

DECREE N ° 97-740
ON MINING TITLES FOR EXPLORATION, EXPLOITATION AND TRANSPORT
OF HYDROCARBONS

UNOFFICIAL TRANSLATION ENDORSED BY OMNIS FROM THE OFFICIAL FRENCH
VERSION

The Prime Minister, Head of Government,

Having regard to the Constitution of September 18, 1992,

Having regard to the constitutional law n ° 95-001 of October 13th, 1995 revising articles 53, 61,74, 75, 90 and 94 of the Constitution of September 18, 1992,

Having regard to the law n ° 96-018 of September 4, 1996 on the Petroleum Code,

Having regard to Decree No. 97-128 of 21 February 1997 appointing the Prime Minister, Head of the Government,

Having regard to Decree No. 97-129 of 27 February 1997 appointing members of the Government,

Having regard to Decree No. 96-1133 of 7 November 1996 designating OMNIS as the technical Body in charge of the management of the national hydrocarbon mining sector,

In Government Council,

Decrees:

FIRST CHAPTER

GENERAL PROVISIONS

First article. - No activity in the national mining sector, as defined by the Petroleum Code, can be exercised without a hydrocarbon mining title.

Art. 2. - The technical Body is responsible for the management of the national mining domain of hydrocarbons.

Art. 3. - The right to the attribution of a hydrocarbon mining title is devolved:

- to the national Company in charge of hydrocarbon upstream activities in the framework of a production sharing contract or similar;
- to the partners in the framework of a contract of association.

Art. 4. - The different categories of mining titles governed by this decree are:

1. The exploration mining title;
2. The exploitation mining title;
3. The transport mining title.

Art. 5. - The mining title confers on its holder the right to engage, during a determined period, within a defined area, to the activities related to this title.

CHAPTER II

THE GRANTING OF A MINING TITLE

Art. 6. - Any application for a mining title must first be submitted to the Ministry in charge of Mines in order to locate the perimeter, object of the application before submitting it to the President of the Republic.

Art. 7. - The delivery of the mining title is pronounced by decree of the President of the Republic on proposal of the General Director of the technical Body.

Art. 8. - The title is issued in the name of the national Company or the Association and includes the number, the nature of the issued mining title, the period of its validity and the coordinates to determine the assigned perimeter.

Art. 9. - When a mining title relating to hydrocarbons is adjacent to a land which is subject to another mining title, the common limits to the perimeter of these titles must be materialized in the field by markers or landmarks established at the expense of the holder of the most recent mining title, and its potential partners.

CHAPTER III

RENEWAL OF THE MINING TITLE

Art. 10. - For the renewal of the mining title, the holder is required to make a written application to the technical Body:

1. For the exploration mining title: six (6) months before the expiration date of the validity of said title;
2. For the exploitation mining title: two (2) years before the expiration date of the validity of said title;
3. For the transport mining title: two (2) years before the expiration date of the validity of said title.

Art. 11. – The renewal is pronounced in the same forms as the original title subject to:

- during the exploration phase, the execution of the work commitment provided for in the contract and of all other causes justified during the period covered by the mining title.
- during the exploitation phase, the commitment that the concerned deposit is likely to provide a commercial production;

- in the matters of transport, the proven existence of an optimal production making hydrocarbon facilities and equipment profitable.

In all cases, the fulfillment of legal, regulatory and contractual obligations arising from the primitive title is required.

Art. 12. - The renewal of a mining title is pronounced:

- in the exploration phase, per period of two (2) years; it can only relate to the last not relinquished perimeter;

However, if a market study should be undertaken after a gas discovery, the duration of the exploration mining title will be extended by fifteen (15) years.

- in the exploitation phase, per period of five (5) years;
- in the matters of transport, per period of five (5) years.

Art. 13. - The refusal of renewal is pronounced by decree of the President of the Republic.

The validity of the title is automatically extended until the notification of the decision of the renewal or refusal.

In case of renewal, the title takes effect the day after the expiration of the previous title.

CHAPTER IV

WITHDRAWAL OF A MINING TITLE

Art. 14. - The withdrawal of the mining title is pronounced in the same forms as the granting in any of the following conditions:

1. If the activity stipulated in the contract covered by the mining title is suspended or restricted;
2. If the exploitation operations of a deposit deemed commercial do not respect the period provided for in the contract;
3. If serious offenses or police or security prescriptions have been identified;
4. If any obligation arising from a contract has not been respected;
5. If within six (6) months from the date of notification of the granting, the participant had not started the activities for which the title was issued.

CHAPTER V

THE EXPLORATION MINING TITLE

Art. 15. - The exploration mining title relates to:

- a. Prospecting: an operation consisting in conducting superficial investigations for the discovery of hydrocarbon substances and indices of hydrocarbon substances; and
- b. Research: any combination of superficial or deep works carried out in order to establish the continuity of indices discovered by prospecting, to study the conditions of exploitation and industrial use and to conclude the evidence of geological deposits.

In case of gas discovery, the exploration mining title may include market studies in order to identify and conclude contracts for the commercialization of gas.

Art. 16. - The exploration mining title covers a perimeter of polygonal shape and the limits of which are defined preferably by straight lines parallel to the Laborde coordinate axes.

Art. 17. - The initial period of validity of the title may not exceed eight (8) years. It depends on the data available from the national Company relevant to the perimeter, such as: samples, documents, geophysical and geochemical data, including results from drilling or logging.

Art. 18. - Any application for an exploration mining title must include the coordinates of the perimeter covered by the title.

Art. 19. - The exploration mining title confers on its holder the right to dispose of hydrocarbons extracted from the soil during the prospecting and research works as well as the production tests that they can include.

However, prospecting and research works must not, under any circumstances, degenerate into exploitation works.

It cannot cover an area already covered by a hydrocarbon exploitation title.

Art. 20. - Any discovery of mineral substances, other than hydrocarbons, must be communicated to the technical Body which must inform the Ministry in charge of Mines.

Art. 21. - The technical Body shall be the recipient of any information allowing to assess the progress of the operations carried out, in particular:

- all reports of geological and geophysical works carried out, duly accompanied by maps and necessary documents for their comprehension;
- the seismic lines realized;
- the final survey reports with a set of recorded logs and the results of analyzes and tests carried out;
- the samples from field survey, and more particularly the cores taken or at least a representative part of these.

Art. 22. - In the event of abandonment or waiver, the information listed in Article 21 become the properties of the State in accordance with the provisions of the contract relating to mining title.

Art. 23. - Any geophysical survey, the starts and the completion of surveys, the production tests as well as all the important operations listed by the national Company shall be subject to prior declarations to the technical Body.

Art. 24. - Any discovery of hydrocarbons during the operations carried out and more especially during the surveys, whether traces, indices or quantities that can lead to the presence of a deposit shall be reported immediately to the technical Body.

Art. 25. - Any commercial discovery encountered in a mining perimeter that was subject of an exploration mining title automatically entails the granting of an exploitation mining title in accordance with the Article 7 of this decree and subject to the provisions stipulated in Chapter VI below.

CHAPTER VI

THE EXPLOITATION MINING TITLE

Art. 26. - The exploitation mining title relates to hydrocarbon development, extraction and production activities.

Art. 27. - The granting of an exploitation mining title automatically entails the annulation of any exploration mining title inside its perimeter.

Art. 28. - The exploitation mining title covers the area generated by the verticals based on a perimeter defined on the surface.

Its initial period of validity is:

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

It takes effect from the date of notification of the decree granting the mining title.

Art. 29. - Any application for an exploitation mining title must be supported:

- by a surface plan at 1 / 10.000 representing the limits of the title applied and locating the main research works ;
- by a statement which set out precisely the research works and the results highlighting the evidence of the existence of exploitable deposit motivating the application.

Art. 30. - The holder (s) of an exploitation mining title shall proceed to the delimitation of the authorized perimeter by means of beacons effectively implanted on the ground and whose position has been indicated on the map appended to the title.

In case a verification is necessary, the latter is carried out by a sworn geometer from the topographic Service who draws up a minute at the expense of the national Company.

Art. 31. - The holder (s) of an exploitation mining title are (are) required to carry out and to respect his (their) activities according to the rules of the art generally accepted in the international oil industry and in accordance with malagasy legislation and regulation in force. He shall take all measures for:

- a. the rational and sustained development of the deposit in order to avoid energy and industrial products losses;
- b. the setting of the rhythm and the volume of the production in accordance with the rules of conservation of deposit;
- c. the optimal recovery of the potential reserves of hydrocarbon;
- d. the development tending to the continuous renewal of the reserves produced;
- e. the protection and the preservation of the environment in accordance with the legislation and regulation texts in force in Madagascar;
- f. to ensure the safety of people and property in accordance with the legislations in force.

CHAPTER VII

TRANSPORTATION OF HYDROCARBONS

Art. 32. - The transport mining title relates to the transportation of hydrocarbons from the extraction place of the deposits to the storage, the processing, the transformation, the loading or the delivery points within the territory of the Republic of Madagascar.

Art. 33. - The mining title of transport by pipeline is granted for a duration of:

- twenty-five (25) years for oil transport;
- thirty-five (35) years for gas transport.

Art. 34. -Any application for a transport mining title must be supported by the proposed route and the technical characteristics of the pipelines.

The technical Body examines the application and submits it to the Minister in charge of Domains.

Art. 35. - The mining title of transport by pipeline assigns the character of public utility to the realization of the pipeline work.

CHAPTER VIII

GENERAL PROVISIONS

Art. 36. - In case of the overlap of a hydrocarbon mining title and a mining permit for mineral substances, the disputes between the permittees shall be settled amicably.

In case of persistent disagreement in the limitation of the perimeter devolved for each permission, the settlement of the dispute shall be referred to a technical Committee in accordance with the Article 9 of the petroleum Code.

The technical Committee shall consist of:

- a representative of the technical Body;
- a representative of the ministry in charge of Mines;
- a representative of each permit holder.

The decisions of the technical Committee shall force the permittees.

Art. 37. – The infringements of the provisions of this decree are repressed according to the provisions stipulated in the Law No. 96-018 on the petroleum Code.

Art. 38. - The Minister of Energy and Mines, the Minister of Territory Planning and the City in charge of the Domains and the Minister of the Environment are responsible for, each within their area of authority, the execution of this decree which will be published in the official Gazette of the Republic.

Made in Antananarivo on June 23, 1997

Pascal RAKOTOMAVO

By the Prime Minister,

Head of Government,

The Minister of Energy and Mines

Charles RASOZA

The Minister of the Environment,

Colette VAOHITA

The Minister of Territory Planning

and City in charge of Domains,

Herivelona RAMANANTSOA