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APPENDICES

Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons

Introductory note

This second edition of the *Hydrocarbon Guide* aims to update the data contained in the first edition published in 2005.

Indeed, Ordinance n° 06-10, which amended and completed Act n° 05-07 of April 28, 2005 pertaining to hydrocarbons, introduced notable changes to the legal and tax frameworks that govern hydrocarbons, which we consider important enough to bring to the attention of those who are interested in the hydrocarbon sector.

KPMG is proud to be the first international consulting firm to assist in fostering a better understanding of the new legislation. Our specialists are available to help anyone in need of further explanations or clarifications.

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THE ALGERIAN HYDROCARBON SECTOR

A HIGH-GROWTH SECTOR WITH INVESTMENT OPPORTUNITIES AND UPSTREAM AND DOWNSTREAM OPPORTUNITIES

Introduction

Investments made by oil companies abroad have a long-term horizon, generally ranging between fifteen and thirty years, sometimes even longer. That is indeed the time horizon of the oil companies currently established in Algeria.

This estimate holds true for oil service providers as well as companies providing oil-related services that wish to enter the Algerian market and establish a permanent presence there.

This is why all oil companies must implement winning business strategies for the long term.

Achieving this not only requires knowledge of the public policies and strategies of their local partners, but they must also be aware of the essential characteristics of the hydrocarbon sector of the host country.

This is the object of the current chapter, which starts with an introduction to the general framework for integrating the sector into the country’s economy and the international hydrocarbon market.

The second part presents some of the key characteristics of the hydrocarbon sector in Algeria.

The third part looks into the policies initiated by the public authorities in the hydrocarbon sector and the institutional procedures stemming from those policies, in order to determine the objectives, and the essential motivations underlying them and their impact on direct foreign investments. This part helps shed light on new national and international developments, as well as on their current and potential impact on Algeria’s hydrocarbon sector, on Sonatrach and on relations with partners.
The fourth part is devoted to the market’s structure, divided into upstream, downstream and oil services markets, but also deals with the market players that oil operators interested in Algeria will have to get acquainted with.

1.1 THE GENERAL FRAMEWORK FOR INTEGRATING THE SECTOR

1.1.1 Recent political and economic developments: a transition which, although difficult, is well under way.

In 2006, twenty years after a serious financial crisis, which began with the oil price war of 1986 and caused great economic and social instability (weak oil prices, outrageously high external debt service payments, a decade of terrorism, high unemployment, social and political tensions), Algeria has succeeded in making its remarkable recovery take root.

Thus, after implementing a structural adjustment program (SAP) from 1994 to 1998 with the assistance of the World Bank and the IMF, Algeria was able to restore its macroeconomic balances and curb inflation, which fell from 20% in 1994 to 1.4% in 2006. Better yet, the Algerian economy is growing again (the economy grew at a rate of 4.1% in 2002, 6.8% in 2003 and more than 5% in 2004, then maintained a growth rate of 3 to 4% in 2006 before achieving a rate of 6.1% in 2007) and now the country holds historically high foreign exchange reserves amounting to 68.4 billion $US as of July 2006 (against 56.2 billion $US in December 2005).

These economic performances remain fragile however as they are essentially driven by high oil prices and public investment. Social tensions, which have lost some of their intensity, remain palpable nonetheless in the absence of major job creation, even though according to the National Bureau of Statistics unemployment fell three percentage points to 12.3% in 2006 from 15.3% in 2005.

On the political front, Algeria’s democratization from a single-party system and centrally-planned economy was as much the result of the civil society’s actions and the vitality of the political class as of the impact of the economic crisis itself. This is how a new constitution was adopted in 1989, following the popular uprising of October 1988, opening the way to a multi-party system and freedom of the press (the Algerian is the freest press in the Arab world). The rise of religious fundamentalism and attendant terrorism in the 1990s has been suppressed, as a result of
society’s resistance and the action of the National Popular Army (ANP) and the other security forces.

The open presidential election of April 2004 consolidated political stability in the country and ensured the necessary security to conduct business.

Oil price fluctuations and, to a lesser degree, the increase in the amount of hydrocarbons sold on the international market represent the key variables of Algeria’s economic development due to public spending adjustments directly stemming from them. That is why the hydrocarbon sector has always been granted special treatment by public authorities and is of interest to Algeria’s civil society and political class alike.

1.1.2 The hydrocarbon sector in Algeria: a strategic position and a consensual governance

Since Algeria became independent, the hydrocarbon sector alternately went through periods of prosperity and crises:

- 1962 to 1965: from independence to the Algiers Agreement with the French government, which had continued to manage Algeria’s oil during the transition. This period saw the creation of Sonatrach, a national energy policy tool.
- 1971 to 1973: from the nationalizations to the historical price reversal of the 1973 October War.
- 1973 to 1986: from the oil shock to Algeria’s severe financial crisis, precipitated by the collapse of oil prices.
- 1986 to 1993: Algeria plunged deeper into the crisis, which forced the country to reschedule its debt and implement a structural adjustment program under the aegis of the IMF and the World Bank.
- 1998: weaker oil prices set off a new alarm with regard to fiscal imbalances.
- 1999 to 2006: period of relative prosperity achieved through a difficult update of the institutional framework governing the exploration and production of hydrocarbons.

History shows, particularly since 1973, that the authorities relax social and economic demand management policies when oil prices are high and increase controls when hydrocarbon prices are weak.
The hydrocarbon sector’s impact on public policies is due to the fact that it accounts for one-third of the country’s GDP, more than two-thirds of government revenues and nearly all foreign exchange reserves (97%).

The transition from a planned economy to a market economy has not yet changed this general trend of the Algerian economy.

This is why the authorities always try to reach a consensus with unions and the political class on how to manage oil revenues. Finding the optimal adjustments from that standpoint has always been a time-consuming exercise.

Generally speaking, oil sector reforms are introduced in times of financial and social crises:

- Act no. 86-14 pertaining to the opening and liberalization of upstream oil,

- The 1991 revision of Act no. 86-14 to broaden its impact so as to include exploration and natural gas finds in response to the persistence of the financial crisis.

It is easier then to understand how difficult it was to build a consensus around the latest hydrocarbon law, which was amended in 2006.

One of the concrete achievements of the economic reforms under way is that all public investments are made within strict budgetary confines and are fed by an oil revenue regulating fund which, as a precautionary measure, shelters additional revenues in excess of a benchmark price of $19 a barrel.

1.2 SOME CHARACTERISTICS OF THE SECTOR

1.2.1 Situation as of the end of 2006

The hydrocarbon sector in Algeria is overwhelmingly dominated by Sonatrach. Sonatrach alone owns more than 43% of the national mining area, which spans a total of 1.5 million km2. Moreover, the corporation operates a pipeline network of more than 14,000 km. Finally, Sonatrach controls 75% of the hydrocarbons produced in Algeria, and that does not even include its share of the partnership contracts it’s involved in.
A few facts illustrate the sector’s growth in 2006\(^1\) from an upstream and downstream physical and financial results standpoint:

- 61 drilled wells, including 50% in partnership,
- 17 new finds, including 8 in partnership,
- 8 new exploration and production partnership contracts were signed in 2005, bringing the total number of contracts of this type currently in force to 33,
- 232 millions of TOE were produced, including 65 in association with foreign oil companies
- Production of 34.8 millions of TOE of LNG and LPG, which represents a 1.5% increase over 2004
- 136.2 millions of TOE were exported,
- Investments of 290 billion AD (equivalent to 4 billion US dollar), which is 9% more than in fiscal 2004.

Among the most significant investments launched in 2006, the following are noteworthy:

- The Gassi Touil integrated gas project,
- The condensate refinery in Skikda,

On the financial front, sales excluding services provided to third parties amounted to 3,461 billion AD, which represents more than 50 billion US dollars, compared 2,371 billion AD in 2004, for a 46% increase.

### 1.2.2 Forecasts for 2007

Investments of $5.1 billion, including investments in partnerships, have been budgeted, which represents an increase of more than 30% over 2004.

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\(^1\) Source: Sonatrach; Press conference of Sonatrach’s CEO about the company’s performance in 2006 in the Sunday, February 6, 2006 edition of El Moudjahid.
The investments include:

- **Upstream:**
  - the development of deposits in partnership at a cost of $3.5 billion (Sonatrach accounts for 68%)
  - an exploration program at a cost of $700 million (drilling of 65 wells and the doubling of seismic acquisition works)
  - the exploration; 184,728 drilled meters, including those drilled in partnerships
  - the development and modernization of the Hassi Messaoud deposit (50 horizontal wells)
  - the development; 461,212 drilled meters, including those drilled in partnerships
  - the development of the Tinhert and Southeast Illizi deposits.

- **Downstream:**
  - the construction of the onshore Medgaz (GZ4) pipeline
  - the reconstruction of destroyed LNG units in Skikda at a cost of of 2.85 billion US dollars

1.3 A MUTATING INSTITUTIONAL FRAMEWORK

1.3.1 The liberalization of the hydrocarbon sector (1986-2006):

In Algeria hydrocarbon sector reforms have always come as an institutional response to the emergence of successive international constraints, which are internal to the global hydrocarbon industry and new international regulations. This is probably why the hydrocarbon sector (1986) was the first sector affected by the liberalization of the Algerian economy.

Ensuring that its institutional apparatus is consistent with the international context is not a recent approach to Algerian energy strategies. The approach goes back to the creation of Sonatrach and the first oil
negotiations with the French government following independence (1964) and was further validated during the crisis of 1986, which was precipitated by a severe drop in oil prices.

The most recent reform - known as the Hydrocarbon Act – sparked debate and resistance in political and social circles, which prompted the authorities to “put the project on the backburner” on the eve of the presidential elections of 2004 and then to amend the law in July 2006, which was finally adopted.

To understand the necessity of this new law, the most prominent elements of globalization, which will certainly impact the Algerian hydrocarbon sector, must first be put into perspective. From an institutional standpoint as well, these elements represent a set of constraints that also limit Algeria’s latitude in formulating energy strategies.

Moreover, as far as Sonatrach is concerned, the recombining and restructuring currently taking place in the hydrocarbon sector throughout the world will have a profound impact on national hydrocarbon corporations, which cannot remain untouched by those transformations, which includes governance. This is particularly true considering that Sonatrach is ranked as the 12th hydrocarbon company in the world and is one of the biggest gas companies in the world (the 3rd largest gas exporter and 2nd LNG exporter).

With the evolution of the global energy market per se, two other external constraints weigh on the Algerian hydrocarbon sector:
- Algeria’s gas future in relation to Europe, which is both Algeria’s primary customer and its primary supplier,
- the anticipated effects of Algeria’s accession to the WTO and of the free trade agreement with the EU on the country’s hydrocarbon sector.

The first external constraint pertains to the future of gas in Algeria, which faces competition from the rise of new producing regions (Egypt, Qatar, Iran, Libya, the Caspian Sea), but especially has to contend with the restructuring taking place in the European Union, its primary market. With the 1998 natural gas directive, the European Commission aimed to build a single energy market to create the most competitive pricing conditions, which would be advantageous for the Commission but would also place the natural gas exporting countries in the weakest possible
position. The directive called into question two provisions that guaranteed the contractual balance between the parties.

The second constraint pertains to the potential impact of Algeria’s accession to the WTO on the hydrocarbon sector. Having falsely believed that the WTO did not concern hydrocarbon exporters or that it was not in their interest to join, which amounts basically to the same thing, Algeria lost several opportunities to join the WTO under less constraining conditions, while it was simultaneously opening the door to external trade to a large degree. Unlike OPEC, the fundamental principle on which WTO stands is that of the prohibition of quantitative trade restrictions, including exports (article 11). For the time being however, hydrocarbons are covered by the provision contained in article 20 regarding exceptions (general exceptions) and article 21 (national security). More specifically, it is paragraph g) of article 20 that protects measures “pertaining to the conservation of depletable natural resources” from WTO rules, “if such measures are applied in conjunction with restrictions on domestic production or consumption.”

At the moment, the balance between that exception granted to exporting countries and the latitude given to consuming countries to impose heavy taxes on refined products and other products derived from hydrocarbons seems to work. On this topic, hydrocarbon exporting countries rightly believe that heavy taxes greatly reduce their capacity to earn higher revenues on their natural resources. How much longer will this balance hold and how will it evolve? Only the future will tell. If it’s not a problem yet for hydrocarbons, WTO agreements greatly impact the trade of refined and petrochemical products, including dispute resolution. Dual pricing, meaning the practice of setting lower prices for the domestic market (households and industries) than for the export market, is facing a serious challenge. A new threat to traditional competitive advantages granted by the hydrocarbon sector to petrochemical industries and energy-intensive industries (cement plants, steel mills, power plants) in the form of controlled prices thus emerges.

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2 The destination clause and the “take or pay” clause guaranteeing long-term contracts.
The last consequence of Algeria’s accession to the WTO on the hydrocarbon sector has to do with oil services. Oil exporting countries face strong pressure to strengthen their commitments to oil and oil-related services. At present, most of them have not made commitments, even while their markets are open.

1.3.2 Institutional adjustments of the sector as tools to regulate the crises and restructurings of the global energy landscape (1986-2006).

Faced with these two constraints, which pertain to the internationalization of the hydrocarbon industries’ production processes, and increasingly constraining international regulations, the new law on hydrocarbons strives to deal with these issues through a controlled opening.

It’s worth recalling that it was under an acute financial crisis (an annual drop of 43% in foreign exchange earnings in 1986) that Act no. 86-14 was adopted to deal with the impasse. Specifically, the law introduced the production sharing formula (PSC), which boosted exploration partnerships at a time when Sonatrach did not have the financial or technological capacity to replenish reserves, which were greatly depleted at the time.

The amendments introduced in 1991 were initiated to complete and improve the law then in force by extending partnerships to natural gas and already discovered deposits, while improving the tax system to make it more attractive. Convincing results were achieved, especially after 1990, with the improvement of foreign exchange reserves in particular, which rose to 1971-levels in 1997. Algeria was also the world’s leading discoverer of hydrocarbons in 1998.

Algeria’s return to macroeconomic balance is as much due to the stringency of the adjustment (1994-1998) as to the efficiency of the country’s energy strategy. A new mutation, in response not only to the evolving global energy landscape, but also to the opening of the Algerian economy, is now all the more indispensable given that institutional and microeconomic reforms will need time to produce the expected effects.

As amended in 2006, the new law on hydrocarbons must thus be read by taking the three following priorities of the Algerian authorities into account:
- Sonatrach’s durability and development as national public operator,

- The increase of revenues transferred to the Treasury and the increase of the Bank of Algeria’s foreign exchange earnings, relative as well to the country’s borrowing power,

- The contribution of the hydrocarbon sector, Algeria’s overwhelmingly dominant sector, to the country’s economic and social development.

### 1.3.3 Sonatrach’s repositioning within the framework of the new law

The concerns that have surfaced pertain to Sonatrach’s supposed weakening relative to other international oil companies that could result from the application of this new law, thus preparing the firm to open itself to a broader ownership.

Contrary to these concerns, the magnitude of Sonatrach’s tangible (financial assets, mining resources, reserves, production, transportation infrastructure, industrial facilities) and intangible assets (personnel’s qualifications and know-how, corporate culture, ability to train) – as sole owner - protects the firm from a complete or partial takeover by third parties.

Indeed, like any other oil company, Sonatrach’s worth is actually only equal to the value of the proven reserves under its control and its capacity to exploit them.

However, Sonatrach’s activity is limited by the fact that it is burdened by prerogatives set by the authorities, which make the company lose sight of the need for greater managerial autonomy and more assertiveness in making strategic choices. Clarifying the relationship between the State and the Sonatrach Group will benefit both. This necessary clarification would take place in the broader context of the relationship between the state as stockholder and State-controlled corporations with reference to the type of governance. In the future, the relationship between Sonatrach and its owner, namely the Algerian State, will likely be spelled out by a contract clearly stating the partnership’s objectives. The Sonatrach Group will not only be protected from any unexpected and/or unwarranted financial withdrawals by its owner, but will also operate with a level of autonomy equal to that enjoyed by global corporations. In return, the Sonatrach Group will have to meet the goals set out in a contractual
commitment clearly agreed to, while accepting the control of its sole shareholder. This contract, in which the goals of the partnership will be stipulated, will complement the exploration and production contracts, which the Sonatrach Group is entitled to, just as any other operator, on all its existing and future deposits, as well as the concession contracts pertaining to oil and gas pipeline transportation systems.

The primary issue has more to do with the conditions that need to be assembled to facilitate and sustain Sonatrach’s development than with a virtual protection that would constrain it more than help it. The conditions are of two types: internal conditions and external conditions. With regard to internal conditions, first and foremost, Sonatrach’s modernization involves knowing and controlling the firm’s costs along the hydrocarbon value chain, that is from exploration and production to ownership transfer points (refinery entrances, port facilities, metering facilities at gas pipeline land borders). Efforts to achieve this have yet to be made for the most part. Externally, we have no choice but to acknowledge that the institutional environment in which Sonatrach still finds itself, places it in a situation that is less favorable than that in which other global oil companies operate. By way of illustration, the firm’s responsiveness is still too slow when it has to convert certain assets internationally (the Currency and Credit Council’s prior approval is needed, the banking system is slow, etc.). In fact, Algerian authorities want to work on the internal and external factors that limit Sonatrach’s efficiency and restrain its growth. We must acknowledge that, by relieving Sonatrach of the obligation to build transportation infrastructures alone, the new law will help the firm cut its costs. In short, it’s in that direction that efforts intended to enable Sonatrach to withstand foreign competition in the hydrocarbon exploration and production sectors will be made.

1.3.4 The hydrocarbon sector’s contribution to Algerian foreign exchange reserves within the new apparatus

The concerns that both the authorities and the population have are in fact linked to fears that the means of making external payment could dry up because of the knowledge that the hydrocarbon sector accounts for 98% of foreign exchange earnings. Those concerns have now been erased with the 2006 amendment stipulating that Sonatrach must have a stake of at least 51% in all new exploration and/or exploitation contracts and in all transportation and refining activities.
Under the fiscal provisions stemming from the 1986 law that was later revised in 1991, Sonatrach alone was responsible for collecting taxes on the State’s behalf. The partners are not taxable persons under Algerian law. A situation like that was even more questionable given that there was a real conflict of interest between Sonatrach, sole tax collector, and Sonatrach, partner of foreign oil operators, as the amount of tax revenues is inversely proportional to the volume of investment and operating costs (oil costs). Some experts estimate that the tax efficiency of the partnerships was insufficient. But the truth is that, from a practical standpoint, it was the tax system’s structure that was the problem.

In the same vein, the way the legislator saw it, the previous production sharing system (PSS) neither encouraged investments nor cost reductions, which were reimbursed during the same fiscal period. On the contrary, a crowding-out effect at the expense of the exploitation of small- and medium-sized finds, which led to opportunity costs, was observed in practice. Simulations based on the proposed tax system show that tax revenues will at least equal those of the old system, while introducing greater flexibility and incentives to invest in the recovery and production of small deposits, which in some cases were simply abandoned after their discovery or just partially exploited.

Thus, from a tax standpoint, the new system pushes the limits back and brings solutions to noted deficiencies and persistent constraints of the provisions which were in force (inadequate flexibility, little transparency). Just as in the past, the 1991 revision of the law had broadened its scope to include hydrocarbon gas in response to the lack of attractiveness that was observed then.

From the standpoint of foreign exchange earnings from hydrocarbon sector activities, the provisions contained in the Currency and Credit Act confirm the status quo, as all resident oil operators are required to keep foreign currencies with the Bank of Algeria, regardless of the tax system in effect (article 55 of the law). As for non-residents, they can “keep abroad the proceeds of hydrocarbon exports acquired as part of the contract.” However, they are required to “import in Algeria and transfer to the Bank of Algeria the convertible currencies necessary to cover their development and exploration expenses, and, if need be, exploitation, pipeline transportation and operation expenses, as well as the amounts necessary to pay royalties and taxes due.” (article 55 of the law).
1.3.5  The hydrocarbon sector’s contribution to economic and social development

The hydrocarbon sector’s contribution to national development is not a new issue in Algeria and other countries that export hydrocarbons. For the authorities, the hydrocarbon sector will continue to contribute to internal and external financial balances, guaranteeing the solvency of the other sectors and, thus, their access to the external trade. These sectors, both private and public combined, cover only 3% of their currency imports with their own exportations, but first a recent event in Algeria’s economic history must be recalled. Construction of the Algerian petrochemical industry was stopped by a political decision in the early ’80s, when all the favorable conditions, including the financial conditions, had been assembled. The context is different and the development of the sector is linked to other issues: specific industrial policies, attractiveness in connection with FDIs and regional integration into the Euro-Mediterranean petrochemical industry.

The tax consolidation provided for in the new law in connection with downstream investments by integrated oil groups represents a concrete incentive. Competitive advantages granted to industries as a result of the availability and accessibility of energy will tend to remain as is, even though prices will gradually be opened. Satisfying the energy needs of households and the transportation sector does not pose any specific problem, with two reservations: that the consumption model favoring the consumption of “long” national resources (carburation with LPG or CNG, instead of liquid fuels) reflect that preference in the energy price structure and that the narrowing gap as far as relative prices limit the waste that was observed. With regard to energy-intensive industries (cement plants, steel mills, etc.), you should know that these operators enjoy some of the benefits of hydrocarbon revenues through lower energy prices, to the extent allowed by the commitments made to the WTO. The law leaves this question open, referring it to regulatory authorities for arbitration.

In giving sovereign powers back to the State, the new law not only advocates a more efficient management of oil revenues, but the transparency required to make political choices in connection with the allocation of resources generated by oil revenues as well. The nature and destination of transfers will be more understandable as a result. The law explicitly transfers to the legislative branch the power to subsidize oil products through the Treasury, thus reinforcing transparency and good governance while consolidating the Sonatrach Group along the way.
1.4 AN EVOLVING MARKET PLAYER STRUCTURE

Keys to understanding the logic of the hydrocarbon sector’s inner workings, its characteristics and forms of governance were given prior to this. Now it would be useful to specify the market structure.

The market can be divided into three segments:
- the hydrocarbon upstream
- the hydrocarbon downstream
- the oil service segment along the hydrocarbon industry’s logistical chain.

1.4.1 The hydrocarbon upstream

This segment of the market, which is of interest to international oil and gas operators, will be more open to competition – with greater transparency and legal safeguards. This is due to the fact that it will be regulated by the new framework provided for in the new law on hydrocarbons.

The only exceptional restriction to the total opening of the hydrocarbon upstream is regulated in article 32, which enables the State to sidestep the rules of competition for reasons of security and the country’s best interest.

1.4.2 The hydrocarbon downstream

Considering the reversals suffered by the Algerian petrochemical industry, where investments have been on hold for more than 25 years ago, on the one hand, and refining capacity was limited both in Algeria and around the world on the other hand, this market segment will have to grow rapidly over the next few years.


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3 Excerpt from article 32 of the bill: “Exploration and/or operation contracts submitted to invitations to tender shall be approved by a decision of the minister in charge of hydrocarbons. The minister in charge of hydrocarbons may, on the basis of a substantiated, detailed report, sidestep these provisions for reasons of general interest within the framework of the hydrocarbon policy.”
BAOSEM\(^4\) (pages 60 and 61), which invited firms to express their interest in building a 15 million ton oil refinery in Algiers and 6 petrochemical projects in Arzew and Skikda in partnership with Sonatrach.

Under the previous law, the activities of this sub-sector of the hydrocarbon sector were controlled by three subsidiaries of the Sonatrach Group who held a near-monopoly position:
- Naftec for refining activities;
- Enip for petrochemical and chemical gas activities;
- Naftal for the transportation, storage and distribution of oil products and LPG.

1.4.3 Oil services
Algeria’s energy services are almost all open to international competition already. The services can be divided into six major categories:

- hydrocarbon upstream services;
- liquid hydrocarbon downstream services;
- gaseous hydrocarbon downstream services;
- energy facilities engineering services;
- energy facilities construction services;
- hydrocarbon maritime transportation services.

Shares of this segment of the hydrocarbon sector are distributed between domestic firms, usually subsidiaries of the Sonatrach group, and foreign and international groups.

1.4.4 The new market players
Essentially the new market players are two independent hydrocarbon agencies established in accordance with provisions contained in article 9 of the law:
- the National Agency for the Development of Hydrocarbon Resources called Alnaft, is in charge of upstream oil, being notably responsible of awarding and managing exploration and/or exploitation contracts,
- the national Agency in charge of controlling and regulating the activities of the hydrocarbon sector called the Hydrocarbon Regulatory

\(^4\) The English version of \textit{Baosem - International Tenders} – has been systematically available since February 2005.
Authority, which is notably in charge of pipeline transportation and downstream oil.

The duties of the two agencies are spelled out in article 10 and 11 of the law. Among other things they are responsible for the tasks previously executed by the ministry in charge of hydrocarbons and Sonatrach respectively.

Similarly, you can see that, under the new law on hydrocarbons, Sonatrach and foreign or international oil operators have different roles and responsibilities from the ones that they had under Act No. 86-14. That situation will be examined in greater detail in the following chapters.

THE NEW LEGAL FRAMEWORK OF THE HYDROCARBON SECTOR IN ALGERIA

This analysis of the legal framework requires that we take successive looks at the general provisions of the law, access to mining resources – which is the core element of this issue –, as well as acknowledged investor guarantees, pipeline transportation, which is an essential complement of this activity, and, finally, transitional provisions.

1.5 GENERAL PROVISIONS

These general provisions essentially determine the role of the State in activities pertaining to liquid and gaseous hydrocarbons, as well as the freedom of investors in this sector and their obligation to prevent risks and protect the environment.

1.5.1 The State’s role in oil activities

The State’s role stems from its ownership rights, but that does not necessarily mean that the State is involved financially.

1.5.1.1 The State’s ownership rights

Article 3, paragraph 1, of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, stipulates that: “Hydrocarbon substances and resources, whether discovered or not, located in the soil or subsoil of the national territory or in territorial waters under Algeria’s sovereignty belong to the national community, of which the State is the embodiment.”
The meaning of this provision is unambiguous: investors are forbidden from ever claiming ownership of the deposit that they discovered.

It’s precisely because it owns these natural resources that the State plays an active role in their management. Indeed it is the role of the minister in charge of hydrocarbons to oversee their development, to formulate a policy and to implement it, following its adoption.

This is also why exploration and/or exploitation contracts must be approved by decree of the cabinet (art. 11, par. 03, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

As we will have the opportunity to demonstrate later, these agreements are not likely to take effect without the cabinet’s approval.

1.5.1.2 The rejection of financial involvement

Even though it monitors the exploitation of these natural resources in its capacity as owner, the State sits on the sideline; the State does not want to necessarily be considered a stakeholder. In accordance with article 44, paragraph 1, of the aforementioned act, the State “shall not assume any obligation for funding or guaranteeing funding and under no circumstances shall it be accountable to third parties in connection with the performance of the contract.” In this regard, the legislator intended to be even more categorical by excluding the State and Alnaft from any liability in connection with outsourced oil operations conducted within the framework of exploration and/or operation contracts, as paragraph 2 of the aforementioned article, introduced by the amendment of the law, clearly stipulates: “Under no circumstances, shall a direct or indirect link be established by the contracting party or any other party with Alnaft or the State, nor shall claims be made, directly or indirectly, by the contracting party or any other party, in connection with any damage or consequence, of any nature, resulting from oil operations and/or their performance.”

The State departs from the principle of non-financial participation in only one hypothetical case: every time it imposes a constraint on an investor, the State is bound to grant the investor a subsidy in an amount, and under terms and conditions, to be determined by regulation (art. 08, par. 02, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).
1.5.2 The freedom of action of investors

After attempting to define the contents of this freedom of action, it is important that we discuss the relative limits imposed on it.

1.5.2.1 The contents of the freedom of action

This freedom of action stems implicitly from the fact that activities linked to the exploration and exploitation of hydrocarbons are considered commercial acts (art. 06, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons), even though the deposits are immovables by nature. (art. 28, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

However, the legislator decided it was better to assert this freedom specifically: “Any person established in Algeria, having a branch there, or organized in any other form making it liable to taxes in Algeria, may conduct one or more of the said activities, provided it abides by (the legislation in effect)” (art. 06, par. 2, of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). What this provision means is that the investor is not only free to invest in oil resources, but that this freedom extends to the legal form taken by this involvement. Remember that under the old legislation, Sonatrach was the sole holder of the mining rights and that foreign corporations had to sign partnership contracts with it.

By virtue of the new law, Sonatrach is no longer the holder of the mining rights, which will be delivered to Alnaft in the future.

The foreign partner is now considered a co-contracting party of the exploration and/or exploitation contract, as a distinct legal person subjected to the same conditions as Sonatrach.

The legislator went much farther however: it strongly asserts - for the first time - the freedom to import and market hydrocarbons and oil products on the national territory, provided of course that these activities are conducted in accordance with the law (art. 08, par. 1, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

Based on this provision, it is clear that all lawful firms constituted under Algerian law, including all the subsidiaries of foreign oil companies or firms in which the latter have a stake, are authorized to import, transform, refine and distribute in Algeria all hydrocarbons in the same way as Naftec and Naftal, the national corporations.
1.5.2.2 Limits to the freedom of action

Even though, theoretically, freedom of action is recognized to “any person,” that is a legal person, private or public, Algerian or foreign, in practice, only those firms with considerable financial and technological means are able to enter the hydrocarbon sector. This is because the new law requires that they harness the resources, as well as the equipment necessary to perform the contract (art. 44, par. 02). In other words, with the exception of Sonatrach, only global oil companies are likely to be in a position to assemble such means to invest in Algeria in this sector of activity at the moment.

Similarly, article 32 of Act No. 05-07 as amended by ordinance No. 06-10 of July 29, 2006 modifying and completing Act No. 05-07 minimized the freedom of action by including a provision stipulating that exploration and/or exploitation contracts must necessarily contain an equity participation clause in connection with Sonatrach’s stake which is a set at a minimum of 51%. Thus, foreign firms are still required, in all cases, to partner with Sonatrach in all future exploration and/or exploitation contracts in order to conduct those activities: “the exploration and/or exploitation contract must specify the percentage of Sonatrach’s stake, as well as the means and conditions for financing exploration investments.” (art. 48, par. 02, of Act. No. 05-07 amended and completed)

As for refining and pipeline transportation activities, the freedom of action was also diminished by the new articles 68 and 77 of the law as modified by the ordinance, which limit the percentage of the foreign partner's stake in refining and pipeline transportation activities to a maximum of 49%.

1.5.3 The prevention of risks and the protection of the environment

With the exception of the obligations required of all corporations under general law with regard to industrial safety, the activities falling specifically within the purview of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons: “must be conducted by the contracting entities and the operators in such a manner as to prevent any risk inherent to those activities” (art. 16). Among the risks linked to the exploration and exploitation of hydrocarbons, oil well fires and hydrocarbon leaks are undoubtedly the most important.

With regard to environmental protection, the law contain a provision stipulating that any person intending to conduct an activity in the
hydrocarbon sector must first “prepare and submit to the Hydrocarbon Regulatory Authority an environmental impact study and an environmental management plan which must necessarily contain a description of the preventive measures and environmental risk management measures associated with the said activities.” (art. 18, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

Then the Hydrocarbon Regulatory Authority must coordinate all those studies in collaboration with the ministry in charge of the environment. It must also obtain the visas which are essential to the contracting entities and the operators. But as far as the facilities and equipment built prior to April 28, 2005, the effective date of Act 05-07 pertaining to hydrocarbons, oil companies, and Sonatrach in particular, have been given a seven-year grace period to bring them in line with the legal requirements (art. 109, par. 1, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

1.6 **ACCESS TO OIL MINING RESOURCES**

Under the old legislation, Sonatrach was the sole beneficiary of the mining titles giving access to the country’s mining resources. This prerogative has now been transferred to the National Agency for the Development of Hydrocarbon Resources. This takeover of the mining titles by the public authorities is justified by the fact that the State is the owner of the natural resources.

In principle, to conduct an activity in the hydrocarbon sector, that is to gain access to the mining area – which is divided in four zones: A, B, C, D – any legal person, public or private, Algerian or foreign, must first sign a contract with Alnaft (art. 23, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). However, this requirement applies to exploration and/or exploitation contracts, but not to prospecting authorizations.

1.6.1 **Authorization to prospect**

Unlike exploration and/or exploitation contracts, prospecting authorizations are not granted on the basis of an agreement. They “may be granted by the National Agency for the Development of Hydrocarbon Resources (Alnaft) to any person applying for permission to conduct hydrocarbon prospecting works on one or more perimeters.” (art. 20, Act No. 05-07 of April 28, 2005, pertaining to hydrocarbons).

The title, which is issued for a maximum period of two years – according to the procedures and conditions provided for by regulation – is not
exclusive by nature. Its legal effectiveness is replaced by the exploration and/or exploitation contract. This means that any parcel of land covered by such an agreement “shall de facto be excluded from a perimeter or perimeters that are the subject of a prospecting authorization.” (art. 21).

Surely it’s the inconsistency of the rights granted by this title that explains why it is liable to be awarded to any person. It is primarily economic considerations that may spur corporations to apply for a title of this kind. In exchange for a relatively minor investment, prospecting authorizations enable corporations to gather limited information about the prospected zones, namely through the use of geological and geophysical methods. This is to say that the practical significance of this title, whose obsolescence can be explained by its vulnerability, is essentially limited to the delimitation of promising perimeters and to the possible conclusion of exploration and/or exploitation contracts with the National Agency for the Development of Hydrocarbon Resources (Alnaft).

In any case, the legislator obligates the beneficiary of this kind of title to communicate all the data and results gathered during the prospecting works to the Agency.

1.6.2 Exploration and/or exploitation contract
Investors wishing to conduct an activity connected with the exploration and exploitation of hydrocarbons must first sign an exploration and exploitation contract, or, when a deposit that has already been discovered is involved, an exploitation contract, with Alnaft.

To analyze the contents of these agreements, a distinction must be made between the provisions that are common to both and those that distinguish them.

Finally, we will have to deal with the rules that are specific to gas.

1.6.2.1 Rules common to exploration and/or exploitation contracts
The provisions common to exploration and/or exploitation contracts pertain to their conclusion, performance and cancellation.

A. The terms of an exploration and/or exploitation contract
Concluding a contract involves three important stages: the selection of the contracting entity, the negotiation of the contract and its coming into force.
1. The principle of the invitation to tender
Article 32 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons contains a provision stipulating that exploration and/or exploitation contracts are concluded following an invitation to tender conducted in accordance with procedures established by regulation which must define:
- the prequalification criteria and rules;
- the procedures for selecting the perimeters which will be subject to competitive bidding;
- the procedures pertaining to the tender;
- the procedures for evaluating the bids and concluding the contracts.

Although awarding contracts through an invitation to tender is the rule, it can be exceptionally sidestepped. Indeed, article 32, paragraph 3, of the aforementioned Act No. 05-07 contains a provision stipulating that the “ministry in charge of hydrocarbons may, on the basis of a detailed and reasoned report, depart from the rule for reasons of public interest within the framework of the hydrocarbon policy”

Furthermore, the aforementioned article stipulates that: “exploration and/or exploitation contracts provided in connection with each invitation to tender shall be approved by decision of the ministry in charge of hydrocarbons.” In other words, the contents of the contract proposal included in all specification provided as part of the invitation to tender must be approved by the ministry in charge of hydrocarbons in its capacity as the authority with powers of oversight over Alnaft.

2. The negotiation of the exploration and/or exploitation of the contract
Theoretically, exploration and/or exploitation contracts are concluded between Alnaft on the one hand, and Sonatrach and the lowest responsible bidder on the other, with the latter two acting as the contracting party. The contracts in question must necessarily contain a clause setting the percentage of Sonatrach’s stake. The stake shall not be less than 51%.

* The designation of the lowest responsible bidder
It is with the lowest responsible bidder, identified when the bids are publicly unveiled, that the exploration and/or exploitation contract must be concluded, immediately after unveiling the bids and choosing the winning bidder. The selection is done on the basis of a single criterion determined and announced beforehand during the invitation to tender process among the following criteria:
- minimum work program scheduled for the first exploratory phase;
- non deductible bonus amount to be paid to the Treasury;
- proposed royalty rate above the minimum set by the law.

*The clause setting the percentage of Sonatrach’s stake in exploitation activities*

Each exploration and/or exploitation contract must necessarily contain a clause setting the percentage of Sonatrach’s stake, which cannot be inferior to 51% (art. 32 of Act No. 05-07 of April 28, 2005, modified and completed by article 02 of Ordinance 06-10 of July 29, 2006 pertaining to hydrocarbons).

*Performance bank guarantee*

Exploration and/or exploitation contracts must include a clause pertaining to the performance bank guarantee. Its amount must be equal to that of the minimum amount of work that the contracting party must perform during each phase of exploration.

Should the contracting party fail to live up to that obligation, this guarantee, which must be issued by a first-rate financial institution, is payable in Algeria on request by the National Agency for the Development of Hydrocarbon Resources (Alnaft), (art. 43, par. 2, of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

3. The coming into effect of exploration and/or exploitation contracts

The validity of exploration and/or exploitation of hydrocarbons contracts and any possible additional clause is conditional on its conclusion by the parties involved, that is between the National Agency for the Development of Hydrocarbon Resources (Alnaft) and the contracting party (collective term that includes Sonatrach and any other winning bidder).

However, this contract only becomes effective, or in other words, comes into force, after it has been approved by decree of the cabinet on the date of publication of the said decree in the Official Gazette (art. 30, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

B. The performance of exploration and/or exploitation contracts

The rules common to the performance of these contracts are essentially devoted to two issues: the acknowledged right of the contracting entity to transfer all or part of its contract and the right of the contracting entity to
enjoy prerogatives falling outside the purview of general law with regard to real estate.

1. **Total or partial transfer of contracts**

After establishing the principle that contracts can be transferred freely, the new law tempered its impact by giving the minister in charge of hydrocarbons the power to depart from these provisions.

*The total or partial transfer of contracts*

Under the terms of article 31 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, “the person who is the contracting party or the persons acting together as the “contracting party” may, individually or jointly, transfer all or part of their rights and obligations in the contract amongst themselves or to any other person.” What transpires from this provision is that when the contracting party is simply made up of Sonatrach and only one other person, the latter may only transfer its rights and obligations to Sonatrach or to a third party. However, when several investors other than Sonatrach are involved in an operation, they are allowed to mutually transfer their rights and obligations to one another or transfer them, totally or partially, to an external party.

However, the validity of this type of transfer is subject to three conditions:

- it must be approved by the National Agency for the Development of Hydrocarbon Resources beforehand;
- it must be the subject of an additional clause which only comes into force after its approval by a decree issued by the cabinet and published in the Official Gazette;
- finally, this transfer is subject to the payment by the assignor of a non-deductible tax, whose amount is equal to one per cent (1%) of the value of the transaction, to the Treasury.

The freedom of transfer is also limited by the fact that Sonatrach has a preemptive right (art. 31, par. 2, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). This means that Sonatrach has priority as far as acquiring the rights and obligations being transferred. Sonatrach has only 90 days from the transfer notification by Alnaft to exercise this right however.

*Exemption from the free transfer of contracts*

After establishing the principle of free contract transfers, the legislator granted the minister in charge of hydrocarbons the possibility of
departing from it for reasons of public interest (art. 31, par. 4, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). This safeguard is apparently meant to allow the minister to either override the preemptive right granted to Sonatrach or to ward off, if need be, any undesirable assignee.

2. Prerogatives outside the purview of general law
Although hydrocarbon deposits and wells are immovable properties, they are not subject to mortgages (art. 28, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). That is because the State is the sole proprietor of mining resources. It is important to recall that under the oil act which was renewed after Algeria’s independence, the companies owning concessions were allowed to use such mortgages, as they held a right over immovable properties that was distinct from the property right stemming from ownership of mining resources.

Even though the new law prevents the contracting party from mortgaging deposits, it gives the contracting party prerogatives beyond the purview of general law, because activities linked to the exploration and exploitation of hydrocarbons may require the right-of-way over multiple public or private properties.

Under the terms of article 07 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, the contracting party and the holder of a pipeline transportation concession are entitled to the following rights:

- acquisition of land, related rights and easements;
- acquisition of marine resource utilization rights;
- expropriation.

The necessary procedures to obtain these prerogatives are initiated with the competent authorities by the Hydrocarbon Regulatory Authority or by Alnaft, depending on whether it is a pipeline transportation concession or an exploration and/or exploitation contract.

The costs involved with implementing these procedures and the costs of all kinds resulting from it are the responsibility of the contacting party or the corporation in charge of operating the transportation concession, as appropriate.

C. Cancellation of exploration and/or exploitation contracts
Article 57 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons contains a provision stipulating that when the contracting party does not honor the commitments it agreed to, or when, generally speaking, it violates the terms and obligations it is bound to comply with by the law in force, the contract may be annulled. This solution may be applied if the contracting party does not fulfill the requirements of the minimal work program for instance, or if it does not pay its royalties or fulfill its tax obligations. Even if the aforementioned provision does not specifically designate the executor of the cancellation, obviously it can only be the National Agency for the Development of Hydrocarbon Resources (Alnaft), as it is Alnaft that acts as the counterpart in exploration and/or exploitation contracts.

The right of cancellation recognized to the agency merely represents a special application of a basic principle of general law, according to which a party may end a contractual relationship if his co-contracting party does not fulfill its obligations. Still, cancellation represents a drastic measure whose consequences may prove just as serious for the authorities as for the investor. This is why, as a matter of principle, it should only be used as a last resort.

This explains why the legislator took the precaution of recalling a general law principle – which is an expression of the fairness that must exist in all contractual relationships - according to which, the right of cancellation is subject to a formal notice to fulfill the contractual obligations. It is only if, thirty days after receiving this formal notice, the contracting party persists in not fulfilling its duties that the cancellation can become effective; and that the Agency may go to arbitration to seek repair for damages sustained.

1.6.2.2 Rules specific to exploration and/or exploitation contracts
These special rules pertain to the conclusion of exploration contacts between investors and the National Agency for the Development of Hydrocarbon Resources (Alnaft), to its duration and to the right, recognized to the contracting party, to opt out of this contract if certain conditions are present.

A. The conclusion of exploration and exploitation contracts
Two aspects are noteworthy: the selection of the contracting party and the right granted to the said contracting party to conduct exploration activities exclusively.

1. The selection of the contracting party
As a matter of principle, the future partner which will act as Sonatrach’s co-contracting party with the National Agency for the Development of Hydrocarbon Resources (Alnaft) is selected following an invitation to tender.

As for concluding exploration and exploitation contracts, Alnaft must first determine, for each perimeter that is the subject of the invitation to tender, what the sole criterion for selecting the winning bid shall be. In that regard, article 33, paragraph 1, of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons allows Alnaft to choose one of the three following parameters, which is determined case by case:
- the minimal work program scheduled to be performed during the exploratory phase;
- the non-deductible bonus amount to be paid to the Treasury.
- and the proposed royalty rate above the minimum fixed by the new law.

2. The exclusive right to engage in exploratory activities
After the exploration contract has been signed and becomes effective, the contracting party has the exclusive right to conduct exploratory activities within the perimeter defined by the said contract.

This exclusivity thus recognized to the investor is essentially justified by the fact that the investor has agreed to immobilize considerable capital in an enterprise that is by definition risky.

Concretely speaking, this exclusive right allows the contracting party to drill wells, a prerequisite to the discovery of any deposit, within the perimeter assigned to it.

These operations can only be carried out as part of exploration and/or exploitation contracts. Carrying out these operations is by definition prohibited to holders of ordinary prospecting authorizations.

B. The duration of exploration activities
According to the provisions of article 35, paragraph 1 of the new law, exploration activities are, as a matter of principle, spread out over a total of seven years after the contract becomes effective. The period is divided into three stages, but the period can be extended under exceptional circumstances.

1. **The first exploratory stage**
   This initial exploratory stage lasts three years. At the end of that time, the perimeter specified in the contract must be reduced by thirty per cent. This reduction does not impact the parcels of land that are being exploited or those likely to benefit from an extension of the delay however (art. 38, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). Of course it was with the intention of motivating the contracting party to begin exploratory work at the earliest opportunity, using the maximum amount of resources over the entire perimeter, that the legislator enforced this reduction at the end of the first stage. Thus the legislator indirectly prevents the contracting party from making the entire perimeter barren by not devoting the appropriate amount of resources to it.

2. **The second exploratory stage**
   At the end of this second exploratory stage, which lasts two years, the remaining perimeter shall also be reduced by thirty per cent. Just as at the end of the first stage, this new reduction, which can be justified by the same reasons as those previously cited, neither concerns the parcels under exploitation, nor those likely to benefit from an extension of the delay by virtue of the provisions contained in article 42 of the new law.

3. **The third exploratory stage**
   At the end of the third phase, which also lasts two years, “the exploration contract shall automatically end.” (art. 37, 63, par. 1), unless the contracting party has filed a declaration of commercial discovery, which implies that a hydrocarbon deposit has been discovered, or has submitted an application to extend the deadline.

4. **The exceptional extension of the exploratory period**
   As we have just seen, as a rule, the exploratory period lasts only seven years, from the moment that the contract becomes effective. But the contracting party may benefit from an exceptional extension of this deadline in order to allow the contracting party to complete a drilling
and/or assess an exploratory well, or when pipeline transportation infrastructures or a gas market are absent.

* Completion of a drilling and/or assessment of an exploratory well
In accordance with the provisions of article 37, paragraph 2 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, the contracting party shall benefit from an exceptional extension of the exploratory period for a maximum of six months. This deadline extension is only granted to the contracting party for a specific reason: to enable the party to complete the drilling and/or assess an exploratory well. The legislator nonetheless imposed a condition: this drilling must have been initiated during the last three months prior to the end of the exploratory period.

When both requirements are met, the contracting party must submit, before the end of the exploratory period, a substantiated request to the National Agency for the Development of Hydrocarbon Resources. It is this agency that may grant the exploratory activity extension to the contracting party after examining the application.

* Absence of pipeline transportation infrastructures or a gas market.
Sometimes the contracting party discovers one or more hydrocarbon deposits without being able to submit a declaration of commercial discovery during the exploratory period. Two reasons may explain such a situation:

- the first is the consequence of inadequate, or total absence of, pipeline transportation infrastructures;
- the second pertains to the verifiable absence of a market for gas production.

When at least one of these conditions is identified, the contracting party must notify Alnaft in writing, before the end of the exploratory period, of “its decision to keep an area covering the said deposit(s) for a retention period of:

- a maximum of three years from the date when notification was received in the case of oil or wet gas deposits;
- a maximum of five years (...) in the case of dry gas deposits” (art. 42, par. 1, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

It’s only after having approved the obstacles cited by the contracting party to support its application and the delimitation of the discovered
deposits that the National Agency for the Development of Hydrocarbon Resources grants an exceptional extension of the exploratory stage.

However, the legislator went though the trouble of specifying that “the retention period actually used may only be added to the exploration stage” (art. 42, in fine, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

This clearly means that this time extension shall not impact the legal length of the hydrocarbon exploitation period.

**C. Total or partial withdrawal from exploratory contracts**

During the exploratory period, which, under normal circumstances, must not exceed seven years, the contracting party always has the possibility of withdrawing, totally or partially, from his contract. However, article 40 of the new law only enables the contracting party to withdraw from the contractual relationship if he has already met all the conditions and obligations stipulated in the contract or in the legislation in force.

With that requirement, the legislator seems to be indirectly discouraging such an initiative. Indeed, it would be too easy to entrust an exploratory perimeter to the contracting party, most often at the expense of one or more candidates, and enable him to withdraw from the contract without having fulfilled the commitments. However, it is worth asking why the contracting party would want to make such a decision after having already met all his obligations, except of course if the exploratory efforts did not yield any commercial discoveries.

Although the aforementioned provision does not specify it, the contracting party is required to notify Alnaft of his intention to withdraw, totally or partially, from the contract. The agency must verify that the contracting party has indeed met his obligations before accepting the cancellation.

The transition from the exploratory stage to the exploitation stage is based on the assumption that one or more commercially exploitable hydrocarbon deposits have been discovered.

**1.6.2.3 Rules specific to the exploitation period**

In order to study the rules specific to the exploitation of hydrocarbons, two, quite distinct, situations have to be considered: a situation where the
contracting party directly entered into an exploitation contract agreement
and a situation where the conclusion of an exploration and exploitation
contract is assumed. This means that the exploitation of deposits that
were not discovered by the contracting party should be treated separately
from the exploitation of deposits discovered by the contracting party
following an exploratory stage.

Then the rights and obligations of the contracting party common to these
two types of contracts will have to be discussed.

A. The exploitation contract
Two issues are worth considering in this regard: the invitation to tender
to exploit a deposit already discovered and the length of the contract.

1. The invitation to tender to exploit a deposit already discovered
The invitation to tender with a view towards concluding an exploitation
contract pertains by definition to deposits that have already been
discovered. These invitations to tender are more complex than the ones
conducted in connection with to exploratory contracts, as they are
conducted in two quite distinct phases.

The first phase is purely technical. It is essentially meant to define the
benchmark technical offer. It will have to satisfy the criteria set by the
National Agency for the Development of Hydrocarbon Resources. Under
the terms of article 34, paragraph 2, of the new law, the main parameters
taken into account are as follows:

- the percentage of in-place recovery volumes;
- optimization of the production;
- the capacities of the production facilities;
- the lead times of the necessary investments;
- the minimum amount of guaranteed investments, based on standard
costs, communicated by Alnaft.

The second phase has a rather economic character. It is intended to allow
Alnaft to choose the winning bidder. As such, the agency will have to
determine and notify the candidates, from the moment that the first phase
is launched, which of the following two parameters will be applied as the
sole selection criterion:

- the proposed royalty rate above the minimum fixed by Act No. 05-07 of
April 28, 2005 pertaining to hydrocarbons;
- the non-deductible bonus amount to be paid to the Treasury upon concluding the contract (art. 34, par. 2, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

Even if the provisions of this article 34 are not sufficiently clear, one can reasonably conclude that the first phase is intended only to shortlist the best candidates as far as the technical criteria are concerned. It is only upon opening the bids pertaining to the economic phase, however, that the exploitation contract will immediately be signed with the winning bidder (art. 34, in fine, act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

2. **The length of the exploitation contract**

The contract period of the exploitation contract varies depending on the nature of the activity. When the contract involves the production of liquid hydrocarbons, its length is twenty-five years. On the other hand, the contract period is thirty years when a dry gas deposit is being exploited.

**B. The exploration and exploitation contract**

After the discovery of one or more deposits in the designated perimeter, the contracting party must present a declaration of commercial discovery. The party must take certain specific measures when the deposit extends to at least one other perimeter over which it has no title. Finally, the contracting party may apply for early production.

1. **The declaration of commercial discovery**

As soon as it discovers a commercially viable deposit, the contracting party is obligated to file a declaration of commercial discovery with the National Agency for the Development of Hydrocarbon Resources. The party must simultaneously file “a development proposal with an estimate of development costs and a delimitation of the exploitation perimeter” (art. 47, par. 1 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons) with the agency. The contracting party must also set aside an annual budget to face these future expenses.

The implementation of this development plan, its eventual amendment and the annual budget must be approved by Alnaft. Finally, the plan must specify the point(s) of measurement in the exploitation perimeter. This is how the volume of hydrocarbons used as the basis for calculating royalties will be determined.
2. The extension of the deposit to distinct perimeters
   a) Sometimes a deposit declared commercially viable extends over at least two perimeters which are the object of distinct contracts. In a hypothetical case such as this, the contracting parties signatory to those agreements must, following notification by the National Agency for the Development of Hydrocarbon Resources, formulate a joint plan for the development and exploitation of the deposit. If the parties involved agree to formulate this “pooling plan,” they must submit it to Alnaft for approval (art. 54, par. 1 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

   b) If the parties are unable to agree on a plan within six months after notification by the agency, or if the plan submitted by the parties fails to win the agency’s approval, an independent expert shall be hired by Alnaft, at the contracting parties’ expense. The expert’s mission will consist in preparing a pooling plan which “will come into force as soon as it is completed” (art. 54, par. 2).

   c) When the deposit declared commercially viable extends over one or more perimeters that have not yet been assigned, the National Agency for the Development of Hydrocarbon Resources shall issue an invitation to tender with a view towards concluding an exploitation contract in connection with that extension of the deposit (art. 54, par. 3).

   The new contracting party will have to abide by the formulation process of the “pooling plan” defined by the new law (art. 54, par. 4).

3. The early production authorization

   The moment that the contracting party discovers a commercially viable deposit, it may file an application with the National Agency for the Development of Hydrocarbon Resources for an early production authorization. The authorization, which shall not exceed twelve months, can cover one or more wells and enables the contracting party to “specify the characteristics necessary to formulate the development plan” (art. 46 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

C. The rights and obligations of the contracting party common to both types of contracts

1. The rights of the contracting party
Besides the rights that have already been discussed or those that will be discussed in connection with guarantees, in this exploitation phase, the contracting party essentially benefits from the exclusive right to conduct exploitation activities and from ownership of hydrocarbons extracted at the point of measurement.

a) The exclusive right to conduct exploitation activities
The exploration and/or exploitation contract gives the contracting party the exclusive right of conducting activities, either after a deposit declared commercially viable has been discovered, or when an already discovered deposit is involved. The exercise of this right is subject to the approval of the development plan by the National Agency for the Development of Hydrocarbon Resources however (art. 24 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

Within the exploitation perimeter, the contracting party also has the right to engage in exploratory operations, such as digging wells, in order to discover other deposits.

In fact this exclusive right recognized to the contracting party naturally ensues in these types of contracts. Indeed, if the contracting party had not been assured of benefiting from such exclusivity, they would certainly not have taken on the risk of investing important sums of money in this sector.

b) Ownership of hydrocarbons extracted at the point of measurement
By virtue of article 25, paragraph 1, of the new law, “hydrocarbons extracted as part of the exploration and/or exploitation contract are the property of the contracting party at the point of measurement and are subject to a royalty in accordance with the terms and conditions set by the said contract.”

Besides the issue of royalties, which will be discussed as part of the tax obligations of the contracting party, it is important to note that the contracting party only takes possession of the hydrocarbons at the point of measurement, that is the designated location of the exploitation perimeter where the volume of extracted hydrocarbons is calculated. In other words, it is this point of measurement that makes it possible to distinguish the State’s ownership right over the hydrocarbons contained in the discovered deposit from the ownership right of the contracting party on hydrocarbons extracted and measured at that location.
Needless to say, the contracting party is free to dispose of the quantities of hydrocarbons thus extracted as he sees fit.

2. The obligations of the contracting party
With the exception of the tax provisions that the contracting party is subject to, and which will be discussed later, the primary obligations of the contracting party pertain to the optimal preservation of the deposits, the potential limitation of production, the satisfaction of domestic needs and the prohibition of gas flaring.

a) The optimal preservation of the deposits
Not only is the contracting party required to apply appropriate recovery methods (art. 24, par. 3), but he is also required to exploit the hydrocarbon deposits by using the most efficient means to ensure optimal preservation. In other words, the contracting party is required to adhere to the best practices inherent to this activity. Keep in mind that this is about the management of the country’s primary natural resource; it must not be squandered by taking only the immediate interests of the contracting party into account.

To achieve these conservation objectives, the contracting party must show his intent to act in this way in connection with each deposit development plan; the plan must contain “work and expenditure commitments aiming to optimize production throughout the life of the deposit” (art. 49, par. 2, of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons).

b) The potential limitation of production
The goals outlined in the national energy policy might justify the adoption of limitations on the contracting parties in connection with the production of hydrocarbon deposits (art. 50, par. 1, of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons). These goals could be linked to requirements pertaining to the conservation of deposits and the production quota system currently applied in particular by the Organization of the Petroleum Exporting Countries (OPEC).

The decision to adopt limitations is made by the minister in charge of hydrocarbons who has the power to set the volume of the production limitations, their effective date and their duration (art. 50, par. 02). It is then up to the National Agency for the Development of Hydrocarbon Resources to implement the limitations. The agency is required to
allocate the quantities equitably between all contracting parties in proportion to their respective production (Art. 50, par. 3).

c) The satisfaction of domestic gas needs
In accordance with the provisions of article 51, par. 2, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, the National Agency for the Development of Hydrocarbon Resources may ask each gas producer to help meet the needs of the national market. The participation of the contracting parties is proportional to their gas production used as the basis for the payment of royalties.

Even though Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons contains no such stipulation, it is worth asking if the obligation, which may be imposed on the contracting party, to market part of his production at local prices, does not constitute a constraint likely to be offset by a subsidy.

d) The prohibition of gas flaring
The interdiction to flare gas is no doubt justified for two reasons:
- for economic reasons, which consist in prohibiting the squandering of this natural resource;
- for ecological reasons, that is to protect the environment.

But after establishing the principle, the legislator softened it.

Indeed, article 52, paragraph 1 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, contains a provision stipulating that: “the National Agency for the Development of Hydrocarbon Resources may, at the request of the operator, that is the person with the technical capacity and who is in charge of conducting oil operations, exceptionally grant a flaring authorization which is not to exceed 90 days.”

In exchange for this exemption, the operator must pay the Treasury a non-deductible tax of eight thousand dinars per thousand normal cubic meters, which is updated every year according to the exchange rate with the U.S. dollar.

1.6.2.4 Rules specific to gas
Three issues will be quickly addressed. The issues in question pertain to Alnaft’s duties with regard to gas, gas sales contracts and greenhouse gas emissions.

A. Alnaft’s duties with regard to gas
In addition to the functions granted to the agency by article 14 of the new law with regard to the exploration and exploitation of hydrocarbons, the National Agency for the Development of Hydrocarbon Resources performs important duties in connection with gas operations.

Under the terms of article 59 of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, the agency is notably in charge of:

- Keeping and updating records about the state of gas reserves, the amount of gas necessary to meet the needs of the domestic market and the volume of gas available for export,
- Periodically establishing (...) a benchmark gas price;
- Making sure that the contracting parties meet the needs of the domestic market;
- Publishing and providing gas market studies to the various contracting parties.”

The agency must also organize, periodically, a forum where consultation and exchanges of information about the gas market take place. Gas producers from Algeria and abroad, as well as contracting parties who have discovered gas and who, for one reason or another, have not yet entered the development phase must be among the participants in the forum.

At the beginning of every year, the agency must also formulate “an updated sliding ten-year plan” containing:

- developed gas reserves;
- undeveloped gas reserves;
- the amount of gas needed by the domestic market;
- the amount of gas needed for assisted recovery and cycling;
- the volume of gas available for export.

Finally, to meet the gas requirements identified by the Electricity and Gas Regulatory Commission, Alnaft must tell the contracting parties what volume of gas, established in proportion to their production, they have to market (art. 64, par. 4). What clearly transpires from these legal provisions is that the powers granted to the National Agency for the Development of Hydrocarbon Resources are ample enough. The agency will thus have to acquire the necessary material and human resources to carry out its duties.
B. Gas sales contracts

Attention essentially focuses on three aspects with regard to these contracts: the conclusion of these agreements, the obligation to include a “Take or Pay” clause and the possibility of resorting to swaps to satisfy domestic market needs.

1. Conclusion of gas sales contracts

It should be pointed out that gas sales contracts, concluded before or after the publication of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, must be transmitted to Alnaft in order to allow the agency to establish the benchmark price for this product.

The conclusion of gas sales contracts must take place within sixty days after the agency notified the contracting party of the quantity of gas he will be allowed to sell.

Contracts thus signed with the distributing companies must contain certain compulsory items, such as the total quantity of gas sold, the length of the contract, the terms of shipment, the market where the gas is sold, the price and its revision....

2. Inclusion of a “Take or Pay” clause

It is important to note that the agreements thus negotiated must necessarily include a “Take or Pay” clause. By virtue of this stipulation, the buyer pledges to take a quantity of gas no less than eighty five per cent (85%) of the quantity provided for in the contract. Even if the buyer failed to satisfy this obligation to take, he would still have to pay the full amount.

This “Take or Pay” clause, which is traditionally included in gas sales contracts, is justified by the size of the investments needed to market this natural resource.

3. The freedom to negotiate swaps

To satisfy the domestic market’s gas needs under the best conditions, suppliers are authorized to freely negotiate swaps and carry them out. The goal of this legal technique is to allow gas producers to trade obligations to supply the domestic market amongst themselves. Under no circumstances however, should the use of swaps negatively impact the level of tax revenues.
A copy of each swap contract must be sent to the National Agency for the Development of Hydrocarbon Resources, which is bound by an obligation of confidentiality (art. 66).

C. Greenhouse gas emissions
Following the Kyoto Protocol, the legislator obligated the contracting party wishing to use, transfer or yield credits pertaining to greenhouse gas emissions to apply for the joint approval of the ministers in charge of hydrocarbons and the environment.

In exchange for this authorization, the contracting party is subject to a specific tax to the Treasury. This tax must be calculated – under terms and conditions to be determined by regulation – on the basis of the credit obtained by the contracting party on the international market.

1.7 THE GUARANTEES RECOGNIZED TO THE CONTRACTING PARTY
Two essential guarantees are recognized to the investor conducting an activity as part of an exploration and/or exploitation contract. The first pertains to the foreign exchange system, whereas the second pertains to dispute resolution.

1.7.1 The foreign exchange system
Current regulations pertaining to foreign exchange controls are, to say the least, incompatible with inducing foreign oil companies to invest in Algeria. This is why the legislator went to the trouble of organizing a foreign exchange system distinguishing non-residents from residents.

1.7.1.1 Non-residents
Two questions are worth asking:

- What are the conditions that a person has to meet to be considered a non-resident?
- What are the effects from it?

A. Conditions to qualify for non-residency
Under the terms of article 55, paragraph 2, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons, any legal person with headquarters located abroad is considered a non-resident. That enterprise shall keep its non-resident status even when it acquires a capital stake in an Algerian corporation, provided that the stake, the percentage of which has not yet
been determined, is paid through the duly recognized import of convertible currencies.

The same also applies when the non-resident person merely establishes a branch in Algeria, provided that the expenses of the branch in question are funded by convertible currency imports.

These provisions clearly show that the legislator introduced a significant foreign exchange innovation to further induce investors to operate in Algeria.

**B. The effects of non-residency**

As soon as a firm meets all the aforementioned conditions to obtain non-resident status, it is allowed to keep the proceeds of exploitation abroad throughout the period during which the deposit is exploited. However, the firm’s ability to enjoy this right is subject to a condition. This foreign firm must import and transfer the convertible currencies needed to cover all expenses involved in carrying out its activities to the Bank of Algeria, whether it is for funding exploration, the development plan, exploitation activities, pipeline transportation, or the payment of royalties or taxes. Non-resident legal persons benefit from a second advantage. With regard to the marketing on the domestic market of hydrocarbons extracted as part of exploration and/or exploitation contracts, the firm has complete freedom as far as the manner in which to use the proceeds from sales. The firm is again entitled to transfer all its surpluses abroad.

**1.7.1.2 Resident legal persons**

If, for some extraordinary reason, a foreign firm decided to create an Algerian subsidiary by establishing its headquarters in Algeria and making it responsible for carrying out activities pertaining to the exploration and exploitation of hydrocarbons, that subsidiary shall be considered a resident.

As a result, the firm is required to repatriate and transfer the proceeds of its hydrocarbon exports to the Bank of Algeria (art. 55, par. 7).

The firm is however free to transfer abroad the annual dividends due to its partners or to the parent company, provided they are non-residents.
Following the approval of the Currency and Credit Council, the firm may also make any transfer abroad to meet the demands of its exploitation activities. The Currency and Credit Council must respond within thirty (30) days after the firm’s application has been filed. The council’s refusal to authorize the transfer must be justified and reach the applicant within the same deadline.

This brings up the question of what recourses are available to applicants in cases of refusal.

1.7.2 Dispute resolutions

When there is a dispute between Sonatrach and the National Agency for the Development of Hydrocarbon Resources regarding the interpretation or performance of a contract to which they were the sole contracting parties, the dispute shall be arbitrated by the minister in charge of hydrocarbons (art. 58, par. 2).

If, however, the dispute involves the National Agency for the Development of Hydrocarbon Resources and a contracting party other than Sonatrach regarding a hydrocarbon exploration and/or exploitation contract, the dispute must first be referred to conciliation in accordance with the conditions stipulated in the agreement.

However, in accordance with article 58 of Ordinance No. 06-10 of July 29, 2006, Sonatrach may not resort to arbitration in connection with disputes opposing the contracting party to Alnaft.

In this hypothetical case, the expression “contracting party” refers exclusively to the “foreign partner.” Appeals to international arbitration are only authorized by article 52, paragraph 1 of the new law after conciliation has failed. Through provisions stipulating that this international arbitration must abide by the “mutually agreed terms and conditions of the contract,” the legislator gives the contracting parties the freedom to organize this private dispute resolution apparatus. Thus, the arbitration agreement may establish an ad hoc arbitration court, or resort to institutional arbitration by referring to the rules of a specific arbitral institution. Similarly, the contracting parties are free to determine the language and location of arbitration or
even state their preference with regard to a single arbitrator or an arbitration board...

It is important to note that the previous oil legislation, especially the 1986 law that was amended in 1991, did not contain such dispute resolution procedures, no doubt because, at the time, public corporations could not comply with arbitration.

Algeria’s definite validation of international commercial arbitration by a document of general application can only be traced to the promulgation of legislative decree No. 93-02 of April 25, 1993. From that moment on, public corporations were allowed to resort to arbitration as part of their international economic relations.

The aforementioned article 58 of Act 05-07 of April 28, 2005 pertaining to hydrocarbons does not break new ground in this area, as it only restates a principle contained in the 1993 document.

1.7.3 The law applicable to exploration and/or exploitation contracts

With regard to determining which law shall apply to international contracts, the civil code confirms a nearly universal principle, which is that of free will. Act 05-07 of April 28, 2005 pertaining to hydrocarbons does not reiterate that traditional solution however, as it mandates the application of Algerian law to hydrocarbon exploration and/or exploitation contracts to the extent that contracts are subject to rules enacted by legislative and regulatory documents which can be applied regardless of the parties’ will and which also depart from general law.

1.7.3.1 The application of Algerian law to exploration and/or exploitation contracts

Article 58, paragraph 3, Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons contains a provision stipulating that “Algerian law, notably this act and the regulations passed pursuant to it, shall be applied to the resolution of disputes,” but even if, in some way, the act refers to “the resolution of disputes,” it is reasonable to assume that it in fact pertains to any legislation governing the matter at issue in the dispute stemming from the interpretation or performance of the hydrocarbon exploration and/or exploitation contract.
1.7.3.2 The stabilization of applicable law
Clauses stabilizing or freezing applicable law in long-term international contracts are often considered a guarantee by foreign contracting parties who fear that the contractual balance could be upset by modifications to applicable law. That is why article 15 of Ordinance No. 01-03 of August 20, 2001, pertaining to the development of investments, confirms this stabilization of applicable law with a provision stipulating that the “revisions or repeals likely to be made in the future shall not apply to investments made within the framework of the current ordinance unless specifically requested by the investor.”

Reading the new law, one realizes that it does not include similar provisions for exploration and/or exploitation contracts. That does not preclude the possibility that those contracts that will be approved by decree may contain provisions addressing the matter.

1.8 PIPELINE TRANSPORTATION
Chapter IV, which Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons devoted to pipeline transportation, is only made up of a total of nine articles that were significantly modified by Ordinance No. 06-10 of July 29, 2006.

As we wait for statutory instruments to shed additional light on this, we should reiterate the essential principles applying to pipeline transportation, as modified by the aforementioned ordinance, by distinguishing between the granting of pipeline transportation concessions and the guaranteed access to the infrastructures.

1.8.1 The granting of pipeline transportation concessions
It might be a good idea to briefly revisit the legal nature of concessions before examining the selection of concession holders and the duration of pipeline transportation concessions.

1.8.1.1 The legal nature of concessions
As we have shown earlier, conducting an activity in the mining sector is essentially linked to the conclusion of an exploration and/or exploitation contract between an investor and the National Agency for the Development of Natural Resources.

However, a corporation may only carry out pipeline transportation activities if it has been granted a concession allowing it to do so. Such
concessions can only be granted to corporations by decree of the minister in charge of hydrocarbons (art. 68, act of 2005). In and of itself, the form used to grant this right is enough to reveal the legal nature of this concession.

It is not a contract, but an administrative act, which, by definition, is unilateral in character.

Contrary to the provisions originally contained in the act of 2005 allowing the grant of a concession to any person selected through competitive tender, the modifying ordinance of 2006 now stipulates that the concession can only be granted to Sonatrach, even in instances where the transportation activities are carried out by a corporation made up of Sonatrach and other resident and/or non-resident persons, which, in all cases, must be governed by Algerian law and thus have resident status.

1.8.1.2 Conditions for granting a concession

Sonatrach can be designated as concession holder to carry out pipeline transportation activities every time a need or demand to evacuate hydrocarbon products surfaces. It then becomes necessary to resort to a tendering procedure to build the infrastructure necessary in connection with the concession.

A. Selecting the concession holder without a call for bids

The Hydrocarbon Regulatory Authority recommends that the minister in charge of hydrocarbons grant a concession to Sonatrach in the three following instances:

- when Sonatrach itself applies for a concession;
- when the application originates from a contracting party – that is one of the parties in an exploration and/or exploitation contract – in preparation for the removal of its hydrocarbon production;
- every time it is necessary to grant a concession to meet the needs of a national plan to develop pipeline transportation infrastructures.

When the concession application pertains to an international pipeline, that is a pipeline originating outside the country and crossing into the national territory or a pipeline originating inside Algeria, the concession may be granted directly by the minister to the person carrying out the activities on the advice of the Hydrocarbon Regulatory Authority with the
possibility that Sonatrach may acquire a stake if it had not been involved initially.

**B. The conditions for carrying out pipeline transportation activities**

Pipeline transportation activities can be carried out on the basis of the concession title granted to Sonatrach by Sonatrach alone or by any corporation established under Algerian law, consisting in Sonatrach and any other resident or non-resident person, in which Sonatrach has a stake of 51% or more.

**C. Invitation to tender to build pipeline transportation infrastructures**

After the concession is granted to Sonatrach by decree of the minister in charge of hydrocarbons, a competitive bidding process leading to the award of contracts to build the pipeline transportation infrastructures must be undertaken. The contents of the competitive bidding process are defined by law.

1. **The contents of the competitive bidding process**

In order to build the pipeline transportation infrastructures, a call for bids must be made in two phases, as with the conclusion of contract to exploit a deposit that has already been discovered.

The first phase is purely technical. Its object is to define the “benchmark technical offer, which shall serve as the foundation of the economic offer.” (art. 70-2).

It must comply with specifications, particularly with regard to:

- the capacity of the pipeline transportation facilities;
- the investment schedule;
- the continuity of the service;
- gas fuel consumption.

The second phase is economic. Its object is to select one of the bidders by taking into account “transport tariffs on the basis of the required minimum return on investment set by the Hydrocarbon Regulatory Authority” as the selection criterion (art. 70-2).
After the opening the bids, which must be public, the building of pipeline transportation infrastructures must immediately be entrusted to the candidate who presented the best bid.

2. The participation of Sonatrach
By virtue of article 68 of the law as modified by the ordinance of 2006, the concession is granted solely to Sonatrach. Based on this type of concession, Sonatrach can carry out the activities alone or as part of a corporation established under Algerian law, consisting of Sonatrach and any other legal person, in which Sonatrach has a stake of 51% or more.

3. The duration of the hydrocarbon pipeline transportation concession
As a rule, the concession to transport hydrocarbons by pipeline is granted for a maximum of fifty (50) years (art. 71).

Outside of an act of God, that is an unforeseeable, irresistible event outside of the concession holder’s control, the concession holder may not suspend his activities. The concession holder must ensure the continuity of the hydrocarbon pipeline transportation service (art. 76) until the end of the period set by the ministerial decree.

Theoretically, the concession holder is only subject to the ultimate penalty, that is the cancellation of his concession, if he fails to fulfill the obligations required by the specifications, provided that he was formally notified to change his behavior and failed to do so.

Barring this anticipated and exceptional interruption, the legislator stipulated that, at the end of the concession, ownership of the hydrocarbon pipeline transportation structures and facilities must be transferred to the State free of any charge (art. 81, par. 1). However, the authorities are not obligated to accept the ownership transfer of all infrastructures. Indeed, three years before the deadline, the Hydrocarbon Regulatory Authority must give the concession holder a list of structures that the State does not want to take back.

The structures that the concession holder must transfer to the State must be operational and in good working order. That is why the concession holder must deposit reserve funds in an escrow account every year. The reserve funds, which are considered an operating expense deductible from taxable income, are intended to cover the cost of abandoning operations and restoring the infrastructures.
1.8.2 The guaranteed use of pipeline transportation

Hydrocarbon exploration and/or exploitation contracts would be devoid of substance if the contracting parties could not ship their production to loading ports or, eventually, to domestic market networks. This is why the new law specifically guarantees the right of contracting parties to use pipeline transportation infrastructures, “based on the principle of third-party access” (art. 72).

Moreover, these transportation infrastructures to ship hydrocarbons, liquid or gaseous, are used in return for the payment of a zone fare, which must also be non-discriminatory.

In this regard, it is important to note that the legislator has created a pipeline transportation fund, which is managed by the Hydrocarbon Regulatory Authority and intended to implement the equalization of pipeline transportation zone fares.

That fund – whose organizational structure and operation will be specified by regulation - must establish a tariff structure by taking several criteria into account:

- provide users with the lowest possible tariff;
- improve operational efficiency;
- reduce operational costs;
- enable concession holders to enjoy reasonable rates of return, after paying all expenses (art. 74).

1.9 REFINING AND OTHER PROCESSING ACTIVITIES

Like pipeline transportation activities, refining activities are conducted by Sonatrach alone or in partnership with any other legal person. When they are conducted in partnership, Sonatrach must have a stake of at least 51% in the refining corporation thus established.

All other processing activities may be conducted without any partnership requirement with Sonatrach. The following are identified as processing activities: operations to separate liquefied petroleum gases, gas liquefaction, operations to transform gas into oil products or any other product, Gas to Liquids (GTL), gas and petrochemistry (article 5 as amended by the ordinance)
1.10 TRANSITORY PROVISIONS

For the most part, the transitory provisions pertain to the fate of partnership contracts signed before the promulgation of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons and the other relations between Sonatrach and Alnaft.

1.10.1 The fate of contracts of association signed prior to Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons

Under the provisions of Act No. 86-14, amended and completed by Act No. 91-21, all partnership contracts pertaining to hydrocarbon exploration and exploitation activities were concluded between Sonatrach and foreign investors. Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons chose to maintain these agreements in force. But, for each contract, Sonatrach must conclude “a parallel contract” with the National Agency for the Development of Hydrocarbon Resources.

1.10.1.1 Maintaining partnership contracts in force

Article 101, paragraph 1, of the new law contains a provision stipulating that the partnership contracts and their additional clauses signed prior to the law’s publication in the Official Gazette, “shall remain in force until the date of their expiration.” This clearly means that they will remain in effect until their deadline has passed.

The legislator adds that “the free will of the parties to the partnership contract is preserved by the present act.” As we have mentioned earlier, that “free will” has a specific legal significance: it represents the right recognized to the parties to an international contract enabling one to choose the law applying to their agreement. But this is certainly not the meaning that the authors of the aforementioned paragraph 2 of article 101 intended to give it, as, even under the act of 1986, submission to the primacy of Algerian law with regard to contracts was mandated. It seems reasonable to interpret this text as simply meaning that the will of the parties, which represents the foundation of partnership contracts, is not to be called into question by the new law, and that the agreement must continue to be implemented according to what had been agreed upon by the parties without challenging the State’s sovereign power to modify the applicable tax treatment through the creation of new taxes, such as the tax on extraordinary income introduced by Ordinance No. 06-10 of July 29, 2006.
1.10.1.2 The conclusion of “parallel contracts”

While preserving the effectiveness of partnership contracts that came into force under the old legislation, the legislator mandates Sonatrach to conclude, for each contract, a “parallel contract” with the National Agency for the Development of Hydrocarbon Resources within ninety days after the establishment of the agency (art. 102).

Even if this “parallel contract” creates some ambiguity, keep in mind that it is concluded as part of the application of article 23, which contains a provision stipulating that hydrocarbon exploration and/or exploitation activities are conducted on the basis of a mining title granted exclusively to Alnaft.

As the prerogatives deriving from this appropriation of the mining area previously fell under the purview of Sonatrach, it is natural for Sonatrach to now transfer responsibility for it to Alnaft. The “parallel contract” is intended to set the terms and conditions for the payment by Sonatrach of the new taxes provided for by the new legislation within the framework of the partnership contracts.

In general terms, all we need to say is that the “parallel contract” must set the terms and conditions of this transfer by distinguishing between production sharing or service contracts on the one hand, and undeclared partnerships on the other. In this regard, it is very important to note that Sonatrach must be subject to the new tax system, whereas its foreign partners remain subject to the income tax under Act No. 86-14 amended and completed.

As indicated earlier, it is useful to specify, in this regard, that the tax provisions of the contracts derived from Act. No. 86-14 amended and completed notwithstanding, a tax on extraordinary income was introduced by the new law and levied on the foreign partners through a tax deduction at source implemented by Sonatrach on the Treasury’s behalf.

1.10.2 Other relations between Sonatrach and Alnaft

These other relations essentially pertain to a transfer of responsibility and the conclusion of exploration and/or exploitation contracts.
1.10.2.1 The transfer of responsibility
At the request of the National Agency for the Development of Hydrocarbon Resources, Sonatrach must, totally or partially, transfer its data banks, as well as all technical data related to hydrocarbon exploration and exploitation activities, to the agency.

This free-of-charge transfer must be done at the latest within six months after publication of the new law.

Sonatrach must also provide Alnaft with a delimitation of the exploration or exploitation perimeters it wishes to keep within thirty days after its establishment.

The mining titles pertaining to the perimeters that Sonatrach does not wish to keep must be returned to the ministry in charge of hydrocarbons which will, in turn, grant them to Alnaft.

The perimeters thus recovered will be the object of an invitation to tender in preparation for the conclusion of exploration and/or exploitation contracts.

1.10.2.2 The conclusion of exploration and/or exploitation contracts
For each of the exploration perimeters it wishes to keep, Sonatrach, or one of the subsidiaries designated by it, must conclude, within ninety days, an exploration contract with the National Agency for the Development of Hydrocarbon Resources. The agreement must notably contain a provision with regard to the minimal work program that the contracting party must pledge to perform during the exploratory phase. The contracting party shall receive a credit for the work it already performed during a period of three years prior to the conclusion of this contract however.

Moreover, the same parties must also conclude an exploitation contract for each of the perimeters being kept.

The tax system has also been greatly modified by the provisions of the new law. We will discuss this in detail in the next chapter.
HYDROCARBON TAX SYSTEM

INTRODUCTION

The new law on hydrocarbons completed by the ordinance of July 29, 2006 has greatly modified the tax system pertaining to the sector’s activities, whether upstream or downstream.

The object of the new law is to implement an incentive-based tax system in order to attract investments to the hydrocarbon sector once again, while maintaining tax revenues initially at current levels, before increasing them with new investments and an expanded taxable base.

It might be unwise to compare the new tax system with the old one before the implementation of the new system and even more ill-advised to draw conclusions regarding effective tax rates. However, you could say that at first glance the new actual tax rates seem to be more advantageous to operators, especially the most efficient ones.

Indeed, considering its structure, the new tax system seems motivated by three concerns:

- to accelerate investments in the sector;
- to prompt operators to reduce operating costs in order to maintain a satisfactory rate of return and;
- finally, to expand taxable products with the dual effect of price elasticity and increased production.

More precisely, the main characteristics of this new tax system can be summed up as follows:

- introduction of an inviting and competitive tax system compared to that of other producing countries;
- uniform and non-discriminatory application of the new system to all operators, including Sonatrach, the national enterprise, with regard to all new contracts concluded under the new law;
- levy of a surface area tax, adjusted according to the zone and duration, whose object is to prompt operators to accelerate exploration;
- levy of royalties, adjusted according to zone, to promote exploration in risky areas or in regions posing special challenges;
- taxation of oil revenues through progressive rates to skim capital gains stemming from significant sales price increases or the discovery of larger-than-expected deposits;
- incentives to prompt operators to develop small, scattered or hard-to-reach deposits;
- introduction of a tax on extraordinary profits applicable to the foreign partners’ share of production within the framework of contracts concluded under the old legislation. The share in question remains subject to the income tax provided for by the old legislation;
- possibility of consolidating upstream and downstream activities for the payment of the additional tax on earnings (ICR) in order to stimulate investment in downstream activities (pipeline transportation, distribution, petrochemicals, etc.), as well as investment in the production and distribution of electricity and the distribution of natural gas, thus allowing corporations to benefit from the reduced rate on corporate profits for ICR calculation purposes.

Thus the new tax system provides for two different tax systems, with, however, a link for consolidating earnings for ICR payment purposes:

- a specific system for exploration and/or exploitation activities;
- and general law for downstream activities.

Moreover, transitory measures have been provided for in consideration of the pre-existing situation, notably the tax provisions governing the numerous production sharing contracts concluded under Act No. 86-14, as modified and completed.
1.11 THE TAX SYSTEM APPLICABLE TO EXPLORATION AND/OR EXPLOITATION ACTIVITIES WITHIN THE FRAMEWORK OF ACT NO. 05-07

The new tax system implemented for this type of activity is characterized by the status granted to the foreign contracting party, who is now considered a full-fledged taxpayer and, as a result, legally and contractually responsible for the payment of taxes and dues owed within the framework of the activities covered by the law, with the understanding that some of those taxes and dues shall be paid by the designated operator, whereas others are the responsibility of each party to the contract.

1.11.1 System applicable to future contracts within the framework of Act No. 05-07

The main applicable taxes and dues are as follows:

- oil royalties, based on produced quantities calculated at measurement points. Quantities that are lost, unused or reinjected are not taken into account when calculating royalties;
- the tax on oil revenues (TRP), which is based on marketed quantities, minus amortizations, taking an “uplift” ratio set by the law;
- the additional tax on earnings (ICR), which is based on revenues after payment of the oil revenue tax, minus legally deductible expenses linked to exploitation, in application of Act No. 05-07 itself and/or provisions of the Direct tax code;
- the surface area tax, which is based on the area of the perimeter, valued on the basis of a rate set by the law. The rate is subject to revision every year and the tax is considered to be a non-deductible charge.

Other ancillary taxes (gas flaring, use of water) may apply. The eventual flaring of gas is subject to a tax in accordance with article 52 of the law. Similarly, the use of water for assisted recovery purposes is also subject to a tax, whose amount is set by article 53.

The exemptions decreed under the old system remain intact. Indeed, exploration and/or exploitation activities are exempt from a number of duties and taxes, notably customs duties and the value-added tax.

1.11.1.1 Oil royalties

A. Scope of application and basis of assessment
The basis for assessing royalties consists of all quantities extracted from each exploitation perimeter. It is established on the basis of the quantities calculated after on-the-ground operations at the point of measurement. The location of the point of measurement is specified in the exploitation perimeter. As such, quantities consumed to meet production needs, as well as quantities lost before the point of measurement or quantities reinjected in the deposits of the same contract, are excluded from the base used to calculate royalties.

The base of the royalties is equal to the quantities of extracted hydrocarbons multiplied by the monthly average of the base prices.

In article 90, Act No. 05-07 sets the conditions for determining base prices according to the nature of the hydrocarbons:
- for oil, LPG, butane and propane produced in Algeria, base prices are the monthly averages of FOB prices published by a trade journal with impeccable credentials, or in the absence of such a publication, the prices posted by Alnaft;
- for condensate, bases prices are the monthly averages of FOB prices published by a trade journal with impeccable credentials, or in the absence of such a publication, the prices posted by Alnaft;
- for liquid hydrocarbons and oil products destined for the domestic market, the base prices are the prices in effect during the calendar year under consideration;
- for gas (sold for export), the base prices are the prices stipulated in the contract, if those prices are equal to, or higher than, benchmark prices, or, if that is not the case, the benchmark prices themselves;
- for gas (sold on the domestic market), the bases prices are the prices in effect during the calendar year under consideration.

B. Terms and conditions of payment

Royalties are paid monthly by the operator acting on his own in the name and on behalf of the physical or legal person who is a signatory to the exploration and/or exploitation contract.

Royalties must be paid to Alnaft before the 10th of each month. Delay in payment will result in an increase of 1% per day of delay in the amount of royalties due. The legislator did not set a maximum amount for this late payment penalty.

C. Royalty rate
The effective royalty rate is the subject of negotiations between the parties to the contract, who set the rate in the contract, but the law provides for minimal legal rates for each production bracket.

Royalties are levied at the following minimal rates:

<table>
<thead>
<tr>
<th>Zones</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>(0 to 20,000 b.o.e./day)</td>
<td>5.5%</td>
<td>8.0%</td>
<td>11.0%</td>
<td>12.5%</td>
</tr>
<tr>
<td>20,001 to 50,000 b.o.e./day</td>
<td>10.5%</td>
<td>13.0%</td>
<td>16.0%</td>
<td>20.0%</td>
</tr>
<tr>
<td>50,001 to 100,000 b.o.e./day</td>
<td>15.5%</td>
<td>18.0%</td>
<td>20.0%</td>
<td>23.0%</td>
</tr>
<tr>
<td>&gt; than 100,000 b.o.e./day</td>
<td>12.0%</td>
<td>14.5%</td>
<td>17.0%</td>
<td>20.0%</td>
</tr>
</tbody>
</table>

**D. Numerical example**

Assuming a daily production of 45,000 bpd of a deposit located in Zone A.

The base price of the barrel (PV), calculated according to article 90 of Act No. 05-07, is 60 $US and the exchange rate (ExR) is 1 $US = 75 AD.

The royalties due in this case are:

- 1\(^{st}\) production bracket (P1) = \(20,000 \times 60 \times 75 \times 5.5\%\) = 4,950,000.00 AD
- 2\(^{nd}\) production bracket (P2) = \(25,000 \times 60 \times 75 \times 10.5\%\) = 11,812,500.00 AD
- monthly royalties = 4,950,000.00 AD + 11,812,500.00 AD = 16,762,500.00 AD

Royalties are a charge deductible from the tax base used to assess the additional tax on earnings (ICR).

---

\(^{5}\) Bep : baril equivalent petrol
1.11.1.2 Tax on oil revenues (TRP)

A. Scope of application and assessment basis

The assessment base of the oil revenue tax (TRP) consists of the value of the annual production of each exploitation perimeter used in the calculation of royalties. Legally deductible charges are then deducted.

First, pipeline transportation fees between the point of measurement and, as the case may be, the loading port or the Algerian export border point, or the point of sale in Algeria are deducted. For gas sold in liquefied form, LPG sold in the form of butane or propane, gas transformed into oil products or any other products, an additional processing cost will be deducted by taking only investments into account.

B. Deductible charges

Deductible charges are as follows:

- royalties;
- reserves for abandonment and/or restoration costs;
- training costs for developing the national human resources necessary to conduct the activities regulated by the current law;
- cost of purchasing gas for assisted recovery;
- annual installments in research investments, as well as installments in development (“amortization rate”) adjusted by the “uplift” ratio corresponding with the nature of the investment.

These investments must not include the interests and general expenses. Moreover, only those development investments that pertain to the exploitation perimeter subject to royalties and that are approved in the annual budget are factored into the calculation.

The amortization rates of the investments, as well as the “uplift” ratios applicable to the annuities of the amortizations are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Research &amp; development</th>
<th>Assisted recovery</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A and B</td>
<td>C and D</td>
</tr>
<tr>
<td>Amortization rate</td>
<td>20.0%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Uplift ratio</td>
<td>15.0%</td>
<td>20.0%</td>
</tr>
</tbody>
</table>
In the particular case of gas sold in liquefied form and LPG sold in the form of butane or propane, of gas transformed into oil products or any other product, the amortization rate is 10% and the uplift rate of 20%.

**C. Terms and conditions of payment**

The TRP is paid monthly, in installments, before the 25\textsuperscript{th} of the month following the month for which payments were due.

Delay in paying the TRP will result in a penalty of 1\% per day of delay. The legislator did not set a maximum amount for this late payment penalty.

The TRP balance consists of the difference between the TRP actually owed and the sum of installments already made. The balance must be settled with the Treasury, at the latest, on the last day of the deadline for filing the annual income tax return for the fiscal year under consideration.

**D. Oil revenue tax rate**

The TRP rate is a function of the cumulative value of production (PV) since the beginning of exploitation.

Thus, for a given year, if:

<table>
<thead>
<tr>
<th>PV (in 10\textsuperscript{9} AD)</th>
<th>TRP rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>30%</td>
</tr>
<tr>
<td>30 &lt; PV &gt; 385</td>
<td>(40/385-70) * (PV-70) + 30</td>
</tr>
<tr>
<td>385</td>
<td>70%</td>
</tr>
</tbody>
</table>

The P.V. thresholds appearing in Algerian dinars on the table above will be updated by applying the average selling rate used to convert US dollars into dinars for the calendar month preceding each payment, as published by the Bank of Algeria, divided by seventy (70) and multiplied by the amount of each threshold.

**E. Numerical example**

If the PV = 250

\[
\text{TRP rate} = (40/385 -70)\times (250-70) +30
\]

- 62 -
The PV is expressed in billions of dinars. In the example, the PV is equal to 250,000,000,000.00 AD.

The TRP is a charge deductible from the assessment base used to calculate the additional tax on earnings (ICR).

1.11.1.3 The additional tax on earnings (ICR)
A. Scope of application and assessment basis

The additional tax on earnings (ICR) is due from each person party to exploration and/or exploitation contracts.

The assessment base of the additional tax on earnings (ICR) consists of the annual revenues generated by the exploitation of a given perimeter, minus the following deductions:
- sums paid as oil revenue taxes (TRP);
- sums paid as royalties;
- annual depreciation charges of goods and equipment, whose depreciation rate is set by law (see the table in the annex to Act No. 05-07 of this guide);
- operating expenses legally deductible by applying the tax laws contained in general law (Direct tax code).

B. ICR rate

The ICR rate is 30%.

Reinvested earnings are subject to a reduced ICR rate of 15%.

C. Consolidation of upstream and downstream activities

Parties to exploration and/or exploitation contracts can consolidate activities regulated by Act No. 05-07, just as they can consolidate activities regulated by the said act with activities regulated by the Electricity Distribution Act and the Gas Pipeline Distribution Act.

1.11.1.4 The surface area tax
A. Scope of application and assessment basis
The surface area tax is an annual tax based on the area of the perimeter\(^6\) granted by Alnaft to the operator subject to this tax.

**B. The surface area tax rate**

The tax is based on unit rates in Algerian dinars. The unit rate takes the location of the perimeter’s zone, the phase that the operator has reached and possibly, the length of the said phase into account.

<table>
<thead>
<tr>
<th>Zones</th>
<th>Exploration period (AD)</th>
<th>Retention period(^7) (art. 42 of Act. No.05-07) and exceptional period (^8) (art. 37)</th>
<th>Exploitation period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1 - 3 years)</td>
<td>(4 - 5 years)</td>
<td>(6 - 7 years)</td>
</tr>
<tr>
<td>A</td>
<td>4,000</td>
<td>6,000</td>
<td>8,000</td>
</tr>
<tr>
<td>B</td>
<td>4,800</td>
<td>8,000</td>
<td>12,000</td>
</tr>
<tr>
<td>C</td>
<td>6,000</td>
<td>10,000</td>
<td>14,000</td>
</tr>
<tr>
<td>D</td>
<td>8,000</td>
<td>12,000</td>
<td>16,000</td>
</tr>
</tbody>
</table>

The surface area tax is a non-deductible charge. The amount of this tax is updated every year. The formula used in the update is as follows: \((\text{US exchange rate of the previous month} / 80) \times (\text{Rate} \times \text{Area of the perimeter})\)

**1.11.1.5 Gas flaring tax and tax on the use of water**

Flaring is prohibited as a rule. However, Alnaft may grant exceptional authorizations for periods not exceeding ninety (90) days. Under these circumstances, the operator to whom the authorization has been granted

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\(^6\) A limited part of the hydrocarbon mining area, consisting of one or more parcels of land.

\(^7\) Period during which one or more deposits are not declared commercially viable due to limitations or a real absence of markets for produced gas.

\(^8\) Exceptional extension of the exploration period for a maximum of six months. This tax in non-deductible.
must pay a tax of eight thousand (8,000.00 AD) per thousand normal cubic meters (nm³).

Payment of this tax does not free the operator from the obligations provided for in article 109 of Act No. 05-07 pertaining to the retrofitting of the facilities and operations to satisfy the legislation setting the technical standards with regard to industrial safety, major risk prevention and management and environmental protection. The tax is not a deductible charge.

The tax is updated on January 1st of each year, according to the following formula:

\[ \frac{\text{US exchange rate for the previous month}}{80} \times \text{Amount of tax} \]

**B. Tax pertaining to the use of water**

The use of water drawn from public water supplies for assisted recovery purposes is subject to the payment of a user fee of eighty (80.00) AD per m³.

This tax is not a deductible charge.

The tax is updated on January 1st of each year, according to the following formula:

\[ \frac{\text{US exchange rate for the previous month}}{80} \times \text{Amount of tax} \]

**1.11.1.6 Farm-out**

Farming out a stake in an exploration and/or exploitation contract is subject to a 1% tax based on the value of the transaction. The tax is charged to the assignor.

**1.11.1.7 Property taxes on property other than operating property**

Property other than those intended for operating purposes is subject to property tax, in accordance with provisions set by general law⁹.

The tax assessment base consists of the rental value of the property. The rental value is determined as follows:

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⁹ Regulated by articles 248 to 261-t of the Direct tax code
A. Residential buildings

<table>
<thead>
<tr>
<th>ZONE 01</th>
<th>ZONE 02</th>
<th>ZONE 03</th>
<th>ZONE 04</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 445 AD</td>
<td>408 AD</td>
<td>371 AD</td>
<td>334 AD</td>
</tr>
<tr>
<td>B 408 AD</td>
<td>371 AD</td>
<td>334 AD</td>
<td>297 AD</td>
</tr>
<tr>
<td>C 371 AD</td>
<td>334 AD</td>
<td>297 AD</td>
<td>260 AD</td>
</tr>
</tbody>
</table>

B. Commercial and industrial buildings

<table>
<thead>
<tr>
<th>ZONE 01</th>
<th>ZONE 02</th>
<th>ZONE 03</th>
<th>ZONE 04</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 891 AD</td>
<td>816 AD</td>
<td>742 AD</td>
<td>669 AD</td>
</tr>
<tr>
<td>B 816 AD</td>
<td>742 AD</td>
<td>669 AD</td>
<td>594 AD</td>
</tr>
<tr>
<td>C 742 AD</td>
<td>669 AD</td>
<td>594 AD</td>
<td>519 AD</td>
</tr>
</tbody>
</table>

The tax is calculated after a reduction of 2% a year from the tax base, with a maximum of 40% for residential buildings and 50% for commercial buildings.

1.11.1.8 Exemptions

The new legislation confirmed all previous provisions containing exemptions benefiting exploration and exploitation activities involving liquid and gaseous hydrocarbons.

Exploration and/or exploitation activities are thus exempt from a number of duties and taxes, notably customs duties and the value-added tax (VAT).

Within this framework, equipment and services directly assigned to these activities are exempt from the VAT (on imports and on operations conducted domestically) and from customs duties on imported equipment.

As for equipment and goods imported by oil company contractors to perform a contract, they may qualify for temporary importation procedures, allowing importation free of duties and taxes. Goods benefiting from this exemption must be re-exported at the end of the
contract or be the subject of a “clearance for home use declaration” with payment, in that case, of the duties and taxes.

Subcontractors hired by oil companies benefit from the same advantages with regard to equipment, works and services, provided that the oil company grants them a certificate of exemption. Only direct suppliers and subcontractors of oil companies are covered by this.

Indeed, article 42 of the Turnover Tax Code contains a provision stipulating that “the goods and services listed in the Hydrocarbon Act, acquired by the suppliers of oil companies and destined to be directly used in liquid and gaseous hydrocarbon prospecting, exploration, exploitation and pipeline transportation activities, may benefit from a VAT exemption.”

Foreign oil companies are also exempt from paying social security dues in Algeria on their employees’ salaries if those employees are already covered by the social protection system of another country before being employed in Algeria.

1.11.2 Transitory system applicable to ongoing partnership contracts

This system only applies to ongoing contracts and foreign corporations, as, since the publication of Act No. 05-07, Sonatrach is subject to the new tax system described in section 3.1.

1.11.2.1 Transitory tax provisions

Sonatrach will be subject to the new tax system, as operator, with regard to its exploration and/or exploitation activities covered by production-sharing contracts and risk service contracts concluded before the law.

Foreign partners will continue to benefit from the same tax treatment as that provided for in the previous law.

The income tax paid by Sonatrach on behalf of its foreign partners shall continue to be paid by Sonatrach and shall be deductible from oil revenues subject to TRP and ICR taxes. The value of the production representing the foreign partner’s compensation shall also be deductible with regard to the calculation of TRP and ICR taxes.

As for contracts of association, only Sonatrach’s share of the production will be subject to the new tax system. The share of the foreign partners
shall remain subject to the tax treatment stipulated by the contract of association.

1.11.2.2 Review of the tax rules that existed under Act No. 86-14

A. The principle

Within the framework of contracts concluded under Act No. 86-14, the foreign operator is not considered a full-fledged Algerian taxpayer with regard to revenues generated by his participation, even if he is subject to reporting requirements. However his revenues from the exploitation of hydrocarbons are subject to taxation by way of a withholding tax.

B. Tax treatment of production-sharing contracts

The following dues and taxes apply within the framework of production-sharing contracts:

* **Royalties**

Royalties apply to gross revenues and are paid by Sonatrach for the whole production. The normal royalty rate is 20% and can be reduced to 16.25% for zone A or 12.5% for zone B.

* **Income tax**

This tax applies to the foreign partner’s share of profit oil.

To calculate profit oil, royalties, transportation costs, depreciation costs (investment costs for exploration, development and exploitation), as well as exploitation costs, must be deducted from gross revenues.

That profit is then multiplied by the percentage of the foreign partner’s share of the contract. The resulting amount is the net income of the foreign partner before tax. It will be paid in kind to the foreign partner by Sonatrach.

That income is subject to taxation at the rate of 38% withheld at the source by Sonatrach, which supports it.

* **Tax on corporate earnings**

This tax only concerns the share of profit oil belonging to Sonatrach.
That share amounts to profit oil minus the foreign partner’s share and the corresponding income tax.

The maximum tax is 85%. Reduced rates of 75% for zone A and 65% for zone B apply.

1.11.2.3 Tax on extraordinary income (TPE)
A. Scope of application and assessment base of the TPE

The tax on extraordinary income (TPE) was introduced by article 3 of Ordinance No. 06-10 of July 29, 2006, modifying and completing Act No. 05-07 of April 28, 2005.

Though introduced by Act No. 05-07 modified and completed, the tax on extraordinary income only applies to contracts concluded under Act No. 86-14. Indeed, it only applies to revenues generated by foreign partners as part of the implementation of contracts signed prior to the coming into force of Act No. 05-07.

The tax on extraordinary income applies to the foreign partners’ production share when the monthly arithmetic average of Brent oil prices is more than 30 $US, FOB price. Logically, this tax should only apply to the foreign partner’s production share representing extraordinary income, that is the money earned on the portion of the per barrel price exceeding 30 $US. However, due to the ambiguity of Decree No. 06-440 of December 2, 2006 establishing the procedure, the terms and conditions of application and the TPE calculation methods, the companies involved have challenged its interpretation and so it has yet to be cleared up.

B. TPE rate

The rate of the tax on extraordinary income ranges between 5% and 50%.

The executive decree pertaining to the tax on extraordinary income provides for different rules and calculations methods according to the type of contract concluded with foreign partners.
a. Case of contracts containing a production-sharing clause with no distinction regarding the share intended as the foreign partner’s compensation and without a “price cap” mechanism (article 8.1 of Decree No. 06-440)

In this specific case, the rate of the tax on extraordinary income (TPE) depends on “the average of the foreign partner’s share of the liquid and gaseous hydrocarbon production during the calendar month.”

The “partner’s share of production” concept is ambiguous. The share is usually made up of:

- the compensation;
- the refund of oil-related costs (refund of exploration investments, development investments, operating costs and all expenses, on the dual condition that they be legally deductible and considered to be oil related costs);
- the refund of investments and/or costs financed in the name and on the behalf of the co-contracting party.

The different rates are shown in the following progressive rate schedule:

<table>
<thead>
<tr>
<th>LEVEL OF PRODUCTION</th>
<th>TPE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below or equal to 5,000 barrels/day</td>
<td>05%</td>
</tr>
<tr>
<td>From 5,001 to 10,000 barrels/day</td>
<td>15%</td>
</tr>
<tr>
<td>From 10,001 to 25,000 barrels/day</td>
<td>25%</td>
</tr>
<tr>
<td>From 25,001 to 40,000 barrels/day</td>
<td>35%</td>
</tr>
<tr>
<td>More than 40,000 barrels/day</td>
<td>50%</td>
</tr>
</tbody>
</table>

b. Case of contracts containing a specific compensation clause without a “price cap” mechanism (article 8.2 of Decree No. 06-440)

In this specific case, the rate of the tax on extraordinary income (TPE) also depends on “the average of the foreign partner’s share of the liquid and gaseous hydrocarbon production during the calendar month.”

The different rates are shown in the following progressive rate schedule:

<table>
<thead>
<tr>
<th>LEVEL OF PRODUCTION</th>
<th>TPE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below or equal to 1,000 barrels/day</td>
<td>15%</td>
</tr>
</tbody>
</table>
c. Case of contracts containing a specific compensation clause and a “price cap” mechanism (article 8.3 of Decree No. 06-440)

In this specific case, the TPE rate is calculated by using a formula provided for in statutory texts. The formula applies if the product of the price of a barrel of oil in a given month multiplied by the price cap coefficient for the same month stipulated in the contract exceeds 30 $US/barrel.

Coefficient = ((PBn – PCn)/PCn)
PBn: Price of a barrel of oil
PCn: Value of the indexed price cap of calendar month n

This formula allows users to calculate a coefficient and the TPA rate depends on the amount of the coefficient.

The different rates are shown in the following progressive rate schedule:

<table>
<thead>
<tr>
<th>VALUE OF THE COEFFICIENT</th>
<th>TPE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below or equal to 0.2</td>
<td>05%</td>
</tr>
<tr>
<td>From 0.2 to 0.5</td>
<td>10%</td>
</tr>
<tr>
<td>From 0.5 to 1.0</td>
<td>15%</td>
</tr>
<tr>
<td>From 1.0 to 1.5</td>
<td>20%</td>
</tr>
<tr>
<td>From 1.5 to 2.0</td>
<td>30%</td>
</tr>
<tr>
<td>From 2.0 to 2.5</td>
<td>40%</td>
</tr>
<tr>
<td>More than 2.5</td>
<td>50%</td>
</tr>
</tbody>
</table>

d. Case of contracts containing a production-sharing formula of the following types:

\[ P_i = (a-b) \text{ or } P_i = (K* a-b) \] (article 8.4 of Executive decree No. 06-4400)

In this specific case, the TPE rate depends on “the average of the foreign partner’s share of the liquid and gaseous hydrocarbon production during the calendar month.”
The different rates are shown in the following progressive rate schedule:

<table>
<thead>
<tr>
<th>LEVEL OF PRODUCTION</th>
<th>TPE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below or equal to 20,000 barrels/day</td>
<td>05%</td>
</tr>
<tr>
<td>From 20,001 to 40,000 barrels/day</td>
<td>15%</td>
</tr>
<tr>
<td>From 40,001 to 60,000 barrels/day</td>
<td>25%</td>
</tr>
<tr>
<td>From 60,001 to 80,000 barrels/day</td>
<td>35%</td>
</tr>
<tr>
<td>From 80,001 to 100,000 barrels/day</td>
<td>45%</td>
</tr>
<tr>
<td>More than 100,000 barrels/day</td>
<td>50%</td>
</tr>
</tbody>
</table>

Art. 8.4 applies to contracts containing a \((P_i = K*a-b)\) or \((P_i = a-b)\) type compensation formula.

In this type of contract, the partner will have a share \((P_i)\) including his compensation, which is a function of his level of participation, and the refund of realized investment expenses.

e. Case of partnership association contracts (article 8.5 of Executive decree No. 06-440)

The previous cases involved production-sharing contracts. Here, we have a different type of association contract with Sonatrach provided for by Act. No. 86-14.

In this specific case, the TPE rate also depends on “the average of the foreign partner’s share of the liquid and gaseous hydrocarbon production during the calendar month.”

The different rates are shown in the following progressive rate schedule:

<table>
<thead>
<tr>
<th>LEVEL OF PRODUCTION</th>
<th>TPE RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below or equal to 20,000 barrels/day</td>
<td>05%</td>
</tr>
<tr>
<td>From 20,001 to 40,000 barrels/day</td>
<td>15%</td>
</tr>
<tr>
<td>From 40,001 to 60,000 barrels/day</td>
<td>25%</td>
</tr>
<tr>
<td>From 60,001 to 80,000 barrels/day</td>
<td>35%</td>
</tr>
<tr>
<td>From 80,001 to 100,000 barrels/day</td>
<td>45%</td>
</tr>
<tr>
<td>More than 100,000 barrels/day</td>
<td>50%</td>
</tr>
</tbody>
</table>
1.12 DOWNSTREAM TAX SYSTEM WITHIN THE FRAMEWORK OF ACT NO. 05-07

1.12.1 Taxation
Downstream oil activities (transportation of hydrocarbons by pipeline, refining, liquefaction of gas and separation of LPG) will now be subject to general tax law applicable to joint stock companies in general, and will thus be subject to the duties and taxes currently in force, or in other words:

- the tax on corporate earnings (IBS) calculated at the rate of 25% of annual income before tax, with reinvested earnings being eligible at the reduced rate of 12.5%;
- the tax on professional activity calculated at the rate of 2% of the taxable turnover excluding taxes. Only certain operations benefit from reductions which range from 30 to 75%.

Operators are authorized to consolidate their operating results pertaining to hydrocarbon, electricity and gas distribution activities, with the understanding that the applicable rates in such cases are the ICR rates, which is to say, the full 30% rate and the reduced rate of 15%.

1.12.2 Exemptions
Hydrocarbon pipeline transportation, gas liquefaction and separation of liquefied petroleum gas activities are exempt from the following duties and taxes:

- the value-added tax (VAT) on goods and services exclusively destined to the aforementioned activities;

- customs duties, taxes and user fees on the import of goods, material and products destined to be used exclusively in the aforementioned activities.

A list of assets and equipment covered by these exemptions was supposed to be established by regulation. This list has not yet been published.
1.13 ACCOUNTING REQUIREMENTS AND FOREIGN EXCHANGE CONTROL REGULATIONS

The contracting party\textsuperscript{10} must keep separate books for each exploitation perimeter, making it possible to establish “value added” and “operating results” accounts and a balance sheet reflecting the results of the activities in question.

The fiscal period is twelve (12) months in duration and must coincide with one calendar year. If the fiscal period is less than twelve (12) months long, it must begin and end during the same calendar year.

Non-resident foreign operators are required to import in Algeria the convertible currencies needed for the payment of due taxes and duties and transfer them to the Bank of Algeria.

According to the law, any legal person\textsuperscript{11} whose headquarters are located abroad is non-resident.

In this regard, the Algerian branch of a non-resident legal person is considered as a non-resident as far as foreign exchange control regulations are concerned and, as a result, must be funded through convertible currency imports.

Similarly, non-resident operators are entitled to keep revenues generated by activities conducted as part of concluded agreements out of the country or to freely transfer those revenues outside of Algeria.

\textsuperscript{10} The National Enterprise Sonatrach – SPA or the National Enterprise Sonatrach – SPA and any person signatory to the exploration and exploitation contract or the hydrocarbon exploitation contract.

\textsuperscript{11} Any foreign legal person, as well as any private or public Algerian legal person, including the National Enterprise Sonatrach – SPA, possessing the financial and/or technical capabilities required by the current law and the statutory documents used in its application.
APPENDICES

Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons

Ordinance No. 2006-10 of July 29, 2006 modifying and completing Act No. 2005-07 of 19 Rabeeh Al Awwal 1426 (which corresponds to April 28, 2005) pertaining to hydrocarbons
Complete text of Act No. 05-07 of April 28, 2005 pertaining to hydrocarbons

1. From the Official Gazette of the PDRA, No. 50, Tuesday, 12 Joumada Ethania 1426 (corresponding to July 19, 2005).

The president of the Republic,

Considering the constitution, namely articles 12, 17, 18, 119, 122-24 and 126;
Considering Ordinance No. 66-154 of June 8, 1966, amended and supplemented, pertaining to the code of civil procedure;
Considering Ordinance No. 66-155 of June 8, 1966, amended and supplemented, pertaining to the code of penal procedure;
Considering Ordinance No. 66-156 of June 8, 1966, amended and supplemented, pertaining to the penal code;
Considering Ordinance No. 75-58 of September 26, 1975, amended and supplemented, pertaining to the civil code;
Considering Ordinance No. 75-59 of September 26, 1975, amended and supplemented, pertaining to the commercial code;
Considering Ordinance No. 75-74 of November 12, 1975, amended and supplemented, pertaining to the establishment of the general cadastre and institution of the land registry;
Considering Ordinance No. 76-80 of October 23, 1976, amended and supplemented, pertaining to the maritime code;
Considering Ordinance No. 76-101 of December 9, 1976, amended and supplemented, pertaining to the direct and assimilated tax code;
Considering Act No. 79-07 of July 21, 1979, amended and supplemented, pertaining to the customs code;
Considering Act No. 81-10 of July 11, 1981, pertaining to the employment of foreign workers;
Considering Act No. 83-13 of July 2, 1983, amended and supplemented, pertaining to work-related accidents and professional illnesses;
Considering Act No. 83-17 of July 16, 1983, amended and supplemented, pertaining to the water code;
Considering Ordinance No. 84-02 of September 8, 1984, pertaining to the definition, composition, training and management of the military;
Considering Act No. 84-12 of June 23, 1984, amended and supplemented, pertaining to the general forest system;

Considering Act No. 84-17 of July 7, 1984, amended and supplemented, pertaining to financial laws;

Considering Act No. 86-14 of August 19, 1986, amended and supplemented, pertaining to activities connected with the prospecting, exploration, exploitation and pipeline transportation of hydrocarbons;

Considering Act No. 88-07 of January 26, 1988, pertaining to work-related hygiene, security and medical care;

Considering Act No. 90-08 of April 7, 1990, pertaining to communes;

Considering Act No. 90-09 of April 7, 1990, pertaining to wilayas;

Considering Act No. 90-11 of April 21, 1990, amended and supplemented, pertaining to workplace relations;

Considering Act No. 90-25 of November 18, 1990, amended and supplemented, pertaining to land orientation;

Considering Act No. 90-30 of December 1, 1990, pertaining to public land legislation;

Considering Act No. 91-11 of April 27, 1991, amended, establishing the rules pertaining to expropriations for reasons of public interest;

Considering Legislative Decree No. 94-07 of 7 Dhout El Hidja 1414 (corresponding to May 18, 1994), amended, pertaining to the conditions of architectural production and the exercise of the architectural profession;

Considering Ordinance No. 95-04 of 19 Chaâbane 1415 (corresponding to January 21, 1995), pertaining to the approval of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States;

Considering Ordinance No. 95-05 of 19 Chaâbane 1415 (corresponding to January 21, 1995), pertaining to the approval of the creation of the Multilateral Investment Guarantee Agency;

Considering Ordinance No. 95-07 of 23 Chaâbane 1415 (corresponding to January 25, 1995), pertaining to insurance;

Considering Ordinance No. 95-20 of 19 Safar 1416 (corresponding to July 17, 1995), pertaining to the Court of Auditors;

Considering Ordinance No. 96-05 of 19 Chaâbane 1416 (corresponding to January 10, 1996), pertaining to the approval of the United Nations Convention on the Law of the Sea;

Considering Ordinance No. 96-22 of 23 Safar 1417 (corresponding to July 9,
1996), amended and supplemented, pertaining to the suppression of violations of the laws and regulations governing foreign exchange and capital movements from and to other countries;

Considering Act No. 98-04 of 20 Safar 1419 (corresponding to June 15, 1998), pertaining to the protection of cultural heritage;

Considering Act No. 01-10 of 11 Rabie Ethani 1422 (corresponding to July 3, 2001), pertaining to mining law;

Considering Ordinance No. 01-03 of Aouel Jourama Ethania 1422 (corresponding to August 20, 2001), pertaining to investment development;

Considering Ordinance No. 01-04 of Aouel Jourama Ethania 1422 (corresponding to August 20, 2001), pertaining to the organization, management and privatization of public enterprises;

Considering Act No. 01-20 of 27 Ramadhan 1422 (corresponding to December 12, 2001), pertaining to the planning and sustainable development of the national territory;

Considering Act No. 02-01 of 22 Dhou El Kaada 1422 (corresponding to February 5, 2002), pertaining to electricity and the pipeline distribution of gas;

Considering Act No. 03-10 of 19 Jourama El Oula 1424 (corresponding to July 19, 2003), pertaining to environmental protection within the framework of sustainable development;

Considering Ordinance No. 03-03 of 19 Jourama El Oula 1424 (corresponding to July 19, 2003), pertaining to competition;

Considering Ordinance No. 03-11 of 27 Jourama Ethania 1424 (corresponding to August 26, 2003), pertaining to the currency and to credit;

Considering Act No. 04-08 of 27 Jourama Ethania 1425 (corresponding to August 14, 2004), pertaining to the environment in which commercial activities are conducted;

Considering Act No. 04-20 of 13 Dhou El Kaada 1425 (corresponding to December 25, 2004), pertaining to the prevention of major risks and the management of catastrophes within the framework of sustainable development;

Considering Act No. 04-21 of 17 Dhou El Kaada 1425 (corresponding to December 29, 2004), pertaining to the finance law of 2005;

After adoption by the national popular assembly;

Promulgates the law, which is as follows:
CHAPTER I

GENERAL PROVISIONS AND DEFINITIONS

Article 1. – The purpose of this act is to define:

- the legal framework of activities pertaining to the exploration, exploitation, pipeline transportation, refining and processing of hydrocarbons, to the marketing, storage and distribution of oil products, as well as the structures and facilities supporting these activities;
- the institutional framework supporting the activities mentioned above;
- the rights and obligations of the persons engaged in one or more of the activities mentioned above.

Art. 2 – The establishment of the institutional framework mentioned above shall lead to the application of the principle of mobility and adaptability characterizing the state’s action, thus to the transfer of prerogatives formerly exercised by SONATRACH-S.P.A back to the state. Relieved of a mission that contradicted and hindered its natural economic vocation, SONATRACH-S.P.A. shall thus benefit, under this act, of the reinforcement and enshrinement of its fundamental role in the creation of wealth to the benefit of the national collectivity.

Art. 3 - Hydrocarbon substances and resources, whether discovered or not, located in the soil and subsoil of the national territory and maritime spaces under Algeria’s sovereignty belong to the national collectivity, of which the state is the product. Those resources shall be exploited by using efficient and rational means so as to ensure optimal conservation, while respecting the rules pertaining to environmental protection.

Art. 4 – The activities covered by article 1 shall be one of the vehicles for the use and training of national human resources and, in this regard, shall benefit from incentives provided for in this act.

Art. 5 – Within the meaning of this act, the following words shall be defined as follows:
Upstream oil: Hydrocarbon exploration and exploitation operations.

Prospecting authorization: The authorization delivered by the National Agency for the Development of Hydrocarbon Resources (Agence nationale de valorisation des ressources en hydrocarbures, ALNAFT) upon request, giving the holder the non-exclusive right of conducting prospecting activities in one or more perimeters.

Downstream oil: Operations of pipeline transportation, refining, processing, marketing, storage and distribution.

Barrel: Volume of crude oil equal to 158.9 liters under normal pressure and temperature.

Barrel oil equivalent (b.o.e.): Volume of liquid or gaseous hydrocarbon having an energy content of 1,400,000 kilocalories, which is equal to that of a barrel of crude oil.

Eligible customer: Customer who has the right to conclude contracts pertaining to the supply of natural gas with a producer, distributor or commercial agent of his choice, and who has the right of access to the transportation and/or distribution network to conduct the activities provided for in the contracts.

Non-eligible customer: Customer who does not have the right to enter into a contract regarding the supply of natural gas with a producer, distributor or commercial agent of his choice as a result of the quantity he consumes. He is the customer of a current distributor (incumbent operator) and he does not have the right of access to the transportation and/or distribution network.

Collection and delivery network: Networks of in-ground or above-ground ducts of various diameters carrying hydrocarbons on a field between the wells and the processing and storage facilities or carrying fluids between the re-injection facilities and the injection wells. The in-ground or above-
ground ducts carrying hydrocarbons between field storage facilities and the pipeline transportation network are also considered collectors.

**Marketing:** The purchase and sale of hydrocarbons and oil products.

**Conservation:** Deposit exploitation method ensuring the highest production level possible at the lowest possible cost, while remaining compatible with the highest possible reserve recovery rates.

**Concession:** Deed by which the minister in charge of hydrocarbons authorizes the concession holder to build and exploit pipeline structures for a set period of time, provided that the holder meets the obligations placed upon him in the said act.

**Concession holder:** The person benefiting, at his own risk, expense and perils, from a pipeline transportation concession.

**Contracting entity:** The person(s) who has(ve) entered into a hydrocarbon exploration and/or exploitation contract or an exploitation contract.

**Exploration and/or exploitation contract:** Contract making it possible to conduct hydrocarbon exploration and/or exploitation activities in accordance with this act.

**Contract of association:** Hydrocarbon exploration and/or exploitation contracts signed with SONATRACH/S.P.A. and one or more foreign partners under the aforementioned Act No. 86-14 of August 19, 1986, amended and supplemented, before the date of publication of this act.

**Cycling:** Operation pertaining to wet gas deposits and consisting in re-injecting the produced gas after extracting liquid fractions (condensates) and perhaps LPG in order to improve the recovery of these liquid fractions.

**Distribution:** Any wholesale or retail sales activity involving oil products.
**Maritime space:** Territorial waters, as well as the continental shelf and the exclusive economic zone, as defined by the Algerian legislation.

**Exploitation:** Activity enabling the extraction and processing of hydrocarbons, to make them conform to pipeline transportation and marketing specifications.

**Act of God:** Any proven occurrence of an unforeseeable, irresistible event beyond the control of the party invoking it, which momentarily or permanently renders the performance of one or more of his contractual obligations impossible.

**Associated gases:** Gaseous hydrocarbons associated in any way to a reservoir containing liquid hydrocarbons.

**Wet gas:** Gaseous hydrocarbons containing a fraction of the elements that become liquid at ambient pressure and temperature in sufficient quantity to justify the construction of recovery facilities for these liquids.

**Natural gas or gas:** All gaseous hydrocarbons produced from wells, including the wet and dry gas which can be associated or not to liquid hydrocarbons and the residual gas obtained after the extraction of natural gas liquids. The specifications of this gas must comply with Algerian sales gas specifications.

**Non-associated gases:** All gaseous hydrocarbons, wet or dry, which:
- are produced at the wellhead and contain more than 100 TCF (thousand cubic feet) of gas for each barrel of crude oil or natural gas liquid produced by this reservoir.
- are produced from a reservoir described as containing nothing but gas, even if it is located in a drilled well where crude oil is also produced through another casing or tubing column.
**Liquified petroleum gas (L.P.G.):** Hydrocarbons essentially made up of a mix of butane and propane, which is not liquid under normal conditions.

**Dry gas:** Gaseous hydrocarbons essentially containing methane, ethane and inert gases.

**Deposit:** The geographic area whose subsoil is made up of one or several stacked reservoirs and whose surface is distinct and separate from one or several other reservoirs, according to geological and engineering surveys.

**Commercial deposit:** A hydrocarbon deposit that the contracting entity commits to developing and producing in accordance with the terms of the contract.

**Hydrocarbons:** Liquid, gaseous and solid hydrocarbons, namely tar sands and bituminous shale.

**Liquid hydrocarbons:** Crude oil, natural gas liquids and liquefied petroleum gases.

**Price indexing:** The formula which factors in inflation in order to maintain the original value. The basic indexes will be the indexes in force at the beginning of the year of publication of this act.

**Days:** Calendar days.

**Domestic market:** All necessary hydrocarbons to meet domestic energy and industrial needs, with the exception of gas re-injected in reservoirs and used for cycling.

**Domestic natural gas market:** Made up of domestic gas suppliers and customers. The gas purchased by these customers is consumed on the national territory.
**Operator:** Any person possessing the technical capacities and who is in charge of conducting oil operations.

**Parcel:** A square of eight (8) kilometers a side, corresponding to a square of five (5) minutes a side in UTM coordinates.

**Perimeter:** A limited part of the national mining estate pertaining to hydrocarbons which is made up of one or more parcels.

**Contractual perimeter:** A limited part of the national mining estate pertaining to hydrocarbons and consisting of one or more parcels, as defined when the contract takes effect.

**Exploitation perimeter:** The contractual perimeter minus the perimeters targeted by reductions, as defined by articles 38, 39 and 40 of this act.

**Person:** Any foreign corporate entity, as well as any private or public Algerian corporate entity possessing the financial and/or technical capacities required by this act and its regulations. As far as retail sales activities are concerned, the concept of person includes natural persons.

**Sliding ten-year plan:** The plan established every year for the next ten (10) years.

**Point of measurement:** The spot on the exploitation perimeter where quantities of extracted hydrocarbons will be measured.

**Third-party access principle:** The principle enabling any third party to benefit from the right of access to pipeline transportation and storage infrastructures within the limit of available capacities, in exchange for the payment of a non-discriminatory tariff, provided that the products involved meet the technical specifications related to the use of these infrastructures.
**Oil products:** All products resulting from the refining operations, as well as the products resulting from the separation of liquefied petroleum gases.

**Prospecting:** Operations that make it possible to discover hydrocarbon, namely the use of geophysical and geological methods, including strategic drillings.

**Refining:** Operations separating petroleum or condensates into liquid or gaseous products suitable for direct use.

**Exploration:** Prospecting activities as a whole, as well as the drillings conducted in the hope of finding hydrocarbon deposits.

**Primary recovery:** The extraction of hydrocarbon reserves by using the reservoir’s natural pressure or production drainage mechanisms.

**Secondary recovery:** The additional extraction of hydrocarbon reserves through the use of enhanced recovery methods, namely the injection of gas and/or the injection of water.

**Tertiary recovery:** The additional extraction of hydrocarbon reserves inaccessible by primary and secondary recovery methods, namely through the use of one of the following enhanced recovery methods: thermal, chemical or miscible.

**Assisted recovery:** The use of secondary and/or tertiary recovery methods to recover hydrocarbon reserves.

**Ultimate reserves:** Hydrocarbons that can be produced from a hydrocarbon deposit without taking economic factors into account.

**Reservoir:** The part of the porous and permeable geological formation
containing a distinct accumulation of hydrocarbons, characterized by a
unique pressure system so that the hydrocarbon production of part of the
reservoir affects the pressure of the reservoir as a whole.

**Storage:** Storage above or under ground of oil products, including refined
products, butane, propane and liquefied petroleum gases, which enables
producers to build up reserves in order to ensure the supply of the
domestic market for a determined length of time.

The facilities used in this type of storage are not related to
pipeline transportation, refining facilities, field exploitation activities or
LPG separation facilities.

**Swap:** Procedure enabling different producers to trade
obligations to supply
gas on the domestic market.

**Pipeline transportation system:** One or more pipelines
carrying the same
effluent, including integrated facilities.

**Mining title:** The deed bearing any hydrocarbon exploration
and/or exploitation
authorization; this deed does not transfer property rights over the soil or
subsoil.

**Flaring:** Operation consisting in burning natural gas in the open
air.

**Annual investment installment:** Part of the investment amount
corresponding to
the percentage set in articles 87 and 91 of this act, for oil revenue tax
calculation purposes.

**Processing:** Operations involving the separation of liquefied
petroleum gases,
the liquefaction of gas, petrochemistry and gas processing.

**Pipeline transportation:** The transportation and storage of
liquid and gaseous
hydrocarbons and oil products, with the exception of on-site collection and delivery networks and the gas networks servicing the domestic market exclusively.

**Uplift:** The percentage by which annual investment installments are increased for oil revenue tax calculation purposes. This “Uplift” percentage covers operational costs.

**Zone:** The zone as defined in article 19 of this act.

Art. 6 - The conduct of the activities covered by article 1, paragraph 1 above, shall be a commercial act.

Any corporate entity established in Algeria or having a branch there, or organized under any other form making it a taxable entity, may conduct one or more of the said activities provided it conforms to the provisions contained in this act, in the commercial code, as well as any other legislative or regulatory provisions currently in force.

Art. 7 – The contracting entity which has entered into an exploration and exploitation contract or into a contract for exploitation alone, or the holder of a pipeline transportation concession, may benefit from the following rights:
- the acquisition of land, related rights and easements, granted in accordance with the provisions of Act No. 01-10 of Rabie Ethani 1422 (corresponding to July 3, 2001), pertaining to the mining law and related legislation.
- the acquisition of the right to use the maritime domain, granted in accordance with the provisions of Ordinance No. 76-80 of October 23, 1976, amended and supplemented, pertaining to the maritime code.
- the expropriation, pursuant to Act No. 91-11 of April 27, 1991 which established the rules pertaining to expropriations for reasons of public interest and was amended by article 65 of the finance law for 2005. The procedures required for granting the rights enumerated above shall be initiated with the authorities having the power to grant the said rights by the Hydrocarbon Regulatory Authority, in the case of pipeline transportation concessions, or by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), in the case of exploration and/or exploitation contracts.

The fees inherent to this procedure and the costs stemming from it shall be borne by:
- the contracting entity, in the case of an exploration and/or exploitation contract,
- the concession holder, in the case of a pipeline transportation concession.

Art. 8 - The importation and marketing of hydrocarbons and oil products on the national territory may be conducted freely provided it is done in accordance with this act.

Any constraint imposed by the State gives rise to a subsidy whose amount and terms and conditions of award shall be defined by regulation. This constraint shall be imposed at the State’s expense.

Art. 9 - Oil products and natural gas prices on the domestic market shall be set in order to:
- encourage operators to develop the necessary infrastructures to satisfy domestic demand;
- encourage the consumption of less polluting oil products, such as unleaded gasoline, compressed natural gas and LPG fuel, over other fuels;
- encourage the consumption of natural gas in economic activities involving electric, industrial and petrochemical production.

The domestic sales price of oil products, excluding taxes, must include the price of crude oil upon entering the refinery, plus refining, land transportation, pipeline transportation, storage, wholesale and retail distribution costs, as well as reasonable profit margins for each activity. The costs must include the depreciation of existing and new investments, as well as the capital reinvestments necessary to continue these activities.

The price of crude oil upon entering the refinery shall be calculated for each calendar year on the basis of the average export crude oil prices over the last ten (10) calendar years based on statistics about export crude oil prices recorded and published by the ministry in charge of hydrocarbons.

The terms, conditions and procedures that the Hydrocarbon Regulatory Authority (l’Autorité de régulation des hydrocarbures) must apply to determine, at the beginning of each calendar year, the sales prices of oil products, excluding taxes, for the said calendar year, shall be defined by regulation. The terms, conditions and procedures defined by regulation shall specify and identify the parameters to be adjusted by indexation formulas specific to the activity.
Once determined, the domestic sales prices of oil products, excluding taxes, for the calendar year in question, shall be announced by the Hydrocarbon Regulatory Authority.

Art. 10 – The gas transfer price that producers charge eligible and non-eligible customers of the domestic market must only include production costs, the costs of infrastructures specifically required to satisfy domestic demand, the exploitation costs of exportation infrastructures used to satisfy domestic demand, plus reasonable profit margins for each activity.

The costs must include the depreciation of existing and new investments, as well as specific capital reinvestments necessary to continue the same activities.

The terms, conditions and procedures that the Hydrocarbon Regulatory Authority must apply to determine, at the beginning of each calendar year, the domestic sales price, excluding taxes, of gas for the said calendar year, shall be defined by regulation.

The terms, conditions and procedures defined by regulation must specify and identify the parameters to be adjusted by indexation formulas specific to the activity.

Once determined, the domestic sales prices, excluding taxes, of gas for the calendar year in question, shall be announced by the Hydrocarbon Regulatory Authority.

An identical price, excluding taxes, shall be applied by gas producers to the supply of all eligible and non-eligible domestic customers. For their hook-ups, eligible customers shall contact the manager of the gas transportation network defined in Act No. 02-01 of 22 Dhou El Kaada 1422 (corresponding to February 5, 2002), pertaining to electricity and the pipeline distribution of gas, and shall be subject to the provisions of articles 65 and 68 contained in it. The operators covered by Act No. 02-01 of 22 Dhou El Kaada 1422 (corresponding to February 5, 2002), pertaining to electricity and the pipeline distribution of gas, shall apply the gas tariffs to customers defined in articles 100 and 103 contained in the said act.

Art. 11. – The minister in charge of hydrocarbons shall attend to the optimal development of national hydrocarbon resources.

He shall be responsible for putting forth the hydrocarbon policy and implementing it once it has been adopted.

The minister in charge of hydrocarbons shall introduce the requests for exploration and/or exploitation contracts, which shall be approved by decrees issued by the executive council.
Art. 12 – Two independent national agencies called hydrocarbon agencies with a legal personality and financial autonomy shall be established;

- a national agency controlling and regulating the activities taking place in the field of hydrocarbons hereinafter designated as the “Hydrocarbon Regulatory Authority.”
- a national agency for the development of hydrocarbon resources hereinafter designated as the “National Agency for the Development of Hydrocarbon Resources (ALNAFT).”

The hydrocarbon agencies shall not be subject to administrative rules, namely with regard to their organization, functioning and the status of the personnel in their employ.

The hydrocarbon agencies shall obtain their resources in accordance with article 15 of this act.

They shall have assets of their own.

The hydrocarbon agencies’ accounting shall be kept in the manner of a commercial entity. The agencies shall prepare their own balance sheets. They shall be subject to the State’s control in accordance with the regulation in force.

They shall abide by trade rules in their dealings with third parties.

Each hydrocarbon agency shall be managed by an executive committee.

In order to fulfill its mission, the executive committee shall rely on specialized management teams. The agency shall have statutory auditors for the control and approval of the agency’s bills who shall be designated in accordance with the regulation in force.

The executive committee shall consist of a president and (5) directors named by presidential decree, on the recommendation of the minister in charge of hydrocarbons.

The executive committee shall enjoy the most extensive powers in order to act on behalf of each hydrocarbon agency and to have any act or operation related to its mission authorized.

The deliberations of the executive committee shall only be validated with the presence of at least (3) members, including the president.

The deliberations shall be adopted by a simple majority of members present. In the event of a tie, the president shall cast the deciding vote to break the deadlock.

The president of the executive committee shall ensure the functioning of the hydrocarbon agency in question and assume all necessary powers, namely with regard to:
- payment authorization
- the appointment and revocation of all employees and agents;
- the remuneration of the personnel;
- the management of corporate assets;
- the acquisition, trade or disposal of movable and immovable property;
- the representation of the committee before judicial authorities;
- accepting the release of a mortgage, the release of seizure, the withdrawal of caveats and other rights before or after payment;
- dealing with inventories and accounts;
- representing the agency in normal activities of daily life.

The president may delegate all or part of his powers.

The remuneration of the president and the members of the executive committee shall be set by regulation. The remuneration system of the personnel of each agency shall be defined by the internal rules of each agency.

The duties of an executive committee member shall be incompatible with any professional activity, any national or local electoral mandate, any public office, and any direct or indirect holdings in a corporation of the hydrocarbon sector.

Any member of the executive committee conducting one of the activities mentioned above shall automatically be declared terminated, after consultation of the executive committee by presidential decree.

The president of the Republic shall hire his replacement on the recommendation of the minister in charge of hydrocarbons.

Any member of the executive committee having been definitely convicted of an infamous offense shall automatically be declared terminated, after consultation of the executive committee by presidential decree.

The president of the republic shall hire his replacement on the recommendation of the minister in charge of hydrocarbons.

At the end of their term, the members of the executive committee shall be prohibited from performing professional duties for a corporation of the hydrocarbon sector for a period of two (2) years.

An advisory body called “advisory council” shall be established within each hydrocarbon agency. It shall consist of two representatives from the ministerial departments involved and possibly from all interested parties (operators, consumers, workers). Each party shall delegate his representative(s).
The advisory council shall provide advice with regard to the activities of the executive committee.

The executive committee shall attend the working sessions of the advisory council. The composition and functioning of the advisory body shall be set by regulation.

The executive committee shall adopt its own rules of procedure, thus setting the internal organization, the mode of operation and the status of the personnel.

The members of the executive committee and agents of the hydrocarbon agency shall perform their duties in complete transparency, impartiality and independence.

The members of the executive committee, of the advisory body and the employees of the hydrocarbon agency shall maintain professional confidentiality, unless they are summoned to testify before a court.

Failure to maintain professional confidentiality as established by the final judgment of a court of law shall result in the automatic termination of the employee’s duties within the hydrocarbon agency.

The replacement shall be done in accordance with the provisions of this act. The Hydrocarbon Regulatory Authority shall organize its own conciliation service to resolve disputes stemming from the application of the regulation, namely with regard to regulation pertaining to access to the pipeline transportation and storage of oil products and related tariffs. The Hydrocarbon Regulatory Authority shall establish its own rules of procedure regarding the functioning of this service.

Art. 13 – The Hydrocarbon Regulatory Authority shall namely be in charge of ensuring that the following are respected:

* technical regulations applicable to the activities governed by this act;
* regulations pertaining to the application of tariffs and to the principle of third-party access to pipeline transportation and storage infrastructures.
* regulations pertaining to hygiene, industrial and environmental safety and to the prevention and management of major risks;
* specifications with regard to the construction of pipeline transportation and storage infrastructures.
* the application of norms and standards established on the basis of best international practices. These norms and standards shall be defined by regulation;
* the application of penalties and fines payable to the Treasury in the case of violations of the laws and regulations pertaining to:
- the technical regulation applicable to the activities governed by this act;
- the regulation pertaining to the application of tariffs and the principle of third-party access to pipeline transportation and storage infrastructures.
- the regulation pertaining to hygiene, industrial and environmental safety.

The amounts, as well as the terms and conditions regarding the application of the fines and penalties contained in this article shall be defined by regulation.

The agency shall also be responsible for:
- studying applications for pipeline transportation concessions and submitting recommendations to the minister in charge of hydrocarbons;
- recommending, to the minister in charge of hydrocarbons, the revocation of a pipeline transportation concession in the event of serious breaches of the provisions contained in the concession contract according to the conditions defined by regulation;
- managing the hydrocarbon and oil products transportation tariffs equalization and compensation fund whose operating practices shall be set by regulation;
- collaborating with the minister in charge of hydrocarbons with regard to sectorial policy and developing regulations governing hydrocarbon activities.

Art. 14. – The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall namely be in charge of:
- promoting investments in hydrocarbon exploration and exploitation,
- managing and updating data banks pertaining to the exploration and exploitation of hydrocarbons,
- issuing prospecting authorizations,
- conducting calls for bids and evaluating bids pertaining to exploration and/or exploitation activities,
- awarding exploration perimeters and exploitation perimeters and concluding
exploration and/or exploitation contracts,
- following up and controlling, as the contracting entity, the performance of
exploration and/or exploitation contracts in accordance with the provisions of this act,
- studying and approving development plans and their periodic updates,
- ensuring that the exploitation of hydrocarbon resources is done in accordance
with the principles of optimal conservation,
- determining and collecting the royalties and transferring them to the Treasury
the working day after they were received, after deducting the amounts defined in article 15 below,
- promoting information exchanges about the gas market,
- ensuring that the operator, as defined in article 29 below, has paid the oil
revenue tax, the surface area tax provided for in chapter VIII of this act, as well as, if need be, taxes related to the flaring of gas and the use of water in accordance with articles 52 and 53 below,
- helping promote the domestic industry,
- encouraging research and development activities,
- collaborating with the minister in charge of hydrocarbons with regard to the
sectorial policy and developing regulations governing hydrocarbon activities,
- consolidating a mid- to long-term plan for the hydrocarbon sector based on
the mid- to long-term plans of the contracting entities and then taking the consolidated plan to the minister in charge of hydrocarbons every year in January,
- exchanging fiscal information with the tax authorities regarding exploration
and/or exploitation contracts.  

Art. 15. – The budgets of the two agencies covered by article 12 above shall be funded by:
- zero point five per cent (0.5%) of the proceeds from the royalty covered by
articles 25, 26 and 85 of this act, which shall be deposited in ALNAFT’s account.  The minister in charge of hydrocarbons shall attend to the
distribution of funds as part of the budget approval process of each hydrocarbon agency,
- remuneration for services performed by both hydrocarbon agencies,
- any other proceed linked to their activities.

The budgets and balance sheets of the two hydrocarbon agencies shall be approved by the minister in charge of hydrocarbons.

For the first six (6) months of operation of the two hydrocarbon agencies, the Treasury shall provide them with a refundable advance so that they may conduct their activities.

The terms and conditions for refunding the advance shall be set by a convention between the Treasury and the agency involved.

Art. 16. – In addition to the provisions contained in the laws and regulations in force with regard to industrial safety, the activities governed by this act must be conducted by the contracting entities and operators in such a manner as to prevent any risk inherent to those activities.

Art. 17. – In conducting the activities covered by this act, the strictest respect for the following related obligations and prescriptions shall be maintained:
- safety and health of the personnel;
- hygiene and public sanitation;
- the essential characteristics of the surrounding environment (terrestrial and aquatic),
- archeological interests;
- the contents of existing laws and regulations pertaining to environmental protection.

Art. 18. – Any person must, before undertaking any activity covered by this act, prepare and submit to the Hydrocarbon Regulatory Authority for approval an environmental impact study and an environmental management plan necessarily containing a description of preventive measures and environmental risk management measures associated with the said activities in accordance with existing legislation and regulation pertaining to the environment.
The Hydrocarbon Regulatory Authority shall be responsible for coordinating these studies in conjunction with the minister in charge of the environment and for obtaining the corresponding visa for the contracting entities and operators involved.

CHAPTER II
UPSTREAM OIL WITH REGARD TO HYDROCARBON PROSPECTING, EXPLORATION AND EXPLOITATION

Art. 19. – For purposes of exploration and exploitation, the national mining estate with regard to hydrocarbons shall be divided in four (4) zones called zones A, B, C, D. That subdivision shall be specified by regulation.

No change to the delineation of the zones may be retroactive. The national mining estate pertaining to hydrocarbons shall be subdivided in parcels, which shall be the basic units for determining the perimeters, the subject of prospecting authorizations and exploration and/or exploitation contracts.

The number of parcels making up each perimeter and the geometry of that perimeter shall be set by regulation.

The maximum sizes of the perimeters of each zone and the minimum work programs shall be set by regulation.

Art. 20. - The prospecting authorization may be awarded by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) to any person applying for permission to conduct hydrocarbon prospecting work on one or more perimeters. This prospecting authorization shall be issued for a maximum of two (2) years, according to procedures and conditions established by regulation.

Art. 21. - The exploration and/or exploitation contract shall prevail over the prospecting authorization.

Consequently, any parcel covered by an exploration and/or exploitation contract shall be de facto excluded from the perimeter(s) covered by the prospecting authorization.

Art. 22. – Any data or results stemming from the prospecting work must be made available to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) in accordance with procedures set by regulation.
Art. 23. – The exploration and/or exploitation activities shall be conducted on the basis of a mining title issued exclusively to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) in accordance with conditions set by regulation.

In order to conduct the said activities, a person must conclude a contract beforehand with the National Agency for the Development of Hydrocarbon Resources (ALNAFT), in accordance with the provisions of this act.

Art. 24. – The exploration and/or exploitation contract shall give the contracting entity the exclusive right to conduct the following activities within the perimeter defined by the said contract:
- exploration activities;
- exploitation activities, in the event that a commercially exploitable deposit is discovered by the contracting entity, following approval of the development plan for the said discovery by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

The exploitation contract pertaining to one or more deposits already discovered shall give the contracting entity the exclusive right to conduct, within the perimeter defined by the said contract, exploitation activities, in accordance with the development plan approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

For all types of contracts defined above, the contracting entity may conduct exploration activities in the exploitation perimeter and must use any appropriate recovery methods, in accordance with article 3 of this act.

Art. 25. – Hydrocarbons extracted within the framework of the exploration and/or exploitation contract shall be the property of the contracting entity at the point of measurement and shall be subject to a royalty in accordance with the terms and conditions set by the said contract.

This royalty shall be paid by bank check or any other authorized method of payment which may be done through the electronic transfer of funds.

Art. 26. – The royalty shall be set on the basis of hydrocarbon quantities produced and measured at the point of measurement after field processing.

The following quantities of hydrocarbons shall be excluded from the calculation of this royalty:
- hydrocarbons consumed for direct production requirements;
- hydrocarbons lost before the point of measurement;
- hydrocarbons re-injected into the deposit(s), provided that those deposits are covered by one and the same contract.

Consumed or lost quantities of hydrocarbons which are excluded from the calculation of the royalty must be limited to technically admissible thresholds and be justified.

Art. 27. – The exploration and/or exploitation contract shall not confer any right of ownership over the soil defined by the said contract;

Art. 28. – The hydrocarbon deposits and wells shall be immovable but shall not be subject to a mortgage.

Art. 29. – If the contracting entity consists of more than one person, the contract shall specify which person is the operator. Any change of operator must be submitted to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) for prior approval.

Art. 30. - The exploration and/or exploration contract, as well as any amendment to the contract, shall be signed by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), and the contracting entity.

The contract mentioned above, as well as any amendment to the contract, shall be approved by a decree from the executive council and take effect on the date of publication of the approval decree in the Official Gazette of the People’s Democratic Republic of Algeria.

That date shall be referred to as the “effective date.”

The contracting entity and the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall be referred to as “the contracting parties.”

Art. 31. - The person constituting the contracting entity or the persons assembled as the “contracting entity” may, individually or jointly, transfer all or any part of their rights and obligations in the contract between themselves or to any other person. To be valid this transfer must be approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) beforehand and confirmed by an amendment of the contract approved in accordance with the provisions of article 30 above.
In all cases, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall grant the right of first refusal to SONATRACH-S.P.A., which must exercise the said right within a period not exceeding 90 days following notification of transfer by ALNAFT.

Any transfer shall be subject to payment to the Treasury, by the yielding person(s), of a non-deductible fee, whose amount shall be equal to one per cent (1%) of the value of the transaction. The method of calculation and payment of this fee shall be specified by regulation.

The minister in charge of hydrocarbons may, on the basis of a substantiated, detailed report, ignore these provisions for reasons of public interest within the framework of the hydrocarbon policy.

Art. 32. – The exploration and/or exploitation contract shall be signed following an international call for bids in accordance with procedures set by regulation.

These regulations shall define, in particular:
- the criteria and rules for prequalification;
- the procedure for selecting the perimeters offered for competition;
- the procedure for submitting bids;
- the procedure for evaluating bids and concluding contracts.

The exploration and/or exploitation contracts concluded in connection with each call for bids shall be approved by a decision of the ministry in charge of hydrocarbons.

The ministry in charge of hydrocarbons may, on the basis of a substantiated, detailed report, ignore these provisions for reasons of public interest within the framework of the hydrocarbon policy.

Art. 33. – For each perimeter that is the subject of a call for bids in preparation for the signing of an exploration and/or exploitation contract, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall determine and announce, on a case by case basis, which of the following criteria shall be retained as the single criterion for the selection of the winning bid:
- the minimum work program planned for the first phase of exploration;
- the non-deductible bonus amount to be paid to the Treasury upon concluding the contract;
- the proposed royalty rate in excess of the minimum set by this act.

The opening of the sealed envelopes shall be public and the contract shall be...
concluded immediately with the bidder presenting the best offer.

Art. 34. – In order to conclude exploitation contracts pertaining to already discovered deposits, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall issue a call for bids involving two phases:

* a first phase, said to be technical, intended to define the benchmark technical offer and serve as the basis for establishing the economic offer, and which must meet the criteria defined by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), namely consisting of:
  - the recovery percentage of on-site volumes,
  - production optimization,
  - the capacity of production facilities,
  - the investment schedule for required investments,
  - the minimum amount of guaranteed investment, based on standard costs issued by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).
* a second phase, said to be economic, intended to select one of the bidders. The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall determine and announce, immediately after the launching of the first phase, which of the two following criteria shall be retained as the single selection criterion:
  - the proposed royalty rate in excess of the minimum set by this act, or
  - the non-deductible bonus amount to be paid to the Treasury upon concluding the contract.

The opening of the sealed envelopes shall be public and the contract shall be concluded immediately with the bidder presenting the best offer.

Art. 35. – The exploration and exploitation contract shall be made up of two (2) periods: a period of exploration and a period of exploitation.

The length of the exploration and exploitation contract shall be thirty two (32) years and shall comprise:

* an exploration period of seven (7) years after the effective date, subject to the provisions of articles 37 and 42 below, with an initial phase of three (3) years. This initial phase shall be designated as the first exploratory phase and shall be followed by a second and a third exploratory phase, each of which shall be two (2) years in length.
* an exploitation period corresponding to the total length of the contract minus the exploration period actually used.

This length of thirty two (32) years shall be increased by any retention period used in accordance with article 42 below.

In the case of dry gas deposits, a period of five (5) additional years shall be added to the exploitation period.

Art. 36. – For an exploitation contract pertaining to a deposit already discovered, the length of the contract shall be twenty five (25) years beginning with the effective date of the contract. The length of the contract shall be thirty (30) years in the case of dry gas deposits.

Art. 37. – At the end of the exploration period, the exploration contract shall be automatically terminated as a matter of right if the contracting entity has not filed a declaration of commercial discovery or has not selected a perimeter, subject to the application of article 42 below.

The contracting entity may apply for an exceptional extension of the exploration period for a maximum of six (6) months to enable it to complete operations involving the drilling and/or evaluation of an exploratory well initiated during the last three (3) months before the expiration of the exploration period. The extension will be granted by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) upon receipt of a substantiated request from the contracting entity, presented before the end of the exploration period.

Art. 38. – The contractual perimeter, excluding exploitation perimeters or perimeters affected by the application of article 42 below, shall be reduced by thirty per cent (30%) at the end of the first phase of the exploration period. The remaining perimeter, excluding exploitation perimeters or perimeters affected by the application of article 42 below, shall be reduced by thirty per cent (30%) at the end of the second phase of the exploration period.

Art. 39. - At the end of the exploration period or of the exceptional extension defined in article 37 above, the contracting entity must return to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) the entire contractual perimeter, excluding the exploitation perimeter(s) or the perimeter(s) affected by the application of article 42 below.
Art. 40. – The contracting entity may totally or partially waive the contract during the exploration period if it has already fulfilled the conditions and obligations of the said contract, as well as the conditions and obligations of this act and its regulations.

Art. 41. – The selection and delineation procedures:
- of the perimeters subject to the application of article 42 below,
- of the exploitation perimeters,
- of the perimeters of the reduced areas,
shall be determined by regulation.

Art. 42. - Should the contracting entity discover one or more hydrocarbon deposits, for which it cannot file a declaration of commercial discovery during the exploration period due to proven limitations or absence of pipeline transportation infrastructures or the verifiable absence of a market for gas production, the contracting entity may notify the National Agency for the Development of Hydrocarbon Resources (ALNAFT) in writing before the end of the exploration period of its decision to keep an area covering the said deposit(s) for a retention period of:
- three (3) years maximum from the date of receipt of the said notification for oil or wet gas deposits,
- five (5) years maximum from the date of receipt of the said notification is for dry gas deposits,

The determination of the perimeter delineating the said deposit(s), as well as the studies regarding the absence or limitations of pipeline transportation infrastructures and the absence of a market for gas, must be approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT). The retention period actually used may only be added to the exploration period.

Art. 43. – The exploration and exploitation contract must specify the minimum work program that the contracting entity commits to performing during each phase of the exploration period.

The exploration and exploitation contract must also specify the amount of the performance bank guarantee, payable in Algeria upon request by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), issued by a first-rate financial institution approved by the National Agency for the Development of Hydrocarbon Resources.
(ALNAFT), and covering the amount of the minimum work program to be performed by the contracting entity during each exploratory phase.

Art. 44. – The state shall not assume any obligation for funding or guaranteeing funding and shall by no means be accountable to third parties with regard to the performance of the contract.

The contracting entity shall ensure the mobilization of the technical and financial resources, as well as the necessary equipment, for performing the contract. All expenditures required to perform the contract shall be made at the contracting entity’s expense.

Art. 45. – The contracting entity must namely satisfy the norms and standards enacted by regulation with regard to:
- industrial safety,
- environmental protection,
- operational techniques.

The contracting entity must also supply, regularly and without delay, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) with all the data and results obtained in the course of performing the contract, as well as all the reports required by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), in accordance with the procedures published by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) with regard to form and frequency.

Art. 46. – The contracting entity that has discovered a deposit may benefit from an early production authorization for one or more wells for a period of time not exceeding twelve (12) months from the date when the said authorization was granted by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

This authorization must allow the contracting entity to specify the characteristics necessary for the creation of the development plan.

This early production shall be subject to the tax framework of this act.

Art. 47. – With the filing of a declaration of commercial discovery, the contracting entity must submit to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) a development plan proposal accompanied by an estimate of development costs and a delineation of the exploitation perimeter. A budget must be presented every year.
In order to be carried out, this proposal must be approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT). Any modification of the proposed development plan must also be submitted to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) for prior approval. The annual budget must be subject to the approval of the National Agency for the Development of Hydrocarbon Resources (ALNAFT) as well.

The development plan must specify the point(s) of measurement within the exploitation perimeter, where the volume of retained hydrocarbons shall be determined for royalty calculation purposes.

Art. 48. – Each exploration and exploitation contract shall contain a clause giving SONATRACH-S.P.A., when it is not a party to the contract, the option of taking a stake in exploitation operations which may reach thirty per cent (30%) without being less than twenty per cent (20%). The option granted to SONATRACH-S.P.A. must be exercised thirty (30) days after approval of the development plan of the commercial discovery by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) at the latest.

SONATRACH-S.P.A. may not transfer all or part of its stake acquired as a result of this option until a period of five (5) years has elapsed from the option exercise date. For each commercial discovery for which the option is exercised, SONATRACH-S.P.A. shall assume responsibility, proportionally to its stake, for all investment and exploitation costs relative to the development plan approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

SONATRACH-S.P.A. shall reimburse, proportionally to its stake, the contracting entity that made the discovery for all costs of the discovered deposit’s well, in addition to assessment costs associated with the said discovery, approved beforehand by the National Agency for the Development of Hydrocarbon Resources (ALNAFT). Thirty (30) days after the option exercise date at the latest, SONATRACH-S.P.A. and the other persons constituting the contracting entity must reach an operational agreement which shall be attached to the contract. This operational agreement must define the rights and obligations of SONATRACH-S.P.A. and the other persons constituting the contracting entity, and must specify the terms and conditions for the payment of future costs incurred within the framework of the contract, as well as the amount, terms and conditions of the reimbursement by SONATRACH-S.P.A of the exploration costs mentioned in the preceding paragraph. Once approved
by ALNAFT, this operational agreement shall be approved by decree of the executive council and shall take effect on the date of the publication of the approval decree in the Official Gazette of the People’s Democratic Republic of Algeria.

The agreement linking SONATRACH-S.P.A. and the contracting entity must necessarily include a joint marketing clause regarding any gas stemming from the discovery, in the event that the said gas should have to be marketed abroad.

Art. 49. – The contracting entity shall be required to apply the necessary methods to achieve optimal conservation of the deposits.

In this regard, each deposit development plan must contain the work and expenditure commitments which aim to optimize production throughout the life cycle of the deposit.

The contracting entity shall be required, for this reason, to apply the regulatory prescriptions with respect to the conservation and assessment of hydrocarbon reserves, especially with regard to ultimate reserves.

Art. 50. – For reasons linked to the goals of the national energy policy, limits may be applied to the production of the deposits.

These limits shall be the subject of a decision by the minister in charge of hydrocarbons setting their quantities, effective date and duration.

The limits shall be allocated equitably by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) to all contracting entities in proportion to their respective production.

Art. 51. – The procedures for supplying the domestic market with gas and for exporting gas abroad, as well as the role of the National Agency for the Development of Hydrocarbon Resources (ALNAFT), shall be established in chapter III of this act.

In order to meet domestic market needs, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) may ask each gas producer to help satisfy these needs in proportion to its gas production subject to royalty.

Art. 52. – The flaring of gas shall be prohibited. However, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) may exceptionally grant, at the request of the operator, a flaring authorization for limited periods which may not exceed 90 days.
The operator requesting this exception must pay a specific non-deductible tax payable to the Treasury of eight thousand (8000) DA per thousand normal cubic meters (Nm3) without prejudice to the application of article 109 below.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall be responsible for controlling flared quantities and shall ensure that the operator pays the tax. The tax shall be updated according to the following formula:

- the average selling rate upon converting U.S. dollars into dinars of the calendar month preceding each payment, as published by the Bank of Algeria, divided by eighty (80) DA and multiplied by the amount of the above tax.

This specific tax shall be updated on January 1st of each year.

Art. 53. – Should the development plan proposed by the contracting entity and accepted by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) contain provisions involving the use of drinking water or irrigation water to perform assisted recovery, a specific non-deductible tax must be paid by the operator in order to remain in compliance with the legislation in force.

This specific tax, payable annually to the Treasury, shall be fixed at eighty (80) DA per cubic meter used.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall be responsible for controlling the quantities used and shall make sure that the operator pays the tax.

The tax shall be updated according to the following formula:

- the average selling rate upon converting U.S. dollars into dinars of the calendar month preceding each payment, as published by the Bank of Algeria, divided by eighty (80) DA and multiplied by the amount of the above tax.

This specific tax shall be updated on January 1st of each year.

Art. 54. - Should a deposit for which a declaration of commercial discovery has been filed extend over at least two perimeters, subject of separate contracts, the contracting entities involved must, after notification by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), establish a joint plan for the development and exploitation of the deposit. This plan shall be referred to as the “unitization plan.” It shall be subject to the approval of the National Agency for the Development of Hydrocarbon Resources (ALNAFT). If the contracting entities are unable to agree on a unitization plan six (6) months after notification by the National Agency for the Development of
Hydrocarbon Resources (ALNAFT) to prepare such a plan, or if the National Agency for the Development of Hydrocarbon Resources (ALNAFT) does not approve the unitization plan submitted by the contracting entities, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall hire, at the contracting entities’ expense, an independent expert chosen from a list appearing in the contract, so that he may establish a unitization plan which shall take effect upon completion.

If the deposit extends over one or more other perimeters which are not covered by contract, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall issue a call for bids in preparation for the signing of an exploitation contract pertaining to this extension of the deposit.

The party(ies) to this contract shall be required to comply with the unitization plan development procedure as defined above.

When the deposit for which a declaration of commercial discovery has been filed extends over two or more zones, the applicable tax framework shall be determined on the basis of the calculation parameters applicable to each zone, in proportion to the hydrocarbon volumes originally contained in each zone.

Art. 55. – The person as defined in this act may be a resident or a non-resident.

Any person whose headquarters are located abroad shall be a non-resident. The ownership interest of a non-resident person in a company incorporated under Algerian law must be paid through the duly declared importation of convertible currencies in accordance with the foreign exchange regulations in force.

The Algerian branch of a non resident corporate entity shall be considered non-resident with regard to foreign exchange regulations.

The staffing of this branch must be funded by imported convertible currencies.

Provided that exploration expenses have been covered by the duly declared importation of convertible currencies, the non-resident person shall be authorized to:

- keep abroad, during the exploitation period, proceeds from the export of hydrocarbons acquired within the framework of the contract. However, the person shall be required to import in Algeria beforehand, and then transfer to the Bank of Algeria, the convertible currencies necessary to cover development, exploration, and if need be, exploitation, pipeline
transportation and operational expenses, as well as the necessary amounts for the payment of royalties and taxes due.
- freely use the proceeds from the domestic sales of hydrocarbons acquired within the framework of the contract and transfer abroad the amounts exceeding his expenses and obligations.

The person must present a quarterly statement of the importations and transfers of convertible currencies to the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

Resident persons shall be required to repatriate and transfer to the Bank of Algeria the proceeds from its hydrocarbon exports in accordance with the foreign exchange regulations in force. Resident persons may freely transfer abroad the dividends owed to their non-resident associates.

Resident persons may also, upon consent by the Currency and Credit Council, make any transfer enabling them to conduct abroad activities covered by this act. The consent by the Currency and Credit Council shall be granted thirty (30) days at the latest after the regulatory file accompanying the application has been received. In case of refusal, the Currency and Credit Council will have to justify its refusal within the same deadline.

Art. 56. – The contracting entity must keep, in conformity with the legislation and regulation in effect, one set of books by fiscal period for each exploitation perimeter, making it possible to set “value added” and “operating results” accounts, as well as a balance sheet showing the results of the said activities, the assets and liabilities assigned or directly related to them, as well as related operating results.

Any investment, stock or spare part acquired directly with currencies or acquired locally with imported currencies, shall be recorded in U.S. dollars however. Each annual investment installment shall be posted in the books according to the dinar equivalent of the buying rate for U.S. dollars, on the last day of the fiscal period, as set by the Bank of Algeria.

Art. 57. – When the contracting entity fails to meet commitments it made or when it ceases to fulfill the conditions and obligations stemming from this act and from texts used in its application, the contract may be cancelled thirty (30) days after formal notification, without prejudice to the provisions of article 58 below, should the said notification prove fruitless.
Art. 58. – Any dispute opposing the National Agency for the Development of Hydrocarbon Resources (ALNAFT) to the contracting entity, stemming from the interpretation and/or the performance of the contract or the application of this act and/or the texts used in its application, shall be the subject of a prior conciliation under the conditions agreed to in the contract. Should the conciliation fail, the dispute may be submitted to international arbitration under the conditions agreed to in the contract.

When SONATRACH-S.P.A. is the sole contracting entity however, the dispute shall be resolved through the arbitration of the minister in charge of hydrocarbons.

Algerian law, namely this act and its regulations, shall be applied to the resolution of disputes.

CHAPTER III
GAS

Art. 59. – In addition to the duties defined in article 14 of this act, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall be responsible for:

1) keeping and updating a record on the state of gas reserves, the amount of gas required to satisfy the domestic demand and the quantities of gas available for export,

2) periodically determining, in accordance with article 61 below, a benchmark price for gas referred to hereinafter as the “benchmark price,”

3) ensuring that the contracting entities supply the domestic market,

4) delivering exceptional gas flaring authorizations and ensuring payment of the specific tax as stipulated in article 52 above,

5) publishing and providing gas market studies to the various contracting entities,

6) organizing periodically a consultation and information exchange forum pertaining to the gas market to which gas producers from inside and outside Algeria, the contracting entities that have discovered still undeveloped gas reserves, as well as representatives from the Hydrocarbon Regulatory Authority, and from the Electricity and Gas Regulatory Commission (Commission de régulation de l’électricité et du gaz, CREG), created by the aforementioned Electricity and Pipeline Distribution of Gas Act, shall be invited.
Art. 60. – The gas sales contracts already in force on the date of publication of this act, their possible amendments and agreements, as well as the contracts and agreements entered into after publication of this act, shall be transmitted to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) so as to enable the agency to determine a benchmark price. These contracts must namely contain:

- the name of the buyer,
- the total quantity of gas provided for in the transaction,
- the length of the contract,
- the conditions and schedule of delivery,
- the supply points and purchasing conditions by the client,
- the market where the gas will be sold,
- the price,
- the price calculation formulas and parameters, as well as the price revision conditions.

The contracts concluded after publication of this act must include an engagement letter from the seller specifying that an arm’s length relationship exists with the buyer. The nature of the ties making for a non-arm’s length relationship shall be defined by regulation.

All the information contained in these contracts and their amendments shall be kept strictly confidential in conformity with the provisions of article 12 of this act.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall periodically publish statistics on the sales of Algerian gas abroad, while respecting the confidentiality of each contract and its amendments.

Meanwhile, the Electricity and Gas Regulatory Commission (CREG) shall periodically publish statistics on the sales of Algerian gas on the domestic market, while respecting the confidentiality of each contract and its amendments.

Art. 61. – The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall periodically determine the benchmark price and shall have it approved by order of the minister in charge of hydrocarbons.

The initial benchmark price calculated on the date of publication of this act shall be the weighted average price of the preceding calendar semester obtained from various sales contracts regarding the exportation of Algerian gas.

The benchmark price shall be calculated according to the prices obtained during the preceding period based on all exports of Algerian gas.
The prices used to calculate the benchmark price shall be the highest prices from among the following:
- the price stemming from each contract,
- the benchmark price for the preceding period.

The benchmark price in b.o.e. may not be less than a percentage of average FOB prices for Sahara Blend for the preceding quarter as published by a specialized trade journal with unquestionable credentials.

This percentage of average FOB prices for Sahara blend shall be set and readjusted periodically by order of the minister in charge of hydrocarbons according to gas market data.

Art. 62. - At the beginning of each year the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall establish an updated ten-year sliding plan containing:
- developed gas reserves,
- undeveloped gas reserves,
- the amount of gas needed to supply the domestic market,
- the amount of gas needed for assisted recovery and cycling,
- the quantities of gas available for export.

Art. 63. – The price of gas earmarked for the domestic market shall be set as stipulated in article 10 above.
SONATRACH-S.P.A. must continue to ensure that domestic gas requirements are met, just as it did before publication of this act.

Art. 64. – 1. At least one hundred eighty (180) days before the beginning of each calendar year, the Electricity and Gas Regulatory Commission (CREG) must supply the National Agency for the Development of Hydrocarbon Resources (ALNAFT) in writing with:
   a) a ten-year program with a year-by-year listing of the quantities expected to be necessary to satisfy the needs of the domestic market,
   b) the necessary quantities to satisfy the domestic market for the following year in excess of the quantities to be supplied by SONATRACH-S.P.A., in accordance with article 63 above,
   c) the quantities of gas already covered by a contract and part of the aforementioned surplus,
   d) the quantities of gas, which are part of the aforementioned surplus, but are not yet covered by a contract and require the application of article 51 above by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).
The basis and methodology for forecasting the quantities expected to be necessary to meet domestic market needs shall be set by regulation.

2. The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall use the information appearing in the preceding ten-year program in the event that the information defined in item 1 above is not supplied within the prescribed time limits.

3. In order to meet the needs identified in paragraph 1. d) above, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall determine and inform each contracting entity of the quantity of gas, calculated in proportion to its annual production, that it must contract directly with the firm(s) in charge of gas distribution, fourteen (14) days at the latest after receiving the information defined in item 1 above.

4. Sixty (60) days at the latest after receiving notification from the National Agency for the Development of Hydrocarbon Resources (ALNAFT) as defined in item 3 above, the firm(s) in charge of gas distribution must enter into a gas purchasing contract with every contracting entity indicated by the National Agency for the Development of Hydrocarbon Resources (ALNAFT). The sales price of gas shall be the price at the point of delivery (gas pipeline) defined in articles 9 and 10 above and adjusted periodically by regulation.

The contract stipulated in item 4 above, entered into by the firm(s) in charge of distributing gas and the contracting entity(ies), shall include a “take or pay” clause containing an obligation to at least purchase a quantity which may not be less than eighty five per cent (85%) of the contracted quantity.

Art. 65. – Any gas production from a perimeter intended to supply the domestic market, with the exception of gas needed for re-injection and cycling purposes, must conform to Algerian specifications for gas sales as set and ordered by the minister in charge of hydrocarbons.

Art. 66. – In order to satisfy domestic market needs under the best conditions, swaps may be freely negotiated and applied between suppliers. By no means shall the use of swaps have a negative impact on the level of tax proceeds.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall receive a copy of each swap contract which it shall keep confidential.
Art. 67. – Any use, transfer or assignment of greenhouse gas emission credits shall be approved by joint order of the minister in charge of hydrocarbons and the minister in charge of the environment.

That approval shall give rise to the payment of a specific tax payable by the contracting entity to the Treasury, corresponding to the credit that the contracting entity may obtain on the international market.

The terms, conditions and procedures for calculating the said tax shall be defined by regulation.

CHAPTER IV
PIPELINE TRANSPORTATION

Art. 68. - Pipeline transportation activities may be conducted by any person to whom a concession has been granted by order of the minister in charge of hydrocarbons.

Art. 69. – 1. All applications for a pipeline transportation concession shall be submitted to the Hydrocarbon Regulatory Authority, which shall formulate a recommendation addressed to the minister in charge of hydrocarbons.

2. In the case of an application submitted by a contracting entity to evacuate its hydrocarbon production, the Hydrocarbon Regulatory Authority shall formulate a recommendation to the minister in charge of hydrocarbons in favor of granting the concession to the said contracting entity.

3. In the case of other concession applications, the Hydrocarbon Regulatory Authority shall formulate a recommendation to the minister in charge of hydrocarbons:
   - either in favor of granting the said concession to the person who submitted the application,
   - or proposing that a call for bids be issued with regard to the said concession.

4. Within the framework of the national pipeline transportation infrastructures development plan, the Hydrocarbon Regulatory Authority shall propose to the minister in charge of hydrocarbons that he issue a call for bids with regard to any concession for which no application has been submitted.

5. For any granted concession, the concession holder must issue a call for bids to award the contract to build related infrastructures.

6. An order of the minister in charge of hydrocarbons shall define the gaseous hydrocarbon pipelines belonging to the hydrocarbon
sector and the pipelines belonging to the gas network servicing the domestic market exclusively.

Art. 70. – 1. For pipeline transportation concession granting purposes, with regard to the cases provided for in paragraphs 3 and 4 of article 69 above, for which a call for bids is required, the Hydrocarbon Regulatory Authority shall issue a call for bids whose sole selection criterion shall be the transportation tariff based on the reasonable return on investment required by the Hydrocarbon Regulatory Authority, provided that the technical provisions contained in the specifications are met.

2. The call for bids to award the contract to build the infrastructure related to the concession shall unfold in two (2) phases:
* a first phase, said to be technical, intended to define the benchmark technical offer, which shall serve as the basis for establishing the economic offer and which must satisfy the specifications relative to the planned infrastructure, namely with regard to:
  - the pipeline transportation infrastructures’ capacity;
  - the schedule for making the necessary investments;
  - the continuity of service;
  - the consumption of gas-fuel.
* a second phase, said to be economic, intended to select one of the bidders. The retained selection criterion shall be the transportation tariff, based on a reasonable return on investment as required by the Hydrocarbon Regulatory Authority.

The opening of the sealed envelopes pertaining to the economic phase shall be public and the contract to build the infrastructures shall be awarded immediately to the bidder presenting the best offer.

The minister in charge of hydrocarbons may, on the basis of a substantiated, detailed report, allow SONATRACH-S.P.A. to acquire a stake in any hydrocarbon pipeline transportation concession awarded, provided it is not already a stakeholder.

Art. 71. – The concessions mentioned above shall be awarded for a maximum period of fifty (50) years.

Art. 72. - The right to use pipeline transportation infrastructures shall be guaranteed on the basis of the third-party access principle, in exchange for the payment of a non-discriminatory per zone tariff.

To this end, a pipeline transportation fund shall be created and placed under the management of the Hydrocarbon Regulatory Authority.
That fund shall assume responsibility for the equalization of pipeline transportation tariffs per transportation zone.

The third-party access principle, the methodology for calculating the pipeline transportation tariff per zone, the organization of the pipeline transportation fund and its operation shall be defined by regulation.

Art. 73. – For international pipelines originating outside the national territory and crossing it and international pipelines originating inside the national territory, the minister in charge of hydrocarbons shall award the transportation concession after notification from the Hydrocarbon Regulatory Authority. This concession shall define up to what limit, part of the pipelines’ capacity shall be subject to the third-party access principle.

The minister in charge of hydrocarbons may, on the basis of a substantiated, detailed report, allow SONATRACH-S.P.A. to acquire a stake in any hydrocarbon pipeline transportation concession awarded within the framework of this article, provided it is not already a stakeholder.

Art. 74. – The principles used in determining pipeline transportation tariffs must consider the following criteria:
- offer the lowest possible tariff to users of pipeline transportation infrastructures while respecting existing regulations and ensuring the continuity of service;
- improve operational efficiency;
- reduce operational costs;
- enable the concession holder, within the boundaries of prudent and rational management, to cover operational costs, pay the fees and taxes he owes, amortize investments and financial charges and earn a reasonable profit.

Art. 75. – For pipeline transportation activities, the following shall be established by regulation:
- the prequalification criteria and rules, including the human and material resources needed to ensure the industrial safety of facilities and operations;
- the procedures governing pipeline transportation concession applications;
- the procedures governing the calls for bids;
- the procedures for obtaining construction and operational authorizations;
- the fare system;
- the regulation of the third-party access principle;
- the technical norms and standards;
- the industrial safety standards;
- the environmental protection measures;
- the penalties and fines provided for in article 13 above;
- the restoration reserves.

Art. 76. – Except for an act of God, the concession holder may not suspend his activities. The holder must ensure continuous service within the framework of article 75 above, without prejudice to the provisions contained in the legislation in force with regard to this.

CHAPTER V
HYDROCARBON REFINING AND PROCESSING

Art. 77. – Hydrocarbon refining and processing activities may be conducted by any person.

The procedures for obtaining the required authorizations for building the structures and operating them shall be defined by regulation.

CHAPTER VI
STORAGE, TRANSPORTATION AND DISTRIBUTION OF OIL PRODUCTS

Art. 78. – Activities pertaining to the pipeline transportation, storage and distribution of oil products may be conducted by any person.

The procedures for obtaining the required authorizations for building the structures and operating them shall be defined by regulation.

Art. 79. – Any person shall have the right to use the infrastructures for the storage and pipeline transportation of oil products based on the principle of third-party access, in exchange for the payment of a non-discriminatory tariff.

The tariff for using the storage infrastructures shall be defined by regulation according to the same methodology used for determining the transportation tariff provided for in article 74 above.
The rules regarding activities pertaining to the pipeline transportation and storage of oil products shall be set by regulation and be administered by the Hydrocarbon Regulatory Authority.

CHAPTER VII
TRANSFER OF PROPERTY AT THE END OF THE CONTRACT OR CONCESSION

Art. 80. - At the end of an exploration and/or exploitation contract, the transfer of ownership of all the structures necessary to keep conducting the activities shall be made to the benefit of the state. The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall notify the contracting entity regarding the list of facilities and structures that the state does not want to assume ownership of through a transfer of property at least three (3) years before the end of the exploration and/or exploitation contract.

This transfer of ownership shall be executed free of charge to the state.

At the time of the transfer, the structures to be transferred by the contracting entity must be operational and in good working order.

For any structure that the state does not wish to assume ownership of through a transfer of property, the contracting entity must assume responsibility for all site abandonment and/or restoration costs provided for in the contract in accordance with the regulations pertaining to industrial and environmental safety.

Art. 81. – At the end of a pipeline transportation concession, ownership of all the structures and facilities necessary to conduct the operations shall return to the state free of any charge.

The Hydrocarbon Regulatory Authority shall notify the concession holder regarding the list of structures that the state does not want to assume ownership of through a transfer of property at least three (3) years before the end of the concession.

At the time of the transfer, the structures to be transferred by the concession holder must be operational and in good working order.

For any structure that the state does not wish to assume ownership of through a transfer of property, the concession holder must assume responsibility for all site abandonment and/or restoration costs provided for in the concession in accordance with the statutory instruments pertaining to industrial and environmental safety.
Art. 82. – The contract or the concession shall set the terms and conditions allowing the contracting entity or the concession holder to build up reserves during the contract or the concession to cover site abandonment and/or restoration costs in accordance with article 80 and 81 above.

In order to cover the costs associated with site abandonment and restoration operations, which must be conducted at the end of the exploitation period, the contracting entity must deposit reserve funds in an escrow account during each calendar year.

This reserve shall be considered an operational charge deductible from the taxable results of the fiscal period. This operational charge shall be set by production unit on the basis of the remaining recoverable reserves at the beginning of each calendar year.

The site abandonment and restoration program, as well as the related budget must be an integral part of the development plan for exploration and/or exploitation contracts.

The amount of the said reserve shall be defined by ALNAFT on the basis of expert opinion. ALNAFT must ensure that the money is deposited in the escrow account.

Control of the site abandonment and restoration operations must be exercised by ALNAFT, in collaboration with the Hydrocarbon Regulatory Authority and the minister in charge of the environment.

In order to maintain the hydrocarbon transportation pipelines and related facilities, but also in order to cover the costs of the site abandonment and restoration operations that must be conducted at the end of the exploitation period, the concession holder must deposit reserve funds in an escrow account during each calendar year.

This reserve shall be considered an operational charge deductible from the taxable results of the fiscal period. At the beginning of each calendar year, the transportation tariff for each product unit transported must include that operational charge.

The site abandonment and restoration program, as well as the related budget, must be an integral part of the development and exploitation plan for the hydrocarbon pipeline transportation and related infrastructures.

The amount of the said provision shall be defined by the Hydrocarbon Regulatory Authority on the basis of expert opinion.

The Hydrocarbon Regulatory Authority must ensure that the money is deposited in the escrow account.
Control of the site abandonment and restoration operations must be exercised by the Hydrocarbon Regulatory Authority, in collaboration with the minister in charge of the environment.

CHAPTER VIII
THE TAX FRAMEWORK APPLICABLE TO EXPLORATION AND/OR EXPLOITATION ACTIVITIES

Art. 83. – The tax framework applicable to the exploration and/or exploitation activities defined by the provisions of this act, shall consist of:

- a non-deductible surface area tax payable annually to the Treasury,

a royalty payable monthly to the National Agency for the Development of Hydrocarbon Resources (ALNAFT), as defined in articles 25 and 26 below.

- a tax on oil revenues (T.R.P.) payable monthly to the Treasury,

- an additional tax on earnings (I.C.R.) payable annually to the Treasury,

- a property tax on assets other than operational assets, as set by the general tax legislation and regulation in effect,

- as well as the fees and taxes provided for in articles 31, 52, 53 and 67 of this act.

<table>
<thead>
<tr>
<th>Years/ Zones</th>
<th>Exploration period</th>
<th>Retention period defined in Art. 42 + Exceptional period defined in Art. 37</th>
<th>Exploitation period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 to 3 included</td>
<td>4 to 5 years 6 to 7 years 7 years</td>
<td></td>
</tr>
<tr>
<td>Zone A</td>
<td>4000</td>
<td>6000 8000 400 000 16 000</td>
<td></td>
</tr>
</tbody>
</table>
Art. 84. – The surface area tax shall be payable annually in Algerian dinars (DA) or in US dollars, at the buying rate for US dollars set by the Bank of Algeria on the day of payment, by the operator as defined in article 29 below, as soon as the contract takes effect pursuant to the provisions of article 55 of this act. This tax shall be calculated on the basis of the size of the perimeter on the due date for each payment.

The DA amount of the surface area tax per square kilometer (km²) shall be set as follows:

These amounts shall be updated according to the following formula:

The average selling rate for conversion from US dollars into Dinars for the calendar month preceding each payment, as published by the Bank of Algeria, divided by eighty (80) and multiplied by the amount of the tax set above.

The indexation shall be applied on January 1st of each year, in the amount of the due tax:

ALNAFT shall ensure that the tax is paid to the Treasury.

Art. 85. - All quantities of hydrocarbons extracted from each perimeter of exploitation and determined in accordance with article 26 of this act shall be subject to a royalty.

The amount of the royalty, for a given month, shall be equal to the sum total of the values of each production bracket for the said month, multiplied by the royalty rate applicable to the said bracket.
The value of the production shall be calculated as stipulated in articles 90 and 91 below and the applicable royalty rates shall be those appearing in each contract.  
The royalty shall be determined monthly for all hydrocarbon quantities extracted from the perimeter of exploitation and measured in accordance with article 26 of this act, using the monthly average of base prices and calculated as stipulated in articles 90 and 91 below.

<table>
<thead>
<tr>
<th>B.O.E./DAY</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.001 TO 50.000</td>
<td>10.5%</td>
<td>13%</td>
<td>16%</td>
<td>20%</td>
</tr>
<tr>
<td>50.001 TO 100.000</td>
<td>15.5%</td>
<td>18%</td>
<td>20%</td>
<td>23%</td>
</tr>
</tbody>
</table>

Should the quantities of hydrocarbons extracted from the perimeter of exploitation expressed in barrel oil equivalent (b.o.e.) be inferior or equal to 100,000 b.o.e./day, as determined on the basis of a monthly average, the royalty rates by production batch set in each contract may not be less than the levels appearing in the table above:

For quantities of hydrocarbons in excess of 100,000 b.o.e./day, as determined on the basis of a monthly average, the royalty rate, set in each contract, applicable to the production as a whole may not equal the level appearing in the table above:

In cases where the contracting entity consists of more than one person, the operator or SONATRACH-S.P.A., when the latter is the only operator within an exploration perimeter, as defined in article 29 of this act, shall pay the National Agency for the Development of Hydrocarbon Resources (ALNAFT) the amount of the royalty for the production as a whole, in accordance with the provisions of article 55 of this act.

The royalty shall be a charge deductible from the tax base for ICR calculation purposes.
Art. 86. – The tax on oil revenues (TRP) shall be paid monthly by the operator.

This oil revenue shall equal the value of the annual hydrocarbon production of each perimeter of exploitation, calculated in accordance with article 91 below, minus the deductions allowed each year.

The cumulative value of the production going back to the beginning of the exploitation of hydrocarbons (P.V.) shall be equal to the product of the quantities of hydrocarbons extracted from the perimeter of exploitation subject to the royalty, in accordance with article 26 of this act, multiplied by the price used in calculating the said royalty.

The authorized deductions shall consist of the following elements:
- the royalty;
- the annual installments of development investments applying uplift rules as defined in article 87 below. These investments must only relate to the exploitation perimeter and must be approved in the annual budgets;
- the annual installments of research investments applying uplift rules as defined in article 87 below, and if need be;
- the reserves to cover abandonment and/or restoration costs in accordance with article 82 above;
- the cost of training domestic human resources for the activities governed by this act;
- the cost of purchasing gas for assisted recovery.

The nature of the investments to be taken into account shall be defined by regulation.

<table>
<thead>
<tr>
<th>P.V. expressed in $10^9$ DA as defined by article 86 above</th>
<th>First threshold $T1$</th>
<th>70</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Second threshold $T2$</td>
<td>385</td>
</tr>
<tr>
<td>Rate of TRP</td>
<td>First level</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>Second level</td>
<td>70%</td>
</tr>
</tbody>
</table>

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By no means shall these investments include interests and general expenses.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall ensure that the operator, as defined by article 29 of this act, has paid the tax on oil revenues in conformity with the provisions of article 55 of this act.

The TPR shall be a charge deductible from the tax base for ICR calculation purposes.

Art. 87. – For TRP calculation purposes, the rates set in the above table shall be used:

The TRP shall be calculated by applying the above rates to oil revenues defined in article 86 above.

Thresholds T1 and T2 appearing in the above table and the formula below shall be updated according to the following formula:

The average buying rate for conversion from US dollars to dinars for the calendar month preceding each payment, as published by the Bank of Algeria, divided by seventy (70) and multiplied by the amount of each threshold appearing in the table above.

When the P.V. is inferior or equal to threshold T1, the TRP shall be calculated by using the rate pertaining to the first level.

When the P.V. exceeds threshold T2, the TRP shall be calculated by using the rate pertaining to the second level.

When the P.V. exceeds threshold T1 but is inferior or equal to threshold T2, the following formula shall be used to calculate the oil revenue tax rate:

\[
\text{Percentage} \, (\%) \, \text{TRP} = \frac{\text{P.V.} - T1}{30} 
\]

The annual installments of research and development investments, with the exception of those pertaining to assisted recovery, shall benefit from an uplift set as follows:

- **Zone A)** Uplift rate of fifteen per cent (15%)
  and

- **Zone B)** Annual investment installment: twenty per cent (20%) a year for five (5) years

- **Zone C)** Uplift rate of twenty per cent (20%)
and
Zone D) Annual investment installment:
  twelve point five per cent (12.5%) a year for eight (8) years

In all zones an annual investment installment of twenty per cent (20%) for five (5) years and an uplift rate of twenty per cent (20%) shall be applied to assisted recovery investments.

The cost of purchasing gas to conduct gas re-injection and cycling operations, the cost of training domestic human resources and, if need be, the cost of abandonment are deductible for TRP calculation purposes without the benefit of an uplift.

Art. 88. – Each person participating in the contract shall be subject to an ICR calculated according to the tax rate on corporate profits (IBS), under the terms and conditions in effect on the date of payment, and according to the amortization rates provided for in the appendix of this act.

To that end, each corporate entity may consolidate the results of all its activities in Algeria covered by this act. The list of those activities shall be defined by regulation.

Each person investing in the activities covered by the aforementioned Electricity and Pipeline Distribution of Gas Act, may benefit from the reduced IBS rate in effect, for ICR calculation purposes. The terms and conditions pertaining to the implementation of the reduced rate provided for in this article shall be set by regulation.

Art. 89. – The exploration and/or exploitation activities governed by this act shall be exempted from:
  a. the value added tax (V.A.T.) on the goods and services related to exploration and/or exploitation activities,
  b. the tax on professional activities (TAP),
  c. customs fees, taxes and duties on the importation of capital goods, materials and products intended to be used exclusively for exploration and/or exploitation activities pertaining to hydrocarbon deposits,
  d. any other fee or tax not covered by articles 31, 52, 53 and 67 above and in this chapter, impacting operating results and established for the benefit of the state, territorial collectivities and any public corporation.

The capital goods, services, material and products covered by this article shall be the ones intended exclusively for these activities and appearing on a list established by regulation.
Art. 90. – The base prices used in the calculation of the royalty, fees and taxes covered by article 91 below shall represent the averages for the calendar month preceding the month for which payments are due:

a) of FOB prices published by a specialized trade journal with unquestionable credentials, for oil, LPG, butane and propane produced in Algeria.

b) of FOB prices published by a specialized trade journal with unquestionable credentials, or in the absence of such a publication, of the prices announced by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) with regard to condensates produced in Algeria.

The said trade journals shall be specified in the contract.

In the absence of available publications for one of the products defined above, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall announce the prices to be applied, which it shall determine by doing reverse calculations using available prices for the said product at the closest delivery points, or by using any other method determined by the National Agency for the Development of Hydrocarbon Resources (ALNAFT). For domestic market needs however, the base price used for liquid hydrocarbons and oil products shall be the price in effect during the calendar year under consideration in accordance with the provisions of articles 8 and 9 of this act.

For gas, the base price used in calculating royalties, taxes, fees and taxes, shall be the price defined as follows:

* In the case of a contract to export gas:
  - the price appearing on the contract, if that price is above or equal to the benchmark price defined in article 61 above. In the opposite case, the base price shall be equal to the benchmark price.

* In the case of a contract to sell gas on the domestic market:
  - the sales price of gas applied to the domestic market shall be the price in effect during the calendar year under consideration, in accordance with the provisions of articles 8 and 10 of this act at the point of delivery (gas pipeline).

  * In the case of gas purchases for assisted recovery purposes, the base price shall be the price freely negotiated between buyer and seller.

When base prices are expressed in US dollars, the average selling rate of the month during which prices were tallied, as published by the Bank of Algeria, shall be used for their conversion into Algerian dinars.

The conversion rates in b.o.e. shall be announced by ALNAFT.
Art. 91. – The value of the production of hydrocarbons extracted from the deposit(s) within the exploitation perimeter shall equal to the product of the quantities of hydrocarbons subject to royalties multiplied by base prices, as defined in article 90 above, minus the pipeline transportation tariff between the point of measurement and the Algerian loading port, or the Algerian export border and if need be, between the point of measurement and the sales point in Algeria.

In the particular case of gas sold in liquefied form and LPG sold in the form of butane and propane, a processing cost calculated by taking investments alone into account, shall also be deducted. The annual investment installments shall benefit from an uplift established as follows:

- an uplift rate of twenty per cent (20%),
- an annual investment installment: ten per cent (10%) a year for a period of ten (10) years.

Art. 92. – Royalty payments shall be made monthly, before the 10th of the month following the month of production, to the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

Should a delay in royalty payment occur, the amounts due shall be increased by one per thousand (1‰) by day of delay.

Art. 93. – The length of the fiscal period may not exceed twelve (12) months. If the said fiscal period is twelve (12) month long, it must coincide with the calendar year. If it is less than twelve (12) months, it must begin and end in the same calendar year.

Art. 94. – The TRP of a fiscal period shall be paid in twelve (12) provisional settlements representing installments on taxes due for the said fiscal period.

The terms and conditions for calculating the amount of monthly provisional payments shall be defined by regulation.

The installments shall be made without notification before the 25th of the month following the month for which the installments are due.

Before determining the ICR, the oil revenue tax shall be paid by the operator who shall deposit the amount, after deducting installments already made, on the last day for filing the annual results statement for the fiscal period at the latest.

Should a delay in payment occur, the amounts due shall be increased by one per thousand (1‰) by day of delay.
Art. 95. – The additional tax on earnings shall be paid on the last day for filing the annual income return for the fiscal period at the latest. The terms and conditions for calculating the amount of the additional tax on earnings shall be defined by regulation. Should a delay in payment occur, the amounts due shall be increased by one per thousand (1\%) by day of delay.

Art. 96. - The tax framework applicable to hydrocarbon sector activities other than exploration and/or exploitation activities shall be the general law in effect. Legal persons shall be authorized to consolidate their results with regard to the activities covered by this act and the Electricity and Pipeline Distribution of Gas Act, in accordance with what is stipulated in article 88 above. The terms and conditions of implementation of the aforementioned consolidation of results shall be defined by regulation.

Art. 97. – The activities of hydrocarbon pipeline transportation, of gas liquefaction and of separation of liquefied petroleum gases, shall be exempted from:

- the value added tax (V.A.T.) on the goods and services exclusively related to the activities listed above,
- customs fees, taxes and duties on the importation of capital goods, material and products intended exclusively for the activities listed above.

The capital goods, services, material and products covered by this article shall be those appearing on a list established by regulation.

Art. 98. – The salaries of the employees of foreign oil enterprises and companies shall be exempt from national payroll taxes when the said employees remain covered by the social protection system to which they belonged before their arrival in Algeria.

Art. 99. – The drilling machines, equipment, materials and tools, as well as other fixed structures used in the exploitation of deposits and the storage and transportation of extracted products shall be immovable by destination. The machines, materials and tools directly intended for the exploitation of hydrocarbon deposits shall be also immovable by destination. The material extracted or produced, the supplies and other movable objects, as well as the shares, stakes and interests in
partnerships, companies or associations of corporations or companies involved in the exploration, exploitation, pipeline transportation, refining and processing of hydrocarbons and in the distribution of oil products, shall be movable.

CHAPTER IX
TRANSITORY PROVISIONS

Art. 100. – In application of the provisions of this act, SONATRACH-S.P.A. must transfer, upon request by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), all or part of the elements making up the data banks possessed by SONATRACH-S.P.A., as well as the technical data relative to exploration and exploitation activities pertaining to hydrocarbons on the national mining estate.

This transfer shall be made free of charge to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and must be completed six (6) months after the establishment of ALNAFT at the latest.

SONATRACH-S.P.A. may keep a copy of all or part of the information covered by this transfer.

Art. 101. – The contracts of association concluded before the date of publication of this act, as well as the amendments to the said contracts signed before the date of publication of this act, shall remain in force until the date of their expiration.

The free will of the parties to the contract of association shall be preserved by this act.

Art. 102. – For each of the contracts of association mentioned in article 101 above, and within ninety (90) days after the establishment of the National Agency for the Development of Hydrocarbon Resources (ALNAFT), a parallel contract shall be concluded between the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and SONATRACH-S.P.A., in application of article 23 of this act. Until the conclusion of the said parallel contract, SONATRACH-S.P.A. must continue to respect the same prerogatives within the framework of Act No. 86-14 of August 19, 1986, amended and supplemented by the aforementioned Act No. 91-21.

Upon the conclusion of the parallel contract, SONATRACH-S.P.A. must return to the minister in charge of hydrocarbons, the mining title in its possession, which shall be awarded to the National Agency for
the Development of Hydrocarbon Resources (ALNAFT). The length of the parallel contract shall be equal to the remaining length of the contract of association.

This parallel contract shall namely establish the terms and conditions of payment by bank check or any authorized method of payment, which may be done through an electronic transfer of funds, by SONATRACH-S.P.A.:

1. **In the case of production sharing contracts and risk service contracts:**
   - to the National Agency for the Development of Hydrocarbon Resources (ALNAFT), of the royalty on the production as a whole, calculated in accordance with article 85 above,
   - of the surface area tax calculated in accordance with article 87 above,
   - of the oil revenue tax (TRP) based on the rates provided for in article 87 above when SONATRACH-S.P.A. participates in the funding of investments, or at the maximum rate, that is seventy per cent (70%) when SONATRACH-S.P.A. does not participate in the funding of investments.

The oil revenue shall be the value of the production, calculated in accordance with article 91 above, minus:
* the value of the royalty,
* the uplifted investment installments for research and development,
* the value, calculated by applying the base price defined in article 90 above, of the share of production earmarked as the foreign partner’s compensation,
* the income tax paid by SONATRACH-S.P.A. on behalf of its foreign partner in accordance with the aforementioned Act No. 86-14 of August 19, 1986, amended and supplemented, and if need be:
  * the cost of training national human resources,
  * the cost of purchasing gas used in assisted recovery,
  * the reserves to cover abandonment and/or restoration costs in accordance with article 82 above.

In addition to the deductions authorized in accordance with articles 85 and 87 above, the following shall also be deductible for additional tax on earnings (ICR) calculation purposes:
   - the value, calculated by applying the base price defined in article 90 above, of
the share of the production earmarked as the foreign partner’s compensation,
- the income tax paid by SONATRACH-S.P.A. on behalf of its foreign partner in accordance with the aforementioned Act No. 86-14 of August 19, 1986, amended and supplemented.

2. In the case of associations in participation:
- only SONATRACH-S.P.A.’s share of the production shall be subject to the tax framework of this act.
- the production share of the foreign partner shall remain subject to the fiscal terms established in the contract of association.

Art. 103. - Within thirty (30) days after the establishment of the National Agency for the Development of Hydrocarbon Resources (ALNAFT), SONATRACH-S.P.A. must supply the agency with the following elements:
1 – The delineation of the exploration perimeters operated by SONATRACH-S.P.A. at that date and which it wishes to keep.
2 – The delineation of the exploitation perimeters operated by SONATRACH-S.P.A. at that date and which it wishes to keep.
This delineation must conform to the provisions of this act.

Art. 104. – The exploration perimeters that SONATRACH-S.P.A. does not wish to keep shall be the subject of a call for bids in preparation for the signing of an exploration and/or exploitation contract.
The hydrocarbon exploitation perimeters that SONATRACH-S.P.A. does not wish to keep shall be the subject of a call for bids in preparation for the signing of an exploitation contract. SONATRACH-S.P.A. shall continue to operate these perimeters until the transfer of these activities to the new contracting entity.
Should the call for bids fail to result in the conclusion of a new exploitation contract, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall decide whether or not the perimeter(s) in question shall be abandoned. In the case of abandonment, SONATRACH-S.P.A. must take charge of all operations necessary for abandonment, in accordance with article 82 above.
In any case, SONATRACH-S.P.A. must return the mining titles in its possession regarding these perimeters to the minister in charge of hydrocarbons so that they may be transferred to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) in accordance with article 23 of this act.
Art. 105. – Within ninety (90) days after receiving the elements mentioned in article 103 above:

1 – For each exploration perimeter mentioned in paragraph of article 103 above, an exploration and exploitation contract shall be concluded by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and SONATRACH-S.P.A., or one of its subsidiaries of its own designation, in accordance with the provisions of this act. In particular, the said contract shall include the minimal work program to be done during each exploration phase.

As part of its commitments, the contracting entity shall benefit from a credit corresponding to the works executed during a period of three (3) years before the signature of the said contract.

2 - For each of the exploitation perimeters mentioned in article 103-2 above, an exploitation contract shall be concluded between the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and SONATRACH-S.P.A., or one of its subsidiaries of its own designation, in accordance with the provisions of this act.

In particular, the contract shall define the threshold to take into account for TRP calculation purposes, in order for exploitation to continue, while reserving for site abandonment and restoration costs if need be.

Upon signing the aforementioned contracts, SONATRACH-S.P.A. must return to the minister in charge of hydrocarbons the mining titles in its possession regarding the perimeters covered by the aforementioned contracts so that they may be transferred to the National Agency for the Development of Hydrocarbon Resources (ALNAFT), in accordance with article 23 of this act.

Art. 106. - For each of the exploitation contracts mentioned in item 2 of article 105 above, SONATRACH-S.P.A. shall submit to the National Agency for the Development of Hydrocarbon Resources (ALNAFT) for approval, within a period not exceeding one hundred eighty (180) days from the effective date of the contract, a development plan as defined in the contract, as well as the financial means necessary for its implementation, in strict respect of the stipulations of article 3 of this act.

Should SONATRACH-S.P.A. and the National Agency for the Development of Hydrocarbon Resources (ALNAFT) be unable to reach an agreement with regard to the said plan within a period not exceeding three hundred sixty (360) days after the implementation of the contract,
the minister in charge of hydrocarbons shall choose the plan to be implemented by SONATRACH-S.P.A., so as to conform with article 3 of this act, after consulting with a technical expert chosen with the agreement of the two parties before the expiration of the aforementioned 360-day period.

Art. 107. – During the period between the date of publication of this act in the Official Gazette of the People’s Democratic Republic of Algeria and the effective dates of the contracts defined in article 102 and 105, SONATRACH-S.P.A. shall continue to abide by the tax framework in effect before the publication of this act.

The corresponding installments shall be considered as provisional payments.

After the contracts take effect, the tax framework defined in this act shall be applied, taking account of the sums already paid by SONATRACH-S.P.A. as provisional payments.

Art. 108. - Within ninety (90) days after the establishment of the National Agency for the Development of Hydrocarbon Resources (ALNAFT), a pipeline transportation concession shall be awarded for each of the pipeline transportation systems by the minister in charge of hydrocarbons to SONATRACH-S.P.A., or to one of SONATRACH-S.P.A.’s subsidiaries designated by the latter, in accordance with the provisions of this act and the regulations provided for in chapter IV of this act.

SONATRACH-S.P.A. must keep separate books for each pipeline transportation system, as well as for each hydrocarbon refining and processing facility.

Art. 109. – A maximum period of seven (7) years from the date of publication of this act in the Official Gazette of the People’s Democratic Republic of Algeria shall be given to adapt the operations, facilities and equipment completed before the effective date of this act so that they may comply with the legislative and regulatory documents setting the technical norms and standards of industrial safety, of prevention and management of major risks and of environmental protection.

On the other hand, when, in derogation of article 58 of this act, SONATRACH-S.P.A. is the sole contracting entity or concession holder, any dispute stemming from the interpretation and/or performance of any contract or deed of grant shall be settled through the arbitration of the
CHAPTER X
SPECIAL PROVISIONS

Art. 110. – Any authorization or approval request presented by the contracting entity or concession holder on his own behalf within the framework of this act and/or its regulations and deemed necessary to the performance of the contract or the concession, must be the subject of a decision, either approving the request or refusing it on justifiable grounds, as soon as all relevant information has been gathered.

The decision to approve or refuse the request must be announced within a period not exceeding ninety (90) days.

Art. 111. - With regard to the duties of the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and the Hydrocarbon Regulatory Authority as a whole, which require a control of the application of, and compliance with, enacted rules, namely the auditing of the contracting entities or the concession holders’ accounts, the aforementioned agencies may hire professional firms, Algerian or foreign, of unquestionable credentials.

The fees paid to those firms shall be at the expense of the agencies involved.

Expert fees paid as part of the resolution of disputes over the auditing or the determination, by ALNAFT, of the amount of the reserve provided for in article 82 of this act, shall be at the expense of the contracting entities or concession holders involved.

Art. 112. – The provisions contained in this act shall be applicable from the date of its publication in the Official Gazette of the People’s Democratic Republic of Algeria.

Art. 113. – The terms and conditions of application of this act shall be set by regulation, to the extent necessary.

Art. 114. - Any provisions contrary to this act shall be repealed, namely the aforementioned Act No. 86-14 of August 19, 1986, amended and supplemented, subject to the provisions of article 101 above.

Art. 115 - This act shall be published in the Official Gazette of the People’s Democratic Republic of Algeria.
Dated at Algiers, 19 Rabie El Aouel 1426 (corresponding to April 28, 2005).

Abdelaziz BOUTEFLIKA

<table>
<thead>
<tr>
<th>NATURE OF CAPITAL EXPENDITURE</th>
<th>RATE</th>
</tr>
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<tbody>
<tr>
<td>Investment in exploration other than drilling</td>
<td>100</td>
</tr>
<tr>
<td><strong>Successful drillings</strong></td>
<td></td>
</tr>
<tr>
<td>Exploration drilling</td>
<td>100</td>
</tr>
<tr>
<td>Development drilling</td>
<td>100</td>
</tr>
<tr>
<td><strong>Unsuccessful drillings</strong></td>
<td></td>
</tr>
<tr>
<td>Exploration drilling</td>
<td>12.5</td>
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<tr>
<td>Development drilling</td>
<td>12.5</td>
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<tr>
<td>or the amount of expenditures to amortize when these drillings are abandoned</td>
<td></td>
</tr>
<tr>
<td><strong>Other drillings, namely those used for assisted recovery and underground storage</strong></td>
<td>12.5</td>
</tr>
<tr>
<td>or the amount of expenditures to amortize when these drillings are abandoned</td>
<td></td>
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<tr>
<td><strong>Constructions</strong></td>
<td></td>
</tr>
<tr>
<td>Hard building</td>
<td>5</td>
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<tr>
<td>Collapsible building mounted on base</td>
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</tr>
<tr>
<td><strong>Transportation roads and infrastructure works</strong></td>
<td></td>
</tr>
<tr>
<td>Runway and pathway</td>
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<td>Airfield</td>
<td>20</td>
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<td>Water wells</td>
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<tr>
<td><strong>Hydrocarbon exploitation facility</strong></td>
<td></td>
</tr>
<tr>
<td>Extraction facility</td>
<td>10</td>
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<tr>
<td>Assisted recovery facility</td>
<td>10</td>
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<tr>
<td>Collection network</td>
<td>10</td>
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<tr>
<td>Separation and primary processing facility</td>
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<tr>
<td>NATURE OF CAPITAL EXPENDITURE</td>
<td>RATE</td>
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<tr>
<td>Storage facility and hook-up</td>
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<thead>
<tr>
<th>NATURE OF CAPITAL EXPENDITURE</th>
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<tr>
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<tr>
<td>Unloading pipeline facility</td>
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<td>Annex exploitation facility</td>
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<tr>
<td>Materials and tools</td>
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<tr>
<td>Housing and construction camp equipment</td>
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<tr>
<td>Material and derrick substructure</td>
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<td>Other materials and tools</td>
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<tr>
<td>Transportation material</td>
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<td>Automotive material intended for southern wilayas</td>
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<tr>
<td>Automotive material intended for other wilayas:</td>
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<tr>
<td>- Light cars</td>
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<tr>
<td>- Trucks</td>
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<td>Air material</td>
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<td>Other non-specific properties, plants and equipment</td>
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<tr>
<td>Collateralized equipment</td>
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<td>Office real estate and other real estate</td>
<td>15</td>
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<tr>
<td>Layout and landscaping of land and buildings</td>
<td>15</td>
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<tr>
<td>Communications equipment and any other computer equipment</td>
<td>25</td>
</tr>
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</table>
Other general facilities
Specific facilities and hydrocarbon pipeline transportation facilities

<p>| | |</p>
<table>
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<tr>
<th></th>
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<tbody>
<tr>
<td>Main pipelines</td>
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<tr>
<td>Other pipelines</td>
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General intangible facility

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<tbody>
<tr>
<td>Preliminary expenses</td>
<td>100</td>
</tr>
<tr>
<td>Surveys and general research (except all tangible investments)</td>
<td>100</td>
</tr>
</tbody>
</table>

**Act of God:** Any proven occurrence of an unforeseeable, irresistible event beyond the control of the party invoking it, which momentarily or permanently renders the performance of one or more of his contractual obligations impossible.

**Annual investment installment:** Part of the investment amount corresponding to the percentage set in articles 87 and 91 of this act, for oil revenue tax calculation purposes.

**Assisted recovery:** The use of secondary and/or tertiary recovery methods to recover hydrocarbon reserves.

**Associated gases:** Gaseous hydrocarbons associated in any way to a reservoir containing liquid hydrocarbons.

**Barrel:** Volume of crude oil equal to 158.9 liters under normal pressure and temperature.

**Barrel oil equivalent (b.o.e.):** Volume of liquid or gaseous hydrocarbon having an energy content of 1,400,000 kilocalories, which is equal to that of a barrel of crude oil.

**Collection and delivery network:** Networks of in-ground or above-ground ducts of various diameters carrying hydrocarbons on a field between the wells and the processing and storage facilities or carrying fluids between the re-
injection facilities and the injection wells. The in-ground or above-ground ducts carrying hydrocarbons between field storage facilities and the pipeline transportation network are also considered collectors.

**Commercial deposit:** A hydrocarbon deposit that the contracting entity commits to developing and producing in accordance with the terms of the contract.

**Concession:** Deed by which the minister in charge of hydrocarbons authorizes the concession holder to build and exploit pipeline structures for a set period of time, provided that the holder meets the obligations placed upon him in the said act.

**Concession holder:** The person benefiting, at his own risk, expense and perils, from a pipeline transportation concession.

**Conservation:** Deposit exploitation method ensuring the highest production level possible at the lowest possible cost, while remaining compatible with the highest possible reserve recovery rates.

**Contract of association:** Hydrocarbon exploration and/or exploitation contracts signed with SONATRACH/S.P.A. and one or more foreign partners under the aforementioned Act No. 86-14 of August 19, 1986, amended and supplemented, before the date of publication of this act.

**Contracting entity:** The person(s) who has(ve) entered into a hydrocarbon exploration and/or exploitation contract or an exploitation contract.

**Contractual perimeter:** A limited part of the national mining estate pertaining to hydrocarbons and consisting of one or more parcels, as defined when the contract takes effect.

**Cycling:** Operation pertaining to wet gas deposits and consisting in re-injecting the produced gas after extracting liquid fractions (condensates) and perhaps LPG in order to improve the recovery of these liquid fractions.
**Days:** Calendar days.

**Deposit:** The geographic area whose subsoil is made up of one or several stacked reservoirs and whose surface is distinct and separate from one or several other reservoirs, according to geological and engineering surveys.

**Distribution:** Any wholesale or retail sales activity involving oil products.

**Domestic market:** All necessary hydrocarbons to meet domestic energy and industrial needs, with the exception of gas re-injected in reservoirs and used for cycling.

**Domestic natural gas market:** Made up of domestic gas suppliers and customers. The gas purchased by these customers is consumed on the national territory.

**Downstream oil:** Operations of pipeline transportation, refining, processing, marketing, storage and distribution.

**Dry gas:** Gaseous hydrocarbons essentially containing methane, ethane and inert gases.

**Eligible customer:** Customer who has the right to conclude contracts pertaining to the supply of natural gas with a producer, distributor or commercial agent of his choice, and who has the right of access to the transportation and/or distribution network to conduct the activities provided for in the contracts.

**Exploitation:** Activity enabling the extraction and processing of hydrocarbons, to make them conform to pipeline transportation and marketing specifications.

**Exploitation perimeter:** The contractual perimeter minus the perimeters targeted by reductions, as defined by articles 38, 39 and 40 of this act.
Exploration: Prospecting activities as a whole, as well as the drillings conducted in the hope of finding hydrocarbon deposits.

Exploration and/or exploitation contract: Contract making it possible to conduct hydrocarbon exploration and/or exploitation activities in accordance with this act.

Flaring: Operation consisting in burning natural gas in the open air.

Hydrocarbons: Liquid, gaseous and solid hydrocarbons, namely tar sands and bituminous shale.

Liquid hydrocarbons: Crude oil, natural gas liquids and liquefied petroleum gases.

Liquified petroleum gas (L.P.G.): Hydrocarbons essentially made up of a mix of butane and propane, which is not liquid under normal conditions.

Maritime space: Territorial waters, as well as the continental shelf and the exclusive economic zone, as defined by the Algerian legislation.

Marketing: The purchase and sale of hydrocarbons and oil products.

Mining title: The deed bearing any hydrocarbon exploration and/or exploitation authorization; this deed does not transfer property rights over the soil or subsoil.

Natural gas or gas: All gaseous hydrocarbons produced from wells, including the wet and dry gas which can be associated or not to liquid hydrocarbons and the residual gas obtained after the extraction of natural gas liquids.
The specifications of this gas must comply with Algerian sales gas specifications.

**Non-associated gases:** All gaseous hydrocarbons, wet or dry, which:
- are produced at the wellhead and contain more than 100 TCF (thousand cubic feet) of gas for each barrel of crude oil or natural gas liquid produced by this reservoir.
- are produced from a reservoir described as containing nothing but gas, even if it is located in a drilled well where crude oil is also produced through another casing or tubing column.

**Non-eligible customer:** Customer who does not have the right to enter into a contract regarding the supply of natural gas with a producer, distributor or commercial agent of his choice as a result of the quantity he consumes. He is the customer of a current distributor (incumbent operator) and he does not have the right of access to the transportation and/or distribution network.

**Oil products:** All products resulting from the refining operations, as well as the products resulting from the separation of liquefied petroleum gases.

**Operator:** Any person possessing the technical capacities and who is in charge of conducting oil operations.

**Parcel:** A square of eight (8) kilometers a side, corresponding to a square of five (5) minutes a side in UTM coordinates.

**Perimeter:** A limited part of the national mining estate pertaining to hydrocarbons which is made up of one or more parcels.

**Person:** Any foreign corporate entity, as well as any private or public Algerian corporate entity possessing the financial and/or technical capacities required by this act and its regulations. As far as retail sales activities are concerned, the concept of person includes natural persons.
**Point of measurement:** The spot on the exploitation perimeter where quantities of extracted hydrocarbons will be measured.

**Price indexing:** The formula which factors in inflation in order to maintain the original value. The basic indexes will be the indexes in force at the beginning of the year of publication of this act.

**Primary recovery:** The extraction of hydrocarbon reserves by using the reservoir’s natural pressure or production drainage mechanisms.

**Prospecting:** Operations that make it possible to discover hydrocarbon, namely the use of geophysical and geological methods, including strategic drillings.

**Pipeline transportation:** The transportation and storage of liquid and gaseous hydrocarbons and oil products, with the exception of on-site collection and delivery networks and the gas networks servicing the domestic market exclusively.

**Pipeline transportation system:** One or more pipelines carrying the same effluent, including integrated facilities.

**Processing:** Operations involving the separation of liquefied petroleum gases, the liquefaction of gas, petrochemistry and gas processing.

**Prospecting authorization:** The authorization delivered by the National Agency for the Development of Hydrocarbon Resources (Agence nationale de valorisation des ressources en hydrocarbures, ALNAFT) upon request, giving the holder the non-exclusive right of conducting prospecting activities in one or more perimeters.

**Refining:** Operations separating petroleum or condensates into liquid or gaseous products suitable for direct use.
Reservoir: The part of the porous and permeable geological formation containing a distinct accumulation of hydrocarbons, characterized by a unique pressure system so that the hydrocarbon production of part of the reservoir affects the pressure of the reservoir as a whole.

Secondary recovery: The additional extraction of hydrocarbon reserves through the use of enhanced recovery methods, namely the injection of gas and/or the injection of water.

Sliding ten-year plan: The plan established every year for the next ten (10) years.

Storage: Storage above or under ground of oil products, including refined products, butane, propane and liquefied petroleum gases, which enables producers to build up reserves in order to ensure the supply of the domestic market for a determined length of time.

The facilities used in this type of storage are not related to storage linked to pipeline transportation, refining facilities, field exploitation activities or LPG separation facilities.

Swap: Procedure enabling different producers to trade obligations to supply gas on the domestic market.

Tertiary recovery: The additional extraction of hydrocarbon reserves inaccessible by primary and secondary recovery methods, namely through the use of one of the following enhanced recovery methods: thermal, chemical or miscible.

Third-party access principle: The principle enabling any third party to benefit from the right of access to pipeline transportation and storage infrastructures within the limit of available capacities, in exchange for the payment of a non-discriminatory tariff, provided that the products involved meet the technical specifications related to the use of these infrastructures.

Ultimate reserves: Hydrocarbons that can be produced from a hydrocarbon
deposit without taking economic factors into account.

**Uplift:** The percentage by which annual investment installments are increased for oil revenue tax calculation purposes. This “Uplift” percentage covers operational costs.

**Upstream oil:** Hydrocarbon exploration and exploitation operations.

**Wet gas:** Gaseous hydrocarbons containing a fraction of the elements that become liquid at ambient pressure and temperature in sufficient quantity to justify the construction of recovery facilities for these liquids.

**Zone:** The zone as defined in article 19 of this act.
Ordinance No. 2006-10 of July 29, 2006 modifying and completing Act No. 2005-07 of 19 Rabeeh Al Awwal 1426 (which corresponds to April 28, 2005) pertaining to hydrocarbons

The president of the Republic,

In consideration of the Constitution, notably articles 12, 17, 18, 122 and 124;

In consideration of Act. No. 2005-07 of 19 Rabeeh Al Awwal 1426, which corresponds to April 28, 2005 pertaining to hydrocarbons;

In consideration of Act. No. 2005-12 of 19 Jumaad Al Thaanee 1426, which corresponds to August 4, 2005 pertaining to water;

After consulting the Cabinet;

Promulgates the Ordinance which reads as follows:

Art. 1 – The object of this ordinance is to modify and complete certain provisions of Act No. 2005-07 of April 28, 2005 pertaining to hydrocarbons.

Art. 2 – Articles 5, 9, 12, 20, 32, 34, 44, 46, 48, 52, 53, 58, 68, 69, 70, 75, 77, 88 and 91 of the aforementioned Act. No. 2005-07 of April 28, 2005 are modified and completed as follows:

“Art. 5 – For the purposes of this act, the following definitions shall apply:
……………………..(without modification until)

Concession holder: The National Enterprise SONATRACH – SPA, which operates a pipeline transportation concession at its own risk and peril.

Contracting party: The National Enterprise SONATRACH – SPA or the National Enterprise SONATRACH – SPA and any person signatory to a hydrocarbon exploration and exploitation contract or an exploitation contract.
……………………..(without modification until)
Person: Any foreign legal person, as well as any private or public Algerian legal person, including SONATRACH – SPA, having the financial and/or technical capacities required by this act and the statutory texts used in its application.

Concerning retail sales activities, the concept of person includes physical persons having the financial and/or technical capacities required by this act and the statutory texts used in its application

Processing: Operations involving the separation of liquefied petroleum gases, the liquefication of gas, the conversion of gas into oil products or any other product, gas to liquids (GTL), petrochemistry and gas processing.

………………..(without modification until)

“Art. 9. – The prices of oil products and natural gas on the domestic market shall be set so as to:

………………..(without modification until)

The refinery-entry price of crude oil shall be calculated for each calendar year on the basis of the average price of export crude oil prices over the last ten (10) calendar years based on export crude oil price statistics recorded and published by the ministry in charge of hydrocarbons. The adjustments made from the refinery-entry price of crude oil used to determine the sales price, excluding taxes, of oil products on the domestic market, shall be distributed according to a methodology and over a period defined by regulation.

………………..(the remainder without modification)………”.

“Art. 12 - Two national agencies with legal personality and financial autonomy called “hydrocarbon agencies” shall be established:

- a national agency to control and regulate the activities of the hydrocarbon sector
  hereinafter referred to as the “Hydrocarbon Regulatory Authority”;

- 145 -
- a national agency to promote the development of hydrocarbon resources hereinafter referred to as “ALNAFT.”

The hydrocarbon agencies shall not be subject to administrative rules, notably with regard to their organization, operation and the status of their personnel.

The hydrocarbon agencies shall draw their resources according to article 15 of this act.

They shall have their own assets.

The accounting of the hydrocarbon agencies shall be kept in a manner similar to that of a commercial entity. The agencies shall prepare their own balance sheets. They shall be subject to the State’s control in conformity with the regulation in force.

The agencies shall be governed by the rules of trade in their relationships with third parties.

Each hydrocarbon agency shall be managed by an executive committee.

In order to carry out its mission successfully, the executive committee shall rely on specialized branches.

The agency shall have statutory auditors designated in accordance with the regulation in force to control and approve the agency’s accounts.

The executive committee shall consist of a president and (5) directors named by presidential decree, on the recommendation of the minister in charge of hydrocarbons.

Within the framework of the national energy policy, the executive committee shall enjoy the most extensive powers to act on behalf of each hydrocarbon agency and to have any act or operation pertaining to its mission authorized in accordance with the laws and regulations in force.
The proceedings of the executive committee shall only be valid if at least two (2) members and the president are present.

The proceedings shall be adopted by simple majority of the members present. In the event of a tie, the president shall cast the deciding vote to break the deadlock.

The president of the executive committee shall ensure the operation of the hydrocarbon agency concerned and assume all necessary powers, notably with regard to:

- payment authorizations
- the appointment and removal of all employees and agents;
- the compensation of personnel;
- the management of corporate assets;
- the acquisition, trade or disposal of movable and immovable property;
- the representation of the committee before judicial authorities;
- accepting the discharge of mortgage registrations
- seizures;
- the right to object and other rights before or after payment;
- impounding inventories and accounts;
- representing the agency in matters of civil life.

The president may delegate to subordinates accountable to him, all or some of his powers.

Each hydrocarbon agency shall have a secretary general, named by presidential decree, on the recommendation of the minister in charge of hydrocarbons.

Subject to the control of the president of the executive committee, the secretary general of the hydrocarbon agency in question shall be responsible for:

- assisting the president of the executive committee in conducting operations and coordinating the activities of the agency,

- supervising the activities of the communications structure and managing the agency’s archives and records,
- overseeing the performance, by the competent departments, of procedures pertaining to the drafting of budgets, plans and forward programs,

- evaluating work procedures and possibly drafting proposals to improve them,

- providing the various departments with the resources and tools necessary to operate efficiently,

- safeguarding and protecting the agency’s assets,

- centralizing the procedures and contacts for the benefit of members of the hydrocarbon sector,

- establishing the communications plan,

- publishing information about the activities of the agency,

- coordinating the agency’s activities with those of other institutions

The secretary general shall attend the meetings of the executive committee and be responsible for technical secretarial duties.

The compensation of the president and the members of the executive committee shall be set by regulation. The compensation of the secretary general shall be in line with that of the executive committee.

The classification and status of president, executive committee member and secretary general of each agency shall be defined by regulation.

The compensation system of the personnel of each agency shall be defined by the internal rules of each agency, subject to the approval by the minister in charge of hydrocarbons.

The duties of president, executive committee member and secretary general shall be incompatible with any professional activity,
any national or local electoral mandate, any public office, and any direct or indirect holdings in a corporation of the hydrocarbon sector.

The president, or any member of the executive committee, or the secretary general, conducting one of the aforementioned activities shall be automatically forced to resign by presidential decree after consultation with the executive committee.

The president of the Republic shall replace the resigning officer on the recommendation of the minister in charge of hydrocarbons.

If found guilty of a major offense, the president, or any member of the executive committee, or the secretary general, shall be automatically forced to resign by presidential decree, after consultation with the executive committee.

The president of the Republic shall replace the resigning officer on the recommendation of the minister in charge of hydrocarbons.

At the end of their term, the president, the members of the executive committee and the secretary general shall not be permitted to act in a professional capacity for a corporation of the hydrocarbon sector, nor shall they be allowed to engage in professional consulting activities in connection with hydrocarbon sector activities as part of the exercise of a liberal profession or in any other capacity, for a period of two (2) years.

During the two-year (2) period in question, the president, the members of the executive committee and the secretary general shall remain entitled to the compensation associated with the office and paid, depending on the circumstances, by the relevant agency.

A body called “supervisory council” shall be established within each hydrocarbon agency and shall be in charge of following up on the agency to ensure that it performs its duties within the framework of the implementation of the national hydrocarbon policy.

The supervisory council shall express opinions and recommendations pertaining to the activities of the agency’s executive committee. The council shall submit an annual report to the minister in charge of hydrocarbons.
The makeup, organization and operation of the supervisory council shall be set by regulation.

The executive committee shall attend the meetings of the supervisory council.

The executive committee shall adopt its own procedural rules, which set the internal organization, the operating mode and the status of personnel.

The president, the members of the executive committee, the secretary general and the agents of the hydrocarbon agency shall perform their duties in complete transparency, impartiality and independence.

The president, the members of the executive committee, the secretary general, the members of the supervisory council and the employees of the hydrocarbon agency shall be bound by professional secrecy, unless they are summoned to testify before a court.

Failure to observe professional secrecy, demonstrated by a guilty verdict rendered by a court of law, shall result in the automatic termination of employment with the hydrocarbon agency.

The replacement shall be made in conformity with the provisions of this act. The Hydrocarbon Regulatory Authority shall organize its own conciliation service to resolve disputes stemming from the application of the regulation, notably regulations pertaining to the access to the pipeline transportation and oil product storage system, as well as tariffs.

The Hydrocarbon Regulatory Authority shall establish its own procedural rules in connection with the operation of this service.”

“Art. 20. - The prospecting authorization shall be granted by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), after approval by the minister in charge of hydrocarbons, to any person applying for permission to conduct hydrocarbon prospecting work on one or more perimeters. This prospecting authorization shall be granted for a maximum of two (2) years, according to procedures and conditions established by regulation.”

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“Art. 32. – Exploration and exploitation contracts and exploitation contracts shall be concluded following an international invitation to tender in accordance with procedures set by regulation.

These regulations shall define, in particular:

- the criteria and rules for prequalification;
- the procedure for selecting the perimeters open to competitive bidding;
- the procedure for submitting bids;
- the procedure for evaluating bids and concluding contracts.

The exploration and exploitation contracts and exploitation contracts concluded in connection with each invitation to tender shall be approved by a decision of the minister in charge of hydrocarbons.

The minister in charge of hydrocarbons may, on the basis of a substantiated, detailed report, and after approval by the Cabinet, depart from the aforementioned provisions for reasons of public interest within the framework of the hydrocarbon policy.

Exploration and exploitation contracts as well as exploitation contracts shall include a mandatory clause stipulating that a stake must necessarily be awarded to the National Enterprise SONATRACH – SPA.

In both cases, the stake of the National Enterprise SONATRACH – SPA is set at a minimum of 51%, prior to each invitation to tender, in the said contracts.”

“Art. 34. – The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall conduct a two-phase competitive bidding process to conclude exploitation contracts in connection with already discovered deposits:

* A technical first phase whose objective shall be to define the benchmark technical offer, which shall serve as the basis for the economic offer and meet the criteria defined by the National Agency for the Development of Hydrocarbon Resources (ALNAFT), notably consisting of:
- the recovery percentage of in place volumes,

- production optimization,

- the capacity of the production facilities,

- the investment schedule for necessary investments,

- the minimum guaranteed investment amount, based on standard costs announced by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

Bids pertaining to the technical phase shall be opened publicly.

* A second economic phase whose object is to select one of the bidders.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall determine and indicate, immediately after the launching of the first phase, which of the two following criteria shall be used as the single selection criterion:

- the proposed royalty rate in excess of the minimum set by this act, or
- the non-deductible bonus amount to be paid to the Treasury upon signing the contract.

The sealed bids shall be opened publicly and the contract shall be concluded immediately with the bidder who submitted the best offer.”

“Art. 44. – The State shall not accept any obligation pertaining to funding or the guarantee of funding and under no circumstances shall it be liable to third parties in connection with the performance of the contract.

Under no circumstances, shall a direct or indirect link be established by the contracting party or any other party with ALNAFT or the State, nor shall any claim, direct or indirect, be made against ALNAFT or the State in connection with damages or consequences, of any kind, resulting from oil operations and/or their conduct.
The contracting party shall harness the technical and financial resources, as well as the necessary equipment, to perform the contract. All expenditures required to perform the contract shall be made at the contracting party’s expense.”

“Art. 46. - The contracting party who discovered a deposit may benefit from an early production authorization for one or more wells for a period of time not exceeding twelve (12) months from the date when the said authorization was granted by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

The authorization must allow the contracting party to specify the necessary features to formulate the development plan.

Early production shall be subject to the tax system of this act.

“Art. 48. – Each exploration and exploitation contract concluded with the contracting party shall specify the percentage of the National Enterprise SONATRACH – SPA’s stake as set by article 32 above, as well as the terms and conditions for financing exploration.

For each commercially viable discovery, the National Enterprise SONATRACH – SPA shall bear, in proportion to its stake, all investment and exploitation costs pertaining to the development plan approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

The costs in question must be approved beforehand by the National Agency for the Development of Hydrocarbon Resources (ALNAFT).

Thirty (30) days at the latest, after the plan to develop the commercially viable discovery has been approved, the National Enterprise SONATRACH-SPA and the other persons constituting the contracting party must conclude an operating agreement which shall be attached to the contract. This operating agreement must define the rights and obligations of the National Enterprise SONATRACH-SPA and the other persons constituting the contracting party, and must specify the terms and conditions for the payment of future costs incurred in connection with the contract, as well as the terms and conditions for repayment by the National Enterprise SONATRACH-SPA.
exploration costs mentioned in the previous paragraph. Once authorized by ALNAFT, this operating agreement shall be approved by Cabinet decree and shall becoming effective on the date of the publication of the decree approving it in the Official Gazette of the People’s Democratic Republic of Algeria.

The operating agreement linking SONATRACH-SPA and the persons constituting the contracting party must necessarily include a joint marketing clause for any gas resulting from the discovery, should the gas be marketed abroad.”

“Art. 52. – The flaring of gas shall be prohibited. However, the National Agency for the Development of Hydrocarbon Resources (ALNAFT) may, at the request of the operator, grant exceptional flaring authorizations for limited periods of time which may not exceed 90 days.

The operator applying for that exception must pay a specific non-deductible tax of eight thousand (8,000 AD) per thousand normal cubic meters (Nm3) payable to the Treasury without prejudice to the application of article 109 below.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall be in charge of controlling flared quantities and shall ensure that the operator pays the tax. The tax shall be updated using the following formula:

- the average exchange rate converting U.S. dollars into dinars of the calendar month preceding each payment, as published by the Bank of Algeria, divided by eighty (80) DA and multiplied by the amount of the above tax.

The tax shall be updated on January 1st of each year.

Moreover, the tax shall be subject to indexation according to formulas specific to the activity.”

“Art. 53. - In case the development plan, proposed by the contracting party and approved by the National Agency for the Development of Hydrocarbon Resources (ALNAFT) provides for the use of water for assisted recovery, a specific non-deductible tax called
“public water user charge” must be paid by the operator and allocated in accordance with the legislation in force.

This specific tax, payable according to provisions established by regulation, shall be set at eighty (80 DA) per cubic meter used.

The tax shall be subject to indexation according to formulas specific to the activity.

The National Agency for the Development of Hydrocarbon Resources (ALNAFT) shall be in charge of controlling the quantities used and shall ensure that the operator pays this specific tax.

An agreement concluded between the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and the Sahara Hydrographical Basin Agency (Agence de bassin hydrographique Sahara, ABH) or any other organization designated by the minister in charge of water resources shall define, notably, the terms and conditions for coordinating the two agencies and stipulate the terms and conditions for payment by ABH to ALNAFT of service fees with regard to the recording and control of the amounts of water used.”

“Art. 58. – Any dispute opposing the National Agency for the Development of Hydrocarbon Resources (ALNAFT) and the contracting party resulting from the interpretation and/or the performance of the contract or the application of this act and/or the statutory texts used in its application, shall first be the subject of a prior conciliation under conditions agreed to in the contract.

Should the conciliation procedure fail, the dispute may be submitted to international arbitration under conditions agreed to in the contract.

In all cases involving the participation of the National Enterprise SONATRACH-SPA, international arbitration shall apply exclusively to members of the contracting party other than SONATRACH-SPA.

When SONATRACH-SPA is the sole contracting party however, the dispute shall be arbitrated by the minister in charge of hydrocarbons.
Algerian law, notably this act and the statutory texts used in its application, shall be applied to the resolution of disputes.”

“Art. 68. – Subject to the provisions of article 73 of this act, pipeline transportation activities may be conducted by:

- the National Enterprise SONATRACH-SPA or,

- any company incorporated in Algeria, made up of any person and the National Enterprise SONATRACH-SPA, which must have a minimum stake of 51% in the company.

The National Enterprise SONATRACH-SPA shall be awarded a concession granted by a decree from the minister in charge of hydrocarbons when the aforementioned Algerian company conducts the pipeline transportation activities.”

“Art. 69. – 1. All applications for pipeline transportation concessions shall be submitted to the Hydrocarbon Regulatory Authority, which shall formulate recommendations to the minister in charge of hydrocarbons.

2. In the case of an application submitted by a contracting party to remove its hydrocarbon production, the Hydrocarbon Regulatory Authority shall formulate a recommendation to the minister in charge of hydrocarbons aimed at granting the concession to the National Enterprise SONATRACH-SPA.

3. In the case of the other concession applications, the Hydrocarbon Regulatory Authority shall formulate a recommendation to the minister in charge of hydrocarbons aimed at granting the concession to the National Enterprise SONATRACH-SPA.

4. As part of the national pipeline transportation infrastructures development plan, the Hydrocarbon Regulatory Authority shall propose that the minister in charge of hydrocarbons grant any concession for which no application was submitted, to the National Enterprise SONATRACH-SPA.

…………………………(the remainder without notification)……………………”

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“Art. 70. – 1. For the purpose of awarding any pipeline transportation concession, in the cases mentioned in article 69 above, the Hydrocarbon Regulatory Authority shall require that the concession holder offer the lowest possible transportation rate based on the reasonable return on investment demanded by the Hydrocarbon Regulatory Authority, subject to respecting the technical provisions contained in the specifications.

- 2. The invitation to tender in connection with the award of contracts to build the infrastructure pertaining to the concession shall unfold in two (2) phases:

* a technical first phase, whose object is to define the benchmark technical offer, which shall serve as the basis for the economic offer and which must meet the specifications pertaining to the infrastructure under consideration, notably with regard to:
  - the pipeline transportation infrastructure’s capacity;
  - the schedule for making the necessary investments;
  - the continuity of service;
  - gas-fuel consumption.

* a second economic phase, whose object is to select one of the bidders. The selection criterion shall be the amount of the investments based on the maximum costs announced by the Hydrocarbon Regulatory Authority, or, if those are unavailable, on standard market costs approved by the Hydrocarbon Regulatory Authority.

The bids pertaining to the economic phase shall be opened publicly and the contract shall be immediately awarded to the candidate who submitted the best bid.”

“Art. 75 - With regard to pipeline transportation activities, the following shall be set by regulation:
- prequalification criteria and rules, including the necessary human and material resources to ensure the industrial safety of facilities and operations;
- procedures pertaining to pipeline transportation concession applications;
- procedures pertaining to invitations to tender;
- procedures for obtaining construction and operating authorizations;
- procedures for controlling and following up on construction and operations;
- the rate structure;
- regulation of the third-party access principle;
- technical norms and standards, notably with regard to construction and operations;
- industrial safety standards;
- environmental protection measures;
- penalties and fines mentioned in article 13 above;
- rehabilitation reserves.”

“Art. 77. – Hydrocarbon refining and processing activities may be conducted by the National Enterprise SONATRACH-SPA alone or in partnership with any person.

When the activities are conducted by the National Enterprise SONATRACH – SPA in partnership with any person, the percentage of SONATRACH’s stake shall be set at a minimum of 51%.

Hydrocarbon processing activities may be conducted by any person.
Procedures to obtain the necessary authorizations for constructing and operating refining and processing infrastructures shall be defined by regulation.”

“Art. 88. – Each person participating in the contract shall be subject to a 30% I.C.R. rate, under the terms and conditions in effect on the date of payment, and according to the depreciation rates provided for in the appendix of this act.

Accordingly, each person may consolidate the results of all its activities in Algeria covered by this act. The list of these activities shall be defined by regulation.

Each person participating in the contract and investing in the activities covered by the aforementioned Electricity and Pipeline Distribution of Gas Act, and in downstream oil activities may benefit from the reduced I.C.R. rate of 15%.

The terms and conditions for implementing the reduced rate provided for in this article shall be set by regulation.”

“Art. 91. – The value of the production of hydrocarbons extracted from the deposit(s) included in the exploitation perimeter shall equal the product of the quantities of hydrocarbons subject to royalties multiplied by base prices, as defined in article 90 above, minus pipeline transportation fees between the point of measurement and the Algerian loading port, or the Algerian export border and, if necessary, between the point of measurement and the sales point in Algeria.

In the particular case of gas sold in liquefied form and LPG sold in the form of butane and propane and processed gas transformed into oil products or any other product, a processing cost calculated solely on the basis of investments, shall also be deducted. The annual investment installments shall benefit from an uplift set as follows:

- Uplift rate: twenty per cent (20%),
- Annual investment installment: ten per cent (10%) corresponding to a period of ten (10) years.”
Art. 3 - Article 101 bis, which reads as follows, has been inserted in Act No. 2005-07 of April 28, 2005 above:

“Art. 101 bis. – The provisions of article 101 above notwithstanding, with regard to partnership contracts concluded between SONATRACH and one or more foreign partners within the framework of the aforementioned Act No. 86-14 of August 19, 1986, a non-deductible tax on extraordinary profits generated by these foreign partners shall be applicable to their share of the production when the monthly arithmetic average of Brent oil prices exceeds 30 dollars per barrel.

The tax shall be applicable from August 1st, 2006.

The rate of the tax applicable to the share of production owned by foreign partners shall be a minimum of 5% and a maximum of 50%.

In order to pay the tax to the Treasury, SONATRACH shall make a deduction, taken from the share of production owned by the foreign partners, equal to the quantity of hydrocarbon corresponding to the amount of the tax.

The procedure, terms and conditions governing the application of this tax, as well as the calculation method, shall be set by regulation in consideration of production levels.

Any agreement contrary to the aforementioned provisions shall be void.”


Art. 5. – This ordinance shall be published in the Official Gazette of the Democratic and Popular Republic of Algeria.

Algiers, 3 Rajab 1427, which corresponds to July 29, 2006.

Abdelaziz BOUTEFLIKA