

LAW

AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE PETROLEUM LAW

(No. 19/2000/QH10 of June 9, 2000)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;

This Law amends and supplements a number of articles of the Petroleum Law passed on July 6, 1993 by the National Assembly of the Socialist Republic of Vietnam.

Article 1. To amend and supplement a number of articles of the Petroleum Law as follows:

1. To add Article 2a as follows:

"Article 2a.-

Petroleum activities must comply with the provisions of the Petroleum Law and other relevant provisions of Vietnamese law.

In case of any discrepancy between the provisions of the Petroleum Law and other provisions of Vietnamese law on the same specific matter related to petroleum activities, the Petroleum Law's provisions shall apply.

In cases where the Petroleum Law and other Vietnamese legislations have not prescribed a specific matter related to petroleum activities, the parties signing a petroleum contract may agree on the application of international laws and/or international practices in petroleum activities or foreign petroleum laws, provided that such international laws, international practices or foreign laws are not contrary to fundamental principles of Vietnamese law."

2. To add Points 11 and 12 to Article 3, as follows:

"11. Executors are organizations and/or individuals representing the parties to a petroleum contract and executing activities within the authorized scope.

12. Petroleum investment promotion projects are projects conducting petroleum activities in deep-water and offshore areas and areas with exceptionally difficult geographical and geological conditions according to the list of blocks decided by the Prime Minister."

3. Article 15 is amended and supplemented as follows:

"Article 15.-

A petroleum contract may be signed in the form of product-sharing contract, joint-venture contract or other contractual forms.

A petroleum contract must be in conformity with the model contract issued by the Vietnamese Government with the following principal contents:

1. Legal status of organizations and/or individuals that shall jointly sign the contract;
2. The contract's object(s);
3. The area delimitation and the time schedule for returning the contractual area;
4. The contract's duration;
5. Conditions for termination of the contract ahead of time or for the extension of the contract;
6. Commitments on working tempo and financial investment;
7. Rights and obligations of the contractual parties;
8. The recovery of investment capital, determination and distribution of profits; the host country's right over fixed assets after the capital recovery and the contract termination;
9. Conditions for the assignment of rights and/or obligations of the contractual parties; the right of the Vietnam Oil and Gas Corporation to contribute investment capital;
10. Commitments on training and priority given to the employment of Vietnamese laborers and the use of Vietnamese services;
11. Responsibilities to protect the environment and ensure safety while conducting petroleum activities;
12. Methods of settling disputes which may arise from the contract and applicable laws.

In addition to provisions and clauses stipulated in the model contract, the contractual parties may agree on other provisions and clauses, which must not be contrary to this Law's provisions and other relevant provisions of Vietnamese law.

The parties to a petroleum contract may agree to nominate a party from among them to act as the executor or hire an executor or establish a joint-execution company according to the Vietnamese Government's regulations.

In cases where they obtain the Prime Minister's consent, the parties to the petroleum contract may agree not to apply the model contract, but the contract to be signed must contain the principal contents prescribed in this Article."

4. Article 16 is amended and supplemented as follows:

"Article 16.

Organizations and/or individuals wishing to sign petroleum contracts shall have to go through biddings under the specific regulations on bidding for projects on petroleum prospection, exploration and exploitation, promulgated by the Vietnamese Government.

In special cases, the Prime Minister may appoint bidders in order to select partners for signing petroleum contracts."

5. Article 17 is amended and supplemented as follows:

"Article 17.

The term of a petroleum contract shall not exceed twenty five (25) years, of which the prospection and exploration period shall not exceed five (5) years.

For petroleum investment promotion projects and natural gas prospection, exploration and exploitation projects, the term of petroleum contracts shall not exceed thirty (30) years, of which the prospection and exploration period shall not exceed seven (7) years.

The term of a petroleum contract may be extended, but for not more than five (5) years. The prospection and exploration period may also be extended, but for not more than two (2) years.

If discovering gas with commercial value, while lacking the consumption market as well as conditions on pipelines and suitable treatment facilities, contractors may retain the areas where gas is found. The duration of retention of such an area shall not exceed five (5) years and may, in special cases, be extended for two (2) more years. Pending the consumption market and the conditions on pipelines and suitable treatment facilities, the contractors shall have to proceed with the work already committed in the petroleum contracts.

In *force majeure* circumstances or other special cases, the parties to a petroleum contract may agree upon the mode of temporary cessation of the exercise and performance of a number of rights and obligations specified in the petroleum contract. The temporary cessation period due to *force majeure* circumstances shall last till the disappearance of such *force majeure* events. The temporary cessation period in other special cases shall be specified by the Vietnamese Government, but it must not exceed three (3) years.

The extended prospection and exploration period, the period of retention of the area where gas with commercial value is found and the period of temporary cessation of the exercise and performance of a number of rights and obligations in a petroleum contract in *force majeure* circumstances or in other special cases shall not be counted into the term of such petroleum contract.

A petroleum contract may be terminated ahead of time provided that the contractor has fulfilled its committed obligations and such termination is agreed upon by the contractual parties.

6. Article 18 is amended as follows:

"Article 18.

The prospection and exploration area for a petroleum contract shall not cover more than two (2) blocks.

In special cases, the Vietnamese Government may permit a prospection and exploration area for a petroleum contract to cover more than two (2) blocks."

7. Article 19 is supplemented as follows:

"Article 19.

The contractors shall have to return the prospection and exploration areas according to the Vietnamese Government's regulations.

Areas where temporary cessation agreements are effected according to provisions of Article 17 of this Law shall not be returned within the temporary cessation period."

8. To add Article 25a as follows:

"Article 25a.

The parties to a petroleum contract may agree upon a level of recovery of expenses for petroleum prospection, exploration, field development and exploitation, of up to seventy percent (70%) of the annual petroleum output for petroleum investment promotion projects, and up to fifty percent (50%) for other projects, until the full recovery."

9. Article 27 is amended and supplemented as follows:

"Article 27.

Disputes arising from petroleum contracts must be first of all settled through negotiations and conciliation.

In cases where negotiations and/or conciliation fail, if the disputing parties are Vietnamese organizations and individuals, the dispute shall be settled at a Vietnamese arbitration or court according to provisions of Vietnamese law. If one disputing party is a foreign organization or individual, the dispute shall be settled by mode stated in the petroleum contract. If the parties agree to settle their dispute at an international arbitration, the third country's arbitration or an arbitration chosen by themselves, such dispute shall be settled according to the procedures of such arbitration.

10. Article 28 is amended and supplemented as follows:

"Article 28.

1. A contractor shall have the following rights:

- a/ To enjoy preferences and guarantees provided for by the Vietnamese law;
- b/ To use samples, data and information which have been obtained for conducting petroleum activities;
- c/ To recruit laborers to perform work of the petroleum contract on the basis of preferential employment of Vietnamese laborers;
- d/ To hire sub-contractor(s) according to provisions of this Law and in conformity with international practices of the petroleum industry;
- e/ To be exempted from import tax and export tax according to provisions of Article 34 of this Law;
- f/ To own its petroleum portion after fulfilling the financial obligations toward the Vietnamese State;
- g/ To export its petroleum portion as agreed upon in the petroleum contract without having to apply for export permit;
- h/ To recover its investment capital as agreed upon in the petroleum contract.

2. Contractors being foreign organizations or individuals shall be entitled to open accounts in Vietnam and abroad; to transfer abroad income from the sale of petroleum being part of recovered expenses, profits and other lawful revenues earned in the course of petroleum activities.

3. Contractors being foreign organizations or individuals shall be entitled to buy foreign currencies at commercial banks to meet requirements of current transactions and other permitted transactions according to provisions of the legislation on foreign exchange management; and to have foreign currency balance ensured for important projects."

11. Article 29 is amended and supplemented as follows:

"Article 29.

Sub-contractors shall enjoy rights prescribed at Points a and c, Clause 1, Article 28 and Article 34 of this Law.

Sub-contractors being foreign organizations and individuals shall be entitled to transfer abroad their recovered expenses and profits earned in the course of petroleum service activities."

12. Article 30 is amended and supplemented as follows:

"Article 30.

A contractor shall have the following obligations:

- 1. To comply with the Vietnamese law;
- 2. To fulfill its commitments inscribed in the petroleum contract;
- 3. To pay taxes and fees as prescribed by the Vietnamese law;
- 4. To transfer technologies; to train and employ Vietnamese officials and workers, and to ensure laborers interests;
- 5. To apply measures for environmental protection and ensuring of safety in petroleum activities;
- 6. To report petroleum activities to the competent State management agency(ies) and the Vietnam Oil and Gas Corporation;
- 7. To supply necessary documents to inspection delegations;
- 8. To remove and dismantle installations, equipment and facilities upon the termination of petroleum activities at the request of the competent State management agency(ies);
- 9. To sell on the Vietnamese market a portion of crude oil under its ownership at the international competitive price at the Vietnamese Government's request and sell natural gas on the basis of agreements in gas development and exploitation projects."

13. Article 32 is amended and supplemented as follows:

"Article 32.

Organizations and individuals that exploit petroleum must pay natural resources tax.

Natural resources tax shall be calculated according to the actual exploitation output in the taxation period for each petroleum contract.

Natural resources tax rate for crude oil shall be set at between four percent (4%) and twenty five percent (25%).

Natural resources tax rate for natural gas shall be set at between zero percent (0%) and ten percent (10%).

The Vietnamese Government shall prescribe specific tax rates within tax rate bracket stipulated in this Article, depending on the geographical, economic and technical conditions of petroleum fields and crude oil or natural gas output."

14. Article 33 is amended and supplemented as follows:

"Article 33.

Organizations and individuals that conduct the petroleum prospection, exploration and exploitation shall have to pay enterprise income tax at the tax rate of fifty percent (50%).

Organizations and individuals that conduct the petroleum prospection, exploration and exploitation at petroleum investment promotion projects shall have to pay enterprise income tax at the tax rate of thirty two percent (32%).

Organizations and individuals that conduct the petroleum prospection, exploration and exploitation may be exempted from enterprise income tax for a maximum period of two (2) years and entitled to the fifty percent (50%) reduction of enterprise income tax for a maximum period of two (2) subsequent years. The exemption or reduction of enterprise income tax shall be provided for by the Vietnamese Government.

Profits for reinvestment shall not be subject to reimbursement of enterprise income tax."

15. Article 34 is amended and supplemented as follows:

"Article 34.

Organizations and individuals that conduct the petroleum activities shall have to pay export tax and import tax according to provisions of the Law on Export Tax and Import Tax.

Equipment, machinery, spare parts and specialized transport means, which are necessary for petroleum activities shall be exempt from import tax.

Supplies necessary for petroleum activities which cannot be produced at home, shall be exempt from import tax.

Goods temporarily imported for re-export in service of petroleum activities shall be exempt from export tax and import tax.

Petroleum portion being part of natural resources tax of the State shall not subject to export tax."

16. Article 35 is amended and supplemented as follows:

"Article 35.

In addition to taxes prescribed in Articles 32, 33 and 34 of this Law, organizations and individuals that conduct the petroleum activities shall have to pay other taxes, rental for the use of land surface and fees prescribed by the Vietnamese law. In cases where any changes in provisions of Vietnamese law cause damage to the interests of organizations and individuals that conduct the petroleum activities, the State shall take measures to adequately settle the interests of such organizations and individuals according to provisions of the Law on Foreign Investment in Vietnam.

Equipment, machinery, spare parts, specialized transport means and supplies which need to be imported to conduct the prospection, exploration and field development activities, which cannot be produced at home, shall not be subject to value added tax.

Foreign organizations and individuals that conduct petroleum activities shall have to pay tax on transfer of profits abroad according to provisions of the Law on Foreign Investment in Vietnam."

17. Article 49 is amended and supplemented as follows:

"Article 49.

In cases where an international treaty which Vietnam has signed or acceded to contains provisions different from those of this Law, such international treaty's provisions shall apply."

Article 2. This Law takes effect from July 1st, 2000.

Article 3.

The Government shall amend and supplement documents detailing the implementation of the Petroleum Law to make them consistent with this Law.

This Law was passed on June 9, 2000 by the 10th National Assembly of the Socialist Republic of Vietnam at its 7th session.

THE NATIONAL ASSEMBLY
CHAIRMAN
(Đã ký)

Nong Duc Manh