

June 15, 2006

# **Transitional Federal Government of Somalia**

## **Petroleum Law**

**Law No. •, dated •, 2006**

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**Law No. •, dated •, 2006**

## **Petroleum Law of Somalia**

Pursuant to Articles 28 and 67 of the Transitional Federal Charter of the Somali Republic, the Transitional Federal Parliament enacts the following that shall have the force of law throughout the Somali Republic:

### **CHAPTER I - GENERAL PROVISIONS**

#### **Article 1 Definitions**

In this Law:

**"Authorisation"** means a Reconnaissance Authorisation, a Production Sharing Agreement, a Surface Access Authorisation, or any agreement made by the Government in respect of such an authorisation or agreement;

**"Authorised Area"** means the area from time to time the subject of an Authorisation;

**"Authorised Person"** means:

- (a) in respect of a Production Sharing Agreement, a Contractor; and
- (b) in respect of any other Authorisation, the Person to whom the Authorisation has been granted;

**"Calendar Year"** means a period of twelve months commencing on January 1 and ending on the following December 31, according to the Gregorian calendar;

**"Contract Area"** means the Authorised Area under a Production Sharing Agreement;

**"Contractor"** means a Person with whom the Somalia Petroleum Authority has made a Production Sharing Agreement;

**"Control"** means, in relation to a Person, the power of another Person to secure:

- (i) by means of the holding of shares or the possession of voting power, in or in relation to the first Person or any other Person; or
- (ii) by virtue of any power conferred by the articles of association of, or any other document regulating, the first Person or any other Person,

that the affairs of the first Person are conducted in accordance with the wishes or directions of that other Person;

"**Crude Oil**" means crude mineral oil and all liquid hydrocarbons in their natural state or obtained from Natural Gas by condensation or extraction;

"**Decommission**" means, in respect of the Authorised Area or a part of it, as the case may be, to abandon, decommission, transfer, remove and/or dispose of structures, facilities, installations, equipment and other property, and other works, used in Petroleum Operations in the Authorised Area, to clean up the Authorised Area and make it good and safe, and to protect the environment;

"**Good Oil Field Practice**" has the meaning given in Section 25.1;

"**Government**" means the Government of the Somali Republic, acting through its appropriate officials or ministry, as determined by the Council of Ministers;

"**Inspector**" has the meaning given in Section 28.1;

"**Law**" means this Petroleum Law, as amended or modified from time to time;

"**Ministry**" means the ministry from time to time responsible for the administration of this Law, as established by the Government, and which shall initially be the Ministry of Petroleum;

"**Minister**" means the minister of the Government from time to time responsible for the administration of this Law, as established by the Government, and which shall initially be the Ministry of Petroleum;

"**Natural Gas**" means all gaseous hydrocarbons and inerts, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction of liquid hydrocarbons from wet gas, but not Crude Oil;

"**Operator**" means an Authorised Person or other Person named in an Authorisation or unitisation agreement to organise and supervise Petroleum Operations;

"**Parliament**" means the Transitional Federal Parliament of Somalia or any successor federal parliament that may be established pursuant to a constitution adopted by referendum of the people of Somalia;

"**Person**" includes a corporation or other legal entity;

"**Petroleum**" means:

- (i) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;  
or
- (ii) any mixture of naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state.

"**Petroleum Operations**" means activities for the purposes of:

- (i) prospecting for Petroleum;

- (ii) exploration for, development, production, sale or export of Petroleum; or
- (iii) construction, installation or operation of any structures, facilities or installations for the development, production and export of Petroleum, or decommissioning or removal of any such structure, facility or installation;

**"Production Sharing Agreement"** means an agreement made or given pursuant to Article 13, pursuant to which the Contractor receives a share of the Petroleum resulting from the conduct of Petroleum Operations as compensation for its activities;

**"Public Officer"** means a civil servant or equivalent individual, members of Parliament or of Government, Judges or Public Prosecutors, or the Somalia Petroleum Authority;

**"Reconnaissance Authorisation"** means an authorisation granted pursuant to Article 12;

**"Regulations"** shall mean those rules and regulations issued from time to time by the Ministry with respect to the management of Petroleum Operations, as contemplated by this Law;

**"Reservoir"** means a porous and permeable underground formation containing an individual and separate natural accumulation of producible hydrocarbons (oil and/or gas) that is confined by impermeable rock and/or water barriers and is characterized by a single natural pressure system;

**"State-Owned Contractor"** means a Person incorporated under the laws of Somalia which is Controlled, directly or indirectly, by a government of a State of Somalia;

**"Somalia Petroleum Authority"** or **"SPA"** means the authority established pursuant to Article 8;

**"Somalia Petroleum Corporation"** or **"SPC"** means the corporation established pursuant to Article 9;

**"Surface Access Authorisation"** means an authorisation granted pursuant to Article 14;

**"Territory of Somalia"** consists of all lands and waters over which Somalia has sovereignty, including its territorial sea and its continental shelf, and further includes its exclusive economic zone where, pursuant to accepted norms of international law, Somalia has sole and exclusive rights for the purposes of exploring for, developing and producing its natural resources;

**"Somalia"** means the Somali Republic; and

**"Well"** means a perforation in the earth's surface dug or bored for the purpose of producing Petroleum.

## **Article 2 Purpose**

This Law shall have as its purpose:

- 2.1 to confirm the sovereign rights of Somalia to explore, develop, produce, utilize and manage its Petroleum resources, located onshore and offshore;
- 2.2 to allow efforts to be undertaken to determine the extent of the Petroleum resources which may exist in Somalia, by creating a regulatory, contractual and financial regime that allows the reconnaissance and exploration of Petroleum, and development, production and marketing of any Petroleum which is discovered;
- 2.3 if Petroleum resources are discovered in Somalia, to provide maximum benefit to Somalia and its people from the development and production of Petroleum;
- 2.4 to ensure the protection, conservation and preservation of the environment in the conduct of Petroleum Operations;
- 2.5 to encourage and support foreign investment which occurs to attain the other purposes of this Law;
- 2.6 to establish the Somalia Petroleum Authority as the competent regulatory authority to regulate Petroleum Operations, applying regulatory principles of equality, openness, accountability, transparency and non-discrimination;
- 2.7 to establish Somalia Petroleum Corporation as an entity Controlled by the Government for the participation in Petroleum Operations in Somalia;
- 2.8 to comply with international initiatives to ensure transparency of extractive industries, by enhancing public financial management and accountability, recognizing that management of natural resource wealth for the benefit of Somali citizens is in the domain of the Government, to be exercised in the interests of national development; and
- 2.9 to ensure fair treatment of specified persons holding rights pursuant to Petroleum grants made by the Somali Democratic Republic on or before December 30, 1990.

### **Article 3** **Territorial Scope of Law**

This Law applies to the Territory of Somalia.

### **Article 4** **Material Scope of Law**

- 4.1 **Scope.** This Law applies to Petroleum Operations.
- 4.2 **Other Minerals.** The existence of an Authorisation in force in a given area does not prevent authorisation of the exploration and production of mineral substances other than Petroleum, provided that such other activity does not hinder the proper performance of the Petroleum Operations.

## **Article 5 Title to Petroleum**

- 5.1 ***Title to Petroleum.*** Title to, and control over, Petroleum in the Territory of Somalia are public property and are vested in Somalia, in trust for its people.
- 5.2 ***Transfer of Title after Recovery.*** A Person may acquire title to Petroleum only after it has been lawfully recovered under a Production Sharing Agreement issued pursuant to this Law.

## **Article 6 Exercise by the Ministry and SPA of its Powers and Functions**

- 6.1 ***Exercise of Power and Functions.*** The Ministry and the Somalia Petroleum Authority shall exercise their powers and discharge their functions under this Law and the Regulations, including under Authorisations made hereunder, in such a manner as:
- 6.1.1 to ensure sound resource management;
  - 6.1.2 to ensure that Petroleum is developed in a way that minimises damage to the natural environment, is economically sustainable and contributes to the long-term development of Somalia;
  - 6.1.3 is reasonable; and
  - 6.1.4 is consistent with Good Oil Field Practice.
- 6.2 ***Opportunity for Representations.*** Before exercising any such power or discharging any such function, the Ministry and the Somalia Petroleum Authority may give opportunity to Persons likely to be affected to make representations to it, and shall give consideration to the relevant representations received by it.

## **Article 7 Functions of Ministry**

- 7.1 ***Functions of Ministry.*** The Ministry shall perform the following functions:
- 7.1.1 make decision on strategies, plans and policies for the development of the Petroleum industry;
  - 7.1.2 issue regulations with respect to the management of Petroleum Operations as recommended to the Ministry by the Somalia Petroleum Authority as contemplated by this Law;
  - 7.1.3 make decision on policies and forms of cooperation with foreign entities, including the approval of the forms of Model Authorisations prepared by the Somalia Petroleum Authority;

- 7.1.4 manage the process of substituting Production Sharing Agreements for rights granted by the Somali Democratic Republic on or before December 30, 1990, as contemplated by Section 48.1;
- 7.1.5 establishing policies to promote or restrict Petroleum export to protect the interest of Somalia;
- 7.1.6 to monitor developments in Petroleum Operations in Somalia and in border regions close to Somalia; and
- 7.1.7 deal with regulators or government ministries and departments responsible for regulation in adjacent countries regarding Petroleum activities that may have cross-border impacts, such as cross-border Reservoirs or pipelines.

The Government may confer on the Ministry such additional functions in relation to the regulation and monitoring of Petroleum Operations and, where appropriate, associated matters connected with the functions for the time being of the Ministry as are appropriate.

7.2 ***Ministry Confidentiality.*** When staff of the Ministry perform their lawful functions, they shall be obligated to maintain the confidentiality of commercial secrets of persons and enterprises of which they become aware where the Ministry is satisfied that:

- 7.2.1 disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the functions of the Ministry, or could reasonably be expected to prejudice the person's competitive position; or
- 7.2.2 the information is financial, commercial, scientific or technical information that is confidential information supplied to the Ministry and the information has been consistently treated as confidential information by a person directly affected by the functions of the Ministry, and the Ministry considers that the person's interest in confidentiality outweighs the public interest in disclosure.

## **Article 8**

### **Establishment and Functions of Somalia Petroleum Authority**

- 8.1 ***Establishment of SPA.*** The Somalia Petroleum Authority is established by this Law as the competent regulatory authority to regulate Petroleum Operations.
- 8.2 ***Time of Formation.*** The SPA shall be formed and be entitled to exercise its powers on the date specified by the Government. Until that date, the functions and powers of the SPA shall be exercised by the Petroleum Regulatory Affairs department of the Ministry, and the other provisions of this Law shall be read accordingly. The Government shall cause the SPA to be formed once it is satisfied that the quantity of Petroleum Operations in Somalia are sufficient to justify the costs of establishing the SPA.
- 8.3 ***Membership of SPA.*** The Government shall appoint members to the SPA. There shall be not less than three and not more than seven members. A quorum of the SPA shall be

constituted by three members. Members shall hold office during good behavior for a period of at least four years, but may be removed for cause at any time by the Government. Cause for removal shall include any breach of Sections 8.8 or 8.9 or ceasing to be eligible to be a member under Section 8.5.

- 8.4 **Staff of SPA.** The Secretary-General and the other staff necessary for the proper conduct of the business of the SPA shall be appointed by the members of the SPA.
- 8.5 **Qualifications of Members.** A person is not eligible to be appointed or to continue as a member of the SPA if that person is not a Somali citizen or is, as owner, shareholder, director, officer, partner or otherwise, engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in Petroleum in Somalia or holds any bond, debenture or other security of a corporation engaged in any such business.
- 8.6 **Qualifications of Staff.** A person is not eligible to be appointed or to continue as staff of the SPA if that person is, as owner, shareholder, director, officer, partner or otherwise, engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in Petroleum in Somalia or holds any bond, debenture or other security of a corporation engaged in any such business.
- 8.7 **SPA Chair.** The Government shall designate one of the members to be Chairperson of the SPA and another of the members to be Vice-Chairperson of the SPA. The Chairperson is the chief executive officer of the SPA, and has supervision over and direction of the work and staff of the SPA. If the Chairperson is absent or unable to act or if the office is vacant, the Vice-Chairperson has all the powers and functions of the Chairperson.
- 8.8 **Duty of Care.** Members and staff of the SPA shall perform their duties faithfully, do their work according to law and be impartial and honest. They may not take advantage of their positions to seek illegitimate gains.
- 8.9 **SPA Confidentiality.** When the SPA and its members and staff perform their lawful functions, they shall be obligated to maintain the confidentiality of commercial secrets of persons and enterprises of which they become aware where the SPA is satisfied that:
- 8.9.1 disclosure of the information could reasonably be expected to result in a material loss or gain to a person directly affected by the functions of the SPA, or could reasonably be expected to prejudice the person's competitive position; or
- 8.9.2 the information is financial, commercial, scientific or technical information that is confidential information supplied to the SPA and the information has been consistently treated as confidential information by a person directly affected by the functions of the SPA, and the SPA considers that the person's interest in confidentiality outweighs the public interest in disclosure.

- 8.10 ***SPA Office.*** The SPA's principal office shall be in the municipality designated by the Ministry.
- 8.11 ***Regional Offices of SPA.*** The SPA shall keep under review the volume of regulatory work that relates to persons whose Petroleum Operations fall wholly within the boundaries of a particular State of Somalia. Where the SPA finds that the volume of such work justifies the creation of a regional office of the SPA in that State, or that a regional office should be established for more than one State, it shall so advise the Ministry. The Ministry may then authorise the establishment of such a regional office and the Government shall appoint three members to the SPA, who shall reside in that State. Two of the SPA members from that region shall be selected from a list of at least five eligible and qualified candidates presented by the government of that State. The provisions of this Law regarding appointment, term, dismissal, eligibility, confidentiality and other matters shall apply equally to SPA members serving in such a regional office. Applications, Authorisations, decisions, directions or orders which the SPA is required or entitled to handle and that relate to Petroleum Operations that are wholly within the boundaries of a State which the regional office of the SPA has been established to serve shall be handled by that office and the regional SPA members, who shall do so in accordance with the rules of practice and procedure of the SPA. In performing its duties, the regional office of the SPA shall observe national principles, policies, objectives and standards and adhere to national guidelines specified by the SPA.
- 8.12 ***Duty of SPA.*** The SPA shall regulate Petroleum Operations according to this Law and other laws of Somalia.
- 8.13 ***Functions of SPA.*** The SPA shall perform the following functions:
- 8.13.1 to regulate, through the issuance, monitoring, modification and enforcement of Authorisations and the issuance of decisions, orders and directions under this Law and the Regulations, the conduct of Petroleum Operations in accordance with and subject to the provisions of this Law;
  - 8.13.2 to ensure proper qualification of Authorised Persons, including without limitation, ensuring that Authorised Persons are commercially viable, credit-worthy persons with the technical capability to perform their obligations;
  - 8.13.3 to implement and ensure compliance by the relevant persons with any Authorisation, rule, decision, order or direction issued by the SPA in accordance with this Law; and
  - 8.13.4 study and keep under review matters relating to the Petroleum industry which the Ministry requests the SPA to monitor, and report from time to time on such matters and recommend such measures as it considers necessary or advisable in the public interest for the control and development of that industry.

The Government, on the recommendation of the Ministry, may confer on the SPA such additional functions in relation to the regulation, monitoring and control of Petroleum

Operations and, where appropriate, associated matters connected with the functions for the time being of the SPA as are appropriate.

8.14 ***Powers of SPA.*** When performing its functions according to law, the SPA shall have the following powers:

- 8.14.1 to grant Reconnaissance Authorisations in accordance with Section 12.1;
- 8.14.2 to grant Production Sharing Agreements in accordance with Section 13.1;
- 8.14.3 to grant Surface Access Authorisations in accordance with Section 14.1;
- 8.14.4 to grant exemptions in accordance with Article 23;
- 8.14.5 to modify and revoke any Authorisation in accordance with this Law, the Regulations and the provisions of the Authorisation;
- 8.14.6 to make and enforce directions to ensure compliance with Authorisations;
- 8.14.7 inquire into, hear and determine any matter where it appears to the SPA that any person has failed to do any act, matter or thing required to be done by this Law, the Regulations or by any Authorisation, decision, order or direction made by the SPA, or that any person has done or is doing any act, matter or thing contrary to or in contravention of this Law, the Regulations or any such Authorisation, decision, order or direction;
- 8.14.8 order and require any person to do at any specified time and in any manner prescribed by the SPA, any act, matter or thing that such person is or may be required to do under this Law, the Regulations or any Authorisation or rule, or any decision, order or direction made or given under this Law or the Regulations; and forbid the doing or continuing of any act, matter or thing that is contrary to this Law, the Regulations or any such Authorisation, rule, decision, order or direction;
- 8.14.9 in connection with the foregoing, to gather information, including compelling the provision of information from any Authorised Person;
- 8.14.10 assess penalties for the breach of any Authorisation, decision, order or direction of the SPA, in accordance with Chapter VII;
- 8.14.11 work cooperatively with foreign regulators, ministries or departments responsible for regulation in adjacent countries regarding cross-border Petroleum Operations or pipelines;
- 8.14.12 to make rules in accordance with Sections 8.17 and 8.18; and
- 8.14.13 of its own motion inquire into, hear and determine any other matter or thing that under this Law or the Regulations it may inquire into, hear and determine.

- 8.15 **Investigation.** It shall be the duty of the SPA to investigate or cause to be investigated whether any relevant requirement or condition of an Authorisation has been or is being contravened.
- 8.16 **Cooperation with SPA.** When the SPA and its members and staff perform their lawful functions, persons and enterprises under inspection or investigation shall cooperate and provide truthful and relevant documents and materials. Such persons and enterprises may not refuse to cooperate, obstruct inspection or investigation or conceal relevant documents or materials.
- 8.17 **SPA Operational Rules.** The SPA may, following consultation with the Ministry, make such rules as appears to it requisite or expedient having regard to its duties and functions, including rules requiring or prohibiting certain commercial conduct of Authorised Persons so as to ensure the orderly functioning of the Petroleum industry in Somalia. The SPA may only make such rules after consulting with Authorised Persons and with persons or bodies appearing to it to be representative of persons likely to be affected by the rules. Rules made pursuant to this Section 8.17 may not have the effect of amending or materially altering the provisions or conditions of any Authorisation. Amendments and material alterations to Authorisations may only occur pursuant to Article 23.
- 8.18 **SPA Procedural Rules.** The SPA may make rules respecting the sittings of the SPA, the procedure for making applications, representations and complaints to the SPA and the conduct of hearings before the SPA, and the manner of conducting any business before the SPA, and generally, the carrying on of the work of the SPA, the management of its internal affairs and the duties of its staff. When making these rules, the SPA shall seek to incorporate principles of openness, transparency, accountability and independence.
- 8.19 **Annual Report.** As soon as may be after the end of year, but not later than six months thereafter, the SPA shall cause a report on the performance of its functions during that year to be provided to the Ministry.
- 8.20 **Public Documents.** The SPA shall make available to the public:
- 8.20.1 the rules established by the SPA pursuant to Sections 8.17 and 8.18;
  - 8.20.2 decisions, orders and directions of the SPA;
  - 8.20.3 penalties imposed by the SPA;
  - 8.20.4 annual reports of the SPA contemplated by Section 8.19;
  - 8.20.5 the model forms of any Reconnaissance Authorisation, Surface Access Authorisation or Production Sharing Agreement; and
  - 8.20.6 the Authorisations issued by the SPA.
- 8.21 **Ministry Role re SPA.** The Ministry may provide general policy guidance to the SPA in connection with the performance of the SPA's functions under this Law and the

Regulations. Policy guidance provided by the Ministry shall be published by the Ministry in the same manner as other legislative and policy matters are published. When performing its duties under this Law or the Regulations, the SPA shall take into account the policy directives issued by the Ministry. The Ministry should not intervene in any specific issue or matter that may be brought before the SPA.

- 8.22 **Appeal.** Except as provided in this Section 8.22, every decision, order or direction of the SPA is final and conclusive. An appeal may be made to the SPA from a decision, order or direction of a regional office of the SPA on any question. An appeal may be made to Supreme Court from a decision, order or direction of the SPA on a question of law, or of jurisdiction, or bias on the part of a member of the SPA who participated in the decision, order or direction, or of compliance with the rules of procedural fairness described in Section 8.23. No appeal lies from a decision of the SPA on any other grounds. An application for appeal must be made within sixty days after the release of the decision, order or direction sought to be appealed.
- 8.23 **Procedural Fairness.** In performing its functions under this Law or the Regulations, the SPA shall:
- 8.23.1 give notice to interested persons of any application received or hearing that the SPA is to conduct in the manner provided in this Law or the Regulations;
  - 8.23.2 conduct hearings with respect to the issuance, revocation or suspension of Authorisations in those circumstances provided for in this Law or the Regulations;
  - 8.23.3 give written reasons for its decisions, orders and directions, which reasons shall be given at the time of the decision, order or direction; and
  - 8.23.4 where a decision, order or direction is made after a hearing, render its decisions based on the evidence, argument and information presented at the hearing.
- 8.24 **Fees, Levies and Charges.** The Ministry may, based on a recommendation from the SPA, and for the purposes of recovering all or a portion of such costs as the SPA determines to be attributable to its responsibilities under this Law or the Regulations, impose reasonable fees, levies or charges on any enterprise that holds an Authorisation issued pursuant to this Law or the Regulations, and provide for the manner of calculating the fees, levies and charges in respect of the person or company and their payment to the Ministry of Treasury. The SPA may also specify the rate of interest or the manner of calculating the rate of interest payable by an enterprise on any fee, levy or charge not paid by the person or company on or before the date it is due.

## Article 9

### Establishment and Functions of Somalia Petroleum Corporation

- 9.1 **Formation of SPC.** Somalia Petroleum Corporation is established as a juridical person in the form of a corporation.

- 9.1.1 The head office of Somalia Petroleum Corporation shall be at a place in Somalia that the Ministry shall designate.
- 9.1.2 Somalia Petroleum Corporation has, in respect of its powers, all the rights, powers, privileges and capacity of a natural person.
- 9.1.3 This Law shall apply to the Somalia Petroleum Corporation in the same terms as is applicable to any other Authorised Person, with the required adaptations.
- 9.2 ***Purpose of SPC.*** The purpose of the Somalia Petroleum Corporation is to be a commercial enterprise Controlled by the Government to conduct Petroleum Operations in Somalia. Somalia Petroleum Corporation shall be entitled to exercise the right of participation referred to in Section 24.1. Somalia Petroleum Corporation may acquire an Authorisation by direct acquisition or pursuant to a bid process conducted by the SPA in the same manner as any other Person.
- 9.3 ***SPC Board of Directors.*** Somalia Petroleum Corporation shall have a Board of Directors comprised of the Chairperson, the Managing Director and not fewer than three, but no more than seven, other directors.
- 9.3.1 The Chairperson is to be appointed by the Government to hold office during pleasure for a term that the Government considers appropriate.
- 9.3.2 The Managing Director is to be appointed by the Government to hold office during good behaviour for a term that the Government considers appropriate and may be removed for cause. The Managing Director is eligible for reappointment on the expiration of his or her term of office.
- 9.3.3 The other directors are to be appointed by the Government based on recommendations of the Ministry, for a term of no more than three years so as to ensure, as far as possible, the expiration in any one year of the terms of office of not more than half of the directors. Any other director is eligible for reappointment on the expiration of his or her term.
- 9.3.4 Subject to Section 9.3.5, no individual is eligible to be appointed or to continue as Chairperson, Managing Director or a director unless the individual is a Somali citizen.
- 9.3.5 When appointing the certain directors, the Ministry need not apply Section 9.3.4 where the Ministry is satisfied that an individual who is non-Somali citizen can assist Somalia Petroleum Corporation owing to his or her experience in the Petroleum industry; provided that the majority of directors (including the Chairperson and the Managing Director) shall be Somali citizens.
- 9.4 ***Role of SPC Board.*** The Board shall direct and manage the business and affairs of Somalia Petroleum Corporation.

- 9.4.1 The Board may, by resolution, make by-laws to regulate the business and affairs of Somalia Petroleum Corporation.
- 9.4.2 The Board may establish an Executive Committee, or any other committee or advisory group that the Board considers advisable, and determine its composition and duties and the tenure of its members.
- 9.4.3 The Board may delegate power to, and specify duties and authority of, the Executive Committee to act in all matters that are not by this Act or any by-law or resolution specifically reserved to be done by the Board.
- 9.4.4 The Chairperson shall carry out the duties determined by by-law.
- 9.4.5 The Managing Director is the chief executive officer of Somalia Petroleum Corporation and has, on behalf of the Board, the direction and management of the business and affairs of Somalia Petroleum Corporation with authority to act in all matters that are not by this Law or any by-law or resolution specifically reserved to be done by the Board or the Executive Committee. The Government may change the title of the Managing Director to such other title as it determines appropriate, so long as the functions of the holder of that office remain as chief executive officer.
- 9.4.6 If the Managing Director is absent or unable to act, or if the office of Managing Director is vacant, the Board may authorise an officer or employee of Somalia Petroleum Corporation to act as Managing Director, but that person may not act as Managing Director for a period of more than ninety days without the approval of the Government.
- 9.5 ***SPC Officers and Employees.*** Somalia Petroleum Corporation may employ such officers and employees, and may engage such agents, advisers and consultants, as it considers necessary to carry out the purpose of this Law and for the proper conduct of its business and Somalia Petroleum Corporation may fix the terms and conditions of their employment or engagement.
- 9.6 ***Remuneration of SPC Board.*** The Chairperson and each director, except the Managing Director and any director employed in the public service of Somalia, are entitled to be paid by Somalia Petroleum Corporation the remuneration fixed by the Ministry for their time to attend meetings of the Board or any committee of the Board and to perform their duties under this Law.
- 9.7 ***SPC Directors Expenses.*** Directors are entitled to be paid by Somalia Petroleum Corporation reasonable travel and living expenses incurred in connection with the performance of their duties under this Act while absent from their ordinary places of residence.
- 9.8 ***Remuneration of SPC Officers and Employees.*** Officers, employees, agents, advisers and consultants are entitled to be paid by Somalia Petroleum Corporation the remuneration, expenses and benefits that Somalia Petroleum Corporation may determine.

**Article 10**  
**Restrictions to Rights of Public Officers**

- 10.1 ***Conflict of Interest Restrictions.*** A Public Officer shall not acquire, attempt to acquire or hold:
- 10.1.1 an Authorisation or an interest, whether direct or indirect, in an Authorisation; or
- 10.1.2 a share in a corporation (or an affiliate of it) that holds an Authorisation.
- 10.2 ***Consequence of Contravention.*** Any instrument that grants or purports to grant, to a Public Officer, an interest, whether direct or indirect, in an Authorisation shall, to the extent of the grant, be void.
- 10.3 ***Relations.*** The acquisition or holding of an Authorisation, interest or share by the minor children or spouse of a Public Officer shall be deemed to be an acquisition or holding by the Public Officer.
- 10.4 ***Exception.*** This Article 10 does not apply to Public Officers who are directors, officers or employees of or consultants to Somalia Petroleum Corporation to the extent that their interest in an Authorisation is held by Somalia Petroleum Corporation.

**Article 11**  
**Graticulation**

For the purposes of this Law, the Territory of Somalia, or parts thereof, shall be divided into blocks according to a grid system which conforms to accepted international standards and norms of graticulation.

**CHAPTER II -AUTHORISATION OF PETROLEUM OPERATIONS**

**Article 12**  
**Reconnaissance Authorisations**

- 12.1 ***Power to Grant.*** The Somalia Petroleum Authority may grant a Reconnaissance Authorisation, in respect of a specified area, to a Person or a group of Persons.
- 12.2 ***Rights under Reconnaissance Authorisation.***
- 12.2.1 A Reconnaissance Authorisation grants a right to perform geological, geophysical, geochemical and geotechnical surveys in the Authorised Area.
- 12.2.2 The Reconnaissance Authorisation shall require the Authorised Person to report on the progress and results of such prospecting, and to maintain confidentiality with respect thereto.

- 12.2.3 Nothing in a Reconnaissance Authorisation authorises the holder to drill a Well or to have any preference or right to enter into a Production Sharing Agreement.
- 12.3 ***Overlapping Authorisations.*** Prior to granting a Reconnaissance Authorisation in respect of an area that is the subject of an existing Authorisation, the SPA shall give written notice to the holder of the existing Authorisation.
- 12.4 ***Surrender and Termination.***
- 12.4.1 The holder of a Reconnaissance Authorisation may surrender it at any time by written notice to the SPA, provided that the Authorised Person has fulfilled all its obligations thereunder.
- 12.4.2 If the holder has not complied with a condition to which the Reconnaissance Authorisation is subject, the SPA may terminate it by written notice to the holder after giving the holder a reasonable opportunity to cure the condition.

### **Article 13 Production Sharing Agreements**

- 13.1 ***Power to Grant.*** The Somalia Petroleum Authority may conclude a Production Sharing Agreement, in respect of a specified area, with a Person or a group of Persons provided that if a group, such group has entered into a joint operating agreement approved by the SPA under Section 20.1. Each Production Sharing Agreement shall be signed by the Minister, based on a recommendation from the SPA.
- 13.2 ***Qualification of Contractors.*** In order to be eligible to enter into a Production Sharing Agreement, a Person must:
- 13.2.1 have, or have access to, the financial capability, and the technical knowledge and technical ability, to carry out the Petroleum Operations in the Contract Area;
- 13.2.2 not have a record of non-compliance with principles of good corporate citizenship; and
- 13.2.3 be a limited liability corporation or entity with limited liability.
- 13.3 ***Exclusivity.***
- 13.3.1 Without prejudice to Article 14, or the right of the SPA to grant a Reconnaissance Permit, a Production Sharing Agreement grants to the Contractor the exclusive right to conduct Petroleum Operations in the Contract Area.
- 13.3.2 The Production Sharing Agreement may be limited to Crude Oil, Natural Gas or other constituents of Petroleum.

- 13.3.3 The initial contract area under a Production Sharing Agreement may not exceed 15,000 km<sup>2</sup>.
- 13.4 ***Notice of Discovery.***
- 13.4.1 A Contractor shall give written notice to the SPA within twenty four (24) hours whenever any Petroleum is discovered in its Authorised Area.
- 13.4.2 The Contractor shall provide such information relating to the discovery requested by the SPA.
- 13.5 ***Work Programmes, Plans & Budgets.*** A Production Sharing Agreement shall oblige the Contractor to carry on Petroleum Operations only in accordance with work programmes, plans and budgets approved by the SPA.
- 13.6 ***Required Provisions of PSA.*** A Production Sharing Agreement shall include provisions addressing the following matters:
- 13.6.1 a minimum work obligation to be performed during an exploratory phase of the term of the Production Sharing Agreement;
- 13.6.2 relinquishment of portions of the contract area during the exploratory phase;
- 13.6.3 financial terms respecting royalties (if any), and the sharing of Petroleum between the Contractor and the Government;
- 13.6.4 if appropriate, financial features other than royalties and sharing of Petroleum, including signature and production bonuses;
- 13.6.5 environmental provisions directed at protecting and preserving the environment;
- 13.6.6 if appropriate, obligations respecting the supply of Petroleum to the Somali domestic market, especially in emergency situations;
- 13.6.7 training and hiring of Somali citizens;
- 13.6.8 preference for the supply of Somali-sourced goods and services;
- 13.6.9 if appropriate, assurances of financial and contractual stability; and
- 13.6.10 international arbitration.
- 13.7 ***Taxation under PSA.***
- 13.7.1 A Production Sharing Agreement may provide that the Contractor is subject to corporate income tax in Somalia, or that it is exempt from corporate income tax in relation to the conduct of Petroleum Operations under that Production Sharing Agreement.

13.7.2 Corporations who are Contractors under a tax-exempt Production Sharing Agreement shall not be liable to pay corporate income tax in respect of the Petroleum Operations conducted under that Production Sharing Contract.

13.7.3 If a Production Sharing Agreement provides that the Contractor is exempt from corporate income tax, the financial provisions shall be adjusted appropriately to reflect the value to the Contractor of this exemption.

13.8 ***Surrender and Termination.***

13.8.1 The holder of a Production Sharing Agreement may surrender it at any time by written notice to the SPA, provided that the Contractor has fulfilled all its obligations thereunder.

13.8.2 If the Contractor has not complied with a condition to which the Production Sharing Agreement is subject, the SPA may terminate it by written notice to the Contractor after giving the Contractor a reasonable opportunity to cure the condition.

**Article 14**  
**Surface Access Authorisations**

14.1 ***Power to Grant.***

14.1.1 The Somalia Petroleum Authority may grant a Surface Access Authorisation, in respect of a specified area, to a Person or a group of Persons.

14.1.2 The SPA may not grant a Surface Access Authorisation in respect of an area that is the subject of a Production Sharing Agreement or a Reconnaissance Authorisation until it has taken into account any submissions made by the holders of such Authorisations in such a way that there is no undue interference with the rights of that other Authorised Person.

14.2 ***Rights Granted.***

14.2.1 A Surface Access Authorisation, while it remains in force, authorises the holder to do one or more of the following:

14.2.1.1 construct, install and operate structures, facilities and installations;  
and

14.2.1.2 carry out other works;

as specified in the Authorisation in the Authorised Area.

14.2.2 Nothing in a Surface Access Authorisation authorises the holder to drill a Well.

14.3 ***Surrender and Termination.***

14.3.1 A Surface Access Authorisation:

14.3.1.1 may be surrendered by the holder by written notice to the SPA, provided that the Authorised Person has fulfilled all its obligations thereunder; and

14.3.1.2 may be terminated by the SPA at any time by written notice to the holder, if the holder has not complied with a condition to which the Authorisation is subject after giving the holder a reasonable opportunity to cure the condition.

14.3.2 The SPA shall provide written notice of the surrender or termination to any Authorised Person in whose Authorised Area operations were authorised to be carried on by the Surface Access Authorisation concerned.

14.4 ***Coordination of Operations.*** The SPA may give a direction to the holders of Surface Access Authorisations and to other Authorised Persons regarding the coordination of their respective Petroleum Operations.

**Article 15**  
**Invitation to Apply**

15.1 ***Application for Authorisations.***

15.1.1 The Somalia Petroleum Authority shall invite, wherever possible by public notice, applications for Authorisations, which shall be the preferred method of granting such Authorisations.

15.1.2 Notwithstanding Section 15.1.1, the SPA may elect to award Authorisations through direct negotiation without issuing such invitations:

15.1.2.1 in the case of Surface Access Authorisations; or

15.1.2.2 in the case of all other Authorisations, where it is in the public interest to do so, based on a direction from the Ministry or the Government.

15.1.3 If the SPA grants an Authorisation without inviting applications, it shall provide reasons for its so doing to the Ministry and the Government.

15.1.4 The application shall be submitted in one of the official or second languages of Somalia or, in the event that they are written in any other language, be accompanied by an official translation into one of the official or second languages of Somalia, and shall be submitted in a closed envelope.

15.2 ***Contents of Invitation.***

- 15.2.1 An invitation shall specify the area concerned, the proposed activities, the criteria upon which applications will be assessed, the applicable fees (if any) to be paid with the application, and the time by which, and the manner in which, applications may be made and considered, through the public opening of bids.
- 15.2.2 Unless the invitation otherwise states, the SPA may choose not to award an Authorisation to any of the applicants.

15.3 ***Contents of Application.***

- 15.3.1 An application for an Authorisation shall include proposals for:
- 15.3.1.1 securing the health, safety and welfare of persons involved in or affected by the Petroleum Operations;
  - 15.3.1.2 protecting the environment, preventing, minimising and remedying pollution, and other environmental harm from the Petroleum Operations;
  - 15.3.1.3 training of, and giving preference in employment in the Petroleum Operations to, nationals of Somalia;
  - 15.3.1.4 commitments to benefit the local community in the Authorised Area and to minimise and mitigate any adverse effects of Petroleum Operations in the Authorised Area; and
  - 15.3.1.5 the acquisition of goods and services from Persons based in Somalia.
- 15.3.2 An Authorisation awarded to an applicant obliges it to comply with its proposals as mentioned in Section 15.3.1.

- 15.4 ***Due Consideration of Applications.*** The SPA shall not grant an Authorisation in respect of an area until it has given due consideration to all applications made in response to, and in compliance with, an invitation.

**Article 16**  
**Petroleum Operations Generally**

- 16.1 ***Third Party Access.*** Every Production Sharing Agreement and Surface Access Authorisation shall require that third party access be granted on reasonable terms and conditions.

16.2 ***Joint and Several.***

16.2.1 If there is more than one Authorised Person in respect of a particular Authorisation, the obligations and liabilities of the Authorised Person under an Authorisation are the obligations and liabilities of them all, jointly and severally.

16.2.2 With respect to a Production Sharing Agreement, the Somalia Petroleum Corporation and any State-Owned Contractor may be exempted by the SPA of the requirement set out in Section 16.2.1.

16.3 ***Effect of Violation of Laws.*** An Authorisation is void *ab initio*, if obtained in violation of the laws of Somalia, including laws concerning corruption.

**Article 17**  
**Environmental Protection**

17.1 ***Environmental Duties.*** Authorised Persons conducting Petroleum Operations are required to:

17.1.1 minimize ecological damage;

17.1.2 avoid waste of Petroleum;

17.1.3 prevent damage or waste of Petroleum-bearing strata;

17.1.4 prevent pollution and waste to land and structures, fresh water resources/aquifers, crops, marine and animal life;

17.1.5 prevent the escape of Petroleum into the environment through uncontrolled flows or discharges;

17.1.6 provide for emergency clean-up operations and procedures;

17.1.7 in appropriate circumstances, conduct an environmental base line study before commencing Petroleum Operations, and an environmental impact assessment of any major proposed Petroleum Operations; and

17.1.8 utilize Good Oil Field Practice in the restoration of the environment at the conclusion of Petroleum Operations.

17.2 ***Environmental Regulations.*** The Minister shall enact Regulations which more clearly define the obligations of an Authorised Person under Section 17.1.

## **Article 18** **Restitution and Reparation**

- 18.1 ***Requirement for Authorisation.*** No person shall conduct Petroleum Operations in the Territory of Somalia except pursuant to an Authorisation issued pursuant to this Law or the Regulations.
- 18.2 ***Restitution.*** Without prejudice to any criminal liability of that Person, a Person who engages in Petroleum Operations other than pursuant to an Authorisation shall:
- 18.2.1 make restitution to Somalia of an amount equal to the market value of Petroleum developed, produced or exported, together with late payment interest thereon at a rate not to exceed the legal rate of interest to be determined by the Ministry;
  - 18.2.2 either forfeit all infrastructure and equipment used in engaging in those Petroleum Operations, or remove such infrastructure and equipment or be liable for the payment of the costs of such removal; and
  - 18.2.3 clean-up pollution resulting from those Petroleum Operations, or reimburse the costs of clean-up to Somalia.
- 18.3 ***Quantum.*** The liabilities under Section 18.1 shall apply cumulatively, or not, as is determined to be appropriate by the SPA, with a view to place Somalia in the position in which it would have been were it not for the Petroleum Operations engaged in other than pursuant to an Authorisation.
- 18.4 ***Joint and Several Liability.*** The liabilities under Section 18.1 of Persons who, together, are engaged in, or have engaged in, Petroleum Operations are the liabilities of them all, jointly and severally.

## **Article 19** **Restrictions on Exercise of Rights**

- 19.1 ***Fair Compensation to Surface Owners.***
- 19.1.1 An Authorised Person shall not exercise any of the rights granted under an Authorisation or under this Law:
    - 19.1.1.1 on any public immovable property without the consent of the SPA;
    - 19.1.1.2 on any private immovable property of the State without the consent of the SPA; or
    - 19.1.1.3 on any private immovable property
- without payment of fair and reasonable compensation to the owner, as may be determined by the SPA.

- 19.1.2 The owner of any immovable property in an Authorised Area retains rights to the use of its land except in so far as the use interferes with Petroleum Operations.
- 19.1.3 An Authorisation may limit or otherwise control the use by an Authorised Person of public infrastructure, and the consumption of other natural resources, including trees, sand, gravel, rock and water.
- 19.1.4 An Authorisation does not constitute a waiver of the obligation to seek the written consent of responsible authorities, except as may be specifically described in the Authorisation.
- 19.2 ***No Interference with Lawful Offshore Activities.*** An Authorised Person shall not exercise any of the rights under an Authorisation or under this Law or the Regulations in a way that interferes with fishing, navigation or any other lawful offshore operation without the written consent of the responsible authority.
- 19.3 ***Compensation for Disturbance.***
- 19.3.1 The Authorised Person is liable to pay fair and reasonable compensation as determined by the SPA if, in the course of Petroleum Operations, it:
- 19.3.1.1 disturbs the rights of the owner of any immovable property, or causes any damage thereon; or
- 19.3.1.2 demonstrably interferes with fishing, navigation or any other lawful offshore activities.
- 19.3.2 Where the value of any rights have been enhanced by the Petroleum Operations, compensation payable in respect of such rights shall not exceed any amount which would be payable if the value had not been so enhanced.
- 19.4 ***Fair and Reasonable Compensation.*** What constitutes fair and reasonable compensation under this Article 19 shall be decided by the SPA, after having considered representations by interested parties.

## **Article 20**

### **Approvals by SPA**

- 20.1 ***Approval of Agreements.*** A joint operating agreement, a lifting arrangement and any agreement related to the Petroleum Operations, as well as any changes to such agreements, shall be subject to prior approval by the SPA. The SPA shall approve any such agreements or amendments where they are consistent with the Authorisations, the Law and the Regulations.

20.2 ***Approval of Change in Control.***

20.2.1 All changes in Control of an Authorised Person shall be subject to prior approval by the SPA.

20.2.2 Where a change in Control occurs without the prior approval of the SPA, the SPA may terminate the applicable Authorisation.

20.2.3 For the purposes of Section 20.2.1, change in Control includes a Person ceasing to be in Control (whether or not another Person becomes in Control), and a Person obtaining Control (whether or not another Person was in Control).

20.3 ***Approval of Transfers.*** Except with the prior written consent of the SPA (which consent may not be unreasonably withheld or delayed), or as explicitly provided in the terms of the Authorisation, no assignment, transfer, conveyance, novation, merger, encumbrance or other similar dealing in respect of an Authorisation shall be of any force or effect. The Regulations shall describe the criteria by which the SPA shall assess the suitability of its consent.

**Article 21**  
**Unitisation Contract**

21.1 ***Unitisation.***

21.1.1 If and when a Reservoir is discovered to lie partly within a Contract Area, and partly in another Contract Area:

21.1.1.1 the SPA may require by written notice the Contractors to enter into a unitisation agreement with each other for the purpose of securing the more effective and optimised production of Petroleum from the Reservoir; and

21.1.1.2 if no agreement has been reached within a period of eighteen (18) months from receipt of written notice as required in Section 21.1.1.1, the SPA shall decide on the unitisation agreement.

21.1.2 If and when a Reservoir is discovered to lie partly within a Contract Area and partly in an area that is not the subject of a Production Sharing Agreement:

21.1.2.1 the SPA may require by written notice the Contractor to enter into a unitisation agreement with the SPA for the purpose of securing the more effective and optimised production of Petroleum from the Reservoir; and

21.1.2.2 if no agreement has been reached within a period of eighteen (18) months from receipt of written notice as required in

Section 21.1.2.1, the SPA shall decide on the unitisation agreement, unless otherwise provided in the Production Sharing Agreement.

- 21.2 ***Unitisation Agreement.*** Without limiting the matters to be dealt with, the unitisation agreement shall define the amount of Petroleum in each area covered by the unitisation agreement, and shall appoint the Operator responsible for production of the Petroleum covered by the unitisation agreement.
- 21.3 ***Requirement of Approval.*** The SPA may approve the continued development or production of a Reservoir partly within a Contract Area under Section 21.2 only after it has approved or decided the unitisation agreement.
- 21.4 ***Approval of Changes.*** Any changes to the unitisation agreement shall be subject to prior approval by the SPA.

## **Article 22 Resolution of Disputes**

### **22.1 *SPA Role in Disputes.***

22.1.1 The SPA may inquire into and decide all disputes involving Persons engaged in Petroleum Operations, either:

22.1.1.1 among themselves, where agreements between them do not specify a dispute resolution mechanism; or

22.1.1.2 in relation to third parties (other than the Government) not so engaged, as long as these third parties accept the jurisdiction of the SPA for the resolution of the dispute.

22.1.2 The SPA may refuse to decide any dispute referred to it and, if it does so, it shall notify the parties to the dispute in writing.

22.1.3 The SPA may, taking into account all relevant circumstances, give any direction which may be necessary for the purpose of giving effect to its decision in proceedings pursuant to this Article 20, including ordering the payment, by any party to a dispute, to any other party to the dispute of such compensation as may be fair and reasonable.

### **22.2 *Disputes re Authorisations.***

22.2.1 If a dispute arises relating to the interpretation and/or application of the terms of an Authorisation between an Authorised Person and the SPA, the parties shall attempt to resolve that dispute by means of negotiation.

- 22.2.2 If the dispute cannot be resolved amicably by negotiation, either Party may submit the dispute to international arbitration under recognized rules, in a neutral venue, or to the Supreme Court, at the election of the submitting Party.

**Article 23**  
**Exemption from or Variation of Conditions**

The SPA may exempt an Authorised Person from complying with the conditions of its Authorisation, and may also agree to vary or suspend those conditions, either with or without conditions and either temporarily or permanently, provided that the SPA shall provide written reasons for its doing so to the Ministry. This Article 23 does not include the power to waive or suspend an obligation to pay any amount due under an Authorisation.

**CHAPTER III - SOMALIA PARTICIPATION**

**Article 24**  
**Somalia Petroleum Corporation and State Participation in Petroleum Operations**

- 24.1 ***SPC and State Participation.*** Each Production Sharing Agreement shall stipulate:
- 24.1.1 the right of Somalia Petroleum Corporation to participate in Petroleum Operations, up to a maximum participation right of 30%; and
  - 24.1.2 the right of a State-Owned Contractor which is Controlled by the State of the Somalia Republic in which the Authorized Area is located to participate in Petroleum Operations, up to a maximum participation right of 10%.
- 24.2 ***Decision to Participate.*** The decision by Somalia Petroleum Corporation to participate in Petroleum Operations under a particular Production Sharing Agreement shall be made by the Minister, if a recommendation to participate has been made by Somalia Petroleum Corporation. The decision by a State-Owned Contractor which is Controlled by the State of the Somalia Republic in which the Authorized Area is located to participate in Petroleum Operations shall be made by the government of the State in which the Authorized Area is located.
- 24.3 ***Timing of Decision.*** The participation rights under Section 24.1 may occur during any phase of Petroleum Operations in accordance with the terms and conditions established in the Production Sharing Agreement.

**CHAPTER IV - CONDUCT OF PETROLEUM ACTIVITIES**

**Article 25**  
**Work Practices**

- 25.1 ***Good Oil Field Practice.*** Petroleum Operations shall be conducted in accordance with Good Oil Field Practice, that is, in accordance with such practices and procedures employed in the petroleum industry worldwide by prudent and diligent operators under

conditions and circumstances similar to those experienced in connection with the relevant aspect or aspects of the Petroleum Operations, principally aimed at guaranteeing:

- 25.1.1 conservation of Petroleum resources, which implies the utilization of adequate methods and processes to maximize the recovery of hydrocarbons in a technically and economically sustainable manner, with a corresponding control of reserves decline, using principles of maximum efficient production rates and other conservation principles, and to minimize losses at the surface;
  - 25.1.2 operational safety, which entails the use of methods and processes that promote occupational security and the prevention of accidents;
  - 25.1.3 environmental protection, that calls for the adoption of methods and processes which minimize the impact of Petroleum Operations on the environment;
- 25.2 **Conservation.** Production of Petroleum shall take place:
- 25.2.1 in such a manner that as much as possible of the Petroleum in place in each individual Petroleum deposit, or in several deposits in combination, will be produced;
  - 25.2.2 in accordance with Good Oil Field Practice and sound economic principles; and
  - 25.2.3 in such a manner that waste of Petroleum or reservoir energy is avoided.
- 25.3 **Continuous Evaluation.** Contractors shall carry out continuous evaluation of production strategy and technical solutions, shall take the necessary measures in order to achieve this, and shall inform the SPA of any relevant changes, in accordance with Good Oil Field Practice.

## **Article 26 Decommissioning**

- 26.1 **Timing of Decommissioning.** An Authorised Person shall Decommission on the earlier of:
- 26.1.1 termination of the Authorisation; and
  - 26.1.2 when no longer required for Petroleum Operations;
- and, in either case:
- 26.1.3 except with the consent in writing of the SPA and in accordance with the conditions of the consent; or
  - 26.1.4 unless the Authorisation otherwise provides.

- 26.2 ***Detail in Authorisations and Regulations.*** Authorisations shall contain provisions addressing the Decommissioning of Petroleum Operations. The Ministry, based on advice and recommendations from the SPA, may make Regulations under this Law relating to Decommissioning of Petroleum Operations.

## **CHAPTER V - INFORMATION AND INVESTIGATION**

### **Article 27**

#### **Data and Information**

- 27.1 ***Title to Data and Information.*** Somalia shall have title to all data and information, whether raw, derived, processed, interpreted or analysed, obtained pursuant to any Authorisation. Appropriate obligations of confidentiality shall apply, as contemplated by Sections 7.2 and 8.9.
- 27.2 ***Export of Data.*** Data and information acquired during the course of Petroleum Operations may be freely exported by Authorised Persons provided that the SPA may require that an original, or in the case of a core, rock, fluid or other physical sample, a usable portion of the original, of all data and information, both physical and electronic, be kept in Somalia.

### **Article 28**

#### **Audit and Inspection**

- 28.1 ***Inspector.***
- 28.1.1 The SPA may appoint a person to be an inspector for the purposes of this Law (an "Inspector").
- 28.1.2 The Inspector will have the powers and rights provided to it in the Regulations.
- 28.2 ***Access to Books and Accounts.*** On request, an Authorised Person shall make its books and accounts available to the SPA for auditing.

### **Article 29**

#### **Termination of Authorisations**

- 29.1 ***Termination.***
- 29.1.1 Termination of an Authorisation for any reason is without prejudice to rights and obligations expressed in this Law, the Regulations or the Authorisation to survive termination, or to rights and obligations accrued thereunder prior to termination, and all provisions of an Authorisation reasonably necessary for the full enjoyment and enforcement of those rights and obligations survive termination for the period so necessary.

29.1.2 The SPA shall have the power to terminate an Authorisation as set out in the Authorisation.

**29.2 *Multiple Authorised Persons.***

29.2.1 If there is more than one Authorised Person in respect of a particular Authorisation and circumstances arise in which the SPA may terminate an Authorisation, the SPA may elect to terminate an Authorisation only in respect of those Authorised Persons whose acts or omissions (or in relation to whom acts, omissions or events have occurred which) have led to such circumstances, and shall so notify the remaining Authorised Persons.

29.2.2 Should the SPA terminate an authorisation under Section 29.2.1, it shall give the remaining Authorised Persons right of preference in the acquisition of the terminated share, in proportion to their respective shares. Any share not acquired by the remaining Authorised Persons shall revert to Somalia.

**Article 30**

**Indemnification of the Government and Ministry and SPA**

30.1 ***Indemnification.*** An Authorised Person shall:

30.1.1 defend, indemnify and hold harmless the Government, Ministry and the SPA from all claims by third parties resulting, directly or indirectly, from Petroleum Operations, and pay all compensations relating to any civil liability claims, pretensions or demands; and

30.1.2 unless the Ministry is satisfied, after consultation with the Authorised Person, that the potential liability under Section 30.1.1 can be covered by other means, including the posting of corporate or bank guarantees or standby letters of credit, maintain insurance in respect thereof on a strict liability basis for such amount as the Ministry requires from time to time.

**CHAPTER VI - PUBLIC INFORMATION**

**Article 31**

**Publication by SPA**

31.1 ***Publication.*** The SPA shall publish, in the *Gazette*:

31.1.1 notice of the grant of Authorisations, and a summary of the terms of such Authorisations;

31.1.2 invitations for applications for Authorisations under Section 15.1.1; and

31.1.3 notice of the termination of Authorisations.

- 31.2 ***Publishing Invitations.*** The SPA shall publish invitations for applications for Authorisations under Section 15.1.1 in the media, in such manner as is required by the Regulations.

**Article 32**  
**Public Information**

32.1 ***Public Access.***

32.1.1 The SPA shall make available to the public:

32.1.1.1 summaries of key terms of all Authorisations and amendments thereto, whether or not terminated;

32.1.1.2 details of exemptions from, or variations or suspensions of, the conditions of an Authorisation under Article 23; and

32.1.1.3 copies of all unitisation agreements.

32.1.2 The SPA shall make available to the public, within a reasonable period of time of a request having been made therefor, summary details of:

32.1.2.1 an approved Development Plan; and

32.1.2.2 all assignments and other dealings consented to in respect of Authorisations, subject to commercial confidence as to the commercial terms.

32.2 ***Publication of Reasons.*** Within ten (10) business days of a request having been made, the SPA shall publish brief reasons for:

32.2.1 granting an Authorisation subsequent to an invitation, as contemplated at Section 15.1.1;

32.2.2 granting an Authorisation without inviting applications, as contemplated at Section 15.1.2;

32.2.3 approving a Development Plan under a Production Sharing Agreement;

32.2.4 granting an exemption from, or agreeing to a variation or suspension of, the conditions of an Authorisation under Article 23; and

32.2.5 making any decision or granting any approval that, under an Authorisation, requires publication.

32.3 ***Compliance Reports.***

32.3.1 Companies shall report on their compliance with requirements under the Law and Authorisations in such manner and detail as required by their Authorisation and as provided by the Regulations.

32.3.2 The SPA shall make available such reports to the public, except for any portions of such reports which the Authorised Person requests be maintained confidential, and which the SPA reasonably considers to be commercially confidential.

32.4 ***Public Access to Payment Information.*** The SPA shall make available to the public such reports by Authorised Persons on payments relating to Petroleum Operations made to the Government of Somalia.

32.5 ***Fees for Access.*** The information contemplated in this Article 32 shall be available to any Person on payment of the fee therefor, to be provided by regulation.

32.6 ***Language.*** The information contemplated in Section 32.1.2 shall be available in at least one official or second language of Somalia.

**Article 33**  
**Transparency**

33.1 ***Transparency Principles.*** The following principles shall apply in respect of Petroleum Operations, and shall be implemented in this Law, and in Regulations enacted pursuant to this Law, and in the rules, directions, decisions and orders made pursuant to this Law:

33.1.1 There shall be regular publication of all material Petroleum-related payments by Authorised Persons to the Government and all material revenues received by the Government from Authorised Persons to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

33.1.2 All material payments and revenues are the subject of a credible, independent audit, applying international auditing standards.

33.1.3 All material payments and revenues are to be reconciled by a credible, independent administrator appointed by the Government, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.

33.1.4 Persons representing the Somali business community who are not involved in Petroleum activities shall be actively engaged as a participant in the design, monitoring and evaluation of the processes contemplated by this Section 33.1.

33.1.5 These principles shall apply to Somalia Petroleum Corporation and any other State-Owned Contractor.

## CHAPTER VII - REGULATIONS AND DIRECTIONS

### Article 34 Regulations

- 34.1 ***Power to Make Regulations.*** The Ministry, based on advice and recommendations from the SPA, may make Regulations under this Law relating to the following:
- 34.1.1 graticulation of the Territory of Somalia;
  - 34.1.2 the exploration for and the development and production of Petroleum;
  - 34.1.3 the use and disclosure of data, information, records and reports;
  - 34.1.4 the measurement and sale or disposal of Petroleum;
  - 34.1.5 health and safety;
  - 34.1.6 protection and restoration of the environment;
  - 34.1.7 resource management;
  - 34.1.8 structures, facilities and installations;
  - 34.1.9 the clean-up or other remedying of the effects of the escape of Petroleum;
  - 34.1.10 abandonment and Decommissioning;
  - 34.1.11 the control of movement into, within and out of Somalia of persons, vessels, aircraft, vehicles and any other man-made platforms and structures;
  - 34.1.12 work programmes and budgets;
  - 34.1.13 the control of tariffs charged for third party access;
  - 34.1.14 the auditing of an Authorised Person and of its accounts and records;
  - 34.1.15 reporting by Authorised Persons on compliance with obligations set out in the Law and Authorisations, including in relation to:
    - 34.1.15.1 the training and employment of Somalia nationals,
    - 34.1.15.2 procurement of Somalia goods and services,
    - 34.1.15.3 occupational health and safety, and
    - 34.1.15.4 environmental protection.

- 34.1.16 fees to be paid, including by applicants for Authorisations, Authorised Persons, and Persons wishing to inspect the public register; and
- 34.1.17 any other matters relating to this Law.
- 34.2 **Regulatory Principles.** When making regulations, the Government shall seek to minimize prescriptive provisions in favour of results-based or performance-based provisions, and utilize accepted international standards to the greatest extent possible.
- 34.3 **Publication of Regulations.** The Ministry shall publish regulations in the *Gazette*.

### **Article 35** **Directions**

In addition to its power to give directions under Section 14.4 and Section 22.1.3, the SPA may give a direction to an Authorised Person:

- 35.1 relating to any matter set out in Section 34.1; or
- 35.2 otherwise requiring compliance with this Law, the Regulations or its Authorisation.

## **CHAPTER VIII - PENALTY PROVISIONS**

### **Article 36** **Territorial and Material Scope of this Chapter**

The provisions of this Chapter are without prejudice to criminal and civil liability under the general law.

### **Article 37** **Unauthorised Activities**

- 37.1 **Lack of Authorisation Offence.** Whoever engages in Petroleum Operations other than pursuant to an Authorisation shall be punished by imprisonment from three (3) months up to five (5) years or fine between one thousand and fifty thousand United States Dollars.
- 37.2 **Serious Offence.** If the damaged caused to Somalia is of an amount of fifty thousand United States Dollars or greater, the penalty shall be imprisonment from one (1) up to eight (8) years or fine between ten thousand and two hundred thousand United States Dollars.

### **Article 38** **Danger to People, Property and Environment**

- 38.1 **Endangerment Offence.** Whoever, by conduct that contravenes the provisions of this Law or the Regulations, endangers the life or physical integrity of a person, endangers property of high value, or gravely endangers the environment, shall be punished by:

- 38.1.1 Imprisonment from one (1) up to eight (8) years or fine between one thousand and fifty thousand United States Dollars, if the conduct and the creation of the danger are malicious;
- 38.1.2 Imprisonment up to five (5) years or fine between five thousand and one hundred thousand United States Dollars, if the conduct is malicious and the creation of the danger is negligent.

### **Article 39**

#### **Hindering the Exercise of Powers by the Inspector**

- 39.1 *Offence of Hindrance.* Whoever, directly or indirectly, in any measure or by any means, hinders, or leads someone else to hinder, the exercise of powers and rights by the Inspector, shall be punished by imprisonment from three (3) months up to four (4) years or fine between one thousand and fifty thousand United States Dollars.
- 39.2 *Offence of Attempt.* An attempt leading to a valid prosecution with verifiable proof is also punishable.

### **Article 40**

#### **Misleading Information**

- 40.1 *Offence of Misrepresentation.* Whoever,
  - 40.1.1 in, or in connection with, any application under this Law or the Regulations, knowingly or recklessly gives information that is materially false or misleading; or
  - 40.1.2 in any report, return or affidavit submitted under any provision of this Law or the Regulations or an Authorisation thereunder, knowingly or recklessly includes or permits to be included, any information which is materially false or misleading;shall be punished by imprisonment up to three (3) years or fine between one thousand and fifty thousand United States Dollars.
- 40.2 *Offence of Attempt.* An attempt leading to a valid prosecution with verifiable proof is also punishable.

### **Article 41**

#### **Non-compliance with Regulations or Directions**

- 41.1 *Offence of Non-Compliance.* Where a Person fails or neglects to comply with a regulation to which Article 34 refers, and/or with a direction to which Article 35 refers, or fails to comply with fundamental term of an Authorisation, the SPA may cause to be done all or any of the things required by the regulation or direction to be done at the cost and expense of that Person.

- 41.2 ***Determination of Costs.*** Costs and expenses incurred by the SPA under Section 41.1, together with interest thereon at a rate to be determined by the SPA, shall be a debt due to the Government.
- 41.3 ***Restitution.*** Without prejudice to any other liability of that Person, a Person who fails or neglects to comply with a regulation to which Article 34 refers, and/or with a direction to which Article 35 refers, or fails to comply with fundamental term of an Authorisation, shall make restitution to Somalia of an amount equal to the costs of any consequences suffered as a consequence of the failure, neglect or non-compliance.

#### **Article 42 Accessory Penalties**

- 42.1 ***Additional Penalties.*** In relation to the crimes provided for in the Law, the following accessory penalties may be applied:
- 42.1.1 Temporary deprivation of the right to participate in public tenders concerning Petroleum Operations, in particular those regarding Authorisations and the procurement of goods and services;
  - 42.1.2 Embargo of any construction works, in such cases as they may result in irreversible damage to relevant public interests;
  - 42.1.3 Disability, up to a maximum of two (2) years, of the exercise of activities, if the Person has, within the period of one (1) year starting from the date of the first contravention, contravened this Law, or Regulations or directions issued thereunder;
  - 42.1.4 Termination of Authorisations;
  - 42.1.5 Good conduct bond;
  - 42.1.6 Disability of rights to subsidies awarded by public entities or services;
  - 42.1.7 Publication of the sentence; and/or
  - 42.1.8 Other writs of prevention which are adequate taking into account the circumstances of the case in question.

#### **Article 43 Liability of Legal Persons, Corporations and Other Legal Entities**

- 43.1 ***Liability of Entities and Representatives.*** Legal persons, corporations or any other legal entities, including those without juridical personality, are liable for contraventions provided for in this Chapter when committed by its organs or representatives in its name and in the collective interest.

- 43.2 ***Due Diligence Defence.*** The liability is excluded where the agent has acted against express orders or instructions properly issued.
- 43.3 ***Agent Liability.*** The liability of the entities mentioned in Section 43.1 does not exclude the individual liability of the respective agents.
- 43.4 ***Joint and Several Liability.*** The entities mentioned in Section 43.1 are jointly and severally liable, as provided for in civil law, for the payment of any fines or compensations, or for the fulfillment of any obligations, derived from the facts or with incidence on matters covered by the scope of this Law.

#### **Article 44** **Fines to Legal Persons, Corporations and Other Legal Entities**

- 44.1 ***Fines.*** In the case of legal persons, corporations or any other legal entities, including those without juridical personality, the amount of the fines shall be as determined by the court, taking into account the economic and financial situation of the legal person, corporation or other legal entity and the severity and consequences of the offence.
- 44.2 ***Access to Assets.*** If the fine is applied to an entity without juridical personality, its payment will be guaranteed by the entity's assets and, in the event of non-existence of such assets or under-capitalisation, jointly and severally, the assets of each of the associates.

#### **Article 45** **Inspection**

The SPA and the Inspector, as well as any other organs of the public administration to whom inspection duties may be delegated in accordance with law and regulations, are responsible to ensure the inspection of compliance with the provisions of this Law or the Regulations.

#### **Article 46** **Extrajudicial Writ of Execution**

For purposes of coercive collection under general law, a certification issued by the SPA in relation to a debt constituted, or amount due, as a result of the application of the provisions of this Law or the Regulations, which is not paid within a reasonable period to be determined by the SPA, and which shall be notified in writing to the debtor, constitutes an extrajudicial writ of execution.

#### **Article 47** **Subsidiary Legislation**

- 47.1 ***Criminal and Other Legislation.*** The general criminal law, as well as relevant administrative and civil legislation, of Somalia are applicable in a subsidiary manner, with the required adaptations, to give effect to the provisions of this Chapter.

- 47.2 **No Conflict.** To the extent that the provisions of any other laws of Somalia conflict with the provisions of this Law or the Regulations, they shall be null and void as regards their application to Petroleum Operations.

## CHAPTER IX - OTHER AND FINAL PROVISIONS

### Article 48 Transitional Provision

- 48.1 **Prior Grants.** With the approval of the Government, the Ministry shall issue Regulations setting out the administrative procedure to be followed, as well as obligations to be undertaken, by Persons who have engaged in or are engaging in Petroleum Operations ("Prior Contractors") pursuant to rights granted by the Somali Democratic Republic on or before December 30, 1990 ("Prior Grants"). Such Regulations shall include the following provisions:
- 48.1.1 a Prior Contractor shall have the right to convert its Prior Grant into the form of Authorisation that is most similar to the Prior Grant. A Prior Grant in the form of a concession entitling the Prior Contractor to conduct exclusive Petroleum Operations shall be convertible into a Production Sharing Agreement. A Prior Contractor wishing to convert its Prior Grant shall:
- 48.1.1.1 provide to the Ministry:
- 48.1.1.1.1 a true copy of a fully executed Prior Grant;
  - 48.1.1.1.2 evidence satisfactory to the Ministry that it was on December 30, 1990 in full compliance with its obligations under the Prior Grant;
  - 48.1.1.1.3 a copy of a record of its performance under the Prior Grant, including the relinquishment of any part of the contract area under the Prior Grant;
  - 48.1.1.1.4 a copy of all data and information required by the Prior Grant to be delivered to the Government;
  - 48.1.1.1.5 identification of the current parties to the Prior Grant, and how the current parties acquired their interest in the Prior Grant from the original parties;
- 48.1.1.2 agree that its Decommissioning obligations under the new Authorisation shall include Decommissioning of its activities conducted pursuant to the Prior Grant;
- 48.1.1.3 agree to the terms of a new Authorisation between the Prior Contractor and the Ministry on or before a date specified by the

Ministry, which shall not be later than the date described in Section 48.2.

- 48.1.2 an Authorisation under Section 48.1.1.3 shall be consistent with the principles of this Law, the Regulations and the model contract published by the SPA pursuant to Section 8.20.5.
- 48.2 ***Effort to Contact.*** The Ministry shall make reasonable efforts to contact each Prior Contractor, so far as it is able to determine who they may be, to advise them of their rights under Section 48.1. Where a Prior Grant appears to be held by more than one Person, the Ministry need only make a reasonable effort to contact the Person who appears to the Ministry to be the operator. No Prior Contractor shall have any right against the Ministry or the Government for a failure by the Ministry to fulfil this Section 48.2.
- 48.3 ***Deadline for Conversion.*** If any Prior Grant that has not been converted into a Production Sharing Agreement under this Law pursuant to the provisions of Section 48.1 on the first anniversary of the coming into force of this Law, then:
- 48.3.1 the Prior Grant shall terminate and cease to be a binding obligation on the Government on the first anniversary of the coming into force of this Law;
- 48.3.2 the Government shall not be liable for any loss, costs, claim or damage resulting from such termination of the Prior Grant; and
- 48.3.3 as a sovereign entity, the Government declares itself immune from any claim made by a Prior Contractor for termination of its Prior Grant.
- 48.4 ***Post-1990 Grants.*** Effective on the date of the coming into force of this Law:
- 48.4.1 any right to conduct Petroleum Operations in Somalia granted after December 30, 1990 shall terminate and cease to be a binding obligation on the Government;
- 48.4.2 the Government shall not be liable for any loss, costs, claim or damage resulting from such termination; and
- 48.4.3 as a sovereign entity, the Government declares itself immune from any claim made by any Person for termination of any such right.

**Article 49**  
**Entry into Force**

This Law shall enter into force on the day after its publication in the *Gazette*.

Approved on • by the Transitional Federal Parliament of the Somali Republic

Assented to on •

The President of the Somali Republic

Abdillahi Yusuf Ahmed