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# Chilean Petroleum Operation Contracts

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# LEGAL MEMORANDUM

## CHILEAN PETROLEUM OPERATION CONTRACTS\*

### *Article 1*

The Empresa Nacional del Petróleo is hereby authorized to sign, on behalf of the State of Chile, operation contracts for the purpose of exploring and exploiting hydrocarbon deposits, which contracts will be governed by the rules hereinafter set forth.

### *Article 2*

An operation contract is one whereby a party named the contractor undertakes to perform for the Empresa Nacional del Petróleo the exploration and exploitation of hydrocarbon deposits, and such activities as may be ancillary thereto, within the territorial area indicated in the contract.

### *Article 3*

The operation contracts will under no circumstances affect the State's ownership over the hydrocarbon deposits and other elements and chemical compounds pertaining thereto, will constitute no concessions, will bestow no rights over such hydrocarbons, elements and compounds nor grant any rights of possession or exploitation thereof.

### *Article 4*

The operation contracts and amendments thereto will be approved by a well-founded Supreme Decree, pursuant to a favorable report from the Foreign Investment Committee. Such contracts and their amendments will not become effective until executed by public deed, in which both the approving Decree and the Foreign Investment Committee's Report will be included.

### *Article 5*

In the operation contract the contractor must, at least:

- (1) Designate domicile in Chile and a representative with the same domicile or residence;
- (2) Undertake to supply, for its own account and risk, all the capital, equipment, materials, personnel, technology and every other element required for the faithful and strict compliance with the contract;
- (3) Undertake to employ in the performance of the contract the best technology in order to ensure, in accordance with the Empresa Nacional del Petróleo, optimum use of the hydrocarbon deposits;

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\*Free translation of Decree Law No. 1089 of 1975, published in Official Gazette No. 29199, July 9, 1975; as amended by Decree Law No. 1820 of 1977, published in Official Gazette No. 29793, June 24 and 27, 1977.

(4) Undertake to explore all the agreed territorial area. For this purpose, it must carry out an uninterrupted exploration program which must be commenced within one year as from the date the contract becomes effective;

(5) Undertake to select in accordance with the terms of the contract, the area to be exploited, which may not exceed one half of the exploration area;

(6) Undertake to commence exploitation operations, in accordance with the contract, within at most one year as from the end of the exploration phase;

(7) Undertake to deliver to Empresa Nacional del Petróleo all the hydrocarbons produced, including those elements and compounds mentioned under Article 3. The Empresa Nacional del Petróleo may, however, authorize the contractor to withhold delivery of those which may be required in production operations arising from the contract;

(8) Undertake to supply all the technical and economic data it may gather in connection with the fulfillment of the contract, as well as all the information it may obtain regarding the existence of mineral, hydrological and other resources, which will be verified by Empresa Nacional del Petróleo personnel in the manner provided in the contract;

(9) Undertake to keep absolutely confidential the technical data obtained in the course of the work and to refrain from revealing industrial secrets regarding Empresa Nacional del Petróleo or its activities, unless expressly authorized in writing;

(10) Undertake to adopt all necessary measures for the adequate preservation of the fauna, flora and all other natural resources;

(11) Undertake to pay to Empresa Nacional del Petróleo, in the event that it does not comply with all or part of the commitments, as compensation for damages, at least the value of work contracted and not performed in the agreed manner. This payment does not preclude greater compensation payments if appropriate, nor does it discharge [the contractor] from other obligations to which it may be subject;

(12) Provide performance guarantees, acceptable to Empresa Nacional del Petróleo, for compliance with the contract.

#### *Article 6*

The compensation received by the contractor for the services will be referred to as "retribution" and may be specified in national or in foreign currency. It will be understood that such retribution covers all costs and investments which the contractor may incur and the related profit; therefore, the contractor has no right to request a modification of such retribution on the grounds that the above mentioned factors have varied.

In the event that payment is agreed upon in foreign currency, the Central Bank of Chile will provide the necessary currency, for which purpose the operation contract must be registered with that bank.

The Empresa Nacional del Petróleo is authorized to pay the contractor, with his consent, all or part of the retribution in the form of hydrocarbons, subject to the prior approval of the Ministry of Mines.

The Ministry of Mines will grant this approval taking into account the adequate supply for national consumption, under the conditions and in the quantities and delivery locations deemed convenient.

With the foregoing limitations, the contractor may export the hydrocarbons received as retribution without being subject to the regulations that govern exports.

The State guarantees the contractor the free disposal of the foreign currency arising from the export of hydrocarbons received as retribution.

The Empresa Nacional del Petróleo may repurchase from the contractor the hydrocarbons given as payment. It may, for this purpose, stipulate and pay for these purchases in foreign currency, the provisions of the second paragraph of this article being applicable thereto.

The contractor will have no rights other than those expressly specified in the related contract.

The contractor's rights under the operation contracts may under no circumstances be transferred or be the subject of any juridical act unless approved by a well-founded Supreme Decree, pursuant to a favorable report from the Foreign Investment Committee.

The above mentioned rights will not be subject to attachment by third parties.

#### *Article 7*

The Empresa Nacional del Petróleo shall incur no liabilities other than those specifically stipulated in the contract.

#### *Article 8*

The terms for the exploration and exploitation phases must be stated in the operation contracts and shall not exceed five and thirty years, respectively.

#### *Article 9*

The operation contracts will contain the rules for fixing the price of the hydrocarbons at the field, for which purpose the main considerations will be the price on the world market, the quality of the hydrocarbons and their geographical location.

For the purposes of this Decree-Law, "price at the field" will be understood to mean the value per cubic meter of clean petroleum or of one thousand cubic meters of gas, as measured in the field's gathering center.

*Article 10*

At the termination of an operation contract, whatever the cause may be and provided exploitation operations have commenced, the contractor must:

(a) Deliver to Empresa Nacional del Petróleo, free of charge, conditions or limitations and in good productive condition, the well and ancillary installations which are at that time in operation; and

(b) Transfer to Empresa Nacional del Petróleo the equipment, tools, machinery, spare parts, installations and other assets and real estate acquired by it during the last five years that the contract has been in force, upon payment of their residual value at the time of delivery ascertained in the manner set forth in the contract.

The remainder of the equipment, tools, machinery, spare parts, installations and other assets and real estate, belonging to the contractor and employed by it in the performance of the contract, will become the property of Empresa Nacional del Petróleo, free of charge, by virtue of law. The appropriate Register shall, at the request of that corporation, register under its name the real estate and such other assets as may be subject to registration.

The State guarantees permission for the contractor to convert, at the bankers free rate of exchange or such other that may replace it in the future, and subsequently remit, the proceeds of the sales of equipment or other assets of his property made under the terms and conditions stated in the contract.

*Article 11*

A "specific petroleum work contract" is one whereby the contractor in an operation contract entrusts to a third party the rendering of a certain service or the performance of a specific job, for which it pays remuneration, for the purpose of assisting in specialized petroleum exploration or exploitation work. The person rendering the service or doing this work is called a sub-contractor.

*Article 12*

The contractor will enjoy the benefits, privileges and exemptions stipulated in the operation contract and in this Decree-Law for the term and under the conditions set forth in the contract.

*Article 13*

Any problem that may arise between the parties regarding the validity, interpretation, effect, term, compliance, cancellation, termination and settlement of the operation contracts, or in respect of any other matter relating thereto, will always be submitted to the jurisdiction of the Chilean courts. In the event that judgment is to be rendered by arbitrators, such judgment will be rendered according to the law.

If the parties fail to agree on the choice of arbitrator or arbitrators, the appointment will be made by the Comptroller General of the Republic.

*Article 14*

The contractor will be subject to a tax calculated directly on the amount of the retribution, as defined in Article 6, equivalent to fifty percent of such retribution; alternatively, he may be assessed under the Income Tax Law, as may be decided by the President of the Republic.

Notwithstanding the foregoing, the President of the Republic may, whatever tax system is applied, grant reductions of the tax, or of all or each one of the taxes of the Income Tax Law, equivalent to 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent or 100 percent, when deemed advisable on account of the difficulties of the territorial area of exploration or exploitation referred to in the contract, the absence of double taxation agreements between the country of origin of the investment and Chile, and the onerous conditions that the other terms of the contract may impose upon the contractor.

Whichever may be the system fixed by the President of the Republic in accordance with this article, it will replace every other indirect tax which could affect the retribution or the contractor as a result thereof, and will remain unchanged for the term it is granted.

The President of the Republic may exempt in the same percentages as those referred to in paragraph two of this article, from duties, taxes, rates or contributions, and in general of any payments or charges, whatever the authority or agency that collects them. This exemption includes the substitutive tax of article 5 of the Stamp Tax, as well as the Value Added Tax of Decree-Law 825 of 1974, and in general any payment or charge that directly or indirectly affects the importation of machinery, tools, materials, spare parts, and goods in general required for the exploration and exploitation of hydrocarbons, due to any of the contracts or subcontracts referred to in this Decree-Law.

Likewise, the President of the Republic may reduce by the same percentages referred to in the second paragraph above, the duties and taxes charged through the Customs, as well as the Value Added Tax, on certain machinery, tools, materials, spare parts or imported elements required for the exploration and exploitation of hydrocarbon deposits and on the products obtained therefrom.

These faculties of the President of the Republic must be exercised in the same Supreme Decree to which reference is made in article 4 of this Decree-Law.

*Article 15*

If the President of the Republic has fixed the method of taxation directly on the amount of the retribution referred to in the preceding article, and the retribution is paid in cash, the Empresa Nacional del Petróleo will be required to withhold and deduct the tax each time it makes a payment to the contractor.

In the event that the retribution is paid in hydrocarbons, the Empresa Nacional del Petróleo shall withhold from the quantity thereof a percentage equal to the tax determined and, for the purposes of paying it over, shall convert the quantities withheld to Chilean currency based on the prevailing price at the field and on the terms indicated in the related contract at the time the withholding is made.

Within the first fifteen days of each month, the Empresa Nacional del Petróleo shall submit returns and pay over the amount withheld as sole tax during the preceding month.

In the case mentioned in the first paragraph, the owners, shareholders and partners of the respective companies will be exempt from Global Complementary Tax or Additional Tax, as may be the case, with respect to income received or accrued arising from such contracts, as well as from any other tax that could be assessable on such income and on the ownership, possession or holding of rights and shares in those companies, exclusive of the taxes assessable on the transfer of those rights or shares.

#### *Article 16*

The assets interned under the exemptions granted in this Decree-Law cannot be transferred within ten years of the date of release from Customs, other than by prior payment of all taxes and duties which had not been paid, which will be assessed on the value of such assets at the date of transfer according to an appraisal made by the appropriate government agency. Any alienation made without complying with the above will be null and void and make the parties liable to other penalties and responsibilities that may be applicable under the law.

The provisions of the preceding paragraph will not apply to transfers or alienations, referred to in article 10, in favor of Empresa Nacional del Petróleo.

#### *Article 17*

The transfers of hydrocarbons that Empresa Nacional del Petróleo makes to the contractor in payment of the latter's retribution, as well as the reacquisitions that Empresa Nacional del Petróleo makes from the contractor in pursuance of paragraph seven of article 6, and the acts, contracts or documents evidencing such transfers will be exempt of any tax or charge. Likewise, the same exemption applies to documents that evidence the operation contracts referred to in article 2 and the specific petroleum work contracts referred to in article 11, and those that evidence any other operation, act or contract executed for these contracts, between the same parties mentioned in the provisions. The export of hydrocarbons will be exempted from any tax or charge.

#### *Article 18*

The remuneration of the foreign subcontractors without Chilean domicile, referred to in article 11, will be subject to a tax calculated on the amount of said remuneration, its rate being that of 20 percent, that sub-

stitutes all other direct or indirect tax that could be assessed on the remuneration or on the subcontractor due to the same.

The President of the Republic can provide for a reduction of this tax equivalent to 10 percent, 20 percent, 30 percent, 40 percent, 50 percent 60 percent, 70 percent or 75 percent.

The Supreme Decree of the President of the Republic that grants the reduction, will be inserted in the corresponding operation contract, and will remain unchanged during the period for which it is granted.

The subcontractor will be especially subject to the obligations established in articles 5, 8, 9 and 10 of this Decree-Law.

The regime established in paragraph four of article 14, will be applied as a matter of law to the subcontractors of article 11 of this Decree-Law.

The provision of the last paragraph of article 15 will be applicable to the subcontractors, except with regard to the exemption of the Global Complementary Tax.

#### *Article 19*

The machines, apparatus, instruments, equipment, tools, and parts or pieces required for fulfillment of a specific petroleum work contract, whether or not the property of the subcontractor, may enter the country under the temporary admission regime established in article 45 *et seq.*, of the Customs Statute.

The goods in question will be interned under said regime for a period of up to five years, which may be extended for annual terms by the General Customs Board in accordance with the particular requirements of the related specific petroleum work contract.

The provisions of this article will likewise be applicable to the contractor in an operation contract with respect to the machinery, apparatus, installations, equipment, tools, and parts or pieces required for the exploration phase.

Philippi, Yrarrazaval, Oyarzun & Cox  
Santiago, January 1978