energy in the various regions of the Country;
- VIII – to use alternative sources of energy sources through the economic use of available inputs and applicable technologies;
- IX – to promote free competition;
- X – to attract investment in the production of energy;
- XI – to promote the country’s competitiveness on the international market;
- XII – to increase share of biofuels in the national energy matrix, on a social, economic and environmental basis (added by Law 11097/2005);
- XIII – to ensure the supply of biofuels nationwide (added by Law 12490 of September 16, 2011);
- XIV – to stimulate generation of electric power from biomass and biofuel sub-products, due to their clean, renewable nature, and being supplemental to hydraulic source (added by Law 12490 of September 16, 2011);
- XV – to promote country’s competitiveness in the international biofuels market (added by Law 12490 of September 16, 2011);
- XVI – to attract infrastructure investments for the transport and storage of biofuels (added by Law 12490 of September 16, 2011);
- XVII – to promote research and development related to renewable energy (added by Law 12490 of September 16, 2011);

XVIII – to reduce gas emissions and pollutants that cause the greenhouse effect in the energy and transport sectors, as well as with the use of biofuels (added by Law 12490 of September 16, 2011).

## CHAPTER II

### NATIONAL ENERGY POLICY COUNCIL

Article 2. It is herewith established the National Energy Policy Council – CNPE, linked to the Presidency of the Republic and presided by the Minister of Mines and Energy, whose duty is to propose national policies and specific actions to the President of the Republic, aimed at:

I – promoting the rational use of the Country’s energy resources, pursuant to the principles specified in the previous Chapter and the provisions of the applicable law;

II – ensuring, as limited by the regional characteristics, the supply of energy resources to the Country’s most remote areas, or those areas of difficult access, submitting the specific measures to the National Congress, whenever they imply the creation of subsidies;

III – periodically reviewing the energy matrixes applied to the Country’s diverse regions, taking into consideration the conventional and alternative sources and the technologies available;

IV – establishing guidelines for specific programs, such as the use of natural gas, coal, thermal nuclear power, biofuels, solar power, wind power and the power derived from other alternative sources (worded by Law 11097/2005);

V – establishing import and export guidelines, so as to meet the domestic consumption needs for petroleum and its by-products, natural gas and condensate, and ensuring the proper

operation of the National System for Fuel Reserves and the enforcement of the Annual Strategic Fuel Stock Plan, stated in article 4 of Law 8176 of February 8, 1991 (worded by Law 12490 of September 16, 2011);

VI – proposing the adoption of necessary measures to ensure the fulfillment of domestic demand for energy, considering short, medium and long-term planning, along with the possibility of recommending undertakings to be regarded as priority in calling for bids and implementation, due to its strategic nature and public interest, in a manner that such undertaking may ensure the optimization of the relationship between moderate tariffation and reliability of the Electrical Power System (worded by Law 10848/2004);

VII – establishing guidelines for the use of natural gas as raw material for industrial productive processes, by means of regulating specific conditions and criteria aimed at its efficient use and compatible with domestic and international markets (added by Law 11909/2009);

VIII – defining blocks to be object of concession or production sharing; (added by Law 12351/2010);

IX – defining the strategy and the policy for economic and technological development of the petroleum, natural gas, other fluid hydrocarbons and biofuels industry, as well as their supply chain (worded by Law 12490 of September 16, 2011);

X – promoting the increase of minimum local content rates for goods and services, to be observed in bids and concessions and production sharing contracts, pursuant to item IX (added by Law 12351/2010).

Paragraph 1. To perform their duties, the CNPE shall rely on the technical support from the energy sector's regulatory bodies.

Paragraph 2. The CNPE shall be regulated by Presidential Decree, which shall determine its composition and functioning.

**CHAPTER III**

**OWNERSHIP AND MONOPOLY OF  
PETROLEUM AND NATURAL GAS**

**Section I**

**Exercise of the Monopoly**

Article 3. The Union owns oil deposits, natural gas and other fluid hydrocarbons existing in the country, including onshore area, territorial waters, continental shelf and the exclusive economic zone.

Article 4. Constitute Union monopoly, pursuant to article 177 of the Federal Constitution:

I – prospecting and production of oil deposits, natural gas and of other fluid hydrocarbons;

II – refining of domestic or foreign oil;

III – import and export of petroleum and basic by-products, resulting from the activities set forth in the preceding clauses;

IV – maritime transport of crude petroleum of domestic origin or of basic by-products produced in the country, as well as pipeline transportation of crude oil, its by-products and natural gas;

Article 5. The economic activities stated in article 4 of this Law shall be regulated and inspected by the Union, and may be exercised, upon concession, authorization or contracting under the production sharing regime, by enterprises organized under Brazilian laws, with headquarters and management in the Country (worded by Law 12351/2010).

## Section II

### Technical Definitions

Article 6. For the purpose of this Law and its regulation, the following definitions shall apply:

I – Oil: any and all liquid hydrocarbon in its natural state, such as crude oil and condensate;

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

III – Oil by-products: products derived from oil refining;

IV – Basic by-products: main oil by-products, as referred to in article 177 of the Federal Constitution, to be classified by the National Petroleum Agency;

V – Refining: set of processes aimed at transforming oil into oil by-products;

VI – Treatment or Processing of Natural Gas: set of operations aimed at enabling transport, distribution and use;

VII – Transport: conveyance of oil, its by-products, biofuels or natural gas by means or route considered as being of general interest (worded by Law 12490/2011);

VIII – Transfer: conveyance of oil, its by-products, biofuels or natural gas by means or route considered as being of specific and exclusive interest of owner or operator of facilities (worded by Law 12490/2011);

IX – Sedimentary Basin: a depression of the Earth's crust, where sedimentary rocks that may bear oil or gas accumulate, associated or not;

X – Reservoir: geological configuration with specific properties, bearing oil or gas, associated or not;

XI – Deposit: an already identified reservoir able to be put into production;

XII – Prospect: geological feature mapped as a result of geophysical studies and geological interpretation, which justify the drilling of exploratory wells for locating oil or natural gas;

XIII – Block: part of a sedimentary basin, formed by a vertical prism of undefined depth, with a polygonal surface defined by the geographical coordinates of their apexes, where oil and natural gas exploration or production activities are developed;

XIV – Oil or Natural Gas Field: area where oil or natural gas is produced, starting from a continuous reservoir or more than one reservoir, at variable depths, comprising production installations and equipment;

XV – Research or Exploration: set of operations or activities aimed at evaluating areas, in order to discover and identify oil or natural gas deposits;

XVI – Production: set of coordinated oil or natural gas extraction operations from a deposit and the preparation for their conveyance;

XVII – Development: set of operations and investments intended to ensure the viability of production activities in an oil or gas field;

XVIII – Commercial Discovery: discovery of oil or natural gas under such conditions that, at market prices, allow return on investments in development and production;

XIX – Oil Industry: set of economic activities related to the exploration, development, production, refining, processing, transport, import and export of oil, natural gas and other fluid

hydrocarbons and their by-products;

XX – Distribution: the wholesale activity to the retail chains or large consumers of fuels, lubricants, asphalts and bottled gas, exercised by specialized enterprises, pursuant to the applicable laws and regulations;

XXI – Reseller: the retailing activity of fuels, lubricants, asphalts and bottled gas, exercised by service stations or dealers, pursuant to the applicable laws and regulations;

XXII – Distribution of Piped Gas: local piped gas sales services to end users, to be exclusively exploited by the States, either directly or by means of concession, pursuant to Paragraph 2 of article 25 of the Federal Constitution;

XXIII – Storage of Natural Gas: storage of natural gas in suitable containers, natural or man-made reservoirs.

XXIV – Biofuel: substance derived from renewable biomass, such as biodiesel, ethanol and other substances established in ANP regulation, that may be used directly or through modifications in internal combustion engines or for other types of power generation, that may partially or totally replace fossil fuels (worded by Law 12490/2011);

XXV – Biodiesel: biofuel derived from renewable biomass for use in pressure-ignited internal combustion engines or, according to regulation, to generate other types of power that may partially or totally replace fossil fuels (worded by Law 11097/2005);

XXVI – First and Second Generation Petrochemical Industry: set of industries that provide basic petrochemical products, such as ethylene, propylene and thermoplastic resins (NR) (added by Law 11921/2009);

XXVII – Oil Supply Chain: production system for

petroleum, natural gas and other fluid hydrocarbons and their by-products, including distribution, retail and storage, as well as their consumption (added by Law 12114/2009);

XXVIII – Biofuels Industry: set of economic activities related to the production, import, export, transfer, transport, storage, commercialization, distribution, conformity analysis and biofuels quality certification (added by Law 12114/2009);

XXIX – Production of Biofuels: set of industrial operations intended to transform renewable biomass of vegetable or animal origin, into fuel (added by Law 12490/2011);

XXX – Ethanol: liquid biofuel derived from renewable biomass, whose main component is the ethyl alcohol, which may be used directly or through modifications, in spark ignition internal combustion engines, in other power generation methods or in petrochemical sector, and may be obtained through different technological routes, as specified by regulation (added by Law 12490/2011); and

XXXI – Aviation Kerosene: substance derived from renewable biomass that may be used in aircraft turbojet or turboprop engines or, according to regulation, in other types of application that may partially or totally replace fossil fuels (added by Law 12490/2011).

## CHAPTER IV

### NATIONAL AGENCY OF PETROLEUM, NATURAL GAS AND BIOFUELS

#### Section I

##### Institution and Duties

Article 7. It is herewith established the National Agency of Petroleum, Natural Gas and Biofuels – ANP, as an integral entity of indirect federal administration, subject to special autarchic regime, as a regulatory body for the oil, natural gas, by-products and biofuels industry, linked to the Ministry of Mines and Energy (worded by Law 11097/2005.).

Sole Paragraph. The ANP shall have its headquarters and legal domicile in the Federal District and main offices in the city of Rio de Janeiro, and able to install regional administrative units.

Article 8. The purpose of the ANP shall be to promote regulation, contracting and inspection of economic activities inherent to the oil, natural gas and biofuels sector, being responsible for: (Worded by Law 11097/2005.)

I – implementing, within its scope of duties, the national oil, natural gas and biofuels policy contained in the national energy policy, pursuant to Chapter I herein, with emphasis on ensuring the supply of oil by-products, natural gas and their by-products, and biofuels, nationwide, and the protection of consumer’s interests in regard to price, quality and product availability (worded by Law 11097/2005);

II – promoting studies aimed at demarcating blocks for the purpose of granting concessions or contracting, exploration,

development and production activities under the production sharing regime (worded by Law 12351/2010);

III – regulating the execution of geological and geophysical services applied to oil exploration, aimed at surveying technical data intended for sales, under a non-exclusive basis;

IV – preparing tender protocols and promoting bidding rounds for the concession of exploration, development and production activities, signing relevant agreements and verifying their execution;

V – authorizing refining, liquefaction, re-gasification, loading, processing, treatment, transport, storage and packaging practices (worded by Law 11909/2009);

VI – establishing criteria for calculation of pipeline transport fees and settling their values, under the situations and pursuant to this Law;

VII – directly inspecting, and pursuant to Law 8078 of September 11, 1990, or by means of partnerships with bodies from States or Federal District, activities that are part of the oil, natural gas and biofuels sector, as well as applying administrative and pecuniary sanctions provided for by the law, regulation or agreement (worded by Law 11909/2009);

VIII – producing evidence for declaration of public utility, for the purpose of expropriation and establishment of administrative easement of areas necessary for exploration, development and production of oil and natural gas, construction of refineries, pipelines and terminals;

IX – enforce compliance of best practices of conservation and rational use of oil, natural gas, their by-products and biofuels, and preservation of environment (worded by Law 11097/2005);

X – stimulate research and adoption of new exploration, production, transport, refining and processing technologies;

XI – organize and keep archives of technical data and information regarding regulated activities in the oil, natural gas and biofuels sector (worded by Law 11097/2005);

XII – annually consolidate information on national oil and natural gas reserves delivered by enterprises and responsible for their disclosure;

XIII – inspect proper operation of the National System for Fuel Stock and compliance with Annual Strategic Fuel Stock Plan, stated in article 4 of Law 8176 of February 8, 1991;

XIV – cooperate with other regulatory bodies of energy sector with regard to issues of common interest, including purposes of providing technical support to the CNPE;

XV – regulate and authorize activities related to the national supply of fuels, by inspecting them on a direct basis or by means of partnerships with other bodies of the Union, States, Federal District or Municipalities;

XVI – regulate and authorize activities related to production, import, export, storage, stocking, transport, transfer, distribution, retail and commercialization of biofuels, as well as conformity analysis and quality certification, by inspecting them on a direct basis or by means of partnerships with other bodies of the Union, States, Federal District or Municipalities (worded by Law 12490/2011);

XVII – demand that regulated agents deliver information regarding production operations, import, export, refining, improvement, treatment, processing, transport, transfer, storage, stocking, distribution, resale, disposal and commercialization of products subject to regulation (added by Law 11097/2005);

XVIII – specify quality of oil by-products, natural gas and its by-products and biofuels (added by Law 11097/2005);

XIX – regulate and inspect access to gas pipelines’ capacity (added by Law 11909/2009);

XX – directly or indirectly promote public calls to contract transport capacity of natural gas, according to Ministry of Mines and Energy guidelines (added by Law 11909/2009);

XXI – register transport and interconnection agreements between transport facilities, as well as those originating overseas; and trade agreements secured by the market players (added by Law 11909/2009);

XXII – inform origin or characterization of natural gas reserves contracted and to be contracted by market players (added by Law 11909/2009);

XXIII – regulate and inspect the execution of the natural gas stocking activity, including what refers to the right of access of third parties to granted installations (added by Law 11909/2009);

XXIV – prepare tender protocols and promote bidding rounds for the contracting of concessionaires to exploit transporting and stocking activities of natural gas (added by Law 11909/2009);

XXV – prepare, upon delegation from the Ministry of Mines and Energy, concession agreements for the exploitation of transporting and stocking activities of natural gas subject to the concession regime (added by Law 11909/2009);

XXVI – authorize the activity of natural gas sales, within the Union’s scope of competence (added by Law 11909/2009);

XXVII – establish criteria for the calculation of the gas pipelines’ transport and transfer capacity (added by Law 11909/2009);

XXVIII – cooperate with State and environmental regulatory bodies, seeking compatible and uniform rules applicable to the natural gas industry and markets (added by Law 11909/2009);

Sole paragraph. In the exercise of duties dealt with in this article, with emphasis on the guarantee of national supply of fuels, provided it is in economically sustainable bases, the ANP may require the following from the regulated agents, as provided for in regulation:

I – maintenance of minimum stock of fuels and biofuels, in own facilities or third-party owned;

II – guarantees and proven capacity to fulfill the market of fuels and biofuels, upon submission of, among other mechanisms, supply agreements between the regulated agents (included by Law 12490 of 2011).

Article 8-A. The ANP shall be responsible for supervising the transport of natural gas in the transport chain and coordinating it in situations characterized as contingency.

Paragraph 1. The Contingency Committee shall define the guidelines for the coordination of natural gas transport chain in situations characterized as contingency, as acknowledged by means of Presidential Decree.

Paragraph 2. In the exercise of duties referred to in the initial paragraph of this article, the ANP, without prejudice to other duties attributed to it by regulation, shall:

I – supervise data and information from the transport gas pipeline control centers;

II – keep information base regarding the natural gas transport system permanently updated, thus providing the Ministry of Mines and Energy with information on system reinforcement needs;

III – monitor natural gas input and output to and from the transport chains, comparing volumes transported with transport agreements in force;

IV – inform movement capacities in place that are not

being used and possible conditions for contracting; and

V – establish standards and parameters for the efficient operation and maintenance of natural gas transport and storage system.

Paragraph 3. The parameters and information regarding the transport of natural gas necessary for the supervision, control and coordination of the operation of gas pipelines shall be made available to the ANP by the carriers, according to specific regulation (added by Law 11909/2009).

Article 9. In addition to duties established in the previous article, the ANP shall perform, from the moment of its implementation, the duties of the National Fuels Department – DNC, regarding distribution and retail petroleum products and ethanol activities, pursuant to article 78.

Article 10. When the ANP becomes aware, during the exercise of its duties, of any fact that may be construed as possible infraction of economic order, it shall promptly communicate it to the Administrative Council on Economic Defense – Cade and the Ministry of Justice’s Secretariat of Economic Law, so that these entities can take the relevant measures within the scope of the applicable law (worded by Law 10202/2001).

Sole Paragraph. Regardless of the communication provided for in the initial paragraph herein, the Administrative Council on Economic Defense – Cade will notify the ANP within twenty-four hours after the publication of the respective decision, details of any decision regarding sanctions due to infraction of economic order committed by corporations or individuals in the exercise of activities related to the national supply of fuels, so as to apply all legal measures under its jurisdiction (worded by Law 10202/2001).

## Section II

### Organizational Structure of Autarchy

Article 11. The ANP shall be managed by a Collegiate Board of Directors, composed of one general Director and four Directors.

Paragraph 1. One Attorney General will complete ANP's organizational structure.

Paragraph 2. The members of the Board will be appointed by the President of the Republic, after approval of the respective names by the Federal Senate, pursuant to letter f of clause III of article 52 of the Federal Constitution.

Paragraph 3. The members of the Board of Directors shall serve mismatched four-year terms, permitting re-appointment, pursuant to article 75 hereof.

Article 12. (VETOED).

I – (VETOED).

II – (VETOED).

III – (VETOED).

Sole Paragraph. (VETOED).

Article 13. Revoked (by Law 9986/2000).

I – Revoked (by Law 9986/2000).

II – Revoked (by Law 9986/2000).

III – Revoked (by Law 9986/2000).

Sole Paragraph – Revoked (by Law 9986/2000).

Article 14. At the end of the term, or once discharged from his/her position, any former ANP director shall be precluded, for

a period of twelve months, from directly or indirectly rendering any type of service to any enterprise which operates in the oil and biofuels sector or distribution (worded by Law 12490/2011).

Paragraph 1. During the preclusion, the former director who has not been discharged pursuant to article 12 may continue to render services to the ANP or any Union's direct administration body, upon compensation equivalent to the administrative position held.

Paragraph 2. The ex-director that violates the precluding provisions set forth in this article is subject to penalties of the law.

## **Section III**

### **Revenues and Autarchy Assets**

Article 15. Constitute ANP revenues:

I – provisions allocated in the General Budget of the Union, special credits, transfers and re-pass assigned to them;

II – part of government share referred to in clauses I and III of article 45 thereof, according to ANP's operational needs, as consigned in approved budget;

III – funds derived from partnerships, contracts secured with entities, bodies or enterprises, with the exception of those mentioned in the previous clause;

IV – donations, legacies, subsidies and other funds consigned to it;

V – fees, charges and fines provided for by the applicable law, amounts obtained from the sale or lease of chattels and real estate owned by them, as well as those deriving from the sale of technical data and information, including those related to bids,

unless otherwise referred to in paragraph 2 of article 22 hereof.

Article 16. Funds derived from governmental share provided for in clause IV of article 45, pursuant to article 51, shall be consigned to the financing of ANP's expenditures for the performing of activities provided herein.

## **Section IV**

### **Decision-making Process**

Article 17. ANP's decision-making process shall observe the principles of legality, impersonality, morality and publicity.

Article 18. The deliberative sessions of ANP's Board of Directors that aim at resolving pending issues among economic agents and between them and consumers and users of goods and services of the oil, natural gas and biofuels sector shall be made public, able to be recorded electronically and the right to obtain copies by interested parties assured (worded by Law 12490/2011).

Article 19. The initiatives of bills or amendments to administrative rules that affect the rights of economic agents and users of goods and services of the oil, natural gas and biofuels sector shall be preceded by public hearing, to be summoned and held by the ANP (worded by Law 12490/2011).

Article 20. ANP's bylaws shall regulate the procedures to be adopted to resolve disputes among the economic agents, and between them and users and consumers, with emphasis on conciliation and arbitration.

## CHAPTER V

### EXPLORATION AND PRODUCTION

#### Section I

##### General Provisions

Article 21. The Union owns the exploration and production rights of oil, natural gas and other fluid hydrocarbons in the country, including onshore land, territorial waters, continental shelf and exclusive economic zone, and the ANP shall be responsible for their administration, with the exception of competencies of other bodies and entities exclusively set forth by the law (worded by Law 12351/2010).

Article 22. The technical assets constituted by data and information on the Brazilian sedimentary basins, are also regarded as integral parts of the national oil resources, with the ANP responsible for collecting, maintenance and management of them.

Paragraph 1. *Petróleo Brasileiro S.A. – Petrobras* shall transfer information and data available on the Brazilian sedimentary basins to the ANP, as well as on oil or natural gas research, exploration and production, developed due to the exclusive nature of monopoly until the publication hereof.

Paragraph 2. The ANP shall establish criteria for remuneration to *Petrobras* regarding the data and information mentioned in the paragraph above and which may be used by the interested parties, with strict observation of article 117 of Law 6404 of December 15, 1976, with amendments introduced by Law 9457 of May 5, 1997.

Paragraph 3. The Ministry of Mines and Energy shall

have unrestricted and free access to the assets referred to in the initial paragraph of this article, aimed at carrying out studies and sectorial planning, keeping, when the case, confidential to which it is subject (added in Law 12351/2010).

Article 23. The oil and natural gas exploration, development and production activities shall be performed through concession agreements, preceded by bidding process pursuant to this Law, or under production sharing regime in the Pre-salt and strategic areas, pursuant to specific law (as written in Law 12351/2010).

Paragraph 1. – Revoked (by Law 12351/2010).

Paragraph 2. The ANP may grant, directly to the owner of production rights or authorization for mineral coal deposit prospecting, concession for use of methane gas that occurs as associated with that deposit, being exempt from bidding process provided for in initial paragraph of this article (added in Law 11909/2009).

Article 24. Concession agreements shall be comprised of two phases: exploration and production.

Paragraph 1. The exploration phase includes the activities of evaluation and possible discovery of oil or natural gas, in order to determine its commercial value.

Paragraph 2. The production phase shall also include development activities.

Article 25. Only those enterprises that comply with the technical, economic and legal requirements set forth by the ANP may obtain the concession for exploration and production of oil or natural gas.

Article 26. The concession implies, as to the concessionaire, the obligation to explore at its own risk and expense and, if successful, produce oil or natural gas in a given block, granting it the ownership of those goods, once extracted, and being subject to

the charges regarding payment of taxes levied and corresponding legal or contractual shares.

Paragraph 1. If exploration is successful, the concessionaire shall submit the development and production plans and projects to the ANP.

Paragraph 2. The ANP shall issue its opinion on the plans and projects mentioned above within one hundred and eighty days.

Paragraph 3. Upon the expiration of the term mentioned in the paragraph above without manifestation of the ANP, the plans and projects shall be considered as automatically approved.

Article 27. – Revoked (by Law 12351/2010).

Sole Paragraph. If the parties fail to reach an agreement within the term established by the ANP, the ANP shall determine, based on arbitration, how the rights and obligations of the blocks will be equitably allocated, based on the applicable general law principles.

Article 28. The concessions shall terminate:

I – upon the expiration of the contractual term;

II – agreement between the parties;

III – for reasons provided for in the contract;

IV – the end of the exploration phase, in case no commercial discovery has been made, as defined in the contract;

V – During the exploration phase, if the concessionaire chooses to give up and relinquish the areas that, at its own discretion, do not justify investments in development activities.

Paragraph 1. The relinquishment of areas, as well as the reversion of assets, shall not result in charges of any nature for the Union or for the ANP, nor shall it grant the concessionaire with any right of indemnification for the services, wells, real estate and

reversible assets, which shall become ownership of the Union and administered by the ANP pursuant to item VI of article 43.

Paragraph 2. In any event of termination of the concession, the concessionaire shall, at its own expense, remove the equipment and assets that are not object of reversion, being obligated to repair or indemnify for damages arising from of its activities and undertake environmental recovery action as established by the relevant bodies.

Article 29. The transfer of the concession contract with the preservation of its object and condition is allowed, as long as the new concessionaire complies with the technical, economic and legal requirements set forth by the ANP, pursuant the article 25.

Sole Paragraph. Transfer of the contract may only occur upon prior and expressed authorization by the ANP.

Article 30. The exploration, development and production of oil or natural gas contract shall not extend to any other natural resource, and the concessionaire shall promptly and exclusively inform its discovery to the ANP.

## Section II

### Specific Norms for On-going Activities

Article 31. Petrobras shall submit its exploration, development and production program to the ANP within three months after the publication of this Law. The program shall contain information and data to provide:

I – knowledge about the production activities in each field, whose demarcation may include a technical security area;

II – knowledge about the exploration and development, recording activities, in this case, costs incurred, investments

made, and investments timetable to be made in each block where prospects have been defined.

Article 32. Petrobras will have its rights on each of the fields found in effective production ratified on the date this Law takes effect.

Article 33. In blocks where Petrobras has, on the effective date of this Law, made commercial discoveries or investments in exploration, it may, considering its investment capacity, including through financing, continue the exploration and development activity, for a period of three years, and if successful, continue production activities.

Sole Paragraph. After evaluation of Petrobras financing qualification, and data and information dealt with in article 31, the ANP shall approve the blocks where the undertakings referred to in this article will continue.

Article 34. After fulfilling the provisions of article 31 and, within one year as of the publication of this Law, the ANP shall enter into concession contracts with Petrobras, being exempt from bidding processes established in article 23, for blocks that comply with the conditions set forth in articles 32 and 33, defining, in each of these contracts, the due share, pursuant to Section VI.

Sole Paragraph. The concession contracts mentioned in this article shall be governed, where applicable, by the general rules established in the previous Section and shall comply with the provisions of Section V of this Chapter.

Article 35. The blocks not covered by the concession contracts mentioned in the article above and those that have failed in their exploration undertakings, or those that have not settled with the ANP shall, within the terms set forth, be object of bidding process by the ANP in order to grant new concession contract, governed by the general rules set forth in the previous section.

## Section III

### Tender Protocol

Article 36. The bidding process to grant concession contracts referred to in article 23 shall comply with the provisions of this Law, in the regulation to be issued by the ANP and in respective tender protocol.

Article 37. The tender protocol shall be accompanied by the respective basic draft agreement and shall indicate:

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

II – the requirements to be fulfilled by the bidders, pursuant to article 25, and the pre-qualification criteria, as the case may be;

III – the minimum governmental share, pursuant to article 45, and the surface-right owner's fees, as set forth in article 52;

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

V – the explicit indication that the concessionaire shall pay the indemnification due for expropriations or easements necessary for executing the contract;

VI – The term, venue and time in which the interested parties will be given the data, studies and other elements and information necessary for bid preparation, as well as the cost of acquisition.

Sole Paragraph. The duration of the exploration phase, mentioned in clause I hereof, shall be estimated by the ANP, subject to level of information available, characteristics and location of each block.

Article 38. Where the participation of enterprises in consortium is allowed, the tender protocol shall contain the following requirements:

I – evidence of public or private commitment of formation of consortium, signed by the consortium members;

II – appointment of consortium leading enterprise, responsible for the consortium and for running the operations, without prejudice to the joint responsibility of the other members;

III – submission, by each of the consortium members, of the documents required for the purposes of evaluating the technical and economic–financial qualification of the consortium;

IV – prohibition of same enterprise participating in another consortium – or individually – in the bidding process of same block;

V – granting of concession to the winning consortium, subject to the registering of deed of incorporation of consortium, pursuant to the sole paragraph of article 279 of Law 6404 of December 15, 1976.

Article 39. The tender protocol shall contain the requirement that the foreign company that bids individually or in consortium shall submit, along with its bid in a separate envelope:

I – evidence of technical capacity, financial competence and legal and fiscal status pursuant to regulation to be issued by the ANP;

II – full content of its instrument of incorporation, and evidence that it is organized and regularly operational, pursuant to the laws of its country;

III – appointment of a legal representative with the ANP, with special powers to carry out acts and assume responsibilities regarding the bidding process and the bid submitted;

IV – commitment that, if winner, establish enterprise according to Brazilian laws, with headquarters and management in Brazil.

Sole Paragraph. The execution of the concession contract shall be subject to the effective compliance with the commitment undertaken according to clause IV hereof.

## **Section IV**

### **Judgment of Bidding Process**

Article 40. Judgment of Bidding Process shall identify the most advantageous proposal, according to objective criteria established in the tender protocol, and shall comply with the principles of legality, impersonality, morality, publicity, and equality among bidders.

Article 41. In Judgment of Bidding Process, aside from other criteria that tender protocol explicitly establishes, will be taken into account:

I – general work program, exploration activity proposals, terms, minimum amount of investment and physical-financial timetables;

II – governmental share referred to in article 45.

Article 42. In the event of a tie, the bidding process shall be decided in favor of Petrobras; when not bidding in a consortium with other enterprises.

## **Section V**

### **Concession Contract**

Article 43. The concession contract shall faithfully reflect the conditions of the tender protocol and the winning bid, and shall have the following essential clauses:

I – definition of the block object of concession;  
II – term of the exploration phase and conditions for extension;  
III – work program and estimated volume of investments;  
IV – concessionaire’s obligations regarding share, pursuant to Section VI;

V – indication of guarantees to be provided by the concessionaire regarding the performance of the contract, including as to investments agreed upon for each phase;

VI – specification of the rules regarding relinquishment and abandonment of areas, including removal of equipment and installations, and reversion of assets;

VII – follow-up and inspection procedures for exploration, development and production activities, and for contract audit;

VIII – obligation, by the concessionaire, to provide the ANP with reports, data and information regarding the activities developed;

IX – procedures related to the transfer of contract, pursuant to article 29;

X – rules on the resolution of disputes related to the contract and its performance, including conciliation and international arbitration;

XI –cases of termination and expiration of the contract;

XII –applicable sanctions in the event of failure by the concessionaire, to comply with the contractual obligations;

Sole Paragraph. Contractual conditions for the extension of the exploration phase, referred to in item II hereof, shall be set forth in order to guarantee the relinquishment of a percentage of the block, at ANP’s discretion, and the increase in price for occupation of the area, pursuant to the sole paragraph of article 51.

Article 44. The contract shall set forth that the concessionaire is obligated to:

I – adopt, in every operation, necessary measures for the conservation of the reservoirs and other natural resources, for the safety of the people and equipment, and for the protection of the environment;

II – promptly communicate the discovery of any deposit of oil, natural gas or any other hydrocarbons or other minerals to the ANP;

III – evaluate the discovery pursuant to the program submitted to the ANP, delivering a commerciality report and declaring its interest in the development of the field;

IV – submit development plan of field declared commercial to the ANP, containing timetable and estimated investment;

V – be civilly liable for the actions of its agents and indemnify any and all damage arising out of exploration, development and production activities contracted, and the ANP or the Union shall be reimbursed for the charges they may have to bear as a result of possible claims motivated by acts under the responsibility of the concessionaire;

VI – adopt best practices of oil industry and comply with rules, as well as applicable technical and scientific procedures, including proper recovery techniques, aiming at the rationalization of production and control of depletion of reserves.

## Section VI

### Share

Article 45. The concession contract shall dispose the following governmental share, set forth in the tender protocol:

I – signature bonus;

II – royalties;

III – special share;

IV – payment for occupation or retention of area.

Paragraph 1. The governmental share contained in clauses II and IV are mandatory.

Paragraph 2. The revenues derived from the governmental share defined in the initial paragraph, allocated to federal public administration, pursuant to this Law, shall be kept in a Single Federal Government account, while not allocated to respective programs.

Paragraph 3. The financial surplus accumulated by the federal public administrative bodies mentioned in the previous paragraph, settled in balance sheet of each financial year, shall be transferred to the National Treasury.

Article 46. The minimum signing bonus value shall be established in the tender protocol and shall correspond to the payment offered in the bid to obtain the concession, and shall be paid on the execution of the contract.

Article 47. The royalties shall be paid on a monthly basis, in local currency, as from the date of start up of the commercial production for each field, in an amount corresponding to ten percent of petroleum or natural gas production.

Paragraph 1. Bearing in mind the geological risks, the production expectation and other relevant factors, the ANP may provide, in the corresponding tender protocol, for the reduction of royalties set forth in the initial paragraph hereof to an amount corresponding to, at least, five percent of production.

Paragraph 2. The calculation criteria for the amount of royalties shall be established by Presidential Decree, based on

oil, natural gas or condensate market prices, the specifications of the product and the location of the field.

Paragraph 3. The burning of flare gas, with its commercialization compromised, and the loss of product under responsibility of the concessionaire, shall be included in the total production volume to be used for the calculation of the royalties due.

Article 48. The royalty quota value provided for in the concession contract, representing five percent of the production, corresponds to the minimum amount referred to in Paragraph 1 of the previous article, shall be distributed as per the criteria set forth by Law 7990 of December 28, 1989.

Article 49. The royalty quota value in excess of five percent of the production shall be distributed as follows:

I – when production occurs onshore or in lakes, rivers, fluvial and lacustrine islands:

a) fifty-two point five percent to the States where production occurs;

b) fifteen percent to the Municipalities where production occurs;

c) seven point five percent to the Municipalities affected by the oil and natural gas loading and unloading operations, pursuant to criterion established by the ANP;

d) twenty-five percent (25%) to the Ministry of Science and Technology, in order to finance programs to foster the scientific research and the technological development applied to the oil, natural gas and biofuels sector and the first and second generation petrochemical industry, as well as for programs of the same nature aimed at preventing and recovering the damage caused to the environment by those industries (worded by Law 11921/2009);

II – when production occurs on continental shelf:

a) twenty-two point five percent to the confronting producer states;

b) twenty-two point five percent to the confronting producer Municipalities;

c) fifteen percent to the Ministry of the Navy, to meet inspection and protection charges in production areas;

d) seven point five percent to the Municipalities affected by the oil and natural gas loading and unloading operations, pursuant to criterion established by the ANP;

e) seven point five percent to establish a Special Fund, to be distributed among all the States, Territories and Municipalities;

f) twenty-five percent (25%) to the Ministry of Science and Technology, in order to finance programs to foster the scientific research and the technological development applied to the oil, natural gas and biofuels sector and the first and second generation petrochemical industry, as well as for programs of similar nature aiming at prevention and recuperation of damages caused to the environment by those industries (worded by Law11921/2009);

Paragraph 1. At least forty percent out of the total resources consigned to the Ministry of Science and Technology shall be applied in programs to foster capacity building and scientific and technological development in the Northern and Northeastern regions.

Paragraph 2. The Ministry of Science and Technology shall administer the programs to support scientific research and technological development provided for in the initial paragraph of this article, with technical support of the ANP, in compliance with item X of article 8, and through partnerships with the Country's universities and research centers, according to rules to be defined by Presidential Decree.

Paragraph 3. In the Pre-salt areas contracted under the concession regime, the quota value of royalties allocated to the Union's direct administration shall be fully consigned to accounting and financial fund, set forth by specific law, aimed at raising resources for social and regional development in the form of programs and projects to combat poverty and the development of education, culture, sports, public health, science and technology, the environment, and reduction and adaptation to climate change. Being forbidden to allocate to specific bodies dealt with in this article (added by Law 12351/2010).

Article 50. The tender protocol and the contract shall establish that, in the event of large production volumes or high profitability, a special share shall be paid, and regulated by Presidential Decree.

Paragraph 1. The special share shall be applied on gross production revenue, after deducting royalties, production investments, operational costs, depreciation and taxes set forth by applicable law.

Paragraph 2. The funds from the special share shall be distributed as follows:

I – forty percent (40%) to the Ministry of Mines and Energy, being seventy percent (70%) to finance geology and geophysics studies and services applied to fossil fuel exploration, to be promoted by the ANP, pursuant to clauses II and III of article 8 hereof, and by the MME, fifteen percent (15%) to fund planning studies for the expansion of the power system, and fifteen percent (15%) to finance basic geological studies, research, projects, activities and services in Brazil (worded by Law 10848/2004);

II – Ten percent (10%) to the Ministry of the Environment, preferably designated to the development of the following environmental management activities related to the oil supply

chain, including the consequences of its use: (Worded by Law 12114/2009.)

a) models and instruments for management, control (inspection, monitoring, licensing and voluntary instruments), planning and regulation of the sustainable use of areas and natural resources (added by Law 12114/2009);

b) studies and strategies for environmental conservation, sustainable use of natural resources and recovery of environmental damage (added by Law 12114/2009);

c) new, less pollutant practices and technologies and optimization of pollution control systems, including power efficiency and joint actions for the treatment of residues and oily waste and other harmful and hazardous substances (added by Law 12114/2009);

d) definition of strategies and studies for systematic environmental monitoring, adding the establishment of specific environmental quality standards, in the scope of sedimentary basins (added by Law 12114/2009);

e) contingency systems that include prevention, control and combat, and response to petroleum pollution (added by Law 12114/2009);

f) mapping of areas sensitive to oil spills in the Brazilian jurisdictional waters (added by Law 12114/2009);

g) studies and projects for the prevention of greenhouse gas emissions into the atmosphere, as well as for mitigation and adaptation to climate change and its effects; considering mitigation as the reduction of greenhouse gas emissions and the increase of the capacity to remove carbon by land carbon sinks, and the adaptation to initiatives and actions to reduce the vulnerability of natural and human systems to the current and expected effects of climate change (added by Law 12114/2009);

h) studies and projects to prevent, control, and remediate deforestation and air pollution (added by Law 12114/2009);

i) initiatives to strengthen the National Environment System – Sisnama (added by Law 12114/2009).

III – forty percent for the State where onshore production occurs, or the State confronting the continental shelf where production occurs;

IV – ten percent for the Municipality where onshore production occurs, or the Municipality confronting the continental shelf where production occurs;

Paragraph 3. Revoked (by Law 12114/2009).

Paragraph 4. In the Pre-salt areas contracted under the concession regime, the quota value of special share allocated to the Union’s direct administration shall be fully consigned to the accounting and financial fund, set forth by specific law, aimed at raising resources for social and regional development in the form of programs and projects to combat poverty and the development of education, culture, sports, public health, science and technology, the environment, and reduction and adaptation to climate change. Being forbidden to allocate to specific bodies dealt with in this article (added by Law 12351/2010).

Article 51. The tender protocol and the contract shall regulate payment by occupation or retention of area, to be made annually, fixed on a square-kilometer or fraction basis of the block surface area, according to regulation set forth by Presidential Decree.

Sole Paragraph. The value of payment by occupation or retention of area shall be increased on a percentage to be established by the ANP, whenever the exploration term is extended.

Article 52. The concession contract for an onshore block shall also include a clause that determines payment of equivalent share to landowners, in local currency, equivalent to a percentage

that ranges from zero point five percent and one percent of petroleum or natural gas production, at ANP's discretion.

Sole Paragraph. The share referred to herein shall be proportionally distributed in relation to the production carried out in the regularly traced out properties on the block surface.

## CHAPTER VI

### REFINING OF OIL AND PROCESSING OF NATURAL GAS

Article 53. Any enterprise or consortium of enterprises that meets the requirements in article 5 hereof may submit a bid along with the respective project to the ANP, for the construction and operation of refineries and natural gas processing, liquefaction, re-gasification and storage facilities, as well as for expansion of its capacity (worded by Law 11909/2009).

Paragraph 1. The ANP shall establish the technical, economic and legal requirements to be observed by the bidders and the project requirements as to environmental protection and industrial and population safety.

Paragraph 2. Once the requirements of the previous paragraph are fulfilled, the ANP shall grant authorization referred to in clause V of article 8, defining its object and ownership.

Article 54. The transfer of authorization ownership is allowed upon prior and explicit approval by the ANP, provided the new owner meets the requirements of Paragraph 1 in the previous article.

Article 55. Within one hundred and eighty days from the publication of this Law, the ANP shall issue authorizations regarding the existing refineries and natural gas processing facilities, ratifying its ownership and rights.

Sole Paragraph. The authorizations referred to in this article shall comply with the provisions of article 53 as to the ownership transfer and expansion of installation capacity.

## CHAPTER VII

### TRANSPORT OF OIL, BY-PRODUCTS AND NATURAL GAS

Article 56. With due regard for the provisions of the applicable laws, any enterprise or consortium of enterprises in compliance with the provisions of article 5 may be granted authorization by the ANP to construct installations and carry out any type of transport of oil, by-products and natural gas, whether for domestic consumption or import and export.

Sole Paragraph. The ANP shall issue rules on the eligibility of the interested parties and the conditions for authorization and transfer of its ownership, upon compliance with the environmental protection and traffic safety requirements.

Article 57. Within one hundred and eighty days from the publication of this Law, Petrobras and other companies that own maritime and pipeline transport equipment and installations shall receive, from the ANP, their respective authorization, ratifying their ownership and rights.

Sole Paragraph. The authorizations referred to in this article shall comply with the rules dealt with in the sole paragraph of the previous article, as to ownership transfer and expansion of installation capacity.

Article 58. Any interested party may use the transport pipelines and maritime terminals now existing or to be built, with the exception of the Liquefied Natural Gas (LNG) terminals,

upon proper compensation to the owner of the installations or the natural gas transport capacity, pursuant to law and applicable regulation (worded by Law 11909/2009).

Paragraph 1. The ANP shall settle the amount and payment conditions for proper compensation, based on previously established criteria, in the event no agreement is reached between the parties, and shall also be responsible for verifying if the agreed amount is compatible with the market (worded by Law 11909/2009).

Paragraph 2. The ANP shall regulate priority criteria to be attributed to the owner of the installations for transport of its own products, aiming at promoting the optimal use of the transport capacity by means available.

Paragraph 3. The revenue referred to in the initial paragraph of this article shall be allocated to the enterprise that effectively bears the cost of the natural gas transport capacity (added by Law 11909/2009).

Article 59. The transfer pipelines shall be reclassified by the ANP as transport pipelines, in the event there is proven interest of third parties in their use, according to the applicable provisions of this Chapter.

## **CHAPTER VIII**

### **IMPORT AND EXPORT OF OIL, BY-PRODUCTS AND NATURAL GAS**

Article 60. Any enterprise or consortium of enterprises complying with the provisions of article 5 may receive authorization by the ANP to perform oil, by-products, natural gas and condensate import and export activities.

Sole Paragraph. The performance of the activity referred to in the initial paragraph hereof shall comply with CNPE guidelines, especially those regarding the fulfillment of provisions of article 4 of Law 8176 of February 8, 1991, and shall observe the other applicable legal rules and regulations.

## CHAPTER IX

### PETROBRAS

Article 61. Petroleo Brasileiro S.A. (Petrobras) is a state-run corporation linked to the Ministry of Mines and Energy, whose purpose is the production, refining, processing, sales and transport derived from wells, shale or other rocks, of oil products, natural gas and other fluid hydrocarbons, as well as any other related or similar activities, as defined by law.

Paragraph 1. The economic activities referred to in this article shall be carried out by Petrobras on a free-competition basis with other enterprises, according to market conditions, observing the transition period provided for in Chapter X and the other principles and guidelines of this law.

Paragraph 2. Petrobras may carry out, directly or by means of its subsidiaries, whether associated with third parties or not, outside the country, any of the activities within its business purpose.

Article 62. The Union shall keep the shareholding control of Petrobras with the ownership and possession of, at least, fifty percent of the shares, plus one, of the voting capital.

Sole Paragraph. Petrobras' share capital is divided into ordinary shares with voting rights and preferred shares with no voting rights, all of them in book-entry form, pursuant to article 34 of Law 6404 of December 15, 1976.

Article 63. Petrobras and its subsidiaries are hereby authorized to constitute consortia with national or international enterprises, whether as a leading enterprise or not, aimed at expanding its activities, gather technologies and increasing investments applied to the oil sector.

Article 64. For the strict fulfillment of the oil sector activities within its business purposes, Petrobras is hereby authorized to establish subsidiaries, of which may associate, majority or minority interest, with other companies.

Article 65. Petrobras shall establish a subsidiary with specific duties to operate and build its pipelines, maritime terminals and vessels to transport oil, by-products and natural gas, being such subsidiary responsible to associate, majority or minority interest, with other companies.

Article 66. Petrobras may transfer the securities and amounts, received by any subsidiary and derived from the Brazilian Privatization Program, to its assets, through the due reduction of its interest in the subsidiary's share capital.

Article 67. The contracts secured by Petrobras for the acquisition of goods and services, shall be preceded by a simple bidding process, to be defined by Presidential Decree.

Article 68. Petrobras may execute pre-contracts by issuing letters of invitation aimed at preparing bids to participate in bidding processes that preceded the concessions dealt with in this Law, thus assuring prices and supply commitments for goods and services.

Sole Paragraph. The pre-contracts shall contain resolute clause by operation of law to be exercised, without penalty or indemnification, in the event another bidder is declared winner, and shall be further submitted for the consideration of external control and inspection bodies.

## CHAPTER IX–A

### ECONOMIC ACTIVITIES OF BIOFUELS SECTOR

(Added by Law 12490/2011.)

Article 68-A. Any enterprise or consortium of enterprises organized under the Brazilian laws, with headquarters and management in the Country, may receive authorization from the ANP to perform the economic activities of the biofuels sector.

Paragraph 1. The authorizations dealt with in the initial paragraph are aimed at allow for the exploitation of economic activities under the free initiative and ample competition regime, pursuant to specific law.

Paragraph 2. The authorization dealt with in the initial paragraph shall consider the compliance by the interested party, where applicable, the conditions set forth by specific law, in addition to the following, pursuant to the regulation:

I – are established under the Brazilian laws, with headquarters and management in the Country.

II – are in compliance with federal, state and municipal treasury authorities, as well as proof of good standing before the ANP;

III – present basic installation project, according to the technical rules and standards applicable to the activity;

IV – present environmental licensing, or another alternate document, issued by the relevant body;

V – present safety control project of installations, approved by the relevant body;

VI – detain paid-in share capital or present other funding sources sufficient for the venture.

Paragraph 3. The authorization may only be revoked upon request by the interested party itself or in the event of infractions committed that are subject to penalty for this, pursuant to the law.

Paragraph 4. The authorization will be granted by the ANP on a term to be established pursuant to the regulation.

Paragraph 5. The authorization shall not be granted if the interested party, within five (5) years prior to the request, received authorization to perform the activity regulated by the ANP, revoked due to penalty applied as a result of administrative proceedings with final decision.

Paragraph 6. Agricultural production, power generation, manufacturing of livestock and food products, when linked to biofuel production unit to be constructed, modified or expanded, are not subject to regulation and authorization by the ANP.

Paragraph 7. The biofuel producing unit that produces or commercializes electric power must comply with the standards and regulations set forth by the relevant bodies and entities.

Paragraph 8. The modification or expansion of the installations related to the economic activities of the biofuels sector is subject to prior approval by the ANP.

## **CHAPTER X**

### **FINAL AND TRANSITORY PROVISIONS**

#### **Section I**

##### **Transition Period**

Article 69. During the transition period, which shall extend to no later than December 31, 2001, price adjustments and revisions

for basic oil and natural gas products, as practiced by producing or processing units, shall be carried out according to specific guidelines and parameters established jointly by the Ministers of Finance and Mines and Energy (worded by Law 9990/2000).

Article 70. During the transition period dealt with in the previous article, the ANP shall establish criteria for the import of oil, basic by-products and natural gas, which shall be compatible with the price de-regulation criteria, provided for in same provision.

Article 71. The oil and natural gas products that constitute raw materials for the petrochemical industry shall be treated according to that set forth in articles 69 and 70, aimed at sector competitiveness.

Article 72. Within five years, as of the publication of this Law, the Union shall ensure, through the ANP, operational and economic conditions to the refineries operating in the country, excluded from the Union's monopoly pursuant to article 45 of the Transitory Provisions of the Constitution, based upon the criteria then in force, applied to refining activity.

Sole Paragraph. Within the term provided for in this article, the following shall be observed:

I – (VETOED.)

II – the refineries undertake to submit, investment plans on the technological modernization and expansion of productivity of their respective refining plants to the ANP, seeking to increase production and the resulting reduction of subsidies granted to them;

III – the ANP shall periodically evaluate the level of competitiveness of the refineries, the execution of the respective investment plans and the resulting reduction of the subsidies related to each one of them.

Article 73. Until the end of the transition period established in article 69, prices of basic products settled by Petrobras, may take into consideration the charges arising out of the subsidies levied on the activities carried out by it.

Sole Paragraph. With the exception of the conditions and term established in the previous article, any subsidy levied on the prices of basic products after the end of the period provided for in article 69, shall be proposed by the CNPE and submitted to approval by the National Congress, pursuant to clause II of article 2.

Article 74. The Secretariat of the National Treasury shall proceed with a complete survey of all reciprocal credits and debts of the Union and Petrobras, comprising the diverse accounts for reciprocal obligations and subsidies, including those related to the so-called Oil, By-Products and Ethanol Account, established by Law 4452 of November 5, 1964 and supplementary law, indemnifying the Treasury for the minimum outstanding legal dividends that were paid as of the enactment of Law 6404 of December 15, 1976.

Sole Paragraph. Until the end of the transition period, credit balance of this offsetting of accounts shall be liquidated by the debtor; in the event Union is the debtor, it shall be responsible for liquidating it in National Treasury bonds.

## Section II

### Final Provisions

Article 75. Regarding the composition of the first Board of Directors of the ANP, seeking to implement the transition to the mismatched term system, the general director and two directors shall be appointed by the President of the Republic, by indication of the minister of Mines and Energy, with three, two and one-year

terms respectively, and two Directors shall be appointed pursuant to paragraphs 2 and 3 of article 11.

Article 76. The ANP may contract experts to execute works in the technical, economic and legal areas, for limited projects or terms, with bid waivers in the cases provided for in the applicable law.

Sole Paragraph. Revoked (by Provisional Presidential Decree 155/2003).

Article 77. The Executive Branch shall promote the establishment of the CNPE and the implement the ANP, upon the approval of its regimental structure within one hundred and twenty days, as of the publication of this Law.

Paragraph 1. ANP's regimental structure shall include the existing commissioned positions and remunerated functions in the DNC.

Paragraph 2. (VETOED.)

Paragraph 3. While not implemented by the ANP, the competencies hereby attributed to it shall be exercised by the Minister of Mines and Energy.

Article 78. Upon implementation of the ANP, the DNC shall be extinct.

Sole Paragraph. DNC's technical-proprietary assets, obligations, rights and revenues shall be transferred to the ANP.

Article 79. The Executive Branch is hereby authorized to relocate, transfer or use the budgetary balances of the Ministry of Mines and Energy in order to bear the expenses for the structuring and maintenance of the ANP, using the budgetary allocations consigned to purposeful and administrative activities, observing the same sub-projects, sub-activities and expenditure groups provided for in the Budgetary Law in effect.

Article 80. The provisions of this Law shall not affect prior third-party rights acquired through contracts secured with Petrobras, pursuant to the applicable law, and shall not invalidate the acts practiced by Petrobras and its subsidiaries, according to their bylaws, which shall be adjusted to this Law, as the case may be.

Article 81. The rules of this Law do not include the equipment and installations intended for the execution of local piped gas distribution services referred to in Paragraph 2 of article 25 of the Federal Constitution.

Article 82. This Law shall take effect on the date of its publication.

Article 83. All provisions to the contrary are hereby revoked, including Law 2004 of October 3, 1953.

Brasilia, August 6, 1997; 176th year of the Independence and 109th of the Republic.

**FERNANDO HENRIQUE CARDOSO**

Iris Rezende

Raimundo Brito

Luiz Carlos Bresser Pereira

**LAW 12276 OF JUNE 30, 2010**  
**DOU (OFFICIAL FEDERAL GAZETTE)**  
**Nº 30 OF JUNE 30, 2010**  
**Extra Edition**

Authorizes the Union to directly assign to Petróleo Brasileiro S.A. – Petrobras, with due compensation, research and oil production, natural gas and other fluid hydrocarbon activities dealt with in clause I of article 177 of the Federal Constitution and make other provisions.

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

Article 1. The Union is hereby authorized to directly assign to Petróleo Brasileiro S.A. – Petrobras, with due compensation and bid waiver, research and oil production, natural gas and other fluid hydrocarbon activities dealt with in item I of article 177 of the Federal Constitution, in areas which are not granted, located in the Pre-salt polygon.

Paragraph 1. Petrobras shall exercise ownership over the oil, natural gas and other fluid hydrocarbons produced according to the contract that formalizes the cession defined in the initial paragraph.

Paragraph 2. The cession dealt with in the initial paragraph shall produce effects, until Petrobras extracts the number of barrels of oil equivalent defined in the respective cession contract, and such number shall not exceed five billion (5,000,000,000) barrels of oil equivalent.

Paragraph 3. Payment due by Petrobras for the cession dealt with in the initial paragraph shall be effective, on a priority basis, in federal debt securities, priced at market value, with exception to quota value referred to in paragraph 4.

Paragraph 4. (VETOED.)

Paragraph 5. Payment conditions for the federal debt securities shall be established by Minister of Treasury Act.

Paragraph 6. The cession referred to in the initial paragraph is nontransferable.

Article 2. The contract that formalizes the cession dealt with in article 1 shall contain, without limitation, clauses to establish:

I – the geographic identification and demarcation of the respective areas;

II – the respective volumes of barrels of oil equivalent, observing the limit referred to in paragraph 2 of article 1;

III – the minimum amounts, and escalation goals throughout the period of contract execution, the nationalization index for goods produced and services rendered for the execution of research and production activities referred to in the initial paragraph of article 1;

IV – the amount and payment conditions dealt with in paragraphs 3 and 4 of article 1; and

V – conditions to carry out its review, considering, among other variables, market prices and specification of product resulting from the production.

Sole Paragraph. The contract and its review shall be submitted to prior analysis by the National Council on Energy Policy – CNPE.

Article 3. The volumes of barrels of oil equivalent dealt with in paragraphs 2 and 4 of article 1, as well as their respective economic

values, shall be defined from technical reports prepared by certifying entities, with due regard for best practices in the oil industry.

Sole Paragraph. The National Agency of Petroleum, Natural Gas and Biofuels – ANP, shall be responsible for obtaining the technical report for evaluation of the areas, in order to provide due support to the Union in the negotiations with Petrobras in regards to values and volumes referred to in the initial paragraph.

Article 4. Research and oil production, natural gas and other fluid hydrocarbon activities dealt with in this Law shall be performed by Petrobras, at its own risk and expense.

Sole Paragraph. Accidents or events of such nature that affect oil production, natural gas and other fluid hydrocarbons in the exploration areas established in the respective cession contract shall not be taken into account in the definition of contract price, or in its revision.

Article 5. Royalties shall be due on the product resulting from the production referred to in this Law pursuant to article 47 of Law 9478 of August 6, 1997.

Paragraph 1. The royalty quota value that represents five percent (5%) of production shall be distributed as per the criteria set forth by Law 7990 of December 28, 1989.

Paragraph 2. The royalty quota value that exceeds five percent (5%) of production shall be distributed as per clause II of article 49 of Law 9478 of August 6, 1997.

Article 6. The special customs regimes and tax incentives applicable to the oil industry in Brazil shall apply to exploration and production activities dealt with in this Law.

Article 7. The ANP shall be responsible for regulating and inspecting activities to be carried out by Petrobras based on this Law, applying, when admissible, provisions of Law 9478 of August 6, 1997.

Sole Paragraph. The regulation and inspection activities referred to in the initial paragraph shall also comprise the terms of production unitization agreements to be signed between Petrobras and the concessionaires of blocks located in the Pre-salt polygon area.

Article 8. The authorization dealt with in article 1 shall be valid for twelve (12) months, as of the publication of this Law.

Article 9. The Union is hereby authorized to subscribe shares from Petrobras share capital and pay them in with federal debt securities.

Sole Paragraph. The Union is hereby authorized, at the Minister of Treasury's discretion, to issue the securities dealt with in the initial paragraph, priced at market value and under direct placement.

Article 10. Without detriment to other objectives, the Mutual Privatization Fund dealt with in item XII of article 20 of Law 8036 of May 11, 1990, may subscribe shares to increase the share capital of corporations controlled by the Union, where the fund mentioned above has equity interest as of the publication of this Law.

Paragraph 1. The shareholders shall not use subscription rights that exceed those corresponding to the quotas they own.

Paragraph 2. The shareholders of Mutual Privatization Funds who hold shares issued by Petr leo Brasileiro S.A. – Petrobras may request the transfer of resources to their account in the FGTS (Employees' Severance Fund), up to the limit of thirty percent (30%), for funds mentioned, aimed at ensuring the exercise of preemptive right, for such funds, to subscribe shares deriving from the increase of capital of Petr leo Brasileira S.A. – Petrobras.

Paragraph 3. The transfer of accounts linked to the FGTS to Mutual Privatization Funds shall observe regulation issued by the FGTS operator agent.

Paragraph 4. In the event of opting for the use of resources originated from the account linked to the FGTS, the provisions of paragraphs 8, 9 and 14 of article 20 of Law 8036 of May 11, 1990 shall apply.

Article 11. (VETOED)

Article 12. The Ministry of Treasury shall forward an annual report to the National Congress regarding operations derived from the application of this Law.

Article 13. This Law shall take effect on the date of its publication.

Brasilia, August 30, 2010; 189th year of Independence and 122nd of the Republic.

**LUIZ INÁCIO LULA DA SILVA**

Guido Mantega

Márcio Pereira Zimmermann

**VETO MESSAGE NUMBER 366 OF JUNE 30, 2010**

**Mr. President of the Federal Senate,**

I hereby communicate Your Excellency that, pursuant to paragraph 1 of article 66 of the Constitution, I have decided to partially veto – due to its unconstitutionality and for being contrary to the public interest – Bill number 8 of 2010 (nº 5941/2009 in the Chamber of Deputies), which “Authorizes the Union to directly assign to Petróleo Brasileiro S.A. – Petrobras, with due compensation, research and oil production, natural gas and other

fluid hydrocarbon activities dealt with in clause I of article 17 of the Federal Constitution, and make other provisions”.

After consulting with the Ministries of Treasury and Mines and Energy, they manifested in favor of veto to the following provisions:

Paragraph 4 of article 1 and article 11

“Paragraph 4. The payment dealt with in paragraph 3, in an amount equivalent to the market value of up to one hundred million (100,000,000) of barrels of oil equivalent of recoverable oil and natural gas, with one hundred percent (100%) Petrobras participation may be made upon the relinquishment, by Petrobras, in mutual agreement with the ANP, of areas under concession contract regarding onshore fields under development or in production.”

“Article 11. In the event Petrobras exercises the right referred to in paragraph 4 of article 1, the onshore fields under development or in production relinquished by Petrobras shall be object of bidding process, as defined in article 23 of Law 9478 of August 6, 1997, and only small and medium-sized independent oil and natural gas producers may participate in the bidding process.

Sole Paragraph. The ANP shall establish the definition of small and medium-sized producers in the bidding process referred to in the initial paragraph hereof.”

Reasons for vetoes

The hypothesis proposed in the Bill, for relinquishment of onshore fields under concession regime as part of the payment to be made by Petrobras as a trade-off for cession in consideration, depends on complex activities that may represent risks to the operation, as well as possible loss to the Treasury.

The concession contracts currently in force envisage that the relinquishment of areas is made without burden on the Union, and such rule would be changed. In addition, a long and costly

certification endeavor would be necessary, in view of the number of areas that would be necessary to comprise the total of 100 million barrels.

Another aspect to be taken into account is the fact that the result verified by the Union in the bidding rounds after the relinquishment of the areas will hardly be equivalent to the pricing made by the certifying entity, and may result in losses to public property and, therefore, in questioning as to the amount accepted by the Union or by Petrobras, as well as to the operation itself.

Moreover, vetoing paragraph 4 of article 1 implies in vetoing article 11, since the legal hypothesis of the latter ceases to exist.

Finally, I emphasize that the Ministry of Mines and Energy will continue to promote policies to stimulate the participation of small and medium-sized enterprises in the sector.

These are, Mr. President, the reasons that led me to veto the provisions mentioned above from the bill concerned, which I now submit for evaluation by the Honorable Members of the National Congress.

**LAW 12304 OF AUGUST 2, 2010**  
**DOU (OFFICIAL FEDERAL GAZETTE)**  
**Nº. 3 OF AUGUST 6, 2010**

Authorizes the Executive Branch to create the public enterprise denominated Empresa Brasileira de Administração de Petróleo e Gás Natural S.A. – Pré-Sal Petróleo S.A. (PPSA) and makes other provisions.

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

Article 1. The Executive Branch is hereby authorized to create a public enterprise, as a corporation, denominated Empresa Brasileira de Administração de Petróleo e Gás Natural S.A.– Pré-Sal Petróleo S.A. (PPSA), linked to the Ministry of Mines and Energy for indefinite period of time.

Sole Paragraph. PPSA shall be headquartered and legal domicile in Brasilia and main office in Rio de Janeiro.

Article 2. The purpose of PPSA shall be to manage production share contracts secured by the Ministry of Mines and Energy and contracts to trade the Union's oil, natural gas and other fluid hydrocarbons.

Sole Paragraph. PPSA shall not be responsible for the direct or indirect execution of exploration, development, production and commercialization of oil, natural gas and other fluid hydrocarbon activities.

Article 3. PPSA shall be subject to the legal regime of private enterprises, including as to civil, commercial, labor and tax rights and obligations.

Article 4. PPSA shall:

I – perform management of production share contracts secured by the Ministry of Mines and Energy, in particular:

a) represent the Union in consortia formed for the execution of the production share contracts;

b) defend Union’s interests on operational committees;

c) technically and economically evaluate exploration, evaluation, development and oil production, natural gas and other fluid hydrocarbon plans, as well as enforce local-content contractual requirements;

d) monitor and audit execution of exploration, evaluation, development and production of oil, natural gas and other fluid hydrocarbon projects;

e) monitor and audit costs and investments related to production share contracts; and

f) provide National Agency of Petroleum, Natural Gas and Biofuels – ANP with the information necessary for its regulatory duties;

II – perform all actions necessary for management of contracts to commercialize the Union’s oil, natural gas and other fluid hydrocarbons, in particular:

a) represent Union in securing contracts;

b) verify compliance, by contractors, of policy for commercialization of the Union’s oil and natural gas resulting from the production share contracts; and

c) monitor and audit operations, costs and sales prices for

oil, natural gas and other fluid hydrocarbons;

III – analyze seismic data provided by the ANP and the contractors under the production share regime;

IV – represent the Union in the production unitization procedures and the resulting agreements, in cases where deposits from the Pre-salt polygon and strategic areas extend to areas which are not granted or contracted under production share regime; and

V – perform other necessary activities for the fulfillment of its business purpose, as set forth in its bylaws.

Sole paragraph. In performing the competencies set forth in clause 1, PPSA will consider, in production share contracts, best practices of the oil industry.

Article 5. PPSA may be contracted by public administration to perform activities related to its business purpose through bid waiver.

Article 6. PPSA shall have its share capital represented by nominative ordinary shares, fully owned by the Union.

Sole Paragraph. The paying-up of the share capital shall be made with resources derived from provisions allocated in the General Budget of the Union, as well as the incorporation of any type of assets susceptible to assessment in cash.

Article 7. The resources of PPSA shall comprise:

I – revenues derived from the management of production share contracts, including its quota value of the signing bonus from the respective contracts;

II – revenues derived from management of contracts secured with traders of the Union's oil and natural gas;

III – revenues derived from agreements and partnerships carried out with national and international entities;

IV – profits from financial applications carried out;

V – divestiture of properties;

VI – donations, legacies, subsidies and other funds consigned to them by individuals or corporations of public or private law; and

VII – revenues derived from other sources.

Sole Paragraph. PPSA's compensation for the management of production share contracts shall be established based on phases of each contract and sizes of blocks and fields, among other criteria, observing the principles of efficiency and cost-effectiveness.

Article 8. PPSA's bylaws shall be approved by Executive Branch Act.

Sole Paragraph. The bylaws shall set forth the maximum number of employees and of positions and titles of free investiture.

Article 9. PPSA shall be administered by a Board of Directors and an Executive Board.

Article 10. The Board of Directors, whose members shall be appointed by the President of the Republic, shall be comprised of:

I – one (1) non-executive director appointed by the Ministry of Mines and Energy, who will preside;

II – one (1) non-executive director appointed by the Ministry of Treasury;

III – one (1) non-executive director appointed by the Ministry of Planning, Budget and Management;

IV – one (1) non-executive director appointed by the Presidential Staff; and

V – PPSA's managing director.

Paragraph 1. The directors shall hold office for four (4) years, being allowed one (1) prorogation.

Paragraph 2. The operation and attributions of the Board of

Directors shall be defined in the bylaws.

Article 11. The members of the Executive Board shall be appointed by the President of the Republic, by indication of the Ministry of Mines and Energy.

Paragraph 1. The members of the Executive Board shall have irreproachable reputation and proven experience in issues compatible with the position.

Paragraph 2. The operation and attributions of the Executive Board, as well as the number of directors and their respective term in office, shall be defined in the bylaws.

Paragraph 3. The collegiate decisions of the Executive Board shall be made by the absolute majority of its members, at least three/fifths (3/5) of them.

Paragraph 4. At the end of the term, the members of the Executive Board shall be precluded, for a period of four (4) months, from directly or indirectly rendering any type of service to any enterprise which operates in the oil, natural gas, biofuels sector, or its distribution and commercialization in Brazil.

Paragraph 5. During the period provided for paragraph 4, the former members of the Executive Board shall receive the same compensation as those for the positions previously occupied by them.

Paragraph 6. Violation of the precluding provisions set forth in this article characterizes influence-peddling and is subject to legal penalties within the law.

Article 12. The PPSA shall have an Audit Committee, whose members shall be elected by General Meeting, comprised by:

I – Two (2) principle directors, and their respective deputies, appointed by the Ministry of Mines and Energy; and

II – One (1) principle director, and his/her respective deputy, appointed by the Ministry of Treasury.

Paragraph 1. The directors shall hold office for four (4) years, being allowed one (1) prorogation.

Paragraph 2. The operation and attributions of the Board of Directors shall be defined in the bylaws, which shall explicitly provide for the contracting of independent auditors to prepare annual audits and reports of public enterprise created by this law.

Article 13. PPSA's personnel shall be that of Consolidation of Labor Laws (CLT), approved by Decree-Law 5452 of May 1, 1943, subject to previous approval of civil-service examination or exam results and certificates, observing the specific rules issued by the Executive Board.

Sole Paragraph. In examinations referred to in the initial paragraph, PPSA may require, as selection criteria, academic titles and minimum professional experience, not superior to ten (10) years, in the field where the candidate intends to perform his/her activities.

Article 14. For the purpose of implementation, PPSA is equivalent to corporations referred to in article 1 of Law 8745 of December 9, 1993, to contract technical and administrative personnel for a definite period of time.

Paragraph 1. The contracting of technical and administrative personnel, for a definite period of time, essential for the initial operation of the PPSA, is regarded as temporary need of exceptional public interest for the purpose of Law 8745 of 1993.

Paragraph 2. The contracting referred to in paragraph 1 shall observe the provisions of the initial paragraph of article 3, in article 6, in clause II of article 7 and in articles 9 and 12 of Law 8745 of 1993, and shall not exceed the maximum term of forty-eight (48) months from the date of establishment of PPSA.

Paragraph 3. In the contracting referred to in the initial paragraph, PPSA shall specify in call for tender, the minimum time, as a selection criteria, academic titles and professional experience in the field where the candidate intends to perform his/her activities.

Article 15. Without prejudice to the provisions of article 14 and according to requirements and conditions provided in the labor law, PPSA may contract personnel for a definite period of time, whose instruments will be valid for two (2) years, through simplified selection process.

Paragraph 1. Contracting for a definite period of time shall be accepted in the following cases:

I – service whose nature or transitory character justifies the previous definition of the term; and

II – corporate activities of transitory character.

Paragraph 2. The labor contract for a definite period of time shall be extended only once (1) and, provided that the sum of two (2) periods do not exceed two (2) years.

Paragraph 3. The selection process referred to in the initial paragraph shall be established in PPSA's internal regulations, shall contain objective criteria and shall be subject to open publication in all cases.

Paragraph 4. The personnel contracted under the terms of this article shall not:

I – receive duties, positions or responsibilities not provided for in the respective contract;

II – be appointed or designated, even on a provisional or replacement basis, to exercise an ad-hoc function or a position of trust; and

III – be contracted by PPSA again, based on this article,

before the period of six (6) months after the end of his/her prior contract expires.

Paragraph 5. Failure to comply with the provisions of this article shall result in the termination of the contract, in the cases of clauses I and II of paragraph 4, or its nullity, in other cases, without prejudice of administrators' responsibility.

Article 16. PPSA is hereby authorized to sponsor closed private pension entity, pursuant to the applicable law.

Sole Paragraph. The sponsorship dealt with in the initial paragraph may be made upon adhesion to the existing closed private pension entity.

Article 17. PPSA shall be subject to supervision by the Ministry of Mines and Energy and inspection by the Federal Comptroller's Office and Federal Court of Accounts.

Article 18. At the end of each fiscal year, PPSA shall deliver the annual report referred to in article 176 of Law 6404 of December 15, 1976 on the internet.

Article 19. This Law shall take effect on the date of its publication.

Brasilia, August 2, 2010; 189th year of Independence and 122nd of the Republic.

**LUIZ INÁCIO LULA DA SILVA**

Guido Mantega

Miguel Jorge

Márcio Pereira Zimmermann

Paulo Bernardo Silva

Erenice Guerra

**LAW 12351 OF DECEMBER 22, 2010**  
**DOU de 23 de dezembro de 2010**

Deals with the exploration and production of oil, natural gas and other fluid hydrocarbons, under the production sharing regime, in Pre-salt and strategic areas; establishes the Social Fund and deals with its structure and font of resources; amends provisions of the Law 9478 of August 6, 1997; and makes other provisions.

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

**CHAPTER I**

**PRELIMINARY PROVISIONS**

Article 1. This Law deals with the exploration and production of oil, natural gas and other fluid hydrocarbons in Pre-salt and strategic areas, establishes the Social Fund-SF and deals with its structure and font of resources, and amends the Law 9478 of August 6, 1997.

**CHAPTER II**

**TECHNICAL DEFINITIONS**

Article 2. For the purposes of this Law, the following definitions shall apply:

I – Production sharing: exploration and production regime for oil, natural gas and other fluid hydrocarbons where the contractors exercise, at their own risk and expense, the exploration, evaluation, development and production activities and, in the event of commercial discovery, acquire the right to appropriate cost, in oil, of the production volume corresponding to the royalties due, as well as the portion of surplus petroleum, according to terms and conditions to be established by contract;

II – Cost oil: portion of oil production, by-products and other fluid hydrocarbons required only in event of commercial discovery, corresponding to costs and investments carried out by the contractor in the execution of the activities of exploration, evaluation, development, production and decommissioning of the facilities, subject to restrictions, terms and conditions to be established by contract;

III – Profit oil: portion of the oil production, natural gas and other fluid hydrocarbons to be split between the Union and the contractor, according to criteria defined by contract, resulting from the difference between the total production volume and the portions related to the cost in oil, to the royalties due and, where applicable, the share referred to in article 43;

IV – Pre-salt area: subsurface region formed by a vertical prism of undefined depth, with a polygonal surface defined by the geographical coordinates of their apexes established in the Annex hereof, as well as other regions to be demarcated by Executive Branch act, according to the evolution of the geological knowledge;

V – Strategic area: region of interest for national development, to be demarcated by Executive Branch act, characterized by low exploratory risk and high potential for the production of oil, natural gas and other fluid hydrocarbons;

VI – Operator: Petróleo Brasileiro S.A. – Petrobras, responsible for running and executing, directly or indirectly, all exploration,

evaluation, development, production and decommissioning of exploration and production installation activities;

VII – Contractor: Petrobras or, when the case, the consortium formed by Petrobras with the bid winner for exploration and production of oil, natural gas and other fluid hydrocarbons under the production share regime;

VIII – Local content: proportion between the amount of goods produced and the services rendered in the Country for execution of the contract and the total amount of the goods used and the services rendered for that purpose;

IX – Production unitization: procedure aimed at dividing production yield and the rational use of the Union’s natural resources, through the unitizing of the development and production regarding the deposit that extends beyond the block granted to the contractor under the production share regime;

X – Measurement point: location to be defined in the development plan of each field where the volumetric measurement of the oil or natural gas produced is carried out, according to regulation by the National Agency of Petroleum, Natural Gas and Biofuels – ANP;

XI – Share point: local where the production of oil, natural gas and other fluid hydrocarbons is divided between the Union and the contractor, pursuant to the respective production share contract;

XII – Signing bonus: fixed value owed the Union by the contractor, to be paid at the moment of signature and pursuant to the respective production share contract; and

XIII – Royalties: financial compensation owed the Federal District, the States and Municipalities, as well as the Union’s direct administration bodies, owing to the production of oil, natural gas and other fluid hydrocarbons under the production share regime, pursuant to paragraph 1 of article 20 of the Federal Constitution.

## CHAPTER III

### PRODUCTION SHARE REGIME

#### Section I

##### General Provisions

Article 3. The exploration and production of oil, natural gas and other fluid hydrocarbons, in Pre-salt and strategic areas shall be contracted by the Union under the production share regime, pursuant to this Law.

Article 4. Petrobras shall be the operator of all blocks contracted under the production share regime, being, for this reason, entitled to minimum interest in the consortium provided for in article 20.

Article 5. The Union shall not undertake the exploration, evaluation, development and production risks arising out of the production share contracts.

Article 6. The costs and investments necessary for the performance of the production share contract shall be fully borne by the contractor, being responsible, in the event of commercial discovery, for its reimbursement pursuant to clause II of article 2°.

Sole Paragraph. The Union, by means of a specific fund to be established by law, may participate in the investments in the exploration, evaluation, development and production activities in the Pre-salt and strategic areas; in such event, it will assume the risks corresponding to its participation, pursuant to the respective contract.

Article 7. Prior to the contracting under the production share regime, the Ministry of Mines and Energy may, on a direct basis

or through the ANP, promote the evaluation of the potential in the Pre-salt and strategic areas.

Sole Paragraph. Petrobras may be directly contracted to carry out exploratory studies necessary for the evaluation provided for in the initial paragraph.

Article 8. The Union, through the Ministry of Mines and Energy, shall enter into the production share contracts:

I – directly with Petrobras, waiving bid; or

II – through auction-type bid.

Paragraph 1. Management of contracts mentioned in the initial paragraph shall be performed by public enterprise to be established for such purpose.

Paragraph 2. The public enterprise mentioned in paragraph 1 of this article shall not undertake the risks and shall not bear the costs derived from the activities of exploration, evaluation, development production and decommissioning of exploration and production installations, arising out of production share contracts.

## Section II

### Competencies of the National Council on Energy Policy

Article 9. The competencies of the National Council on Energy Policy – CNPE include, among others set for by the law, to propose to the President of the Republic:

I – the contracting timing for blocks under the production share regime, observing the energy policy and the development of the national industry for the supply and goods and services;

II – the blocks intended for direct contracting with Petrobras under the production share regime;

III – the blocks intended for bidding process under the production share regime;

IV – the technical and economic parameters of the production share agreements;

V – the demarcation of other regions to be classified as Pre-salt areas and strategic areas, according to the evolution of geological awareness;

VI – the oil commercialization policy intended for the Union in the production share contracts; and

VII – the commercialization policy for natural gas derived from the production share contracts, observing the priority supply in the domestic market.

## **Section III**

### **Competencies of the Ministry of Mines and Energy**

Article 10. The Ministry of Mines and Energy shall have the following competencies, among others:

I – to plan the use of oil and natural gas;

II – to propose to the CNPE, after consulting with the ANP, the definition of the blocks to be object of concession or production share;

III – to propose to the CNPE the following technical and economic parameters of the production share contracts:

a) criteria for definition of surplus oil of the Union;

b) minimum percentage of surplus oil of the Union;

c) minimum interest of Petrobras in the consortium provided for in article 20, which shall not be inferior to thirty percent (30%).

d) restrictions, terms and conditions for the calculation and appropriation, by the contractor, of the cost in oil and the production volume corresponding to royalties due.

e) minimum local content and other criteria related to the development of the national industry; and

f) value of the signing bonus, as well as the portion to be allocated to the public enterprise dealt with in paragraph 1 of article 8;

IV – Establish guidelines to be observed by the ANP to promote the bidding process set forth in clause II of article 8, as well as to prepare the initial tender protocols and draft production share contracts; and

V – Approve initial tender protocols and draft production share contracts prepared by the ANP.

Paragraph 1. At the end of each half year, the Ministry of Mines and Energy shall issue the report on the activities related to the production share contracts.

Paragraph 2. The report shall be published within thirty (30) days after closing half year, securing full access to the public.

## **Section IV**

### **Competencies of the National Agency of Petroleum, Natural Gas and Biofuels**

Article 11. The ANP shall have the following competencies, among others defined by law:

I – promote technical studies to support the Ministry of Mines and Energy in demarcating blocks that shall constitute object of the production share contract;

II – prepare and submit for approval by the Ministry of

Mines and Energy the share contract act and the initial tender protocols, in the event of bid.

III – promote the bidding rounds provided for in clause II of article 8 hereof;

IV – enforce best practices in the oil sector;

V – analyze and approve, according to the provisions of clause IV of this article, the plans for exploration, evaluation and development of the production, as well as the annual work and production plans regarding the production share contracts; and

VI – to regulate and inspect the activities performed under the production share regime, pursuant to clause VII of article 8 of Law 9478 of August 6, 1997.

## **Section V**

### **Direct Contracting**

Article 12. The CNPE shall propose to the President of the Republic, cases in which, seeking to preserve national interest and fulfillment of other energy policy objectives, Petrobras shall be directly contracted by the Union for the exploration and production of oil, natural gas and other fluid hydrocarbons under the production share regime.

Sole Paragraph. The contracting parameters mentioned in the initial paragraph shall be proposed by the CNPE, pursuant to clause IV of article 9 and item III of article 10, where applicable.

## Section VI

### Bidding Process

Article 13. The bidding process for contracting under the production share regime shall comply with the provisions of this Law, the rules to be issued by the ANP and with the relevant tender protocol.

Article 14. Petrobras may participate in the bidding process provided for in clause II of article 8, in order to expand its minimum interest defined in “c” of clause III of article 10.

### Subsection I

#### Tender Protocol

Article 15. Tender protocol shall be accompanied by the respective basic draft contract and shall indicate:

- I – block object of the production share contract;
- II – bidding process judgment criterion, pursuant to article 18;
- III – minimum percentage of surplus oil of the Union;
- IV – formation of consortium provided for in article 20 and the respective minimum interest of Petrobras;
- V – restrictions, terms, criteria and conditions for the calculation and appropriation, by the contractor, of the cost in oil and the production volume corresponding to the royalties due;
- VI – criteria for definition of surplus oil of the contractor;
- VII – minimum exploratory program and the estimated corresponding investments;

VIII – minimum local content and other criteria related to the development of the national industry;

IX – value of the signing bonus, as well as the portion to be allocated to the public enterprise dealt with in paragraph 1 of article 8;

X – bidding process rules and phases;

XI – rules applicable to the joint participation of enterprises in the bidding process;

XII – list of documents required and the criteria for technical, legal, economic–financial and fiscal qualification of the bidders;

XIII – the guarantee to be submitted by the bidder for its qualification;

XIV – term, venue and time in which the interested parties will be given the data, studies and other elements and information necessary for bid preparation, as well as the cost of their acquisition; and

XV – venue, time and form for submitting bids.

Article 16. Where the joint participation of enterprises in the bidding process is allowed, the tender protocol shall contain the following requirements, among others:

I – evidence of public or private commitment of formation of consortium, set forth in article 20, signed by the bidders;

II – appointment of leading enterprise in the bidding process, without prejudice of joint responsibility of other bidders;

III – presentation, by each of the bidding enterprises, of the documents required for the purposes of evaluating the technical and economic–financial qualification of the consortium to be formed; and

IV – prohibition of the participation of one same enterprise

jointly or individually in more than one bid in the bidding process for the same block;

Article 17. The tender protocol shall contain the requirement that the foreign company to bid on an individual basis or jointly with other enterprises shall submit, along with its bid in a separate envelope:

I – evidence of technical capacity, financial competence and legal and fiscal status;

II – full content of their instruments of incorporation, and evidence that they are organized and regularly operational, pursuant to the laws of their countries;

III – appointment of a legal representative with the ANP, with special powers to carry out acts and assume responsibilities regarding the bidding process and the bid submitted; and

IV – in the event of winning bid, commitment to establishing an enterprise according to Brazilian laws, with headquarters and management in Brazil.

## **Subsection II**

### **Judgment of Bidding Process**

Article 18. Judgment of the bidding process shall identify the most advantageous bid, according to criteria of highest surplus in oil for the Union, respecting the minimum percentage pursuant to “b” of clause III of article 10.

## Section VII

### Consortium

Article 19. When Petrobras is directly contracted or, in the event of being single winning bidder, it shall form a consortium with the public enterprise dealt with in paragraph 1 of article 8 of this Law, according to provisions of article 279 of Law 6404 of December 15, 1976.

Article 20. The winning bidder shall form a consortium with Petrobras, and with the public enterprise dealt with in paragraph 1 of article 8 of this Law, according to provisions of article 279 of Law 6404 of December 15, 1976.

Paragraph 1. Petrobras' participation in the consortium shall implicate adherence to tender protocol rules and winning bid terms.

Paragraph 2. The proprietary rights and obligations of Petrobras and the other contractors shall be proportional to their interest in the consortium.

Paragraph 3. The consortium formation contract shall indicate Petrobras as responsible for the execution of the contract, without prejudice to the joint responsibility of the consortium members before the contracting party or third parties, pursuant to paragraph 2 of article 8 hereof.

Article 21. The public enterprise dealt with in paragraph 1 of article 8 shall be part of the consortium as representative of Union's interest in the production share contract.

Article 22. The operational committee of the consortium shall be responsible for its management.

Article 23. The operational committee shall be composed of representatives of the public enterprise dealt with in paragraph 1 of article 8 and the other consortium members.

Sole Paragraph. The public enterprise dealt with in paragraph 1 of article 8 shall indicate half of the operational committee members, including its president, and the other consortium members shall indicate the other members of the committee.

Article 24. The operational committee shall:

I – define the exploration plans to be submitted for analysis and approval by the ANP;

II – define plan for evaluation of discovery of oil deposits and natural gas, to be submitted for analysis and approval by the ANP;

III – declare commerciality of each deposit discovered and define plan for field production development, to be submitted for analysis and approval by the ANP;

IV – define the annual work plans, to be submitted for analysis and approval by the ANP;

V – analyze and approve budgets related to the exploration, evaluation, development and production activities set forth in the contract;

VI – supervise operations and approve accounting of costs borne;

VII – define terms of production unitization agreement to be entered into with owner of the adjoining area, pursuant to Chapter IV of this Law; and

VIII – other duties defined in production share contract;

Article 25. The president of the operational committee shall have power of veto and casting vote, as provided for in the production share contract.

Article 26. The signing of the production share contract shall be subject to proof of filing of deed of incorporation of consortium in the Public Trade Registry domicile of its headquarters.

## Section VIII

### Production Share Contract

Article 27. The production share contract shall envisage two (2) phases:

I – the exploration phase, which shall include the activities of evaluation and possible discovery of oil or natural gas, in order to determine its commerciality; and

II – the production phase, that shall include the development activities.

Article 28. The production share contract for oil, natural gas and other fluid hydrocarbons shall not extend to any other natural resource, and the operator shall be held responsible for making known its discovery, pursuant to clause I of article 30.

Article 29. Essential clauses of the production share contract:

I – definition of the block object of contract;

II – contractor’s obligation to assume exploration, evaluation, development and production risks;

III – indication of guarantees to be offered by the contractor;

IV – right of the contractor to appropriate the cost in oil, enforceable only in case of commercial discovery;

V – restrictions, terms, criteria and conditions for the calculation and appropriation, by the contractor, of the cost in oil and the production volume corresponding to the royalties due;

VI – criteria for calculating the value of oil or natural gas, based on market prices, specifications of the product and the location of the field.

VII – rule and terms for splitting the surplus in oil, which may include criteria related to economic efficiency, profitability,

production volume and variation of oil and natural gas prices, observing the percentage set forth by article 18;

VIII – duties, composition, operation and decision-taking process and resolution of disputes in the scope of the operational committee;

IX – accounting rules, as well as follow-up and control procedures for exploration, evaluation, development and production activities;

X – rules to carry out activities, at contractor's own risk and expense, which shall not imply in any obligation to the Union or accounting in the value of cost in oil;

XI – term of exploration phase and conditions for its extension;

XII – minimum exploratory program and conditions for its review;

XIII – criteria for formulation and review of production, exploration and development plans, as well as the respective work plans, including the measurement and share points of oil, natural gas and other fluid hydrocarbons produced;

XIV – obligation, by the contractor, to provide the ANP and the public enterprise dealt with in paragraph 1 of article 8 with reports, data and information regarding execution of the contract;

XV – criteria regarding the relinquishment and abandonment of areas by the contractor, including the removal of equipment and installations, and reversion of assets;

XVI – penalties applicable in the event of default on contractual obligations;

XVII – procedures related to the transfer of rights and obligations regarding the contract, pursuant to article 31;

XVIII – rules on settling disputes, which may envisage conciliation and arbitration;

XIX – contract term, limited to thirty-five (35) years, and the conditions for termination;

XX – amount and payment terms for signing bonus;

XXI – the mandatory submission of periodical inventory on the greenhouse gas (GHG) emissions, of which to be published, including copy to the National Congress;

XXII – submission of contingency plan regarding incidents involving oil spills, natural gas, other fluid hydrocarbons and their by-products; and

XXIII – mandatory execution of environmental audit for the entire operational process of production and distribution of oil and natural gas originated from the Pre-salt area.

Article 30. Petrobras, in the capacity of production share contract operator, shall:

I – communicate the discovery of any oil deposit, natural gas or any other fluid hydrocarbons or minerals to the operational committee and the ANP;

II – submit for approval of the operational committee, evaluation plan for discovery of oil deposits, natural gas and other fluid hydrocarbons, to determine their commerciality;

III – carry out evaluation of oil deposits and natural gas discovery in terms of evaluation plan approved by the ANP, submitting a commerciality report to the operational committee;

IV – submit field production development plan to operational committee, as well as work and production plans, containing timetables and budgets;

V – adopt best practices of oil industry by complying with applicable norms and technical and scientific procedures, and applying proper recovery techniques, aimed at the rationalization of production and control of declining reserves; and

VI – forward all data and documents regarding activities carried out to the operational committee.

Article 31. The assignment of rights and obligations regarding the production share contract shall only occur upon prior and explicit authorization by the Ministry of Mines and Energy, and after consulting with the ANP, observing the following conditions:

I – preservation of the contractual object and its conditions;

II – compliance, by the assignee, with the technical, economic and legal requirements established by the Ministry of Mines and Energy; and

III – exercise the preemptive right over the other consortium members, in the proportion of their interest in the consortium.

Sole Paragraph. Petrobras may only assign the interest in the production share contract that it obtains as bid winner, pursuant to article 14.

Article 32. The production share contract shall terminate upon:

I – expiration of its term;

II – agreement between the parties;

III – resolution reasons provided for in it;

IV – the end of the exploration phase, in the event no commercial discovery has been made, as defined in the contract;

V – by exercising the right of withdrawal by the contractor in the exploration phase, provided the minimum exploratory program has been fulfilled or the amount corresponding to the unfulfilled portion has been paid, as set forth in the contract; and

VI – refusing to secure production unitization agreement, after decision by the ANP.

Paragraph 1. The relinquishment of areas shall not result in any obligations for the Union nor shall it grant the contractor any right of indemnification for the services and goods.

Paragraph 2. In the event of termination of the production share contract, the contractor shall remove equipment and assets that are not object of reversion, being obligated to remedy or indemnify for the damage arising out of its activities and undertake environmental recovery action as established by the relevant bodies.

## CHAPTER IV

### PRODUCTION UNITIZATION

Article 33. The unitization procedure for production of oil, natural gas and other fluid hydrocarbons shall be implemented when it is observed that the deposit extends beyond the block granted or contracted under the production share regime.

Paragraph 1. The concessionaire or contractor under the production share regime shall inform the ANP that the deposit shall be object of production unitization agreement.

Paragraph 2. The ANP shall determine the term for the interested parties to enter into a production unitization agreement, in compliance with CNPE guidelines.

Article 34. The ANP shall regulate procedures and guidelines for preparation of the production unitization agreement, which shall establish:

I – the interest of each of the parties in the unitized deposit, as well as hypotheses and review criteria;

II – the development plan for the area object of production unitization; and

III – dispute resolution mechanisms.

Sole Paragraph. The ANP shall monitor negotiation between the interested parties on terms of production unitization agreement.

Article 35. The production unitization agreement shall appoint the operator of the respective deposit.

Article 36. The Union, represented by the public enterprise referred to in paragraph 1 of article 8 and based on the evaluations carried out by the ANP, shall, in cases where the deposits from the Pre-salt polygon and the strategic areas extend to areas which are not granted or shared, enter into a production unitization agreement, whose terms and conditions shall bind the future concessionaire or contractor under the production share regime.

Paragraph 1. The ANP shall provide the public enterprise referred to in paragraph 1 of article 8 with all the information necessary for the production unitization agreement.

Paragraph 2. The exploration and production regime to be adopted in the areas referred to in the initial paragraph is regardless of regime effective in the adjacent areas.

Article 37. The Union, represented by the ANP, and after due evaluations, shall enter into a production unitization agreement with the interested parties, whose terms and conditions shall bind the future concessionaire, in cases where the deposit is not located in the Pre-salt polygon or strategic areas and extends to areas which are not granted.

Article 38. The ANP may contract Petrobras directly, in order to carry out the evaluation activities of the deposits provided for in articles 36 and 37.

Article 39. The production unitization agreements shall be submitted for previous approval by the ANP.

Sole Paragraph. The ANP shall manifest within sixty (60) days after receiving agreement proposal.

Article 40. At the end of the term referred to in paragraph 2 of article 33 and, in the absence of agreement between the parties, the ANP shall determine, within one hundred and twenty (120)

days and based on technical report, how rights and obligations over the deposit will be appropriated and notify the parties to enter into the production unitization agreement.

Sole Paragraph. Refusal, of any of the parties, to enter into a production unitization agreement, shall imply in the resolution of the production concession or share contracts.

Article 41. Development and production of the deposit shall be suspended while the production unitization agreement is awaiting approval, except in the cases authorized and under the terms defined by the ANP.

## CHAPTER V

### GOVERNMENTAL REVENUES IN PRODUCTION SHARE REGIME

Article 42. The production share regime shall have the following governmental revenues:

I – royalties; and

II - signing bonus.

Paragraph 1. Royalties correspond to the financial compensation for the exploration of oil, natural gas and other fluid hydrocarbons referred to in paragraph 1 of article 20 of the Federal Constitution, and their inclusion in the cost calculation in oil is hereby prohibited.

Paragraph 2. The signing bonus is not part of the cost in oil; it corresponds to a fixed value due to the Union by the contractor, and shall be established by the production share contract and paid at the moment of the signing.

Article 43. When the block is located onshore, the production share contract shall contain a clause determining the payment of

share, in local currency, equivalent to one percent (1%) of the oil or natural gas production to the landowners where the block is located.

Paragraph 1. The share referred to in the initial paragraph shall be proportionally distributed in relation to the production carried out in the regularly traced out properties on the block surface, and its inclusion in the cost calculation in oil is hereby prohibited.

Paragraph 2. The calculation of the third-party share, referred to in the initial paragraph shall be made by the ANP.

Article 44. The provisions of article 50 of Law 9478 of August 6, 1997 shall not apply to the production share contracts.

## CHAPTER VI

### COMMERCIALIZATION OF UNION'S OIL, NATURAL GAS AND OTHER FLUID HYDROCARBONS

Article 45. The oil, natural gas and other fluid hydrocarbons consigned to the Union shall be commercialized under Brazilian private law, upon bid waiver, according to the commercialization policy referred to in clauses VI and VII of article 9.

Sole Paragraph. The public enterprise dealt with in paragraph 1 of article 8, representing the Union, may contract Petrobras directly, upon bid waiver, as trader agent of oil, natural gas and other fluid hydrocarbons referred to in the initial paragraph.

Article 46. The revenue derived from commercialization referred to in article 45 shall be directed to the Social Fund, according to articles 47 through 60.

# CHAPTER VII

## SOCIAL FUND – SF

### Section I

#### Definition and Purpose of Social Fund – SF

Article 47. It is herewith established the Accounting and Social Fund – SF, linked to the Presidency of the Republic, aimed at raising resources for social and regional development, in the form of programs and projects to combat poverty and promote development of:

- I – education;
- II – culture;
- III – sports;
- IV – public health;
- V – science and technology;
- VI – the environment; and
- VII – measures to reduce and adapt to climate changes.

Paragraph 1. The programs and projects referred to in the initial paragraph shall observe the Multiannual Plan (PPA), the Budgetary Guidelines Law (LDO) and the respective provisions allocated in the Annual Budgetary Law (LOA).

Paragraph 2. (VETOED.)

Article 48. The SF aims at:

- I – constituting long-term public savings based on revenues accrued by the Union;
- II – offering a way to raise resources for social and regional

development, as provided for in article 47; and

III – reducing income and price fluctuations in the domestic economy arising out of income variations generated by oil exploration and production activities and other non-renewable resources.

Sole Paragraph. The SF is hereby prohibited to directly or indirectly grant guarantees.

## Section II

### Social Fund Resources – SF

Article 49. Constitute Social Fund resources:

I – quota value of signing bonus amount allocated to Social Fund by production share contracts;

II – quota value of the royalties allocated to the Union, minus those consigned to its specific bodies, as provided for in the production share contracts, pursuant to regulations;

III – revenues derived from the commercialization of the Union’s oil, natural gas and other fluid hydrocarbons, pursuant to the law;

IV – royalties and the special share from areas located in the Pre-salt polygon contracted under the concession regime, consigned to the Union’s direct management, in compliance with paragraphs 1 and 2 of this article;

V – results from financial applications on its cash equivalents;  
and

VI – other resources consigned to SF according to the law.

Paragraph 1. Law 9478 of August 6, 1997, takes effect with the following amendments:

“Art. 49. ....

Paragraph 3. In the Pre-salt areas contracted under the concession regime, the quota value of royalties allocated to the Union’s direct administration shall be fully consigned to the Accounting and Financial Social Fund – SF, set forth by specific law, aimed at raising resources for social and regional development in the form of programs and projects to combat poverty and develop education, culture, sports, public health, science and technology, the environment, and reduction and adaptation to climate change. Being its allocation to specific bodies dealt with in this article forbidden. (NR)

“Art. 50. ....

Paragraph 4. In the Pre-salt areas contracted under the concession regime, the quota value of special share allocated to the Union’s direct administration shall be fully consigned to the Accounting and Financial Social Fund – SF, set forth by specific law, aimed at raising resources for social and regional development in the form of programs and projects to combat poverty and develop education, culture, sports, public health, science and technology, the environment and reduction and adaptation to climate change. Being its allocation to specific bodies dealt with in this article forbidden”. (NR)

Paragraph 2. The performance of the provisions in paragraph 1 of this article shall comply with the transition rule, at the Executive Branch’s discretion, established pursuant to the regulations”.

## Section III

### Social Fund Investment Policy

Article 50. The Social Fund investment policy aims at seeking profitability, safety and liquidity in its applications and ensuring its economic and financial sustainability to fulfill the purposes defined in articles 47 and 48.

Sole Paragraph. Social Fund investments and applications shall preferably be allocated to assets overseas, aimed at reducing income and price volatility in the domestic economy.

Article 51. Social Fund resources for application in programs and projects referred to in article 47 shall result from the return on capital.

Sole Paragraph. After establishing Social Fund and ensuring its economic and financial sustainability, the Executive Branch may, pursuant to the law, propose the use of a percentage of resources on the principle be applied for the purposes set forth in article 47, in the initial stage of formation of fund savings.

Article 52. The Social Fund investment policy shall be defined by the Finance Management Committee of the Social Fund (CGFFS).

Paragraph 1. The CGFFS composition and operation shall be established by the Executive Branch, ensuring the participation of the Treasury Minister, Planning Minister, Budget and Management and the President of the Central Bank of Brazil.

Paragraph 2. The members of the CGFFS shall not receive any compensation for performing of their duties.

Paragraph 3. The expenses regarding the operation of the CGFFS shall be borne by the Social Fund.

Article 53. The CGFFS shall define:

I – amount to be annually redeemed from Social Fund, after ensuring its financial sustainability;

II – minimum profitability expected;

III – type and level of risk that may be assumed in carrying out investments, as well as terms to minimize risks;

IV – minimum and maximum percentages of resources to be invested overseas and in the Country;

V – minimum capitalization to be attained before any transfer for the purposes and objectives defined in this Law.

Article 54. The Union, at CGFFS' discretion, may contract federal financial institutions to act as Social Fund operating agents, who shall be entitled to compensation for services rendered.

Article 55. The Union may participate, as sole shareholder, in specific investment funds, using resources from the Fund.

Sole Paragraph. The specific investment fund dealt with in this article shall be constituted by federal financial institution, observing the rules referred to in clause XXII of article 4 of Law 4595 of December 31, 1964.

Article 56. The investment funds dealt with in article 55 shall be of private nature and have proper resources separated from shareholder and administrator, subject to proper rights and obligations.

Paragraph 1. The paying-in of investment fund shares shall be authorized by Executive Branch act, after consulting with the CGFFS.

Paragraph 2. The investment fund shall be aimed at promoting application in assets in Brazil and overseas.

Paragraph 3. The investment fund shall respond for its

obligations with assets and rights comprising its equity, and the shareholder shall only pay up for the subscribed shares.

Paragraph 4. The dissolution of the investment fund shall be according to its bylaws, and its resources shall return to Social Fund.

Paragraph 5. No Federal tax or social contribution shall levy on the credit, foreign exchange and insurance operations, or on yields and profits from the investment fund.

Paragraph 6. The investment fund shall prepare Annual Reports according to the applicable law and as set forth in its bylaws.

Article 57. The investment fund bylaws shall define, without limitation, the application policies, criteria and levels of profitability and risk, operational issues of the administrative and financial management and rules for the prudential supervision of investments.

## **Section IV**

### **Management of Social Fund**

Article 58. It is herewith established the Deliberative Council of the Social Fund (CDFS), whose duty shall be to propose, to the Executive Branch, after consulting with related Ministries, priority and allocation of resources redeemed from the Social Fund for the purposes established in article 47, observing the PPA, the LDO and the LOA.

Paragraph 1. The composition, competencies and operation of the CDFS shall be established by Executive Branch act.

Paragraph 2. The members of the CDFS shall not receive any remuneration for performing their duties.

Paragraph 3. The allocation of resources for programs and projects defined as priority by the CDFS is subject to prior establishment of goals, execution term and evaluation plans, pursuant to provisions set forth in the PPA.

Paragraph 4. The CDFS shall submit projects and programs for thoughtful quantitative and qualitative evaluation during all the execution phases, monitoring the effective impacts on the population and regions of intervention, with the support of public institutions and research universities.

Paragraph 5. Social Fund resources consigned to programs and projects dealt with in article 47 shall comply with reduction of regional inequalities criteria.

Article 59. The annual reports and results from Social Fund applications shall be prepared and calculated on a biannual basis, in the terms provided for by the central accounting entity dealt with in item I of article 17 of Law 10180 of February 6, 2001.

Sole Paragraph. Social Fund supervision rules shall be defined by Executive Branch Act, without prejudice to the inspection by the relevant bodies.

Article 60. The Executive Branch shall forward a performance report on the Social Fund to the National Congress on a quarterly basis, as provided for in Fund regulation.

## CHAPTER VIII

### FINAL AND TRANSITORY PROVISIONS

Article 61. The special customs regimes and tax incentives applicable to the oil sector in Brazil shall apply to the activities of exploration, evaluation, development and production dealt with in this Law.

Article 62. Law 9478 of August 6, 1997, takes effect with the following amendments:

“Article 2 .....

.....

VIII — defining the blocks to be object of concession or production share;

IX — defining strategy and policy for economic and technological development of the oil, natural gas and other fluid hydrocarbons industry, as well as their supply chain;

X — promoting the increase of minimum rates of local content for goods and services, to be observed in bids, as well as in concession and production share contracts, pursuant to clause IX.

.....”(NR)

“Article 5. The economic activities dealt with in article 4 of this Law shall be regulated and inspected by the Union, and may be exercised, upon concession, authorization or contracting under the production share regime, by enterprises organized under Brazilian laws, with headquarters and management in the Country.” (NR)

“Article 8 .....

.....

II — promoting studies seeking to demarcate blocks, for the purpose of granting concessions or contracting, exploration, production and development activities under production share regime;

.....” (NR)

“Article 21. The Union owns the exploration and production rights over oil, natural gas and other fluid hydrocarbons in national territory, including onshore area, territorial waters, continental shelf and exclusive economic zone, and the ANP shall be responsible for management, with the exception of competencies of other bodies and entities exclusively set forth by the law.” (NR)

“Article 22 .....

.....

Paragraph 3. The Ministry of Mines and Energy shall have unrestricted and free access to the assets referred to in the initial paragraph hereof, with the objective to carry out studies and sectorial planning, and maintaining confidential to which it is subject, whenever necessary.” (NR)

“Article 23. The oil and natural gas exploration, development and production activities shall be performed through concession contracts, preceded by the bidding process pursuant to this Law, or under production share regime in the Pre-salt and strategic areas, pursuant to specific law.

.....” (NR)

Article 63. While the public enterprise dealt with in paragraph 1 of article 8 is not established, its competencies shall be exercised by the Union, through the ANP, and they may also be delegated by means of Executive Branch act.

Article 64. (VETOED.)

Article 65. The Executive Branch shall establish specific

policy and measures seeking to increase the participation of small and medium-sized enterprises in the exploration, development and oil production and natural gas activities.

Sole Paragraph. The Executive Branch shall regulate the provisions of the initial paragraph within one hundred and twenty (120) as of the date of publication of this Law.

Article 66. The Executive Branch shall regulate the provisions of this Law.

Article 67. Paragraph 1 of article 23 and article 27 of Law 9478 of August 6, 1997 are hereby revoked.

Brasilia, August 22, 2010; 189th year of Independence and 122nd of the Republic.

**LUIZ INÁCIO LULA DA SILVA**

Guido Mantega

Miguel Jorge

Márcio Pereira Zimmermann

Paulo Bernardo Silva

Sergio Machado Rezende

Carlos E. Esteves Lima

Alexandre Rocha Santos Padilha

Luis Inácio Lucena Adams

ANNEX  
PRE-SALT POLYGON  
POLYCONIC COORDINATES/SAD 69/MC54

Longitude (W)	Latitude (S)	Apexes
5828309.85	7131717.65	1
5929556.50	7221864.57	2
6051237.54	7283090.25	3
6267090.28	7318567.19	4
6435210.56	7528148.23	5
6424907.47	7588826.11	6
6474447.16	7641777.76	7
6549160.52	7502144.27	8
6502632.19	7429577.67	9
6152150.71	7019438.85	10
5836128.16	6995039.24	11
5828309.85	7131717.65	1

**MESSAGE FROM THE PRESIDENT OF THE REPUBLIC  
NUMBER 707, OF DECEMBER 22, 2010  
DOU (OFFICIAL FEDERAL GAZETTE)  
OF DECEMBER 23, 2010**

**Mr. President of the Federal Senate,**

I hereby communicate Your Excellency that, pursuant to paragraph 1 of article 66 of the Constitution, I have decided to partially veto the Bill 5940 of 2009 (n°. 7/10 in the Federal Senate) for being contrary to the public interest, which “Deals with the exploration and production activities of oil, natural gas

and other fluid hydrocarbons under the production share regime in Pre-salt Polygon and other strategic areas. The law also creates the Social Fund and changes provisions of Law 9478 of August 6, 1997; and makes other provisions”.

After consulting with the Ministries of Treasury, of the Planning, Budget and Management, and of Science and Technology, they manifested in favor of the veto to the following provision:

Paragraph 2 of article 47

“Paragraph 2. Fifty percent (50%) out of the total revenue referred to in article 51, accrued by the Fund dealt with in the initial paragraph, shall be applied in programs dedicated to the development of the public, basic and higher education, being at least eighty percent (80%) of which intended for basic and childhood education.”

Reasons for the veto

The Social Fund is a long-term savings account aimed at ensuring the intergenerational benefits derived from the exploration of the Pre-salt. In this context, it is not adequate to previously establish which areas shall have priority among those already envisaged, to which education is included. For this reason, the Deliberative Council of the Social Fund was created, to be the interface body with the demands from the society, and will enable, over time, the definition of the redeemed resources.”

The Ministries of Treasury, of the Planning, Budget and Management, of Science and Technology and the Secretariat for Institutional Relations also manifested in favor of the veto to the provision transcribed as follows:

## Article 64.

“Article 64. Except for the Union’s interest, as well as the allocation provided for in “d” of clause II of article 49 of Law 9478 of August 6, 1997, the remaining quota value of royalties and special share derived from production share or concession contracts dealt with in the same Law, when the production occurs in the continental shelf, territorial sea or exclusive economic zone, shall be divided among the States, the Federal District and the Municipalities as follows:

I – Fifty percent (50%) for the formation of a special fund to be distributed among all the States and the Federal District, according to the allocation criteria of the State Participation Fund (FPE); and

II – Fifty percent (50%) for the formation of a special fund to be distributed among all the Municipalities, according to the allocation criteria of the Municipalities Participation Fund (FPM).

Paragraph 1. The States and Municipalities that suffer any decrease in revenues due to this Law shall be compensated by the Union, with resources derived from its quota value in royalties and special share, as well as with oil profits, both in the concession and production share regime, until they have reestablished themselves through increased offshore oil production.

Paragraph 2. The Union resources consigned to compensation dealt with in the Paragraph 1 shall be re-passed on to the States and Municipalities that suffer a decrease in revenues due to this Law, simultaneously to re-pass made to other States and Municipalities.

Paragraph 3. The royalties correspond to the participation in oil exploration, natural gas and other fluid hydrocarbon

results dealt with in paragraph 1 of article 20 of the Federal Constitution, and inclusion in the calculation of the cost in oil is hereby prohibited, as well as any other type of refund or compensation to contractors, except for the provisions of paragraph 1 of article 50 of Law 9478 of August 6, 1997.

#### Reasons for the veto

The way the article was written does not establish the formula or the rate to obtain the total amount of resources derived from royalties. Likewise, the percentage of such values that shall correspond to the Union's interest is not established, nor, therefore, the percentage to be allocated to the States, the Federal District and the Municipalities. Such data are essential for the calculation of the quota value to be divided among the Union and the other entities, pursuant to the initial paragraph and the clauses, and possible compensation, provided for in paragraph 2.

In addition, the proposal does not clarify whether the rules for division of the resources are limited to future agreements or are applicable to those already in force. Moreover, it is clear that no criterion has been adopted to compensate the revenue to the States and Municipalities by the Union. In both cases, the consequence could be major litigation among the diverse entities.

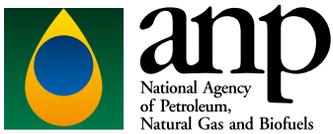
These are, Mr. President, the reasons that led me to veto the provisions mentioned above in the bill concerned, which I now submit for evaluation by the Honorable Members of the National Congress.











Ministry of  
**Mines and Energy**

