

ISLAMIC REPUBLIC OF MAURITANIA

Honour – Fraternity - Justice

ORDINANCE No. 88.151

STATING THE LEGAL AND FISCAL REGIME
APPLICABLE TO THE EXPLORATION FOR
AND EXPLOITATION OF PETROLEUM

(Unofficial English Translation)

**The Military Committee of National Salvation has deliberated and adopted ;
The President of the Military Committee of National Salvation,
Head of the State, promulgates the Ordinance as follows :**

PART I

GENERAL PRINCIPLES

ARTICLE 1

- 1.1** All solid, liquid or gaseous petroleum deposits or natural accumulations existing in the Islamic Republic of Mauritania, including the marine areas and the exclusive economic zone, are the property of the State.
- 1.2** The exploration for and exploitation of petroleum, whether solid, liquid or gaseous, as well as the transportation, storage and marketing thereof, hereinafter referred to as "Petroleum Operations", resulting from the petroleum extracted from the Mauritania subsoil are of public interest and subject to the provisions of this Ordinance as well as to the specific statutory and regulatory provisions which would not be contrary thereto.

ARTICLE 2

- 2.1** This State may carry out any Petroleum Operation either directly or through one or several juridical or natural persons, whether national or foreign, who shall act jointly and severally.

Subject to the provisions of this Ordinance, the State may authorise said juridical or natural person to carry out Petroleum Operations through contracts whatsoever the nature thereof and, inter alia, services contracts or production sharing contracts.

In order to permit the juridical or natural person, who has entered into a contract as set forth above, to perform their contractual obligations, such person shall be granted, in accordance with the provisions specified in the contract which binds it to the State, an exclusive exploration authorization and, in the event of commercial discovery, one or several exclusive exploitation authorizations, each covering a delimited perimeter.

- 2.2** The State may also, in accordance with the provisions of Law No. 77.204 stating the Mining Code and any subsequent modifications thereof, grant H-type exploration permits and B-type exploitation permits to one or several juridical or

natural persons, whether national or foreign, who shall act jointly and severally, to carry out Petroleum Operations under the conditions and regulations defined in the Mining Code, subject to the provisions of this Ordinance and as specified in the contract entered into between the State and said juridical or natural person.

- 2.3 The State reserves the right to associate with the holders of contracts set forth in paragraph 1 and 2. The conditions for State participation to the Petroleum Operations shall be defined in said contract.
- 2.4 The Minister in charge of Mines shall be the State's representative in any action resulting from the application of this Ordinance.
- 2.5 Any exclusive exploitation authorisation, H-type exploration permit or B-type exploitation permit shall be considered as exclusive exploration and exploitation rights under this Ordinance.

ARTICLE 3

- 3.1 No person may be granted exclusive exploration and exploitation rights unless it proves to possess the necessary technical competence and moral, technical and financial capabilities to properly conduct Petroleum Operations, unless such person complies with the conditions required to the persons who have control on other companies and unless such person undertakes to devote a minimum appropriate financial effort to exploration work during the exploration duration provided in said contracts.
- 3.2 The selection of the holder of exclusive rights of exploration for and exploitation of solid, liquid or gaseous petroleum, among the persons who meet the conditions set forth in the first paragraph of this Article and who desire to carry out Petroleum Operations, shall be made through international calls for bids or through any other procedure which permit the Mauritania State to benefit from the best favourable conditions.
- 3.3 Granting of exclusive rights of exploration for and exploitation of solid, liquid or gaseous petroleum inside an exploration perimeter shall be the subject of a contract as provided in Article 2, established in accordance with the legal and regulatory provisions in force and jointly signed by the Minister in charge of Mines and the legal representative of the applicant.
- 3.4 This contract, its appendices and additional clauses shall establish the rights and obligations of the parties during its entire term of validity.
- 3.5 Said contract shall be approved by a law.

ARTICLE 4

- 4.1 The holder of exclusive petroleum exploration and exploitation rights shall be subject to the laws and regulations in force in the Islamic Republic of Mauritania ; it shall be amenable to Mauritania courts and tribunals.
- 4.2 The contracting parties agree to settle amicably any dispute which may arise from the interpretation or application of the contract ; failing such amicable agreement, the parties shall resort to arbitration in order to settle said disputes.

PART II

EXPLORATION

ARTICLE 5

- 5.1 Any application for an H-type exploration permit or an exclusive exploration authorisation shall be sent to the Minister in charge of Mines, on behalf of juridical or natural persons who possess the moral, technical and financial capabilities to properly conduct Petroleum Operations. Such applications may be made by one or several juridical or natural persons who hold an individual mining authorisation.
- 5.2 The H-type exploration permit or the exclusive exploration authorisation grants the holder thereof, under the conditions specified in the contract, the exclusive right to explore for solid, liquid or gaseous petroleum fields inside the perimeter which it covers and the right to be granted, under the provisions of Article 8.1, when a commercially exploitable field is discovered, a B-type exploitation permit or an exclusive exploitation authorisation respectively.

ARTICLE 6

- 6.1 The initial duration of an H-type exploration permit or an exclusive exploration authorisation, as specified in the contract, cannot exceed three years.
- 6.2 An H-type exploration permit or an exclusive exploration authorisation may be renewed twice for a duration which shall not exceed three years each time in accordance with the provisions of the contract, subject to fulfilment of all contractual obligations and subject to relinquishment of a portion of the initial surface of the exploration perimeter each time.
- 6.3 However, where a natural gas field is discovered, an H-type exploration permit or an exclusive exploration authorisation may be renewed a third time under the conditions specified in the contract, for a duration which shall not exceed five years and with respect to the perimeter delimited by the surface of the field so discovered.

- 6.4 The holder of exclusive exploration or exploitation rights shall undertake to perform, during the initial and the renewal periods of the H-type exploration permit or the exclusive exploration authorisation, a minimum work program which shall be specified in the contract.

ARTICLE 7

- 7.1 A non exclusive geological or geophysical prospection authorisation, as issued by the Minister in charge of Mines, may be granted in areas not yet covered by exclusive exploration or exploitation rights. Several prospection authorisations may be concurrently granted on the same area.

The prospection authorisation is granted for a maximum duration of one year. The holder thereof is granted the non exclusive right to perform any geological and geophysical prospection work, excluding drilling in excess of 200 meter depth.

- 7.2 All the information collected and the results of prospection work shall be provided to the Direction of Mines and Geology under the conditions specified in the authorisation.

PART III

EXPLOITATION

ARTICLE 8

- 8.1 Any discovery of solid, liquid or gaseous petroleum considered commercial by the holder of an H-type exploration permit or an exclusive exploration authorisation shall grant it, upon its request and provided it has fulfilled all the obligations imposed to it, the exclusive right to be granted a B-type exploitation permit, with respect to the holder of an H-type exploration permit, or an exclusive exploitation authorisation, with respect to the beneficiary of an exclusive exploration authorisation.

- 8.2 In the event the holder of exclusive exploration rights does not consider a petroleum discovery as commercially exploitable, the Government may, in accordance with the provisions of the contract entered into between the Government and such holder, cause to be exploited for its own account said discovery by a company of its election, without any compensation for the holder of exclusive exploration rights.

ARTICLE 9

The duration of a B-type exploitation permit, as provided in the Mining Code, or an exclusive exploitation authorisation, shall not exceed twenty-five years. Such duration may be extended twice for a duration which shall not exceed ten years each time, provided that a commercial exploitation is still possible.

ARTICLE 10

The holder of a B-type exploitation permit or an exclusive exploitation authorisation undertakes to meet in priority, upon request from the State, the petroleum domestic needs of the Islamic Republic of Mauritania, from its share of production, under the conditions specified in the contract.

The above-mentioned share of production which such holder is entitled to may, after having met the domestic needs of the Islamic Republic of Mauritania be freely exported and without any export taxes and levies, except to the countries declared hostile to the Islamic Republic of Mauritania.

PART IV

FISCAL REGIME

ARTICLE 11

- 11.1** The materials, supplies, machinery and equipment as well as spare parts, consumable products and substances exclusively assigned to Petroleum Operations, and provided that they are included in the categories described in a list established by decree, shall be exempted from all duties and taxes when they are imported in the Islamic Republic of Mauritania by the holder of exclusive petroleum exploration or exploitation rights or by companies which work for their account and provided such goods are not available in the Islamic Republic of Mauritania under equivalent conditions of quality, quantity, price and financing.
- 11.2** The materials, supplies, machinery and equipment as well as spare parts, consumable products and substances, as above-mentioned exclusively assigned to Petroleum Operations, Imported in the Islamic Republic of Mauritania by the holder of exclusive petroleum exploration or exploitation rights or by companies which work for their account, and which may be re-exported after use, shall be cleared under the temporary entry regime, with provision of a surety for the materials and equipment which may be consumed in the country, in suspension of all import and export duties and taxes.

- 11.3** In order to benefit from the exemption from duties and taxes, or from the temporary entry regime, the companies concerned shall provide the Direction of Customs with an administrative certificate.
- 11.4** The companies which benefit from the above-defined customs regimes shall be subject to all the control and monitoring measures enacted by the customs administration in accordance with the regulations then in force, including, inter alias, the separate accounting of equipment on the one hand, and consumable materials and supplies on the other hand.
- 11.5** In the event materials, supplies, machinery and equipment as well as spare parts, consumable products and substances as above-mentioned are no longer directly used for the Petroleum Operations and are kept inside the customs territory of the Islamic Republic of Mauritania, such goods shall no longer benefit from the foregoing provisions. The amounts which the company shall then have to pay shall be determined on the basis of the actual value of such goods at the place and at the time they are declared in order to be brought into use under the generally applicable regime.

ARTICLE 12

The holder of exclusive petroleum exploration or exploitation rights as well as any juridical or natural person working on its account shall be exempted from any taxes on turnover, such as, inter alias, taxes on services rendered, provided that such taxes are directly related to the Petroleum Operations performed by such holder.

ARTICLE 13

The company which holds exclusive petroleum exploration and exploitation rights shall be liable to the payment of direct income tax, with respect to its Petroleum Operations in the Islamic Republic of Mauritania, under the conditions specified in Article 15 of this Ordinance.

ARTICLE 14

- 14.1** The company which holds a B-type exploitation permit as provided in Part III of the Mining Code shall be subject to a royalty on production to be paid in kind or cash, at the State's election, and determined on the total quantity of Petroleum produced from the exploitation permit and not used in the Petroleum Operations, excluding storage and marketing.
- 14.2** The amount of said royalty, as well as the modalities of establishment and payment, shall be specified in the contract. However the royalty rate shall not be less than ten percent of production.

- 14.3 The above-mentioned royalty shall not be an advance payment with respect to the income tax, and shall be considered as a charge with respect to the determination of the taxable net profits.
- 14.4 The holder of exclusive exploitation rights other than the holder of a B-type exploitation permit, shall not be subject to the payment of a royalty on production.

ARTICLE 15

- 15.1 The companies referred to in Article 13 shall be liable to direct income tax as provided in the General Tax Code and determined on the net profits arising from all the Petroleum Operations which such companies carry out in the Islamic Republic of Mauritania, whether individually or in association with other companies.

For that purpose, each company shall maintain, for each calendar year, accounts with respect to Petroleum Operations which shall be used to establish a profit and loss account and a balance sheet showing the results of said Operations as well as the assets and liabilities assigned or directly related thereto.

- 15.2 The taxable net profit referred to in the first paragraph above shall consist of the difference between the value of assets at the closure and opening of the fiscal period, as reduced by the additional assets brought in, corresponding to goods or cash newly assigned by the company or its associates to the Operations referred to in this Article, and as increased by the amounts corresponding to the withdrawal by the company or its associates of goods or cash previously assigned to said Operations.

Net assets mean the amount to which assets exceed total liabilities represented by debts to third parties, depreciation, and authorized or justified provisions.

- 15.3 Stocks shall be valued at the acquisition price or at the value at the closure of the fiscal period, in the event such value is lower than the acquisition price.

Accruals shall be valued at cost price, the assets brought in or withdrawals in kind referred to in the second paragraph above shall be recorded in accounting on the basis of the market value of the asset brought in or withdrawn; however, they may be, at the taxpayer's election, recorded on the basis of the book value when the transfer is made between two enterprises both located in Mauritania.

- 15.4 The amount of loss which the company may prove to have incurred during commercial production shall not be authorized to be deducted from the taxable profit beyond the time-period allowed under the General Tax Code, unless as otherwise provided for in the contract.

15.5 The profit and loss account referred to in the first paragraph above shall be credited with the following:

- (a) the value of products sold, determined on the basis of the prices realized by the company, with shall reflect the prevailing international market prices at the time such prices are established with respect to said products.
- (b) As the case may be, the value of the share of production paid in kind as royalty on production, determined pursuant to the provisions of Article 14.
- (c) Capital gains realized in connection with the assignment or transfer of any item of the assets. However, a decree shall establish:
 - 1. the conditions under which, except in the event of termination of any activity, it may be disregarded, subject to re-employment within no more than three years as new capital assets or transfers equivalent to such capital assets, an amount equal to the value of capital gains realized in connection with the assignment or transfer of the item of the capital assets, to be added to the cost price of the assigned items.
 - 2. the conditions under which the assigner may disregard capital gains realized in connection with the assignment, in whole or part, of its capital assets, provided the obligation to take into its own accounts and for the same figures all the entries included in the accounts of the assignee with respect to the assigned items.
- (d) any other revenues or proceeds directly connected to the operations referred to in this Article, including, inter alia, those arising from the sale of related substances.

15.6 The following may be debited from the profit and loss account referred to in the first paragraph above:

- (a) cost of materials, supplies and energy used or consumed, personnel wages and related costs, cost of services provided to the companies referred to in article 13 by third parties or affiliated companies as defined in Article 17, provided said cost shall not exceed that usually charged by third parties;
- (b) depreciation as entered in the accounts by the company, provided it shall not exceed the rates customarily used in the petroleum industry and as specified in the contract, including depreciation carried back from previous fiscal periods showing a loss;
- (c) overheads related to Petroleum Operations including, inter alia, rentals for

- movable and immovable properties, insurance premiums but excluding costs of establishment;
- (d) interests and adios on debts incurred by the company up to a limit specified in the contract. 'n addition the competent authorities with respect to foreign exchange control shall be advised of such debts;
 - (e) losses of materials or assets resulting from destruction or damage or depreciation of the book value thereof, assets which are renounced or abandoned during the year, bad debts and indemnities paid to third parties as compensation for damage;
 - (f) with respect to the holders of B-type exploitation permit, the total amount of royalty paid in cash or in kind during the fiscal period, pursuant to Article 14 of this Ordinance;
 - (g) reserves made for clearly identified future losses or liabilities which current events render probable;
 - (h) any other losses or charges directly related to Petroleum Operations, excluding the amount of direct income tax determined in accordance with the provisions of this Article, subject to the provisions specified in the contract.

15.7 For a given fiscal period, the above-defined taxable profit shall be subject to the direct income tax on industrial and commercial profits which, subject to the specific provisions set forth in this Ordinance, shall be determined in accordance with the provisions of the General Tax Code with respect to income tax.

ARTICLE 16

Taking into account the possible evolution of the context of the petroleum industry, an additional petroleum tax may be introduced with respect to the holders of B-type exploitation permits referred to in the Mining Code, which tax shall be calculated on the profits arising from the Petroleum Operations and of which the rate, the modalities of establishment and payment shall be specified in the contract.

ARTICLE 17

17.1 Apart from the royalty, the income tax and the additional petroleum tax set forth in Articles 14, 15 and 16 of this Ordinance, the companies referred to in Article 13 shall be exempted from:

- a) any other tax on revenues, profits and distribution of profits;

- b) any levy, duty, tax or contribution of any nature whatsoever with respect to Petroleum Operations and any revenue related thereto, or which may be payable in connection with the establishment and operation thereof under this Ordinance.

17.2 The exemption set forth in Article 17.1 shall also apply to any transfer of funds, purchase and transportation of petroleum for export, services rendered and more generally, any revenues or activities of affiliated companies to companies which hold exclusive petroleum exploration and exploitation rights, provided the above-mentioned elements shall be directly related to the Petroleum Operations.

In this Ordinance, affiliated company means any company which directly or indirectly controls or is controlled by a company defined in Article 13, or any company which directly or indirectly controls or is controlled by a company or entity which directly or indirectly controls itself a company defined in Article 13, it being understood that such control means the direct or indirect ownership by a company or any other entity of at least fifty percent of the shares enough to hold a majority of voting rights at general meetings of another company.

17.3 Notwithstanding the foregoing provisions, real estate taxes on buildings used for housing shall be payable in accordance with the generally applicable conditions.

The State may request the payment of a lump sum (bonus) on the date of signing the contract and upon a discovery, the amount of which shall be specified in the contract entered into with the holder of exclusive petroleum exploration and exploitation rights.

ARTICLE 18

For the companies referred to in Article 13 and for their associates, the provisions of this Chapter shall not give rise to any aggravation during the duration of the contract Any dispute arising from the provisions of this Chapter shall be settled in accordance with the arbitration procedure provided in Article 4 of this Ordinance.

PART V

GENERAL PROVISIONS

ARTICLE 19

Any application for assignment or transfer of exclusive petroleum exploration and exploitation rights to juridical persons who possess the technical and financial capabilities to properly conduct the Petroleum Operations, shall be submitted to the Minister in charge of Mines for approval, except in the event of assignment to affiliated companies.

ARTICLE 20

- 20.1 Juridical persons of foreign nationality who have incurred expenses in connection to the Petroleum Operations shall, provided they comply with the currency exchange regulations and their contractual obligations, have the right:
- to receive and retain abroad the proceeds of sales of petroleum, to extent such amounts exceed the financial requirements of said persons in the Islamic Republic of Mauritania;
 - to freely remit outside the Islamic Republic of Mauritania the proceeds of sales of petroleum, the dividends and proceeds of any kind arising from the capital invested as well as the proceeds from liquidation or realization of the assets of said persons.
- 20.2 The juridical persons or foreign entities who hold exclusive petroleum exploration and exploitation rights and the juridical persons or foreign entities who work on their account shall benefit from the guarantee of free transfer with respect to any currency exchange transaction in connection with the Petroleum Operations.

ARTICLE 21

Petroleum Operations shall be performed in such a manner as to ensure good preservation of national resources and to protect environment. For that purpose, the holders of exclusive exploration and exploitation rights shall carry out the work with the most reliable techniques utilized in the petroleum industry and take any necessary actions to guarantee that their activities will not cause prejudice to the human safety and preservation of environment.

ARTICLE 22

- 22.1 The Director of Mines and Geology will exercise the rights of monitoring and control over Petroleum Operations. The conditions for exercising such rights are specified in the Mining Code.
- 22.2 All information, documents and samples pertaining to the Petroleum Operations and provided to the Direction of Mines and Geology on a confidential basis may be disclosed upon expiry of a five-year period starting on the date on which they have been provided, or in the event of relinquishment of an area, on the date of such relinquishment with respect to information, documents and samples pertaining to said area.
- 22.3 It may be departed from the provisions of Article 52(b) of the Mining Code if, in the opinion of the Minister in charge of Mines, special technical and economic conditions so justify.

ARTICLE 23

- 23.1 Only the juridical or natural persons who hold an H-type exploration permit or a B type exploitation permit, excluding any juridical or natural person who benefit from an exclusive exploration or exploitation authorisation as defined in Article 2.1, shall be subject to the provisions of Law 77.204 stating the Mining Code as amended by subsequent instruments, under the conditions provided in Article 23.2.
- 23.2 Shall be repealed any and all previous provisions which would be contrary to this Ordinance such as, inter alia, the contrary provisions set forth in Law 77.204 of July 30, 1977, stating the Mining Code and in Ordinance 79.046 of March 15, 1979 stating the Investment Code as well as any amendment thereto.
- 23.3 This Ordinance repeals and replaces any provision regarding Petroleum Operations contained in Law 61.106 of May 29, 1961.
- 23.4 Any holder of conventions regarding the exploration for and exploitation of solid, liquid or gaseous petroleum, entered into prior to the effectiveness of this Ordinance shall remain subject to the provisions contained in said conventions until termination thereof.

ARTICLE 24

- 24.1 The conditions for application of this Ordinance shall be established by decree.
- 24.2 Until approval of the decree for application of this Ordinance, the regulatory provisions currently in force which are not contrary to this Ordinance remain applicable.

ARTICLE 25

This Ordinance shall be published under the urgent procedure and executed as Law of the State.

Nouakchott, November 13, 1988

**For the Military Committee of National
Salvation, the President**

Colonel MAAOUYA OULD SID'AHMED TAYA