

# Decret 97-740 Unofficial English Translation

**OMNIS**

## **DECREE No. 97-740**

**concerning hydrocarbon exploration claims, concessions and transportation licences**

The Prime Minister, Head of the Government,

Considering the Constitution dated 18<sup>th</sup> September 1992,

Considering Constitutional Law no. 95-001 dated 13<sup>th</sup> October 1995 revising articles 53, 61, 74, 75, 90 and 94

of the Constitution dated 18<sup>th</sup> September 1992,

Considering law no. 96-018 dated 4<sup>th</sup> September 1996, the Petroleum Code,

Considering decree no. 97-128 dated 21<sup>st</sup> February 1997 appointing the Prime Minister, Head of the

Government,

Considering decree no. 97-129 dated 27<sup>th</sup> February 1997 appointing the members of the Government,

Considering decree no. 96-1133 dated 7<sup>th</sup> November 1996 appointing OMNIS as the technical agency

responsible for managing national hydrocarbon resources,

In Cabinet,

**Decrees:**

### **CHAPTER ONE**

#### **GENERAL**

Article one. – No activities in connection with national mineral resources, as defined by the Petroleum

Code, shall be carried on without a hydrocarbon claim.

Art. 2. – The technical agency is responsible for managing national hydrocarbon resources.

Art. 3. – The right to be awarded a hydrocarbon claim is devolved upon:

- the national company in charge of “upstream” hydrocarbon activities under a production sharing

contract or similar agreement;

- the partners within the framework of a joint venture contract.

Art. 4. – The different categories of claim covered by this decree are:

4. Exploration claim;

5. Concession;

6. Transportation licence.

Art. 5. – The claim gives the holder the right to carry on the activities relating to that claim within a stipulated

area and for a specified period.

### **CHAPTER II**

#### **GRANTING OF A CLAIM**

Art. 6. – Claim applications must first be submitted to the Department of Mines in order to locate the

area to which the application relates before submission to the President of the Republic.

Art. 7. – The issue of the claim is declared by decree of the President of the Republic at the proposal of the

Head of the Technical Agency.

Art. 8. – The claim is issued in the name of the national company or joint venture and includes the number and

nature of the claim issued, the period of validity and the coordinates of the area awarded.

Art. 9. – If a hydrocarbon claim relates to a site adjacent to a site covered by another claim, the common boundaries of the claims shall be indicated in situ by marker buoys or markers put in place at the expense of the holder of the newer claim and any partners.

### **CHAPTER III RENEWAL OF CLAIM**

Art. 10. – In order to renew a claim the holder must apply in writing to the Technical Agency as follows:

4. Exploration claim: six (6) months before the claim validity expiry date;
5. Concession: two (2) years before the claim validity expiry date;
6. Transportation licence: two (2) years before the claim validity expiry date.

Art. 11. – Renewal is declared in the same way as the original claim, subject to the following:  
- during the exploration phase, subject to fulfilment of the work undertaking according to the contract and any other justified causes during the period covered by the claim;  
- during the development phase, subject to an undertaking that the field concerned is likely to supply commercial production;  
- with respect to transportation, subject to the proven existence of optimum production to make the hydrocarbon installations and transportation facilities profitable.

In all cases, compliance with the legal, statutory and contractual obligations deriving from the original claim is required.

#### **Art. 12. – Renewal of a claim is declared:**

during the exploration phase, for periods of two (2) years; it can only relate to the last area not handed back;

However, if a market study is to be undertaken following a gas discovery, the period of the exploration claim will be extended for fifteen (15) years.

- during the development phase, for periods of five (5) years;
- with respect to transportation, for periods of five (5) years.

Art. 13. – Non-renewal is declared by decree of the President of the Republic.

The validity of the claim is automatically extended until the renewal or refusal decision is notified.

In the case of renewal, the claim becomes effective on the day after expiry of the previous claim.

### **CHAPTER IV WITHDRAWAL OF CLAIM**

Art. 14. – Withdrawal of a claim is declared in the same way as granting, if any of the following conditions occurs:

6. If the activity stipulated in the contract covered by the claim is suspended or restricted;
7. If a field considered commercial is not developed within the time stipulated in the contract;
8. If serious offences or breaches of police or safety requirements are noted;
9. In case of non-fulfilment of any contractual obligation;
10. If the contractor fails to commence the activities for which the claim was issued within six (6) months from the date of notification of granting.

### **CHAPTER V EXPLORATION CLAIM**

Art. 15. – The exploration claim relates to:

c. Prospecting: this involves surface investigations aimed at discovering hydrocarbon substances and shows of hydrocarbon substances; and

d. exploration: series of surface or deep work carried out in order to establish the continuity of shows

discovered by prospecting, to study the conditions of development and industrial use and to conclude as to the presence of geological deposits.

In the case of gas discoveries, the exploration claim may include market studies with the aim of

identifying and concluding contracts to market the gas.

Art. 16. – The exploration claim covers a polygonal area the boundaries of which are preferably delineated by

straight lines parallel to the axes of Laborde coordinates.

Art. 17. – The initial period of validity of the claim shall not exceed eight (8) years. It depends on the data

available to the national company for the area concerned, such as: samples, documents, geophysical and

geochemical data, notably the results of boring or borehole logs.

Art. 18. – Applications for an exploration claim must include the coordinates of the area covered by the claim.

Art. 19. – The exploration claim gives the holder the right of disposal of the hydrocarbons extracted from the

ground in the course of prospecting and exploration and any production tests carried out.

However, prospecting and exploration work shall in no circumstances develop into development work.

The claim cannot cover an area already covered by a hydrocarbon concession.

Art. 20. – Discoveries of minerals other than hydrocarbons shall be notified immediately to the Technical

Agency, which must inform the Department of Mines.

Art. 21. – The Technical Agency must be sent information allowing the progress of work to be assessed,

notably:

- all reports on geological and geophysical work carried out, duly accompanied by the maps and

documents needed to interpret them;

- seismic films made;

- end of boring reports with a set of logs recorded and the results of analyses and tests carried out;

- samples of terrain encountered and specifically core samples taken or at least a representative part

of these.

Art. 22. – In case of waiver or withdrawal, the information listed in article 21 shall become the property of the

State in accordance with the provisions of the claim contract.

Art. 23. – Prior declarations must be made to the Technical Agency with respect to geophysical measurement,

start and end of boring, testing and production tests and also all major operations as listed by the national

company.

Art. 24. – Hydrocarbon discoveries made in the course of work and specifically in boreholes, whether in the

form of traces, shows or quantities possibly indicating the presence of a field, must be notified to the Technical

Agency without delay.

Art. 25. – Commercial discoveries made within an area covered by an exploration claim automatically lead to the granting of a concession in accordance with article 7 hereof and subject to the provisions of Chapter VI below.

## **CHAPTER VI CONCESSION**

Art. 26. – The concession relates to hydrocarbon development, removal and production.

Art. 27. – The granting of a concession automatically means the cancellation of any exploration claim within the area concerned.

Art. 28. – The concession covers the area generated by the vertical lines resting on an area defined at the surface.

The initial period of validity of a concession is:

- twenty-five (25) years for the development of liquid and solid hydrocarbons, and
- thirty-five (35) years for the development of gas.

The concession becomes effective from the date of notification of the decree granting the claim.

Art. 29. – Concession applications must be accompanied by:

- a surface map on a 1:10,000 scale showing the limits of the concession applied for and showing

the location of the main exploration activities;

- a report describing precisely the exploration work and the results proving the presence of a workable field justifying the application.

Art. 30. – The holder or holders of a concession is/are required to mark out the concession area by means of marker buoys effectively placed in situ. The position of these shall be shown on the map which accompanies the concession.

In the event that checking is necessary, this shall be done by a sworn surveyor with the Topographical

Department, who will draw up a report at the national company's expense.

Art. 31. – The holder or holders of a concession is/are required to carry out and duly perform their activities in

accordance with the generally acknowledged rules of practice of the international petroleum industry and in

accordance with Malagasy legislation and regulations in force. The holder or holders shall in particular take

steps to ensure:

g. Rational, sustained development of the field in order to avoid losses of energy and industrial

products;

h. That the production rate and volume are fixed in accordance with the field conservation rules;

i. Optimum recovery of the potential hydrocarbon reserves;

j. Development aimed at continuous renewal of broached reserves;

k. Protection and safeguarding of the environment in accordance with the laws and regulations in

force in Madagascar;

l. The safety of people and property in accordance with the legislation in force.

## **CHAPTER VII**

## **HYDROCARBON TRANSPORTATION**

Art. 32. – The transportation licence covers transportation of hydrocarbons from the place of removal from the fields to the points of storage, treatment, processing, loading or delivery within the territory of the Republic of Madagascar.

Art. 33. – The pipeline transportation licence is issued for a period of:  
- twenty-five (25) years for transportation of petroleum;  
- thirty-five (35) years for transportation of gas.

Art. 34. – Applications for a transportation licence must be accompanied by a proposed route and the technical specifications of the pipelines.

The Technical Agency will consider the application and submit it to the Minister for State Property.

Art. 35. – The pipeline transportation licence classifies the construction of the pipeline works as being of public interest.

## **CHAPTER VIII GENERAL**

Art. 36. – In the event of encroachment of a hydrocarbon claim with a mineral licence, the disputes between the holders shall be settled amicably.

In the case of continuing dispute concerning the boundaries of the area awarded to each holder, the dispute shall be referred to a Technical Committee for settlement pursuant to article 9 of the Petroleum Code.

The Technical Committee shall be formed by:

- one representative of the Technical Agency;
- one representative of the Department of Mines;
- one representative of each holder.

The Technical Committee's decisions shall be binding upon the holders.

Art. 37. – Infringements of the provisions of this Decree shall be punished in accordance with the provisions of law no. 96-018, the Petroleum Code.

Art. 38. – The Minister for Energy and Mines, the Minister for Town and Country Planning with responsibility for State Property and the Minister for the Environment are responsible, each in his own area of authority, for implementation of this decree which shall be published in the *Official Gazette* of the Republic.

Made at Antananarivo, 23<sup>rd</sup> June 1997

Pascal RAKOTOMAVO

By the Prime Minister,  
Head of the Government,

The Minister for Energy  
and Mines

Charles RASOZA

The Minister for the Environment,  
Colette VAOHITA

The Minister for Town and Country Planning  
with responsibility for State Property,  
Herivelona RAMANANTSOA