

LAW N° 96-018

Establishing Petroleum Code

UNOFFICIAL TRANSLATION ENDORSED BY OMNIS FROM THE OFFICIAL FRENCH VERSION

The National Assembly has adopted,

The President of the Republic of Madagascar, with regard to the decision n° 14-HCC/D.3 on 4 September 1996,

enacts the Law the content of which is developed as follows:

TITLE 1

GENERAL PROVISIONS

Section 1

SCOPE

Art.1 - On the territory of the Republic of Madagascar, prospecting, research, exploration, exploitation, transformation and transportation of liquid, solid or gaseous hydrocarbons, as well as the fiscal and custom regimes for these activities shall be governed by the provisions of the present Code.

Art.2 - A Technical Body, specialized in the field with a suitable structure shall be designated by decree to represent the State.

Art.3 - This organization is the manager of the national hydrocarbon mining domain. For this purpose, it entrusts any operation of prospecting, research, exploration, exploitation, transformation and transportation of hydrocarbons in the national mining domain of hydrocarbons to a "national Company" responsible for "upstream" activities, alone or in association with other oil companies, which shall be placed under its tutelage.

The mode of creation, the legal regime and the statutes of the "National Company" in charge of hydrocarbon upstream activities shall be specified by regulation.

Art.4 - The Technical Body, in the exercise of its functions, shall have free access to all documents and all facilities belonging to Companies undertaking "upstream" petroleum activities. For this purpose, the Technical Body shall mandate representatives.

Art.5 - All deposits of solid, liquid or gaseous hydrocarbons within the territory covered by the sovereignty of the Malagasy State are not susceptible to any form of private appropriation unless provided for in the present Code.

Section 2

DEFINITIONS

Art.6 - In the sense of the present Code:

- "upstream activities" means all operations of prospecting, research, exploration, exploitation, transformation and transportation of produced liquid, solid or gaseous hydrocarbons.
- "national mining domain" means all areas where activities of prospecting, research, exploration, exploitation, transformation and transportation of hydrocarbons are carried out;
- "hydrocarbons" means solid, liquid or gaseous hydrocarbons, when a precision of nature is not given;
- "national Company" means a national entity responsible for "upstream" hydrocarbon activities;
- "territory of the Republic of Madagascar" means the land territory, the continental shelf, the Exclusive Economic Zone, the territorial seas, as defined by international law and conventions expressly ratified by the Republic of Madagascar;
- "transformation" means the processing of solid and gaseous hydrocarbons into crude oil;
- "transport" means the transportation of hydrocarbons by pipeline from wellhead to the delivery point;

Section 3

NATURE OF PROPERTY

Art.7 - Hydrocarbon deposits are immovable.

Buildings, machinery, equipment and materials that are permanently fixed for the purposes of the exploitation of the deposits, the storage, transportation and processing of crude products are also immovable.

Machinery, equipment and materials directly used for the exploitation of the deposits are immovable by destination.

Art. 8 - All shares or interests in a company or an association carrying out upstream activities are movable assets.

Extracted materials, supplies and any other movable items are also movable.

TITLE II

MINING TITLE

Art.9 - Any upstream activities relating to the national mining domain shall be subject to a mining title granted by the President of the Republic on the proposal of the technical organism, after having taken knowledge from the Ministry of Mines on the situation of the requested perimeter.

The nature and the deadline for the communication of information by the ministry of mines will be subject of regulatory texts.

As soon as the mining title has been issued, the Technical Body shall inform the local decentralized authorities concerned.

Disputes that may arise from an encroachment of a hydrocarbon mining title and a mining title for mineral substances shall be subject of an amicable agreement between the two licensees.

In case of persistent disagreement, the settlement of the dispute shall be entrusted to the competence of a technical committee, the composition of which shall be determined by regulation.

Art. 10 - The terms and conditions of granting, withdrawal and cancellation of any mining title, the particular regime to each, the rights and obligations attached to them, their period of validity and the rules governing their renewal shall be fixed by regulation, taking into account the environmental requirements in particular.

Art. 11 - The mining title shall be granted to the national Company for any "upstream" activity within the national hydrocarbon mining domain.

However, in the framework of a joint venture agreement, the said title could be jointly granted to the members of the Association.

TITLE III

PETROLEUM CONTRACTS

Section 1

GENERAL PROVISIONS

Art. 12 - Any upstream activity in the national mining domain shall be carried out only by virtue of a petroleum contract with the national Company.

Art.13 - Any type of contract frequently used in the international oil industry may be used to fix the rights and obligations related to upstream activities within the national mining domain, in particular the production sharing contract and the joint-venture association.

When necessary, the national Company with the agreement of the Technical Body may conclude a production sharing contract with oil companies. In this case, the national Company may transfer to its co-contractor all or part of its rights and obligations relating to a mining title in its possession.

In the case of a joint-venture association, the contract shall be concluded between the oil companies and the national Company.

Art.14 - Any contract related to the "upstream" activities within the national mining domain shall be governed by malagasy law.

Art. 15 - The contract relating to the national mining domain shall necessarily contain the following stipulations, without being restrictive:

1. the structure of the association and the functioning of the management bodies;
2. the conduct of the exploration and exploitation activities;
3. the rules and procedure for decisions in carrying out activities;
4. the applied methods of recourse to the principle of sole risk and its effects on the contract;
5. the percentage of share for the contracting parties in the event of a joint venture association;
6. the allocation of charges;
7. the risks, perils and constraints related to the protection of the environment and to economic and social easements exclusively supported by the companies that have entered into a contract with the national Company during the exploration phase and whose coverage by an insurance policy is mandatory;
8. the terms and conditions for the reimbursement or recovery of the costs and expenses incurred by the companies that have entered into a contract with the national Company for petroleum activities, in the event of exploitation;
9. the financing arrangements for the works;
10. the principle of production sharing. The co-contractor's share as remuneration shall be determined by the ratio of the cumulative revenues to the cumulative costs of oil;

11. the valorization of produced hydrocarbons;
12. the right of audit and the methods of settlement of accounts, in the event of termination of the contract;
13. the terms and conditions of fundraising for investments;
14. the methods of release of bank guarantees;
15. the preservation and rational development of deposits;
16. the optimal recovery of hydrocarbon reserves;
17. the additional exploitation of the produced reserves, in particular by the use of artificial recovery processes.

The contract shall also include any other details agreed upon by the Parties in matters not falling within the scope of the law or regulation.

Section 2

CONTRACTORS

Art.16 - No company can conclude a contract with the “national Company” without justifying the necessary technical and financial capacities to carry out the commitments subscribed.

The approval of the contract thus concluded shall be established by a decree of the President of the Republic of Madagascar.

Art.17 - Hydrocarbon exploration, prospecting, exploration and exploitation activities may cover all or part of a mining area.

Art.18 - The national Company may entrust to a company that has signed a contract related to a mining title the role of operator, with the prior authorization of the Technical Body. The authorization shall not be refused without valid reason.

The company entrusted with the role of operator is required to make use of national resources and personnel as a matter of priority, in the manner prescribed by regulation.

TITLE IV

RIGHTS AND OBLIGATIONS OF THE CONTRACTORS

Art.19 - In the event of a commercial discovery of solid, liquid or gaseous hydrocarbons, each contracting party shall withdraw the share of production accruing to it under contract, from the field departure point or at the point of export or at any other point agreed between the Parties.

Art.20 - Any gas, associated or not associated, may be used free of charge for the purposes of petroleum operations either for the production of the energy required for these operations, or for the implementation of “gas lift”, pressure maintenance and secondary recovery.

Art.21 - If, in the context of an oil contract, the discovery of an unassociated natural gas deposit could lead to commercial exploitation, it shall be subject to a technical and economic feasibility assessment.

In the light of the results and prior to the development and exploitation works, the national Company and the other contracting party (s) shall study and set the conditions thereof. These conditions shall be established on the basis of the principles of the initial contract for liquid hydrocarbons, the evaluation of the market and

the mutual interest of the parties, in particular those relating to the rights and obligations of the parties, the terms and conditions of development and exploitation as well as the economic framework.

If the parties cannot agree on these conditions, they shall have recourse to the dispute settlement provisions of the contract.

The conditions mutually agreed thus defined shall be subject to an amendment to the contract.

Art.22 - Any discovery of mineral substances other than hydrocarbons must be immediately brought to the attention of the Technical Body which must inform the Ministry of Mines. A detailed description of this discovery should be included in the periodic progress reports.

These substances do not fall within the scope of any petroleum contract.

Art.23 - Each signatory of petroleum contract who has not agreed to fund additional works decided by its partners shall comply with the terms and conditions set out in the contract under the "Sole risk" principle.

Art.24 - In any petroleum contract the contracting party (s) is (are) bound to:

1. contribute to the national effort of training the Malagasy personnel in the field of hydrocarbons, according to a program and a budget to be established in the contract;
2. comply with the labor and social welfare legislation in force;
3. contribute to the supply of hydrocarbons of the domestic market from their share of production according to the principles stated below:
 - a. the volume of supply referred to above shall consist of the total volume of domestic market requirements for hydrocarbons less the volume of hydrocarbons corresponding to whatsoever share due to the national Company;
 - b. the volume of supply thus determined shall be distributed among all the contracting companies other than the national Company operating in the national mining domain in proportion to the volume of hydrocarbons accruing to them;
 - c. any obligation to supply hydrocarbons provided for in paragraph (b) above may only apply to a maximum of 50% of the hydrocarbon volumes accruing to each of the contracting companies;

Failure to comply with the obligations set out in this article is punishable by the penalties provided for in Article-75 of this Code.

Art.25 - The contracting party shall notify the technical body within thirty (30) days of any change in control of the company or the parent company. This change shall not affect the obligations stipulated in the contract. Otherwise, the new holder may not be in full possession of the rights of the assignor.

Art.26 - The contracting party other than the national Company may, subject to the consent of the technical Body, assign all or part of its rights and obligations under a contract.

Nevertheless, an assignment by the above-mentioned contracting party to an affiliated company may be made without the authorization of the technical Body, subject to the notification to the latter within 30 days from the date of transfer.

The above-mentioned contracting party wishing to assign all or part of its share of profit shall apply in priority to the national Company, as the case may be, to its other partners and to third-party companies; the said contracting party being able to realize the assignment under the best conditions.

Art.27- In the event of a duly ascertained failure by one of the contracting parties to comply with the obligations prescribed by this Code, its implementing regulations and the terms of the contract, the technical Body may, after formal notice has remained ineffective, either claim compensation on the amount of the bank

guarantee referred to in Article 39 below, either apply, as the case may be, the penalties provided for in Title X of this Code or apply the provisions of Decree on mining title.

In all cases, the technical Body is entitled to take all the provisional measures it will deem necessary.

Art.28- Contracting companies, who are beneficiaries of a mining title, are required for the duration of their activities and upon the expiry of that mining title, take all measures for the protection and the preservation of the environment in accordance with the laws and regulations in force.

TITLE V

TRANSPORT OF HYDROCARBONS BY CANALIZATION

Art.29- For a better guarantee of the control and security, the national Company will determine the technical terms and conditions of the management of the transport of hydrocarbons from the extracting point of the deposit to the storage, the processing, the transformation, the loading or delivery points.

It may itself provide this transport or transfer all or part of its right to this title to any other contracting party within the framework of a petroleum contract.

Otherwise, the national Company may associate, under any particular contract, with any other company owing adequate technical and financial capacity to transport crude hydrocarbons within the national territory.

Art.30- If the construction of a structure for transport of hydrocarbons by pipeline is required in the framework of a hydrocarbon exploitation contract within the territory of the Republic of Madagascar, the Minister in charge of the domains will issue the authorization for the construction of such a work at the request of the concerned parties at their expense and will establish by regulatory means the necessary provisions and modalities.

In case of occupation of private land, the company will compensate the owner.

Art.31- If the holder of a transport authorization or his representative contravenes the provisions of the this Code, the texts adopted for its application, the laws and regulations relating to public safety and national defense or the stipulations of the contracts concluded under this Code, the technical Body shall require him to comply with those provisions or stipulations within two months, except where the requirements of public security and national defense require immediate execution.

If the person fails to comply with these injunctions, he is liable to the penalties provided for in Article 85 of this Code.

TITLE VI

OFFSHORE HYDROCARBONS

Art.32- Subject to the provisions of this Code and the regulations governing hydrocarbons, the malagasy legislation and regulations apply to upstream activities in malagasy maritime areas, in particular with regard to:

- the facilities and devices defined in Article 33 hereafter;
- the control of operations inside security zones;
- the maintenance of public order;

Art.33- The installations and devices used for upstream activities in offshore zone include, without this list being exhaustive:

- the platforms and their annexes;

- the exploration or exploitation devices and their annexes;
- the offshore buildings directly involved in exploration or exploitation operations;
- the pipeline transport facilities;
- the pipeline networks.

Art.34- These installations and devices defined in the previous article are subject to international conventions, texts and regulations relating to maritime navigation and the protection of the environment, especially the 1990 International Convention on the prevention, the fight and the cooperation on oil pollution.

Art.35- A security zone shall be established around the installations and devices to ensure protection.

The restrictions required, in particular for the overflight by aircraft, will be taken by regulatory means.

Art.36- The owner or the operator of an installation or a device built upon the seabed or the person on board in charge of the conduct of the exploration, prospecting, research and exploitation works is responsible, each as far as it is concerned, for the installation, the operating and the maintaining in good condition of its maritime signalization.

In all cases, the costs of signalization are the responsibility of the owner or the operator. These conditions apply to the signalization of the security zones established around installations and devices.

In the event of a breach of the provisions of the first paragraph of this Article, without prejudice to legal proceedings, the competent authorities may, after an injunction has remained unheeded, automatically take all necessary measures at the expense of the owner or the operator.

To ensure the compliance with the above obligations, the competent authorities shall have access to installations, devices and signaling devices.

Art.37- The owner or the operator is required to completely remove the installations and devices which have ceased to be used.

If necessary, they may be put on notice to comply with this obligation.

In case of refusal or negligence, and after the deadline, there can be proceeded automatically at their expense and risks.

In this case, the owner or the operator may be deprived of his rights in the installations and devices.

If necessary, a seabed inspection by experts at the expense of the operator or the owner can be undertaken.

Art.38- The owner or the operator who refused or neglected to comply, within the deadlines of the formal notice, to the provisions of the first paragraph of the previous article, shall be punished by the penalties provided for in Article 85 of this Code.

TITLE VII

FINANCIAL PROVISIONS

Art.39- Contracting companies of foreign origin shall, during the exploration phase, file a letter of guarantee from a first class bank approved by the Central Bank of the Republic of Madagascar, covering the amount of the commitments made, and this, in order to guarantee the respect of the work commitments to which they are contractually subject.

Art.40- During the exploration phase, contracting companies of foreign origin are required to domicile in a bank in Madagascar from foreign capital the funds needed to cover all of their local needs.

Art.41- The provisions of the contract on the subject will specify the principles referred to in articles 39 and 40 above.

Art.42- From the beginning of the exploitation of any hydrocarbons deposits declared of commercial interest under a contract, contracting companies of foreign origin may hold outside Madagascar the sales revenue from their share of hydrocarbons.

However, the said companies are required to domicile in a bank in Madagascar, from foreign capital, the funds needed to cover all of its local needs.

Art.43- The national Company is required to repatriate to banks in Madagascar all revenues from the exports of its share of hydrocarbons.

Art.44- Contracting companies of foreign origin do not have the right to use the credit from Malagasy banks, pledges or loans between companies or enterprises operating in Madagascar, for the coverage of its local needs referred to in Articles 40 and 42 above.

Art.45- Any contracting company shall pay, as a contribution, a sum the amount of which represents 1 / 2500th of the total amount of the exploration minimum works commitments , to be distributed between all the communities concerned by the exploration mining title, valid for the entire duration of the exploration, payable at the beginning of the exploration work.

The rules for the collection of this sum will be fixed by regulation.

TITLE VIII

TAX AND CUSTOM PROVISIONS

Art.46- All companies engaged in upstream activities within the national mining domain, in the framework of the present Code are subject only to the tax and custom regime defined in this Title.

Section I

TAX REGIME

Art.47- The companies referred to in Article 46 above shall be subject, because of the types of activities and the results of these activities:

- to the payment of a royalty per barrel produced;
- to the payment of a direct tax on hydrocarbons;
- to the general tax system with regard to other taxes and duties as they are defined in the General Tax Code, except as recommended in Article 48 below.

The allocation of the aforementioned royalty to all eligible entities will be defined in the Finance Act.

Art.48- The direct tax on the hydrocarbons is representative and liberating of the Income Tax (IR) and Income Tax on Movable Capital (IRCM) and Fixed Taxes on Transfers (TFT).

Art.49- The royalty is based on the fiscal reference price which will be equal to the international market price at the point of export reduced by the costs of transport between the said point of export and the field departure point.

Art.50- The direct tax on hydrocarbons is based on the net results that companies referred to in Article 46 above shall derive from the whole of the hydrocarbon deposit (s) included in the initial exploration mining perimeter, as well as the transport of the products on the territory of the Republic of Madagascar.

For this purpose, an accounting of the operations referred to in the above paragraph shall be kept in each calendar year in order to establish an income statement and a balance sheet showing the results of said operations and the assets and liabilities assigned to it.

Art.51- Are excluded for the calculation of the royalty and the direct tax on the hydrocarbons the quantities of hydrocarbons that are either consumed for direct production needs or reintroduced into the deposits, either lost to the handling or unusable, and related substances.

Art.52- The rules of assessment and recovery of the royalty and the direct tax on the hydrocarbons are fixed as part of the finance laws.

Art.53- Individuals of foreign nationality working for and on behalf of the contracting companies are subject to the imposition of common law as regards to salaries, fees, wages and other income that they have received in Madagascar, directly or indirectly, as results of their activities on the territory of the Republic of Madagascar.

Section 2

CUSTOMS REGIME

Art.54- The materials, the equipment as well as the specific products, directly used in the execution of prospecting, research and hydrocarbon exploration shall benefit from the temporary admission with suspension of duties and taxes, the duration of which may not exceed the duration of the prospecting, research and exploration mining title.

Art.55- The materials and the equipment intended for the first installation of the exploitation, processing and transport of hydrocarbon units are admitted free of all customs duties and taxes.

An order of the Minister in charge of Finances, following the opinion of the concerned organizations and departments, shall establish the detailed rules for the application of this Article.

TITLE IX

APPLICABLE LAW AND DISPUTES

Art.56 - operations relating to hydrocarbons within the national mining domain shall be governed by malagasy law.

Malagasy law and international principles of law generally accepted in the matters of hydrocarbons are also applicable to contracts concluded between the national Company and foreign companies operating in the territory of the Republic of Madagascar.

Art.57 - Disputes arising from the application of the present Code as well as infractions to its provisions fall under the competency of malagasy jurisdictions.

However, any disputes that may arise upon the execution of contractual stipulations may be subject to a clause conferring jurisdiction to an international arbitration body to be designated according to the terms and conditions set out in the contracts.

Art.58 - Cases brought to the national jurisdictions under the first paragraph of Article 57 above are enrolled and decided as a matter of priority.

Any appeal against a decision rendered in the last resort is deemed urgent within the meaning of Articles 38 and 63 of Law No. 61-013 of 19 July 1961 establishing the Supreme Court. This appeal is directly referred to the Supreme Court of all chambers gathered, which in the event of a cassation implying normally an adjournment, evokes and rules on the merits in one and the same judgment.

Art.59 - Any dispute submitted by mutual agreement of the Parties to arbitration must be preceded by a conciliation body in the presence of an ad hoc committee.

Art.60 - The prior conciliation procedure is initiated by the most diligent party who shall seize the other party and simultaneously shall inform the technical Organization, by registered letter with acknowledgment of receipt.

Art.61 - The request for prior conciliation includes a statement of the reasons for the dispute, the statement of the grounds of the claim and specifying the claims of the applicant and the supporting documents.

Art.62 - Within fifteen (15) days of the date of receipt of the registered letter, each party shall designate its conciliator and notify this nomination to the other party by registered letter with acknowledgement of receipt.

Within a period of fifteen (15) days from the appointment of the second conciliator, both conciliators shall appoint a third conciliator to chair the committee by mutual agreement.

Art.63 - In the absence of agreement between the conciliators of the two Parties or if the defendant has not appointed his conciliator, the most diligent party shall have a period of 30 days from the date of notice of the disagreement or the expiry of the 15 days referred to in Article 62 above, to request from the First President of the Supreme Court or in his absence, the Vice-President of the Supreme Court or in the event of his being unable to act, to the most senior President of Chamber of the Supreme Court, to appoint the third conciliator or conciliator of the defaulting party.

In the absence of agreement between the conciliators of the two Parties or if the defendant has not appointed his conciliator, the most diligent party shall have a period of 30 days from the date of notice of the disagreement or the expiry of the 15 days referred to in Article 62 above, to request from the First President of the Supreme Court or in his absence, the Vice-President of the Supreme Court or in the event of his being unable to act, to the most senior President of Chamber of the Supreme Court, to appoint the third conciliator or conciliator of the defaulting party.

If the applicant does not notify the appointment of his conciliator to the other party within the time and in the manner set out above, he shall be deemed to have waived conciliation.

Art.64 - Conciliation proceedings shall be held in Madagascar unless otherwise decided by the Parties.

Art.65- The President of the commission may order any investigative action, request the Parties to produce all documents, call all witnesses, commit all experts, determine their mission and set a deadline for filing their report.

Unless otherwise agreed by the Parties or unanimous decision of the Commission, the recommendation of conciliation must be made within 30 days from the date of the appointment of the chairing conciliator.

Art.66- The recommendation of the commission is made by a majority vote of the three conciliators.

The recommendation must be motivated.

The conciliator who does not approve the recommendation may give notice to the Parties.

Art.67- The conciliation is deemed to have failed if, 30 days after the notification of the recommendation to the Parties, they did not notify each other of their acceptance of the recommendation.

The conciliation is also deemed to have failed if the commission could not be constituted in the deadlines set out above.

Art.68- The costs and fees of the conciliation fixed by the President are compensated and supported by half by the Parties.

Art.69- The most diligent party shall have a period of 30 days from the date of ascertainment of the failure of conciliation to initiate arbitration proceedings.

Art.70- The disputes that have not been settled by the conciliation procedure described above as well as all the disputes concerning contracts for the sale of hydrocarbons for export are subject to the arbitration of an

ad hoc committee constituted by three arbitrators, which decides according to the procedure of the International Chamber of Commerce of Paris.

Each Party appoints an arbitrator. The third arbitrator, president, is jointly appointed by the two referees. If an agreement cannot be reached, the third arbitrator shall be appointed by the First President of the Supreme Court of the Republic of Madagascar on the list of arbitrators of the International Center for Settlement of Investments Disputes (ICSID).

He cannot be of the nationality of either party.

Art.71- The Malagasy law is the only applicable to the arbitration of the merits of the dispute.

In case of silence of the Malagasy texts, the arbitral court will refer to the general principles of law, the internationally recognized practices and the applicable jurisprudence in the matter.

The language of arbitration is French.

The place of arbitration is fixed in each agreement in a country different from that of the two Parties.

Art.72- The arbitration award binds both parties. It is subject to the exequatur of the courts of the place of execution and shall not be subject to any remedy.

Art.73- The arbitration fees are supported by the losing party.

TITLE X

PROVISIONS RELATING TO OFFENSES AND PENALTIES

Art.74- Violations of the provisions of the present Code as well as those of the texts taken for its application are recorded by minutes established by sworn agents, mandated for this purpose by the technical Body, or by the police officers.

Are also empowered to establish the above offenses:

- the sworn officers of the Ministry of Mines;
- the officers and non-commissioned officers in charge of the ships or boats of the State;
- the skippers of the aircraft of the State;
- the customs officers and indirect taxes;
- the district chiefs and the heads of maritime sub-districts.

The reports of these offenses are forwarded to the Public Prosecutor for prosecution and to the Technical Body for information.

The judgment of breaches of this code could be attributed to the Special Economic Chamber courts at the level of first instance and their sections, if any, to a court of similar jurisdiction.

Art.75 - Anyone who has undertaken on the territory of the Republic of Madagascar an activity of prospection, research, exploration, exploitation or transport of hydrocarbons, in violation of the provisions of this Code and the regulations adopted for its application, or without respecting the conditions set by the mining title, shall be punished by imprisonment from 6 months to 5 years, a fine of 500,000,000 to 5,000,000,000 FMG or only one of these penalties, without prejudice to the confiscation of the proceeds and materials used to commit the offense without the need to determine whether or not they belong to the condemned.

Shall also be punished by penalties provided for above, any violation of the legislative or regulatory provisions concerning the exercise of the administrative supervision, the conservation of the deposits, the safety and

the hygiene, the statements of drilling and geophysical surveys, when this infraction affects the public security or the persons engaged in work research and exploitation.

Art.76- Violations of the provisions of Article 35 paragraph 2 relating to the restriction of the overflight of a safety zone are punishable by the penalties provided for in article 75 above.

Art.77- When the activities of prospecting, research, exploration, exploitation, transformation or transport of hydrocarbons are located within the malagasy maritime zones, no equipment likely to be confused with the navigation signal or likely to be hindered the observance of such signal by the navigator cannot be implemented.

Any violation of this article shall be punishable by imprisonment of 2 months to 5 years, a fine of 300,000,000 to 3,000,000,000 FMG or only one of these penalties.

Art.78- The person responsible for the exploration and exploitation works within the facilities and devices referred to in Title VI of this Code shall be liable, on pain of imprisonment of 2 to 6 months, to a fine of 100,000,000 to 1,000,000,000 FMG or one of the these fines, to make mention by the maritime authority, on the circulation permit issued for this purpose, the name and the qualifications of each of the people whose presence on board is mandatory under the laws and regulations on the safeguarding of human life at sea.

Art.79- The owner or operator of the installations or devices referred to in Title VI of this Code or the person responsible for installations and devices, the conduct of exploration or exploitation works shall be punished by the penalties provided for in Article 78, when the offense has been committed deliberately.

Any owner or operator of such facilities and devices who has not given to the person responsible for these facilities and devices, the conduct of the exploration or exploitation works the manifest order to comply with the provisions of which non-compliance is punishable under the first paragraph of this section, may be held to have committed an offense by omission or negligence.

Art.80- Without prejudice to the application of laws and regulations concerning the repression of Pollution of the Sea by Hydrocarbons, facilities and devices covered by Title VI of the Code shall be liable to sanctions provided for in Article 75 above, any person who may have during the course of prospecting, research, exploration or exploitation of hydrocarbons in the malagasy maritime zones, dumped or allowed to escape into the sea, from a facility or device referred to Title VI of this Code, products listed in Article 3, paragraph 1 of the International Convention for the Prevention of Pollution of the Sea by Hydrocarbons, signed in London on 12 May 1954, as defined in Article 1, paragraph 1 of that Convention.

Art.81- Any violation of the provisions of Article 36 shall be liable to the penalties provided by the laws and regulations of maritime navigation.

Art.82- The international conventions relating to marine pollution and to which Madagascar is a part are applicable to the offenses repressed by this Code.

Art.83- When a report of an offense under section 31 has been drawn up, the interruption of the prospecting, the research, the exploration, the exploitation, the transformation works or the transport of hydrocarbons may be ordered, by the urgent application judge, until the final decision on the requisition of the public Ministry acting at the request of the technical Body.

The urgent application judge shall rule after having heard the offender or having duly summoned him to appear within forty-eight hours.

The interim order shall be enforceable and notwithstanding any remedy.

As soon as the minutes referred to in the first paragraph of this article are drawn up, the Technical Body, as guardianship and control authority, in the event of an offense which may lead to imminent danger, may, if the interim relief judge has not yet pronounced, order the interruption of work.

A copy of this decision shall be forwarded without delay to the public Ministry.

The guardianship and control authority shall take all necessary administrative measures to ensure the immediate application of its decision.

The urgent application judge hearing may, after the return to normal of the situation duly noted by the technical Body, automatically or on request of either the guardianship and control authority or the offender, pronounce the release. Otherwise, the measures taken remain.

The decision of the guardianship and control authority ceases to have effect as soon as the decision of urgent application judge has been made.

The guardianship and control authority is notified of the judicial decision and, if necessary, ensures its execution. When no prosecution has been instituted, the Public Prosecutor shall inform the guardianship and control authority which, either automatically or at the request of the offender, terminates the measures taken.

Art.84- The continuation of prospecting, research, exploration, exploitation, transformation or transport, notwithstanding the judicial or administrative decision ordering the interruption and / or the cessation, shall be punished with imprisonment from 6 months to 5 years, a fine of 500,000,000 to 5,000,000,000 FMG or one of these two penalties.

Art.85 – In the event of violation of the this Code or the regulation issued pursuant thereto, the competent court may order, if necessary, either the removal of facilities and devices, or their implementation in compliance with the conditions stated in this Code or the said regulations.

The penalties provided for in Article 84 shall also apply in the event of non-performance within the prescribed deadlines, of the removal or the compliance of works referred to in the first paragraph above.

If, on the expiry of the period fixed by the judgment, the removal of the installations and devices or their modification to meet the requirements, as the case may be, has not taken place or is not completed, the technical Body may of right carry out all necessary works for the execution of the court decision, at the expense and risk of the convicted person.

TITLE XI

TRANSACTIONS

Art.86- All violations of this Code and its implementing legislation can be the object of transaction before or after the judgment. The transaction before judgment shall suspend the legal proceedings of all offenses. After a final judgment, it can only be transacted on pecuniary sentences.

The ability to accept the written submission of an offender regarding a recognized minor offense and to make a final settlement, either before or after judgment, belongs to the technical Body. It may, however, delegate its powers by regulation.

The offender who has made a request for a transaction sends a copy to the Public Prosecutor. The latter only starts the proceedings after having been notified by the technical Body of the refusal to transact or the failure of its transaction.

Art.87- No transaction can be granted if the offender does not request it in writing application stamped at FMG 10,000 and addressed to the technical Body. The latter will consult with the Ministry of Finance and the Ministry of Mines for a decision of the competent authority.

The offender has a period to be determined in the decree implementing the present Code to transmit his request. After this period, he override the settlement procedure and the case is referred to the competent courts.

Art.88- The transaction request is suspensive of the investigation of the case at the level of the competent courts.

If the amount of the transaction is not paid within a deadline set in the implementing decree of this Code, it is ignored and the proceedings are taken to the level of the competent courts.

Art.89- The modalities determining the amount of the transaction and its update will be defined in the texts of application of this Code.

Art.90- The benefit of the transaction cannot be granted:

- in case of recidivism;

- in case of refusal of visit, act of rebellion, assault, insult, contempt and threat against the agents in charge of the observation of the infractions.

Art.91- The total proceeds of the transactions, auctions or final convictions pronounced by the courts, after deduction of any fees and taxes of any kind shall be distributed according to the conditions provided by regulation.

TITLE XII

MISCELLANEOUS

Art.92- Notwithstanding the legislative provisions in force, the holders of mining title of exploration and exploitation of hydrocarbons can occupy property belonging to private persons or goods dependent on the domains of the State or the decentralized territorial collectivities subject to an agreement between the Licensee and the owner and / or the occupant.

Art.93- The property dependent on the public domain can only be the object of transfer of management.

At the request of the national Company, or as the case may be, of the joint venture association, holder of a valid mining title, and after consulting the technical Body, the State or the concerned decentralized territorial collectivity delegate the management by order of the Minister in charge of Lands.

The assets, whose management has been transferred, retain their status of dependence on the public domain and remain unseizable, inalienable and imprescriptible. They may not be registered in the assets of the national Company or the Association as a joint venture beneficiary or recorded on their balance sheet.

Art.94- The conditions of delimitation, occupation and transfer of management of these goods are fixed by regulation.

Art.95- The procedures for determining and controlling the quantities produced from the national mining domain and the conditions for marketing the quota for the supply of the domestic market as defined in Article 24 of this Code will be fixed by regulation.

TITLE XIII

TRANSITIONAL PROVISIONS

Art.96- Until the effective implementation of the national Company, the technical Body is authorized to act on behalf and for the account of the national Company.

TITLE XIV

FINAL PROVISIONS

Art.97- All provisions contrary to this Code including the amended Law No. 80-001 of 6 June 1980 on the Petroleum Code in Madagascar are and remain abrogated.

Art.98- The texts of application of this Code are fixed by regulations.

Art.99- This law shall be published in the Official Journal of the Republic.

It will be executed as the law of the State.

Promulgated in Antananarivo, September 4, 1996.

Albert ZAFY