

LAWS OF KENYA

THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT

CHAPTER 308

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THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT

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

Commencement: 16th November, 1986

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

1. This Act may be cited as the Petroleum (Exploration and Production) Act.
2. In this Act, unless the context otherwise requires—“block” means a block constituted as provided by section 7.
“block” means a block constituted as provided by section 7;
“contractor” means the person with whom the Government concludes a petroleum agreement;
“crude oil” means
 - (a) all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure;
 - (b) asphalt and ozokerites; and
 - (c) the liquid hydrocarbons known as distillate or condensate or natural gas liquids obtained from natural gas by condensation or extraction;

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

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

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

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

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

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

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

(3) The Government may conduct petroleum operations either

(a) through an oil company established by the Government to conduct those operations; or

(b) through contractors in accordance with petroleum agreements ; or

(b) in such other manner as may be necessary or appropriate

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

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

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

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

(3) The Minister-

- (a) shall make available model petroleum agreements to potential contractors as a basis for the negotiation for petroleum agreements;
- (b) shall negotiated petroleum agreements with potential contractors by such procedures as secure the most favourable conditions for the Government, except that the Minister may cause any investigations, negotiations or consultations to be made or carried out as he considers necessary before entering into a petroleum agreement and may reject any application made by a potential contractor if satisfied that the rejection is in the best interest of Government;
- (c) shall supervise petroleum operations carried out under a petroleum agreement;
- (d) may take any action, decision, or give any permission or consent or exercise any other control as may be necessary or desirable for the purposes of this Act or the regulations made thereunder.

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

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

- (a) the opening of areas for petroleum operations;
- (b) the terms and conditions applicable to the grant of exploration permits under section 5(2);

- (c) the manner in which applications may be made for petroleum agreements;
- (d) the periods of time for exploration and production ;
- (e) the minimum exploration work and expenditure obligations to be fulfilled by a contractor;
- (f) the fees or any other payments to be made by the contractor under a petroleum agreement;
- (g) the procedure for the assignment of rights and obligations of a contractor under petroleum agreements;
- (h) the registration of contractors;
- (i) the manner in which reports, data, information and accounts shall be submitted by the contractor;
- (j) the procedures of inspection and control of a contractor's operations
- (k) the conduct petroleum operations, conservation of petroleum resources and measures relating to safety, environmental protection and the avoidance of waste, pollution and accidents
- (l) procedures regarding the revocation or termination of petroleum agreements.
- (2) Notwithstanding subsection (1), the Minister may make regulations which he considers necessary for giving effect to the provisions of this Act.

- 7.**
- (1) For the purposes of this Act, the Minister may, by notice in the Gazette, divide Kenya and the continental shelf into numbered areas, and each area shall be described as a "block".
 - (2) The Minister may reserve blocks to be exploited by the Government.
 - (3) The Minister may require a contractor to relinquish portions of a block to which a petroleum agreement relates in the manner specified in the agreement.

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

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

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

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

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

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

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

11. (1) There shall be established a training fund or the purpose of training Kenyan nationals in the petroleum industry.

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

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

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

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

SUBSIDIARY LEGISLATION**Regulations under section 6****THE PETROLEUM (EXPLORATION AND PRODUCTION) REGULATION**

1. These Regulations may be cited as the Petroleum (Exploration and Production) Regulations.

2. (1) A petroleum agreement shall be negotiated on the basis of the model production sharing contract substantially in the form set out in the Schedule.

(2) No person other than a company incorporated or registered in Kenya under the Companies Act may enter into a petroleum agreement with the Government.

3. (1) The Minister may, by notice, declare the opening of blocks for petroleum operations in respect of which he is prepared to receive applications for the negotiation of petroleum agreements and may, by that notice invite the applications and specify the conditions subject to which, including the period within which, the applications may be made.

(2) An application for negotiation of a petroleum agreement shall be in writing and shall specify-

- (a) the name, nationality and the nature of the business of the applicant;
- (b) the name and nationality of every director of the applicant;
- (c) the block to which the application applies;
- (d) the terms on which the applicant proposes to negotiate

(3) The Minister may, for the purpose of and pursuant to section 8 of the Act, require evidence or other information concerning the financial and technical qualifications of any applicant and such evidence and information shall be treated as confidential.

4. (1) The Minister shall maintain a register of contractors in such form as may be proper to record the name, address and other necessary particulars of the contractor, or the assignment of a petroleum agreement.

(2) The Minister shall delete from the register any contractor in respect of whom a petroleum agreement has been terminated.

(3) Every entry in, and deletion from, the register shall be notified by the Minister by notice in the Gazette.

5. (1) Applications for the grant of an exploration permit under section 5 (2) of the Act to carry out geological and geophysical survey may be made to the Minister in respect of any open block and shall be in writing specifying –

- (a) the name, nationality, nature of business and the principal place of business of the applicant;
- (b) the name and nationality of every director where the applicant is a company, corporation or other body corporate;
- (c) the delineation of the area proposed to be covered by the exploration permit;
- (d) the purpose of the proposed exploration to be undertaken and the description and estimated duration of the exploration.

(2) The Minister may call for such additional information as he may require under this regulation to enable him assess the suitability of a grant of an exploration permit.

(3) Without prejudice to section 70 of the Interpretation and General Provisions Act, the Minister may attach such terms as he may consider necessary to the exploration permit including terms relating to the conduct of the exploration operations, inspection by the Minister, submission of data, samples and reports to the Minister and confidentiality thereof, payments to be made by the grantee, liability and indemnity.

(4) A non-exclusive exploration permit granted under section 5 (2) of the Act to prospect and carry out geological and geophysical surveys shall not confer upon the grantee any right to drill any well for production of petroleum or any other well of a depth greater than a depth approved by the Minister.

(5) The Minister may grant more than one exploration permit for any particular area but a permit shall be in respect of the area for which it is granted only.

(6) An exploration permit shall not confer on the grantee any right of priority with respect to application for negotiation of or entering into a petroleum agreement with the Minister.

6. (1) Neither a petroleum agreement nor an exploration permit granted under section 5 (2) of the Act shall of itself authorize a contractor or its subcontractors or the grantee of a permit to enter upon or occupy or exercise any rights in-

- (a) any burial ground or land in the vicinity or precincts of any church, mosque or other sacred buildings or places of worship;
- (b) any area situated within fifty metres of any building in use, or any reservoir or dam;
- (c) any public road within the meaning of the Public Roads and Roads of Access Act, railway, or street within the meaning of the streets Adoption Act;
- (d) any area situated within a municipality or township within the meaning of the Local Government Act;
- (e) any land within one thousand metres of the boundaries of any aerodrome under the Civil Aviation Act;
- (f) any area of land declared to be a National Park or National Reserve under the Wildlife (Conservation and Management) Act, but nothing in this regulation shall be construed as preventing directional drilling into the subsurface of the areas of land and places specified in subparagraphs (a) to (f) from adjacent land by a contractor and its subcontractors or by the grantee of a permit.

(2) Entry into any area of land or place specified in paragraph (1) shall be subject to the consent of the competent authority.

(3) For the purpose of paragraph (2) “competent “authority” means the person or body for the time being empowered under the relevant written law or custom to authorize access to the area of land or place.

7. The fees and other payments payable under or by virtue of a petroleum agreement or an exploration permit shall be as determined by the Minister from time to time.

8. Nothing in these regulations shall be construed as preventing more than one application being made by the same person in respect of different blocks or more than one petroleum agreement or exploration permit being entered into or granted to the same person.