

**PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL,
2015**

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**PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION)
BILL,2015**

A Bill for:

An Act of Parliament to provide a framework for the contracting, exploration, development and production of petroleum; cessation of upstream petroleum operations; to give effect to relevant articles of the Constitution in so far as they apply to upstream petroleum operations; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I

PRELIMINARY

- Short title. 1. This Act may be cited as the Petroleum (Exploration, Development and Production) Act,2015.
- Interpretation. 2. In this Act, unless the context otherwise requires—
- “Advisory Committee” means the National Upstream Petroleum Advisory Committee established under section 13 of this Act;
- “associated natural gas” means
- (i) any natural gas dissolved in crude oil under reservoir conditions; and
 - (ii) any residue gas remaining after the extraction of crude oil from a reservoir;
- “Authority” means Upstream Petroleum Regulatory Authority established under section 15 of this Act;
- “best petroleum industry practices” means such practices, methods, standards and procedures generally accepted and followed internationally by prudent, diligent, skilled and experienced operator in upstream petroleum operations, including practices, methods, standards and procedures intended to—
- (a) conserve petroleum by maximizing recovery of petroleum in a technically and economically sustainable manner;
 - (b) promote operational safety and prevention of accidents; and

(c) protect the environment by minimizing the impact of upstream petroleum operations;

“block” means acreage as defined by specific geographic coordinates for purposes of upstream petroleum operations as provided by section 51 of this Act;

“Board” means the Board of Directors of the Authority as provided for under section 18 of this Act;

“brine” means all saline geological formation water resulting from, obtained from, or produced in connection with exploration, drilling, well simulation, production of oil or gas, or plugging of a well;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for petroleum;

“civil fine” means a financial penalty imposed by a government agency as restitution for a wrong doing and not considered to be a criminal punishment;

No. 6 of 2012

“compulsory acquisition” means acquisition as provided for under the Land Act;

“conservation of petroleum resources” means prevention and minimization of wastage of petroleum, protection of correlative rights and maximization of ultimate economic recovery;

“contract area” means a licensed block;

“contractor” means the person with whom the Government concludes a petroleum agreement;

“County Government” has the meaning assigned to it in the Constitution of Kenya;

“crude oil” means—

- (a) all hydrocarbons regardless of gravity which are produced at the wellhead in liquid state at atmospheric conditions of temperature and pressure; and
- (b) the liquid hydrocarbons known as distillate or condensate or natural gas liquids obtained from natural gas by condensation or extraction;

“delivery point” means the point at which petroleum passes through the intake valve of the pipeline, vessel, vehicle or craft at a terminal, refinery or processing plant in Kenya; or such other point as may be agreed by the Government and the contractor, with such point to be specified in the petroleum agreement;

“decommissioning” means abandonment, recovery, removal and disposal, or if applicable re-deployment, of wells, flow lines, pipelines, facilities, infrastructure and assets related to upstream petroleum operations;

“development” means the planning, placement, construction and installation of facilities needed for production of petroleum;

“development area” means area delimited in a development plan and adopted in accordance with petroleum agreement;

“downstream petroleum operations” means all or any of the operations related to distribution of petroleum to residential, industrial, power generation and other end users;

Cap. 371.

“Exclusive Economic Zone” has the meaning assigned to it in the Maritime Zones Act;

“exploration” means the set of operations carried out in onshore or offshore blocks for data acquisition using geological, geochemical, geophysical exploration and appraisal wells or any other method with a view to locating petroleum deposits;

“facility” includes—

- a) any structure, device, roads, or other associated installations or infrastructure including pipelines, rail stations, pump stations, compressor stations and equipment constructed, placed or used in order to carry out upstream petroleum operations;
- b) vessel, vehicle or craft when stationary and used for drilling or support of on-going upstream petroleum operations; and
- c) vessel, vehicle or craft for transportation of petroleum in bulk when connected to a facility for loading of petroleum;

“field” means the geological structure or feature which hosts one or more reservoirs from which petroleum production may be commercially undertaken through a defined set of facilities;

“gas” means methane, ethane, propane, butane or hydrocarbons which may consist of one or more of any of those gases, either in the form of gas or liquid;

“Government” means the National Government of the Republic of Kenya;

“local community” means a sub-county or sub-counties in which an upstream petroleum resource is exploited;

“local content” means the added value brought to the Kenyan economy from petroleum related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits;

“meter” means any and every kind of machine, device or instrument used for the measurement of the volumes and rates of production of petroleum;

“midstream petroleum operations” means all or any of the operations related to petroleum transportation, storage, refining operations, or natural gas processing operations that are related to multiple development areas (including operations for the liquefaction of natural gas);

“Ministry” means the ministry for the time being responsible for Petroleum in Kenya;

“national oil company” means an oil company established by the Government for purposes of conducting upstream petroleum operations on behalf of the Government;

“natural gas” means hydrocarbons that are in a gaseous phase at atmospheric conditions of temperature and pressure, including wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid hydrocarbons from wet gas, and non-hydrocarbon gas produced in association with liquid or gaseous hydrocarbons;

“non- associated natural gas” means any natural gas that is not associated natural gas;

“non-exclusive exploration permit” means a prospecting permit that gives the holder the right to conduct reconnaissance and general investigations of an area which includes acquisition of geological, geochemical and geophysical data and may allow drilling to a prescribed depth by the Authority and shall not confer upon the grantee any right to drill any well for production of petroleum;

“Operator” means the designated entity that is responsible for managing the day to day operation of oil and gas exploration, development and production;

“operational permit” means any permit for purposes of petroleum exploration, drilling, development and production;

“Outer Continental Shelf” means the outer continental shelf as defined in the United Nations Convention on the Law of the Sea or all submerged lands seaward and outside the area of lands beneath navigable waters;

“permit” means an authorisation granted to a person to enable the carrying out of any activity in the upstream petroleum operations in accordance with this Act but shall exclude the petroleum agreement;

“person” means any natural or juridical person;

“petroleum” means all hydrocarbons and includes crude oil and natural gas, whether capable of being produced from conventional and unconventional reservoirs, including shale oil, oil shale, shale gas, coal bed methane gas, tar sands, and other sources of hydrocarbon reserves;

“petroleum agreement” means any agreement, license or contract or other arrangement between the Government and a contractor and/or amongst contractors to conduct operations in accordance with the provisions of this Act, which may include:

- (a) production sharing contracts;
- (b) concession agreements; and
- (c) service contracts;

“Petroleum Institutions” means entities established to provide structured and efficient systems to define functions and provide oversight in the operations and management of the Upstream Petroleum Industry in Kenya as provided for under Part III of this Act;

“pipeline” means a pipe or system of pipes that is used or to be used for the transportation of petroleum and any apparatus and works associated therewith, including—

- (a) apparatus for inducing or facilitating the flow of petroleum through the pipe or system of pipes;
- (b) valves, valve chambers, manholes, inspection pits and similar works, being works annexed to, or incorporated in the course of the pipe or system of pipes;

- (c) apparatus for supplying energy for the operation of any such apparatus as is mentioned in paragraph (a) or of such works as are mentioned in paragraph (b);
- (d) apparatus for the transmission of information for the operation of the pipe or system of pipes;
- (e) apparatus for affording cathodic protection to the pipe or system of pipes; or
- (f) a structure for the exclusive support of a part of the pipe or system of pipes;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by discharging, emitting or depositing wastes or emitting noise so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare or to animals, birds, wildlife, fish or aquatic life, land, property and water sources or to plants or to cause a contravention of any condition, limitation or restriction which is subject to a license under this Act;

“production sharing contract” means a petroleum agreement entered between the Government and the contractor, which enables the contractor to explore, develop and produce petroleum within a contract area;

“tariff” means a set of prices, rates, charges, and any cost associated with capacity, supply and delivery of upstream petroleum and may include any adjustments, as approved by the Authority;

“third party access” means the non-discriminatory provision for the use of common user petroleum logistics facility by any contractor;

“Tribunal” means the Energy and Petroleum Tribunal established under the Energy Act;

“upstream petroleum operations” means all or any of the operations related to the exploration, development, production, separation and treatment, storage and transportation of petroleum up to the agreed delivery point;

“vandalise” means to commit any wilful, negligent, reckless or malicious act which destroys or damages upstream petroleum facilities;

“venting” means controlled release of gaseous hydrocarbons or any other gases from the petroleum operation into the atmosphere;

“waste” includes any matter prescribed to be waste and any matter whether liquid, solid, gaseous or radioactive which is discharged, emitted or released to the environment in such a volume, composition or manner as to cause an alteration of the environment;

“works” means pipelines, machinery, lands, buildings, structures, earth works and water works, and includes any apparatus required for upstream petroleum operations.

Scope of application

3. (1) This Act shall apply to all upstream petroleum operations being carried out within the Republic of Kenya.

(2) The scope of this Act excludes midstream and downstream petroleum operations.

Act to prevail

4. (1) If there is a conflict between this Act and any other Act, in matters relating to upstream petroleum operations, this Act shall prevail.

(2) For greater certainty, a provision of an Act that provides for a person or body to approve any work or authority to permit or deny any act or omission shall not be construed as giving that person or authority any power with respect to upstream petroleum operations.

PART II

NATIONAL UPSTREAM PETROLEUM POLICY AND PLAN

Upstream Petroleum Policy and Plan

National upstream petroleum policy.

5. (1) The Cabinet Secretary shall develop and publish a national policy on upstream petroleum operations which shall be reviewed at least every five years.

(2) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national upstream petroleum policy.

National upstream petroleum strategic plan.

6. (1) The Cabinet Secretary shall develop, publish and review upstream petroleum strategic plan.

(2) The upstream petroleum strategic plan must take into account the national upstream petroleum policy and serve as a guide for policy implementation.

(3) The Cabinet Secretary shall prescribe regulations on the content and timelines for the preparation of the upstream petroleum strategic plan.

Monitoring implementation of national upstream petroleum strategic plan.

7. Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national upstream petroleum strategic plan.

Conduct of Upstream Petroleum Operations and Promotion of Upstream Petroleum Investments

Conduct of upstream petroleum operations

8. (1) No person shall engage in any upstream petroleum operations in Kenya without having previously obtained the permission of the Cabinet Secretary or Authority in such manner, in such form and on such terms as are prescribed by this Act and by regulations made thereunder.

(2) All upstream petroleum operations shall be conducted in accordance with the provisions of this Act, the regulations made thereunder and the terms and conditions of a petroleum agreement.

(3) The Government may conduct upstream petroleum operations either—

(a) through the national oil company; or

(b) through contractors in accordance with petroleum agreements; or

(c) in such other manner as may be necessary or appropriate.

(4) Subject to this Act and the regulations made thereunder, the Government may authorize a contractor to engage in upstream petroleum operations within a specified area, in accordance with the terms and conditions set out in the petroleum agreement.

(5) Notwithstanding the provisions of this section, the Government may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than upstream petroleum operations within an area which is the subject of a petroleum agreement, provided that the prospecting, mining and the other operations shall not interfere with upstream petroleum operations.

(6) The Government may participate at any phase of upstream petroleum operations in accordance with the terms and conditions to be established in the participation agreement with the contractor.

Promotion of upstream petroleum investments

9. (1) The Government shall create a conducive environment for investments in upstream petroleum operations and infrastructure development, including formulation of guidelines in collaboration with relevant Government agencies on development of upstream petroleum investments and to disseminate them among potential investors.

(2) The Government shall ensure that upstream petroleum operations and infrastructure development are carried out for the benefit of the people of Kenya.

(3) In its effort to promote upstream petroleum operations and investments, the Government shall facilitate the acquisition of land for upstream petroleum infrastructure development and ancillary infrastructure.

PART III:

PETROLEUM INSTITUTIONS

Cabinet Secretary

Functions of the
Cabinet Secretary

10. (1) The functions of the Cabinet Secretary shall be to—
- (a) make available model petroleum agreements as a basis for the negotiation of petroleum agreements;
 - (b) cause any investigations, due diligence or consultations to be made or carried out as considered necessary before entering into a petroleum agreement and may upon advise from the Advisory Committee reject any application made by a potential contractor if satisfied that it is in the best interest of the country;
 - (c) upon advise of the Advisory Committee, negotiate, sign or revoke petroleum agreements or appoint an authorized representative to do so in writing on behalf of the Government as provided for in this Act, the regulations made in relation thereto and the petroleum agreement;
 - (d) supervise upstream petroleum operations carried out under a petroleum agreement;
 - (e) develop, publish and review upstream petroleum policy and strategic plans;
 - (f) review and approve any proposed exploration activity contained in the annual work programme, appraisal programme and production forecasts submitted by a contractor;
 - (g) review and approve budgets submitted by a contractor;
 - (h) upon advise of the Advisory Committee, suspend, revoke or terminate the petroleum agreement or recall the security therein on behalf of the Government as provided for under this Act, the regulations made thereunder and the petroleum agreement;

- (i) approve transfer or assignment of any interest in a petroleum agreement in accordance with the provisions of this Act and regulations made thereunder;
 - (j) may take any action, decision, or give any permission or consent or exercise any other control as may be necessary or desirable as provided for in this Act, the regulations made in relation thereto and the petroleum agreement;
 - (k) approve field development plan upon advise by the Authority; and
 - (l) conduct bidding rounds and direct negotiation for granting of a petroleum agreement in accordance with this Act and regulations made thereunder.
- (2) For the purposes of this Act, the Cabinet Secretary or his authorized representative may, at all reasonable times—
- (a) enter any area, structure, vehicle, vessel, aircraft or building that has been, is being or is to be used in connection to upstream petroleum operations;
 - (b) inspect and test any machinery or equipment that has been, is being or is to be used in connection to upstream petroleum operations;
 - (c) take or remove for the purpose of analysis, testing or for use in evidence in connection with an offence under this Act, samples of petroleum or other substances from any area where any upstream petroleum operations are being carried on;
 - (d) inspect, take extracts from, and make copies of any document relating to any upstream petroleum operations;
 - (e) order, by instrument in writing—
 - (i) the cessation of any operations and withdrawal of all persons from any structure or building that is being used in connection to upstream petroleum operations; or
 - (ii) the discontinuance of use of any machinery or equipment which is considered unsafe, until such action as is necessary for safety and specified in the instrument is fully implemented; and

(f) make any examinations and inquiries as are necessary to ensure that the provisions of this Act and any directions issued or conditions or orders imposed under this Act, are being complied with.

(3) The Cabinet Secretary or his authorized representative may engage a person who has relevant expertise to assist in any matter of inspection, testing or examination.

(4) A person who is an occupier of or is in charge of any building, structure, place, vehicle, vessel, aircraft, machinery or equipment shall provide the Cabinet Secretary or his authorized representative with all reasonable facilities and assistance.

(5) Any person who—

(a) without reasonable excuse, obstructs or hinders the Cabinet Secretary or an authorized officer in the exercise of the Cabinet Secretary's powers under this section, or

(b) knowingly or recklessly makes a statement or produces a document that is false or misleading in a material particular to the Cabinet Secretary or an authorized officer engaged in carrying out his duties and functions under this Act

commits an offence and shall on conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than three years or to both.

Directions by the
Cabinet Secretary.

11. The Cabinet Secretary may, by notice in writing served on a contractor, give directions to the contractor, consistent with best petroleum industry practices, as to any matter with respect to which regulations may be made under section 129.

Compliance with
directions.

12. Where a contractor fails or neglects to comply with a directive of the Cabinet Secretary in accordance with section 11, the Cabinet Secretary may cause to be done all or any of the things required by the direction to be done, and the costs and expenses incurred in doing so shall be a civil debt due to the Government.

National Upstream Petroleum Advisory Committee

Establishment of the
National Upstream
Petroleum Advisory
Committee.

13. (1) There is established an inter-ministerial committee to be known as the National Upstream Petroleum Advisory Committee.

(2) The Advisory Committee shall consist of—

- (a) Principal Secretary or an authorized representative in the Ministry responsible for petroleum who shall be the Chairperson;
- (b) The person in charge of petroleum at the ministry responsible for petroleum or an authorized representative;
- (c) Chief Executive or an authorized representative of the national oil company;
- (d) Attorney General or an authorized representative;
- (e) Principal Secretary of The National Treasury or an authorized representative;
- (f) Director General, National Environmental Management Authority or an authorized representative;
- (g) Commissioner General, Kenya Revenue Authority or an authorized representative; and
- (h) Director General, Upstream Petroleum Regulatory Authority or an authorized representative who shall be the Secretary.

(3) The Advisory Committee may co-opt such other members as they deem necessary but in any case not more than four members shall be co-opted.

Functions of the
Advisory Committee.

14. (1) The functions of the Advisory Committee shall be to—
- (a) advise the Cabinet Secretary on upstream petroleum operations;
 - (b) participate and advise the Cabinet Secretary in the negotiation and granting of petroleum agreements;
 - (c) advise the Cabinet Secretary on the suspension, revocation or termination of the petroleum agreement or the recall of security for compliance;
 - (d) submit a report to the Cabinet Secretary on the terms negotiated with contractors;
 - (e) develop the criteria for negotiation of petroleum agreements;
 - (f) participate in the evaluation of the bids and applications for awarding of upstream petroleum blocks;

(g) perform such other functions and duties as may be provided under this Act or as may be delegated by the Cabinet Secretary.

(2) Where the Cabinet Secretary rejects any advice given under this section, the reasons for the rejection shall be communicated to the Advisory Committee.

Upstream Petroleum Regulatory Authority

Establishment of the
Upstream Petroleum
Regulatory Authority

15. (1) There is established the Upstream Petroleum Regulatory Authority hereinafter be referred to as the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

(3) Except as otherwise provided in this Act, the Authority shall be independent in the performance of its functions and exercise of its powers and shall not be subject to the direction or control of any person or authority.

Objects and functions
of the Authority

16. The objects and functions of the Authority shall be to—

- (a) regulate upstream petroleum operations in Kenya;
- (b) provide such information and statistics to the Cabinet Secretary as may be required from time to time;
- (c) collect, maintain and manage upstream petroleum data;
- (d) conduct due diligence and investigate the affairs of any person prior to granting non-exclusive exploration permit;
- (e) perform any other function that is incidental or consequential to its functions under this Act or any other written law.

Powers of the Authority

17. The Authority shall have all powers necessary or expedient for the performance of its functions under this Act and in particular, the Authority shall have the power to—

- (a) coordinate the development of upstream petroleum infrastructure and promote capacity building in upstream petroleum operations;
- (b) monitor and regulate upstream petroleum operations including reserve estimation, measurement and evaluation of the produced oil and gas;
- (c) assess field development plans and make recommendations to the Cabinet Secretary for approval, amendment or rejection of the plans;
- (d) assess tail-end production and cessation of upstream petroleum operations and decommissioning;
- (e) verify the measurement of petroleum to allow for estimation and assessment of royalty and profit oil and gas due to the Government as well as issue the requisite approvals;
- (f) verify the recoverable cost oil and gas due to the parties in a petroleum agreement;
- (g) audit contractors for cost recovery;
- (h) monitor upstream petroleum operations and carry out necessary inspections and audits related to the operations.
- (i) ensure that contractors uphold the relevant laws, regulations and petroleum agreement terms;
- (j) ensure optimal levels of recovery of petroleum resources;
- (k) promote well planned, executed and cost-efficient operations;
- (l) ensure optimal utilization of existing and planned facilities;
- (m) ensure the establishment of a central database of persons involved in upstream petroleum operations;
- (n) manage upstream petroleum data and provide periodic updates and publication of the status of upstream petroleum operations;

- (o) take such action as is necessary to enforce the requirements in a petroleum agreement or any regulations and to protect the health and safety of workers and the public;
- (p) ensure and facilitate competition, access and utilization of facilities by third parties;
- (q) monitor conditions of Operators and their trade practices to ensure that competition and fair practice is maintained;
- (r) provide information to the relevant authority for the collection of taxes and fees from upstream petroleum operations;
- (s) set, review and approve contracts, tariffs and charges for common user upstream petroleum facilities;
- (t) make proposals to the Cabinet Secretary, of regulations which may be necessary or expedient for the regulation of the upstream petroleum sector or for carrying out the objects and purposes of this Act;
- (u) work in coordination with the relevant statutory authorities to formulate, enforce and review environmental, health, safety and quality standards for the upstream petroleum sector;
- (v) prescribe the form and manner in which any application for any authority, consent or approval under this Act shall be made;
- (w) investigate and determine complaints or disputes arising from upstream petroleum operations;
- (x) enter, inspect and search any premises at which any undertaking is carried out or an offence under this Act is being committed or is suspected to have been committed;
- (y) issue orders either verbally or in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled;
- (z) develop guidelines on ratified or ascended treaties, conventions and protocols affecting the upstream petroleum sector in consultation with other statutory authorities;

- (aa) impose such sanctions and civil fines, being not less than ten thousand shillings per violation per day, as may be prescribed in regulations to secure compliance with orders issued under this Act;
- (bb) prosecute offences created under this Act;
- (cc) regulate contracts on upstream petroleum operations not specifically provided for under this Act;
- (dd) monitor and enforce local content requirements;
- (ee) issue operational permits and non-exclusive exploration permits in accordance with this Act;
- (ff) ensure enforcement and compliance with the National Transparency and Accountability Standards; and
- (gg) perform any other function incidental or consequential to its functions under this Act.

Board of Directors of
the Authority

18. (1) The management of the Authority shall vest in the Board of Directors of the Authority which shall consist of—

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for petroleum or authorized representative;
- (c) the principal Secretary in The National Treasury or authorized representative;
- (d) the Director General; and
- (e) five other members appointed by the Cabinet Secretary.

(2) A person shall be qualified for appointment as a Chairperson under sub-section (1) (a) or a member under sub-section (1) (e) if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya or its equivalent in the fields of petroleum geosciences, engineering, economics, finance, law, business administration or management, or in matters of health, safety and environment;
- (c) has at least seven years relevant professional experience in petroleum industry disciplines; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

Terms of office of the chairperson and members of the Board.

19. (1) The chairperson of the Board of the Authority shall hold office for a period of four years and shall be eligible for re-appointment for one further term.

(2) A member of the Board of the Authority shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

(3) The chairperson and members of the Board of the Authority shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

Gender, regional and ethnic balance.

20. Appointments under this Act shall take into account the principle that the composition of the Authority, taken as a whole, shall reflect gender balance as well as regional and ethnic diversity of the people of Kenya.

Conduct of business of the Board.

21. The conduct and regulation of the business of the Board shall be as provided in this Act, but subject thereto, the Board shall regulate its own procedure and the procedure of any committee thereof.

Board meetings.

22. (1) The Board shall meet as often as necessary for the transaction of business but shall meet not less than four times every financial year and not more than four months shall elapse between the date of one meeting and the next.

(2) The Chairperson shall preside at every meeting of the Board at which the chairperson is present but in the absence of the chairperson, the members of the Board present shall appoint a member from among their number to preside at that meeting.

(3) The Chairperson or, in the absence of the chairperson a member of the Board appointed by the Board to act in the place of the chairperson, may at any time call a special meeting upon a written request by a majority of the members.

Notice of meeting.

23. Unless five members otherwise agree, at least seven days' written notice of every meeting of the Board shall be given to every member of the Board.

Decision of the Board to be by majority.

24. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members of the Board present and in the case of an equality of votes, the chairperson or member presiding shall have a casting vote.

A member of the Board is entitled to have opinion recorded.

25. Any member of the Board present at a meeting of the Board or a Committee thereof, shall have the right to require his opinion to be recorded in the minutes if the Board or the Committee, as the case may be, passes a resolution, which in the opinion of that member is contrary to his advice or to law.

Member of the Board to disclose interest.

26. (1) A member of the Board who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his knowledge, disclose the nature of his interest to the Board and shall not be present during any deliberations on the matter.

(2) A disclosure of interest made by a member of the Board under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall in respect of that matter—

- (a) remove himself during any deliberations on the matter;
- (b) not participate in any decision taken by the Board on the matter; and
- (c) refrain from attempting to influence or coerce any other member to decide in his favour.

The Board to cause minutes to be recorded and kept.

27. The Board shall cause the minutes of all proceedings of its meetings to be recorded and kept, and the minutes of each meeting shall be confirmed by the Board at the next meeting of the Board and signed by the Chairperson or the member presiding at the meeting.

Quorum.

28. (1) Subject to subsection (2), five members of the Board shall constitute a quorum for the conduct of business at any meeting of the Board.

(2) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under section 26, the other members present may, if they deem it expedient so to do—

- (a) postpone the consideration of that matter until there is a quorum; or
- (b) proceed to consider and decide the matter as if there was quorum.

Vacancy of office of chairperson or members

29. (1) The office of the chairperson and member, as the case may be, shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the President or the Cabinet Secretary, as the case may be, resigns from office; or

(c) is removed from office under any of the circumstances provided in section 30.

(2) The President or the Cabinet Secretary, as the case may be, shall notify every resignation, vacancy or termination in the *Kenya Gazette* within fourteen days.

Removal of
Chairperson and
members.

30. (1) A chairperson and member (other than an ex officio member), may be removed from office on account of any of the following—

- (a) violation of the Constitution or any other law;
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) being absent from three consecutive meetings of Board without reasonable cause;
- (e) failure to disclose to the Board any interest in any contract or matter before the Board;
- (f) being convicted of a criminal offence;
- (g) incompetence; or
- (h) bankruptcy.

Director General.

31. (1) The Cabinet Secretary shall, on the recommendation of the Board, appoint a Director General who shall be the chief executive of the Authority and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

(2) The Cabinet Secretary shall appoint the Director General mentioned in sub-section (1) from a list of three names of persons submitted by the Board upon the Board carrying out a competitive selection process.

(3) A person shall be qualified for appointment as a Director General if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya or its equivalent in the fields of engineering, physical sciences, law, finance, economics or energy;

(c) has had at least seven years relevant professional experience in petroleum industry disciplines; and

(d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Director General shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(5) The Director General shall be an ex-officio member of the Board but shall have no right to vote at any meetings of the Board.

Authority Secretary.

32. (1) There shall be an Authority Secretary who shall be appointed on such terms and conditions as the Board may determine.

(2) A person shall be qualified for appointment as the Authority Secretary if such person—

(a) is a citizen of Kenya;

(b) holds a degree in law from a university recognized in Kenya or its equivalent;

(c) is a certified public secretary;

(d) has had at least seven years relevant professional experience; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Authority Secretary shall—

(a) be the secretary to the Board;

(b) record and keep minutes and other records of the Board;

(c) keep custody of the seal of the Authority; and

(d) carry out such other functions as the Board or the Director General may, from time to time, assign.

(4) The appointment of the Authority Secretary under this section shall be through a competitive recruitment process.

Removal of the
Director General or
Authority Secretary
from office

33. (1) The Director General or Authority Secretary may be removed from office by the appointing authority in accordance with the terms and conditions of service only for—

- (a) inability to perform the functions of their respective offices arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution;
- (e) bankruptcy; or
- (f) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Director General or the Authority Secretary, as the case may be, is removed under subsection (1), the Director General or the Authority Secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his defence against the allegations.

Staff of the Authority.

34. The Authority may appoint such staff as it may require for the proper discharge of the functions of the Authority under this Act, on such terms and conditions of service as the Board may determine.

Remuneration of Board members.

35. The Authority shall, in consultation with the Cabinet Secretary pay its members such remuneration, fees or allowances for expenses as it may determine from time to time

Protection from personal liability.

36. A matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall not, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

Liability of the Authority for damages.

37. The provisions of section 36 shall not relieve the Authority of the liability to pay compensation or damages to any person for an injury to that person, that person's property or any of the persons' interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

Funds of the Authority.

38. (1) The funds of the Authority shall consist of—

- (a) such moneys as may, from time to time, be appropriated by Parliament for that purpose;

- (b) license fees, permit fees, service fees, penalties and such other moneys or assets as may accrue to or vest in the Authority in the exercise of its powers or the performance of its functions under the Act;
- (c) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;
- (d) interest from bank deposits; and
- (e) any revenue from other sources including sale of data packages and technical information, loans, grants, gifts or donations approved by the Cabinet Secretary.

(2) Notwithstanding subsection (1), the Authority may decide to replace the source of funds provided for in subsection (1) (a) either partially or completely by a levy on production of crude oil or marketable natural gas or both calculated on the basis of amount of production of crude oil or natural gas in Kenya.

(3) The Authority may make Regulations to provide for a levy prescribing the amount in Kenya Shillings payable per cubic metre for crude oil, the amount of Kenya Shillings payable per one thousand cubic metre for marketable natural gas, the timing of the applicable levy and any other requirements for implementation of the levy.

(4) There shall be paid out of the funds of the Authority, all expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

Financial year.

39. The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

Annual estimates.

40. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year, and in particular but not limited to—

- (a) the payment of salaries or allowances and other charges in respect of the staff of the Authority and the members of the Board; and
- (b) any other expenditure that may be necessary for the carrying out of their respective objects and functions under the Act.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary who, after approving it, shall forward it to the Cabinet Secretary of the National Treasury.

(4) After the Cabinet Secretary's approval, the Authority shall not increase the annual estimates without the consent of the Cabinet Secretary.

Books of accounts, records, audit and reports.

41. (1) The Authority shall keep or cause to be kept proper books of accounts recording all the income and liabilities, expenditure, assets, undertakings, funds, activities, contracts, transactions and any other business of the Authority.

(2) The Authority shall ensure that all moneys received are properly brought to account, all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets and liabilities under this Act.

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(3) Within a period of three months after the end of each financial year, the Authority shall prepare annual financial statements in accordance with the provisions of Section 81 of the Public Finance Management Act and submit them to the Controller of Budget and the Auditor-General or to an auditor appointed under subsection (4), for audit.

(4) The auditor referred to in subsection (3) shall be appointed by the Authority with the written approval of the Auditor-General.

(5) The appointment of an auditor shall not be terminated by the Authority without the prior written consent of the Auditor-General.

(6) The Auditor-General may give general or special directions to an auditor appointed under subsection (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Auditor-General on any matter relating to the directions given under subsection (6).

(8) Within a period of six months after the end of the financial year, the Auditor-General shall report on the examination and audit of the accounts of the Authority, to the Authority and to the Cabinet Secretary, and in the case of an auditor appointed under subsection (4), the auditor shall submit a copy of the report to the Auditor-General.

(9) Nothing in this Act shall be construed to prohibit the Auditor-General from carrying out an inspection of the Authority's accounts or records whenever it appears to him to be desirable and the Auditor-General shall carry out such inspection at least once every six months.

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(10) Notwithstanding anything in this Act, the Auditor-General may submit to the Cabinet Secretary a special report on any matter incidental to his powers under this Act, and the provisions of the Public Finance Management Act on the same issue shall apply *mutatis mutandis* to any report made under this section.

(11) The Cabinet Secretary shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him under this section.

(12) The fee for any auditor, not being a public officer, shall be determined and paid by the Authority.

(13) The Authority shall prepare a report for each quarter not later than fifteen days after the end of each quarter and submit it to the Cabinet Secretary who shall, upon approving it, forward a copy to the Cabinet Secretary of the National Treasury.

(14) The Authority shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Public Sector Accounting Standards Board from time to time.

Delegation of powers or functions to committees or agents.

42. (1) The Authority may, by resolution either generally or in any particular case delegate to any committee of the Authority or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of its functions or duties.

(2) Every such committee, officer, employee or agent shall be appointed by the Authority in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority and powers so conferred.

(3) Any instrument issued by the Authority under subsection (2) may be issued for a limited period or without limitation of period, and may be varied or revoked by the Authority at any time.

(4) The Authority shall pay such allowances and fees to the members of such committees or such agents as the Authority may determine.

Powers of committees or agents.

43. (1) A committee, member, officer, employee or agent appointed under section 42 may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—

- (a) enter upon any premises at which any undertaking is carried out or an offence under this Act is or is suspected to have been committed;
 - (b) inspect and test any process, installation, works or other operation which is or appears likely to be carried out in those premises;
 - (c) be accompanied by a police officer(s) if there is a reason to believe that any serious obstruction may occur;
 - (d) require from any person the production of any book, notice, record, list or other document which appears to the committee, officer, employee or agent to have relevance to the inspection or inquiry, which is in the possession or custody or under the control of that person or of any other person on that committee's or agent's behalf;
 - (e) examine and copy any part of any book, notice, record, list or other document which appears to have relevance to the inspections or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as he believes may afford evidence of an offence under this Act;
 - (f) require information relevant to the committee, officer, employee or agents' inspection or inquiry from any person whom the committee, officer, employee or agent has reasonable grounds to believe is or has been employed at any such premises or to have in that person's possession or custody or under the person's control any article referred to in this subsection; or
 - (g) exercise such other powers as may be necessary in connection with the inspection or inquiry and other powers of his appointment under section 42.
- (2) A committee, member, officer, employee or agent entering any premises under this section may be accompanied by such persons and may enter with such equipment as may be necessary.

(3) Where—

- (a) the premises to which this section relates are unoccupied;
- (b) the owner, occupier or person in charge thereof is temporarily absent;
or
- (c) entry thereon is refused or obstructed;

the committee, officer, employee or agent may use such force as is reasonably necessary to effect entry.

Provided that in the case of an entry under paragraph (a) or (b)—

- (i) reasonable steps shall be taken prior to entry by the committee, officer, employee or agent to find the owner, occupier or person in charge of the premises to be entered; and
- (ii) the premises shall be left by the committee, officer, employee or agent as effectively secured against trespassers as they were found.

(4) Where it is suspected that an undertaking is being carried contrary to any licence, permit or regulations issued under this Act, an officer or agent of the Authority may, in the course of his duty, lock up, seal, mark or otherwise secure—

- (a) any building, room, place, receptacle or item of plant;
- (b) any goods or materials in a factory; and
- (c) aircraft, vessels, vehicles or containers.

(5) A person who, unless authorized, opens, breaks, alters or in any way interferes with a lock, seal, mark or other fastening placed by a committee, officer, employee or agent in accordance with the provisions of this section on any building, room, place, receptacle, item of plant, goods, or materials, commits an offence and shall, on conviction, be liable to a fine of not less than five hundred thousand shillings or to a term of imprisonment of not less than six months or both.

(6) A person who resists, hinders or obstructs any committee, officer, employee or agent acting in the course of the committee's or agent's duty under this section or who wilfully fails to comply with any requirements lawfully made thereunder commits an offence and shall, on conviction, be liable to a fine of not less than five thousand shillings for each day or part thereof that the obstruction occurs.

Conduct of functions of
the Authority

44. (1) The Authority shall perform its functions and exercise its powers in a manner that—

- (a) is balanced and objective;
- (b) is open and transparent;
- (c) is fair and reasonable;
- (d) is non- discriminatory; and
- (e) promotes fair competition.

(2) Notwithstanding the generality of subsection (1), the Authority shall, in the performance of its functions;

- (a) promote efficiency, economy and safety in the conduct of upstream petroleum operations;
- (b) ensure that contractors only carry out the upstream petroleum operations which they are licensed to perform;
- (c) promote competition in upstream petroleum operations to ensure optimal performance of industry players;
- (d) advocate and ensure transparency in the interaction of the upstream petroleum sector and the Authority;
- (e) ensure fair balance in the interests of the Government and other participants in the upstream petroleum sector, and
- (f) ensure full compliance of the petroleum agreement.

Co-operation with others

45. The Authority shall, to the greatest extent possible and in consistency with this Act, consult and co-operate with other ministries, departments and agencies of the Government having duties, aims or functions related to those of the Authority.

National Data Centre

46. The Authority shall operate and manage a national data centre which shall be a centre for storage, analysis, interpretation, and management of petroleum data and information from sedimentary basins and field operations on behalf of the Government.

Decisions of the Authority.

47. (1) The Authority shall within sixty days after obtaining all the documentations or representations that it requires make its decision on any matter before it.

(2) Decisions of the Authority shall be in writing and the order so given and reasons thereof shall be served upon all parties to the proceedings, and may be published in the *Kenya Gazette* as prescribed by regulations.

(3) The Authority shall, within seven days of making a decision, communicate such decision to the parties involved.

(4) All orders of the Authority shall be complied with within the time prescribed therein.

Appeal against a decision of the Authority.

48. A person aggrieved by a decision of the Authority may appeal to the Tribunal within thirty days of receipt of the decision-

Provided that the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.

The common seal.

49. (1) The common seal of the Authority shall be kept in such custody as the Authority may direct and shall not be used except on the order of the Board.

(2) The common seal of the Authority when affixed on a document and duly authenticated shall be judicially and officially noticed unless and until the contrary is proved, and any necessary order or authorization by the Authority under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Director General and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signature of the Chairperson or the Director General-

Provided that the Authority shall, in the absence of either the Chairperson or the Director General nominate one member to authenticate the seal on behalf of the Chairperson or the Director General.

PART IV:

UPSTREAM PETROLEUM RIGHTS AND MANAGEMENT OF PETROLEUM RESOURCES

Property in petroleum

50. (1) All petroleum existing in its natural condition in strata lying within Kenya and its continental shelf is vested in the Government in trust for the people of Kenya.

(2) All upstream petroleum resources in subsection (1) shall be managed in accordance with the provisions of the Constitution, this Act and the regulations made thereunder.

Constitution of blocks

51. (1) For the purposes of this Act, the Cabinet Secretary may, by notice in the *Kenya Gazette*, zone Kenya and its continental shelf into numbered areas defined by specific geographical coordinates, and each area shall be described as a “block”.

(2) The Cabinet Secretary may reserve blocks for exploration by the Government.

Licensing

Upstream petroleum licensing

52. (1) No person shall engage in upstream petroleum operations without either—

- (a) a petroleum agreement in accordance with this Act; or
- (b) a non-exclusive exploration permit in respect of an area specified therein for the purpose of obtaining geological, geophysical and geochemical information granted in accordance with Section 59.

(2) A person who wishes to undertake any of the activities provided for in sub-section (1) shall make an application to the Cabinet Secretary for a petroleum agreement or make an application to the Authority for a non-exclusive exploration permit in the prescribed form.

(3) An application under this section shall be accompanied by the requisite information to be specified in the Regulations.

(4) A person who contravenes the provisions of sub-section (1) commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to a term of imprisonment of not less than two years or both.

Financial and technical obligations of contractor

53. (1) The Government shall enter into petroleum agreements only with contractors who have the financial, technical and professional capacity necessary to fulfill their obligations under the petroleum agreement.

(2) The Contractor shall maintain financial, technical and professional capacity throughout the length of the contract.

(3) The contractor shall at all times ensure that any sub-contractor or agent of the contractor acting on his behalf possesses the necessary skills and qualifications to perform the work.

Negotiation, award and execution of petroleum agreements

54. (1) Subject to section 59 the Cabinet Secretary shall on behalf of the Government be responsible for the negotiation, award and execution of petroleum agreements in the form prescribed in the First Schedule of this Act.

(2) A petroleum agreement shall be awarded on the basis of bidding rounds conducted in accordance with the provisions of this Act and regulations made under this Act.

(3) Notwithstanding the provision of sub-section (2), the Cabinet Secretary may award a petroleum agreement on the basis of direct negotiations upon advice of the Advisory Committee in the following limited circumstances—

- (a) where there are no bids received following the concluded bidding rounds; or
- (b) where the bids received do not satisfy the minimum criteria for the award of a petroleum agreement; or

(c) where the blocks do not have adequate data.

(4) Where the Cabinet Secretary receives a proposal for direct negotiations and the conditions provided in sub-section (3) have been met, the Cabinet Secretary shall issue a thirty day public notice of the intention to conduct direct negotiations for the award of the block in at least two newspapers of nationwide circulation.

(5) Upon the lapse of the thirty day notice, the Cabinet Secretary may on the advice of the Advisory Committee—

(a) commence direct negotiations with the applicant if no other entity declares an interest in the block; or

(b) if one or more other entities declares an interest in the block, conduct the prescribed tender limited to the interested applicant/s as prescribed by this Act and regulations made hereunder.

(6) The award of blocks by direct negotiations shall be conducted in the form and manner prescribed in the regulations made under this Act.

(7) The provisions of this section shall be exempted from the Public Procurement and Disposal Act.

(8) If a party to a bidding round or direct negotiations is dissatisfied with the award of the bidding round or direct negotiations, an appeal may be made to the Tribunal in the first instance.

Express rights and obligations in petroleum agreements

55. (1) Notwithstanding any other written law and subject to this Act and regulations made thereunder, there shall be an express obligation in every petroleum agreement on the contractor to—

(a) perform certain minimum work and incur certain minimum expenditure during the course of exploration operations;

(b) present to the Cabinet Secretary a field development plan in respect of any commercial field and promptly take all steps that are reasonable to develop that field for production;

(c) present to the Cabinet Secretary a work programme and budget for each year of operation;

(d) keep accurate books of accounts and records of upstream petroleum operations and submit quarterly expenditure reports and annual audited financial statements to the Cabinet Secretary;

- (e) conduct upstream petroleum operations in accordance with requisite professional and technical skills;
- (f) adopt measures necessary for the conservation of petroleum and other resources as well as protect the environment;
- (g) give preference to the use of locally available raw materials, products, equipment, manpower, services and continuously transfer technology and build local capacity;
- (h) indemnify the Government against all claims made by third parties, in respect of any injury, damage or loss caused by, or resulting from, the conduct of any operations carried out by the contractor or subcontractors pursuant to the provisions of any petroleum agreement;
- (i) provide such information, data, reports and samples concerning upstream petroleum operations as the Cabinet Secretary or Authority may require; and
- (j) conduct all upstream petroleum operations in accordance with the best petroleum industry practice.

(2) The contractor shall have the exclusive right to explore and exploit petroleum in the contract area subject to the provisions of this Act, the regulations made thereunder and the petroleum agreement.

Submission of joint operating agreements

56. Where two or more persons enter into a joint venture partnership with a view of applying for a petroleum agreement, they shall upon signing a petroleum agreement submit a joint operating agreement to the Cabinet Secretary on or before the effective date of the petroleum agreement.

Operator

57. (1) There shall be appointed for each petroleum agreement, an Operator nominated by the contractor and approved by the Cabinet Secretary.

(2) A contractor may, with the approval of the Cabinet Secretary, change an Operator as may be stipulated in the petroleum agreement and in the regulations made under this Act.

(3) Notwithstanding subsection (2), the Cabinet Secretary may in exceptional circumstances prescribed in regulations, change an Operator-

Provided that the Operator shall be the contractor or one of the joint venture partners in the event of a joint venture partnership.

Application for non-exclusive exploration permit

58. (1) A person intending to carry out non-exclusive exploration surveys shall apply to the Authority for a non-exclusive exploration permit.

(2) The application for a non-exclusive exploration permit shall be in the manner prescribed by regulations and shall be accompanied by the prescribed fee.

(3) A non-exclusive exploration permit shall be for a geographically delineated area.

(4) Non-exclusive exploration permits may be issued to different persons in respect of different non-exclusive exploration activities in the same area or areas.

(5) A non-exclusive exploration permit shall state—

(a) the date of issue of the permit;

(b) the area to which the permit relates;

(c) the type of data for which the permit is issued;

(d) the conditions under which the permit is issued; and

(e) confidentiality requirements.

(6) It shall be a condition of every non-exclusive exploration permit holder to provide at no cost to the Authority copies and samples of all the data collected.

Grant of non-exclusive exploration permit

59. (1) The Authority may, on application duly made for a non-exclusive exploration permit under section 58, issue the permit under such conditions as the Authority may determine.

(2) Information relating to non-exclusive exploration permits shall be made available to the public on request and the Authority shall ensure that every County Government affected by the non-exclusive exploration activities is kept informed in accordance with this Act.

(3) A person who contravenes the provisions of section 58 commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to a term of imprisonment of not less than ten years or both.

Ratification by Parliament

60. (1) The Cabinet Secretary shall submit a production sharing contract to parliament for ratification in accordance with Article 71 of the Constitution and the regulations made under this Act.

(2) Parliament shall approve or reject the production sharing contract provided in sub-section (1) within ninety days of receipt of the application.

Operational permits

61. (1) A contractor intending to carry out any of the upstream petroleum operations listed under sub-section (2) shall make an application for an operational permit to the Authority in accordance with this Act and regulations made thereunder.

(2) A contractor shall require an operational permit to do any of the following—

- (a) drill a well;
- (b) develop and produce petroleum;
- (c) construct petroleum gathering systems in the field;
- (d) build a crude oil storage facility;
- (e) plug or abandon any individual well;
- (f) operate an underground injection control well;
- (g) convert any individual well to an underground injection control well;
- (h) decommission or abandon any upstream petroleum facility;
- (i) develop, build, construct or operate a gas processing facility; or
- (j) remediation and reclamation upon abandonment of a well and/or facility.

(3) A contractor shall require specific operational permits to engage in upstream petroleum operations in each individual well which shall include the following information—

- (a) drilling permit for exploration, appraisal, development and production wells; shall include the global positioning system (GPS) location of the individual well, commitment by the contractor on ability to construct a well site, access road to the well site, facilitate mobility of equipment, supplies, and materials to the well site during drilling, monitoring, appraisal and evaluation activities;

the designation of a well for drilling shall be as stipulated by regulations made under this Act and shall consist of the name of the prospect, reservoir or field in which the well is to be drilled, followed by the serial number which indicates the chronological order in the drilling sequence for the prospect or field. Every well shall be identified by a unique designation indicating the block name and the basin in which it is located.

(b) development and production permit; shall include the system of production facilities, such as tank batteries, production units, flow lines and gathering lines, and other equipment, as deemed necessary to conduct production activities; and

(c) plugging and abandonment permit shall include the proper methodology approved by the Authority in consultation with the Government agency responsible for environment, and complete restoration of the individual well site, well site access road and removal of all equipment, supplies and materials used during drilling and production.

(4) Before the issuance of any permit, the local community in the County where upstream petroleum operations are to take place shall be sensitized.

(5) The sensitization shall be undertaken by the Authority in collaboration with the contractor, in accordance with the regulations made under this Act.

(6) The Authority shall grant operational permits to qualified contractors, upon completion of successful application process that conform to all the requirements of this Act and the regulations thereto.

(7) A person who contravenes the provisions of this section commits an offence and upon conviction shall be liable to a fine of not less than ten million shillings or to a term of imprisonment of not less than two years or both.

Security for compliance and suspension or termination of petroleum agreement

62. (1) On or before the commencement of the initial exploration period or of any additional exploration period the contractor shall provide a security, in such form to be provided in the petroleum agreement guaranteeing the contractor's minimum work and expenditure obligations.

(2) Subject to this section and this Act, where a contractor is in default of his minimum work and expenditure obligations, the Cabinet Secretary may, by notice in writing served on the contractor, suspend or terminate the petroleum agreement and recall the security forthwith.

(3) For the purposes of subsection (2), the contractor shall not be treated as in default unless the Cabinet Secretary has served the contractor with notice in writing giving the particulars of the default and the contractor has neglected to remedy the default within the period prescribed in the petroleum agreement or such reasonable additional time as may be granted by the Cabinet Secretary; or where the default cannot be remedied, the contractor has failed to offer adequate compensation in respect thereof.

Transfer of interest in a petroleum agreement

63. (1) Any interest in a petroleum agreement issued under this Act shall not be transferred without the written consent of the Cabinet Secretary.

(2) A contractor shall apply to the Cabinet Secretary, in the prescribed form and manner, for the transfer of an interest in a petroleum agreement and shall in so doing fulfil all other legal requirements under the laws of Kenya to qualify for such transfer.

(3) The Cabinet Secretary shall ascertain the financial and technical capacity of the person to whom the interest in the petroleum agreement is being transferred to and shall not consent to a proposed assignment, transfer or trade of an interest in any petroleum agreement to a person not eligible for the grant of a petroleum agreement under this Act.

(4) Subject to subsections (2) and (3), the Cabinet Secretary shall not unreasonably withhold consent to an application to transfer an interest in a petroleum agreement unless there is reason to believe that granting consent shall be against public interest or safety.

(5) In this section—

“transfer of interest in petroleum agreement” includes the acquisition of control by the person to whom an interest in a petroleum agreement under this Act is transferred; and

“control” in relation to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management by that person, whether through the ownership of shares, voting, securities, partnership or other ownership or participation interests, agreements or otherwise.

(6) This section applies to any direct or indirect transfer of interest or participation in the agreement, including, inter alia, assignment of shareholdings and other ownership shares that may provide decisive control of a contractor possessing a participating interest in the agreement.

(7) Any transfer or charge of the contractors’ fixed facilities shall be subject to the approval of the Cabinet Secretary.

(8) The Cabinet Secretary and the contractor shall inform the Government agency responsible for collection of taxes and revenues of all approvals for the transfer, assignment or trade of interest in a petroleum agreement within twenty (20) days after the approval.

(9) Subject to this Act, the holder of an interest in petroleum agreement shall notify the Cabinet Secretary whenever there is any change in the ownership or control of the exploration company or any joint venture company with an interest in petroleum agreement, and the holder of the interest and new owner shall tender a written commitment to the Cabinet Secretary that they shall continue to honour their obligations under the petroleum agreement.

(10) There shall be no transfer of shares and stocks by a company that holds a petroleum agreement in Kenya without prior consent of the Cabinet Secretary, except for listed companies.

(11) Notwithstanding any other payments that may be applicable for the transfer of shares and stocks by a company that is a party to a petroleum agreement, the Cabinet Secretary may charge such fees for the transfer as may be prescribed in regulations.

Report of discovery of petroleum

64. (1) A contractor shall report any discovery of the existence of any petroleum or any other resource within forty eight hours of discovery to the Cabinet Secretary who shall be the only authority to make the first public disclosure of the discovery.

(2) A contractor who makes a public disclosure of the discovery referred to in subsection (1) without having reported the discovery to the Cabinet Secretary within the period specified or without the approval of the Cabinet Secretary shall be liable to a penalty of not less than twenty million shillings.

(3) Where any other natural resource is discovered in the course of exploration and production of petroleum, the Contractor shall inform the Cabinet Secretary of such discovery and the Cabinet Secretary shall inform his counterpart in the ministry responsible for the discovered other natural resource.

Notification prior to abandonment

65. (1) A contractor shall furnish the Authority reasonable notice of the contractor's intention to abandon any well.

(2) The closure or plugging of any well shall be carried out only with the prior consent in writing of the Authority.

(3) A person who contravenes the provisions of subsection (1) commits an offence and upon conviction shall be liable to a fine of not less than twenty million shillings or to a term of imprisonment of not less than five years or both.

Surrender of blocks

66. (1) A contractor shall surrender all or part of the block as provided for in the petroleum agreement and regulations in this Act.

(2) In case of a partial surrender of a block the Cabinet Secretary shall require a contractor to surrender contiguous portions of a block in the manner specified in a petroleum agreement and in accordance with this Act.

(3) It shall be a requirement for the portion surrendered under subsection (2) to have geological and geophysical data which the contractor shall be under obligation to submit at the time of surrender.

(4) The surrender of any block shall not affect any liability on the part of the contractor incurred prior to the date of surrender in respect of the block.

(5) The Cabinet Secretary shall require the obligations stipulated in a petroleum agreement, including decommissioning costs applicable as well as any other conditions to be met at the time of surrender.

Development and production of petroleum

Development.

67. (1) Where a commercial field is established, such field shall be developed promptly by the contractor in accordance with the petroleum agreement, this Act and regulations made thereunder to ensure the most beneficial, effective and efficient use of the petroleum resources.

(2) A contractor shall prepare a field development plan which shall contain—

- (a) the contractors' proposals for the development of and production from the reservoir;
- (b) the contractor's assessment of whether the development of and production from the reservoir should be subject to unitization or joint upstream petroleum operations in accordance with the provisions of this Act;
- (c) the contractor's assessment of how to coordinate upstream petroleum operations with other contractors, including the joint use of facilities subject to this Act and any other applicable law;
- (d) the contractor's proposals relating to the spacing, drilling and completion of wells and the facilities required for the production of petroleum including—
 - (i) the estimated number, size and production capacity of production platforms, if any;

- (ii) the estimated number of production wells;
- (iii) the particulars of production equipment and facilities;
- (iv) the particulars of feasible alternatives for transportation of petroleum including pipelines; and
- (e) any other relevant information and data.

(3) The field development plan shall be submitted by the contractor to the Authority for review which shall advise the Cabinet Secretary for approval.

Petroleum production

68. An application for the grant of a production permit in accordance with this Act shall be accompanied by—

- (a) a report on the petroleum reservoir;
- (b) an approved field development plan;
- (c) assessment of all potential effects of the upstream petroleum operations on all aspects of the environment;
- (d) any relevant information that the Authority may reasonably require, including information relating to alternative proposals for development and production not included in the development plan;
- (e) any other information deemed pertinent by the Authority which shall include but not be limited to particulars of, extent, thickness, chemical composition, petro-physical properties, flow rates, permeability, porosity, and any other relevant geological geochemical and engineering data;
- (f) field decommissioning plan;
- (g) all relevant environmental licenses and reports as maybe required by law; and
- (h) any other requirement in accordance with the petroleum agreement and the provisions of this Act.

Variations or alterations in field development plan

69. (1) The contractor shall inform the Authority of any significant deviation or alteration of the terms and preconditions under which a field development plan has been submitted or approved as well as any significant alteration of facilities or use of facilities.

(2) On receipt of information under subsection (1), the Authority may approve the variation or alteration of terms and preconditions under which a plan has been submitted or approved as well as any significant alteration of facilities, or may in the alternative require a new or amended plan to be submitted for approval.

Natural gas

70. (1) The Cabinet Secretary shall promote the development of the natural gas industry in Kenya

(2) The petroleum agreement may provide terms in respect of natural gas including:

- (a) development and utilization of associated natural gas by the Government where the contractor does not wish to develop and utilize the associated natural gas;
- (b) development of non-associated natural gas;
- (c) minimization of flaring on natural gas;
- (d) extension of the exploration periods provided in contract for appraisal of the discovery, development of the discovery and market of natural gas;
- (e) valuation of natural gas;
- (f) overall contract period; and
- (g) any other terms necessary for development of natural gas.

Restriction on removal of petroleum and samples.

71. (1) No person shall remove any petroleum or any petrological specimens, sample of petroleum, brine and fresh water encountered in a borehole or well from the area from which it has been obtained to any other area, or disposed of in any manner, except—

- (a) by any person, with the written consent of the Authority, for the purpose of sampling or analysis;
- (b) by a contractor in accordance with the conditions of the petroleum agreement; or
- (c) as otherwise permitted by this Act and Regulations.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than twenty million shillings or to imprisonment for a term of not less than five years or to both.

Unitization

72. (1) A contractor shall immediately notify the Cabinet Secretary and the Authority in the event that a discovery is made in its contract area of a petroleum deposit capable of commercial exploitation that extends beyond the said contract area.

(2) In the event that each of the adjacent areas specified in subsection (1) is the subject of a petroleum agreement, the Authority may determine that the subject petroleum deposit shall be developed and produced pursuant to a unitization agreement.

(3) Upon determination by the Authority in subsection (2), the contractors involved shall cooperate in the preparation of a plan for the joint development and production of the relevant petroleum deposit.

(4) The plan contemplated in the subsection (3) shall be presented to the Authority for review and approval within eighteen (18) months from the date the Authority receives the notice referred to in subsection (1), or such longer period as the Authority may specify.

(5) In the event that such plan is not submitted within the period established in subsection (4), the Authority may arrange for an independent consultant to prepare such a plan in accordance with best petroleum industry practices and at the expense of the contractors involved.

(6) The consultant provided for in the subsection (5) shall consult with and keep all the parties informed of its work at all times.

(7) The contractors involved shall execute a unitization agreement based on the plan developed pursuant to either subsection (3) or (5) failure to which the petroleum deposits in question shall revert to the Government.

(8) In the event that the adjacent area to the contract as specified in subsection (1) is not subject to a contract, the Authority may determine that the subject petroleum deposit shall be developed pursuant to a unitization agreement and shall advise the Cabinet Secretary to arrange for the licensing of the adjacent area as shall be provided for in regulations under this Act.

Third party access to infrastructure

73. (1) Owners of infrastructure for the conduct of upstream and midstream petroleum operations shall have the obligation to provide access to such infrastructure to third parties under such reasonable conditions; provided that there are no significant technical challenges posed that prevent the utilization of such infrastructure by third parties.

(2) If the available capacity of such infrastructure is insufficient to accommodate third party requirements, the owners of such infrastructure shall be obliged to increase the capacity of such infrastructure in order that the third party requirements can be satisfied provided that—

- (a) Such expansion shall not have an adverse impact on the technical integrity and the safe operations of such infrastructure; and
- (b) The third parties will bear the cost to support increase in capacity of the infrastructure.

(3) Any agreements for the use of such infrastructure shall be submitted to the Authority for approval.

Segmentation

74. (1) A contractor engaged in upstream petroleum operations pursuant to a petroleum agreement shall be prohibited from owning, controlling, or otherwise having an interest in midstream or downstream petroleum operations.

(2) Nothing in subsection (1) shall be construed as prohibiting a parent company which owns a contractor from directly or indirectly participating in midstream or downstream petroleum operations.

Cessation of upstream petroleum operations

Petroleum field
decommissioning plan

75. (1) A contractor shall submit a field decommissioning plan to the Authority before a production permit to install and operate the facilities is issued.

(2) The plan referred to in subsection (1) shall contain proposals for continued production or shut down of production, decommissioning of facilities and any other information required under the regulations.

(3) The decommissioning of facilities referred to in subsection (2) may constitute further use of the facilities in the upstream petroleum operations, other uses, complete or partial removal and disposal or abandonment.

(4) The Authority may on receipt of the plan require further information and evaluation, or may require a new or amended decommissioning plan.

(5) The contractor may from time to time as directed by the Authority update the decommissioning plan as shall be provided for in the regulations made under this Act.

Decommissioning fund

76. (1) There shall be established a decommissioning fund for each development area or for other facilities operated in relation to a production permit under this Act for the purpose of costs related to the implementation of a decommissioning plan as provided in the petroleum agreements.

(2) The decommissioning fund shall be applied to the implementation of activities approved in the decommissioning plan.

(3) Payments into the decommissioning fund shall commence from the first calendar quarter in any of the following situations whichever is earlier—

(a) the petroleum production has reached fifty percent of the aggregate recoverable reserves as determined in an approved development plan and any successive re-appraisal of such initial recoverable reserves; or

(b) ten years before the expiry of the of the production permit.

(4) For every subsequent first calendar quarter in which petroleum is produced or a facility operated, the Authority shall charge the contractor a portion of the estimated future cost for decommissioning of facilities to be deposited in the fund.

(5) The amount deposited in the decommissioning fund shall be charged as operating cost subject to the cost recoverable limitations stipulated in the petroleum agreement or as may be provided by regulations.

(6) Where the decommissioning fund is not sufficient to cover the implementation of the decommissioning plan, the contractor, and where applicable, the owner of the facilities shall cover the costs and expenses.

(7) Where any amount remains in the decommissioning fund after the decommissioning plan has been implemented, such funds shall be distributed pro rata between the contractor and the Government (where the Government has participating interest).

(8) The management of the decommissioning fund shall be done by a committee consisting of representatives of the Government and the contractor, in such manner as may be prescribed by regulations.

Notification of
termination and
decommissioning

77. (1) The contractor shall notify the Authority of the date and time of intended termination of use of a facility if the said use is expected to terminate permanently before the expiry of the production permit.

(2) Decommissioning shall be scheduled to occur after a producing field reaches its economic limit.

(3) Decommissioning shall be carried out as provided for in this Act, the petroleum agreement and the decommissioning plan.

Disposal of
decommissioned
facilities

78. (1) The Authority may issue directions relating to the disposal of decommissioned facilities and shall stipulate a time limit for the implementation of such directions.

(2) Directions issued under subsection (1) shall take into consideration factors such as the economic efficiency, technical viability, safety and any environmental concerns as well as consideration for other users.

(3) The obligation to carry out directions relating to disposal, apply even where such directions are made or are to be implemented after the expiry of the production permit.

(4) Where the ownership of a facility has been transferred in accordance with this Act, the contractor and the owners shall jointly ensure that directions relating to disposal are adhered to.

(5) Where the directions are to the effect that the facility shall continue to be utilized in the upstream petroleum operations or for other purposes, the contractor, owner and user are jointly obligated to ensure that all directions on disposal in the future are carried out.

(6) Where directions relating to disposal of a facility are not carried out within the stipulated time, the Authority may take the necessary measures on behalf of the contractor or other responsible parties.

(7) Where the Authority takes any measures under subsection (6) on behalf of a contractor or other responsible parties, any risks or costs incurred arising out of that measure, shall be borne by the contractor or other responsible party.

Removal of property by
contractor

79. (1) Where a production permit has been surrendered or has expired, or has by reason of relinquishment ceased to comprise any area subject to the production permit, the Authority shall by notice in writing served on the contractor, direct that the contractor shall within the period specified in the notice—

(a) remove or cause to be removed from the area which was, but no longer is, subject to the production permit, all property brought into that area by any person engaged or concerned in the upstream petroleum operations authorized by the production permit, or to make arrangements that are satisfactory to the Authority with respect to that property;

(b) make an application and receive a plug and abandonment permit(s) to plug, to the satisfaction of the Authority, all wells drilled in that area by any person engaged or concerned in those operations; and

(c) take any action to the satisfaction of the Authority for the conservation and protection of the natural resources and the environment in that area.

(2) A direction given under subsection (1) shall be consistent with best petroleum industry practices, and nothing in this section or in any direction shall be construed as requiring any person serving or having served as the contractor to do anything contrary to best petroleum industry practices.

(3) A person to whom directions are given under subsection (1) who refuses or neglects to comply with such directions within the period specified in the notice, commits an offence and shall on conviction be liable to a fine not less than ten million shillings or imprisonment for a term not exceeding two years or both.

Liability for damages
for disposal of
decommissioned
facility

80. (1) A person obligated to implement directions relating to disposal of a decommissioned facility under this part shall be liable for damage or loss arising in connection to the disposal of the facility or other implementation related thereto.

(2) Where the contractor abandons a facility, the contractor shall be liable for any damage or loss caused in connection with the abandoned facility.

(3) Where there is more than one party liable under subsection (1) or (2), they shall be held jointly and severally liable for all financial obligations, penalties and/or liabilities.

(4) Where a decision is made to abandon the facility, it may be agreed between the contractor and the Government that future maintenance, responsibility and liability be assumed by the Government based on agreed financial compensation as provided for in the regulations

PART V

INFORMATION AND REPORTING

Reporting requirement

81. The contractor shall submit to the Authority reports on—

(a) all geological, geochemical, geophysical surveys, drilling, completion and production data and any other information in accordance with the petroleum agreement and regulations made under this Act;

(b) the rates and volume of petroleum produced, its composition including test production and the recovery of petroleum in connection with formation testing;

(c) the volumes and other results of production monitoring as well as monitoring procedure; and

(d) the use, injection, venting and flaring of natural gas or petroleum which information shall be based on metering.

Disclosure of information.

82. Information obtained under section 81 relating to any matter shall not be published or otherwise disclosed to a third party without prior consent in writing from the person from whom the information was obtained.

Provided that nothing in this section shall restrict—

(a) the disclosure of such information:

(i) to the Cabinet Secretary for the time being responsible for petroleum;

(ii) to any officer or authority having functions in relation to upstream petroleum, policy development, economic planning of upstream petroleum operations, tax administration or environmental management; and

(iii) in furtherance of a right to a person as provided for under the Constitution and other relevant laws; or

(b) the use of such information in any manner, which the Authority deems necessary or expedient in connection with the objects of this Act.

Contractor to furnish information.

83. It shall be the duty of every contractor to furnish the Cabinet Secretary and the Authority as the case may be at such times and in such form and manner, such information as the Cabinet Secretary and the Authority may in writing require.

False information.

84. A person who refuses to furnish the information requested under section 83 or who makes a false statement or a statement which he has reason to believe is untrue, to the Cabinet Secretary, and to the Authority, as required under this Act, commits an offence and shall, on conviction, be liable to a fine of not less than twenty million shillings or to a term of imprisonment of not less than five years or both.

Information required by the Authority

85. (1) Where the Authority has reason to believe that a person is in possession of any information or data relating to upstream petroleum operations or any petroleum obtained or the value thereof, the Authority may, by notice in writing, require that person to—

- (a) furnish to the Authority with that information or data within the period and manner specified in the notice;
- (b) attend before the Authority or its representatives at such time and place as may be specified to answer questions pertaining to upstream petroleum operations or any petroleum obtained or the value thereof; or
- (c) furnish to a person identified in the notice at such time and place specified such information or data in their custody or domain relating to upstream petroleum operations or any petroleum obtained or the value thereof.

(2) A person shall not be excused from furnishing information or data or answering a question when required to do so under this section on the ground that the information or data so furnished or the answer to the question might tend to be incriminating or expose them to liability or penalty.

(3) Where any information or data is furnished pursuant to a requirement under subsection (1) (c), the person to whom it is made available may make copies or take extracts from the data.

(4) Any person who—

- (a) refuses or fails to comply with the requirement in a notice under subsection (1) to the extent to which he or she is capable of complying with it; or
- (b) in purported compliance with any requirement referred to in subsection (1), knowingly or recklessly makes a statement or furnishes any information or data that is false or misleading in a material particular;

commits an offence and shall on conviction, be liable to the penalty provided in section 84.

PART VI

LOCAL CONTENT AND TRAINING

Local content requirements

86. (1) A contractor and its sub-contractors who conduct upstream petroleum operations shall –

- (a) comply with local content requirements in all of its operations;

- (b) ensure first consideration is given to services provided and goods manufactured in Kenya where the goods meet the specifications of the petroleum industry as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standards;
- (c) ensure qualified and skilled Kenyans are given first consideration with respect to employment at all levels of the value chain; and
- (d) ensure qualified and skilled Kenyans are given first consideration with respect to employment at all levels of the value chain.

(2) For the purpose of subsection (1) the contractor shall before engaging in upstream petroleum operations prepare and submit a long term and annual local content plan which corresponds with the work program to the Authority for approval.

(3) Without limiting the generality of subsection (2), the local content plan shall include sub-plans on the following—

- (a) employment and training;
- (b) research and development;
- (c) technology transfer;
- (d) industrial attachment and apprenticeship;
- (e) legal services;
- (f) financial services;
- (g) insurance services; and
- (h) succession plans for positions not held by Kenyans.

(4) The Cabinet Secretary shall make regulations on local content in the upstream petroleum operations.

Monitoring and enforcement of local content.

87. (1) The Authority shall monitor and enforce local content in upstream petroleum operations.

- (2) Without limiting the generality of subsection(1), the Authority shall—
- (a) oversee, coordinate and manage the development of local content;

- (b) prepare guidelines to include targets and formats for local content plans and reporting;
- (c) make appropriate recommendations to the Cabinet Secretary for the formulation of local content Regulations;
- (d) set minimum requirements for local content in local content plans;
- (e) public education and sensitization;
- (f) undertake local content monitoring, audit and enforcement; and
- (g) perform any other functions as may be prescribed in regulations.

Training and training fund

88. (1) Any institution wishing to provide human capital development, build knowledge and technical capacity in upstream petroleum operations must be accredited in accordance with guidelines issued under Section 129.

(2) There shall be established a training fund for the purpose of training Kenyan nationals in upstream petroleum operations.

(3) All moneys raised by the contractors as training contribution shall be paid into the training fund.

(4) No money shall be withdrawn from the training fund except as may be authorized by the Cabinet Secretary in accordance with the provisions of this Act and regulations made thereunder.

(5) All moneys from the training fund shall be used only for the purpose for which the fund is created.

(6) For the purposes of this section, the training contribution shall be such amount as is specified in the petroleum agreement.

PART VII

PAYMENTS AND REVENUES

Collection of taxes, profit petroleum and royalties.

89. (1) The contractor shall comply with financial and fiscal obligations in the implementation of the petroleum agreement under this Act and other relevant laws.

(2) The contractor shall pay to the Government all taxes, relevant fees and levies in such manner as may be prescribed by both the petroleum agreement and any other relevant laws.

(3) Taxes, profit petroleum and royalties from upstream petroleum operations shall be collected in accordance with the relevant tax laws and accounts provided to the Government agency responsible for collection of taxes in the manner it prescribes.

(4) Where a person fails to make a payment under this Act when the amount falls due, the person shall pay such penalty as shall be prescribed in the production sharing contract or any other petroleum agreement. Such penalty shall be without prejudice to the Government exercising any other remedies available in law.

Annual Fees

90. (1) The holder of a petroleum agreement shall pay annual fees as may be prescribed by a petroleum agreement and regulations.

(2) The annual fees referred to under subsection (1) include—

(a) surface fees;

(b) training fees; and

(c) such other fees as may be prescribed.

(3) The annual fees under subsection (1) shall be payable on the grant of a petroleum agreement and thereafter annually on the anniversary of the grant until the termination of the petroleum agreement.

Signature bonus

91. (1) Prior to the award of the petroleum agreement the contractor shall pay to the Government such signature bonus as shall be prescribed in the petroleum agreement.

(2) In this section, “signature bonus” means a single, non-recoverable lump sum payment by the contractor to the Government upon execution of the petroleum agreement.

Payment terms

92. All payments due to the Government under this Act shall be in an internationally acceptable and freely convertible currency.

Petroleum revenue

93. (1) The profit petroleum shall be shared between the contractor and the Government in accordance with the petroleum agreement.

(2) The Government’s share of petroleum revenues exclusive of taxes shall be deposited into a dedicated petroleum fund, and managed in accordance with the Public Finance Management Act, the Constitution and any other relevant law.

Sharing of petroleum resource.

94. (1) The Government’s share shall be apportioned between the National Government, the County Government and the local community.

(2) The County Government's share shall be equivalent to twenty percent of the Government's share.

Provided that the amount allocated in accordance to this sub-section shall not exceed twice the amount allocated to the County Government by the Commission for Revenue Allocation in the financial year under consideration.

(3) The amount shared under subsection (2) shall be exclusive of the amount allocated by the Commission for Revenue Allocation in the financial year.

(4) The local community's share shall be equivalent to five percent of the Government's share and shall be payable to a trust fund managed by a board of trustees established by the County Government in consultation with the local community.

Provided that the amount allocated under subsection (4) above shall not exceed one quarter of the amount due to the County Government in the financial year under consideration.

(5) The respective County Government shall legislate on the establishment of the board of trustees and the prudent utilisation of the funds received under this section for the benefit of present and future generations.

Sovereign Wealth Fund

95. (1) There is established a Sovereign Wealth Fund at The National Treasury into which shall be paid a percentage of Government's share of revenue as shall be received from proceeds of petroleum and managed by the Government.

(2) The purpose of the fund shall be to—

- (a) provide an endowment to support development in future generations when petroleum reserves may have been depleted;
- (b) to cushion the impact on or sustain public expenditure capacity during periods of unanticipated petroleum revenue shortfalls;
- (c) build a savings base for the Kenyan people;
- (d) enhance the development of Kenyan infrastructure; and
- (e) provide stabilization support in times of economic stress;

(3) The Cabinet Secretary of The National Treasury, shall determine, with the approval of parliament the—

- (a) amounts payable into the Fund;

(b) management of the Fund; and

(c) withdrawals to be made from the Fund.

Provided that the amount payable into the Fund shall be at least five per centum of the Government share of proceeds.

PART VIII

ENVIRONMENT, HEALTH AND SAFETY

Environmental compliance and quality management

Environmental compliance in the contractor's work practices

96. (1) A contractor shall carry out upstream petroleum operations in the contract area in accordance with all the applicable environment, health, safety and maritime laws and best petroleum industry practices.

(2) Without prejudice to the generality of the sub-section (1), the contractor shall—

- (a) take all reasonable steps necessary to secure the safety, health and welfare of persons engaged in all its operations in or about the contract area;
- (b) deploy the best available technology to assure quality, environment, health and safety requirements are met;
- (c) control the flow and prevent the waste or escape in the contract area of petroleum, gas (not being petroleum) or water;
- (d) prevent the escape in the contract area of any mixture of water or drilling fluid and petroleum or any other matter;
- (e) prevent damage to petroleum bearing strata in any area in respect of which the petroleum agreement is not in force;
- (f) keep separate, in such manner as the Authority may by notice in writing served on the contractor direct, each petroleum reservoir discovered in the contract area, and any sources of water discovered in the contract area;
- (g) prevent water or any other matter entering any petroleum reservoir through the wells in the exploration or development area, except when required by, and in accordance with, best petroleum industry practices;

- (h) prevent the pollution of any soil, air, biodiversity, brine, water well, spring, stream, river, lake, reservoir, estuary or harbour by the escape of petroleum, salt water, drilling fluid, chemical additive, gas (not being petroleum) or any other waste product or effluent;
- (i) where pollution occurs, treat or disperse it in an environmentally acceptable manner;
- (j) furnish to the Authority, prior to the drilling of any well, a detailed report on the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed, in the drilling of the well; and
- (k) prevent from flaring or venting of oil and natural gas by undertaking all reasonable steps including the harnessing or re-injecting of the gas.

Environmental
compliance in handling
of waste

97. (1) A contractor shall ensure that the management of production, transportation, storage, treatment and disposal of waste arising out of upstream petroleum operations is carried out in accordance with all the applicable environment, health, safety and maritime laws and best petroleum industry practices.

(2) A contractor may contract a separate entity to manage the transportation, storage, treatment, spillage or disposal of waste arising out of upstream petroleum operations.

(3) For the avoidance of doubt the contractor shall remain responsible for the activities of the entity referred to under subsection (2).

(4) A person contracted by the contractor under subsection (2) shall not carry out those activities without being registered and licensed by the Government agency responsible for environment and any other relevant government entity.

(5) A person who carries on the management of the production, transportation, storage, treatment, clean up or disposal of waste arising out of upstream petroleum operations without a license or fails to comply with the terms and conditions prescribed in the license issued under subsection (4) commits an offence and is liable on conviction to a fine of not less than twenty million shillings or imprisonment of not less than five years or both.

Maintenance of
property

98. (1) A contractor shall—

- (a) maintain in good condition and repair, all structures, facilities, equipment and other property in the area subject to the petroleum agreement and used in connection with the operations in which the contractor is engaged;
- (b) remove from that area all structures, facilities, equipment and other property that are not either being used or intended to be used in connection with those operations; and
- (c) take reasonable steps to warn persons within the vicinity of any such structure, facilities, equipment or other property of the presence of the structure, equipment or other property and the possible hazards resulting there from.

(2) Subsection (1) shall not apply in relation to any structure, equipment or other property that was not brought into the area subject to the petroleum agreement by or with the authority of the contractor.

(3) A contractor who contravenes subsection (1) commits an offence and shall on conviction, be liable to a fine of not less than one million shillings or to a jail term of not less than six months or both.

Venting and flaring of
oil and natural gas

99. (1) Venting and flaring of oil and natural gas in the course of the conduct of upstream petroleum operations shall be prohibited except with the prior authorization of the Authority in consultation with the Government agency responsible for environment and any other relevant government entity in the case of—

- (a) such short-term flaring for production testing; or
- (b) emergency or safety reasons; and

in each case the contractor shall comply with the terms and conditions contained in the instrument of consent, relevant regulations and best petroleum industry practices.

(2) Any application to the Authority in respect of proposed flaring of oil or natural gas shall include an evaluation of reasonable alternatives to flaring that have been considered along with information on the amount and quality of oil or natural gas involved and the duration of the requested flaring.

(3) In considering the application under subsection (1) and (2), the Authority shall be satisfied that flaring is necessary to safeguard the health and safety of persons in the contract area or to prevent damage to the property of any person.

(4) A contractor who contravenes, fails or neglects to comply with a requirement of this section commits an offence and shall on conviction be liable to a fine of not less than one hundred million shillings or a jail term of not less than five years or both.

Reporting of accidents and incidents.

100. (1) A person engaged in any undertaking or activity pursuant to a petroleum agreement or permit issued under this Act shall notify the Authority within forty eight hours in writing, in the form and manner prescribed by the Authority, of any accident or incident causing loss of life, personal injury, explosion, oil spill, fire or any other accident or incident causing harm or damage to the environment or property which has arisen in Kenya or within Kenya's Exclusive Economic Zone or Outer Continental Shelf.

(2) The Authority may direct an investigation to be carried out into any accident or incident under subsection (1) and take such action as it deems necessary.

Standardisation.

101. A person shall not use or employ for or in connection with any of the purposes of producing, transporting, storing or using upstream petroleum, any mode, material or apparatus other than that which complies with the specification or standard of the Kenya Bureau of Standards or where no such standard exists, any international standard approved by the Kenya Bureau of Standards.

Health and Safety

Safety

102. Upstream petroleum operations shall be conducted in such a manner as to enable a high level of safety to be maintained and further developed in accordance with technological advancement, best petroleum industry practices, the Occupational Safety and Health Act as amended from time to time and any other applicable laws.

Safety precautions

103. (1) A contractor shall take such precautions as are necessary to-

- (a) ensure the safety of any person employed or otherwise within the vicinity of any installation in accordance with the Occupational Safety and Health Act as amended from time to time and any other relevant law; and
- (b) protect the environment and natural resources, including taking precautions to prevent pollution.

(2) The contractor shall ensure that the persons referred to in subsection (1) (a) are duly informed of those precautions and that the contractor has secured the requisite insurance to cover any such eventualities.

General requirements
for emergency
preparedness

104. (1) A contractor and any other participant in upstream petroleum operations shall, at all times maintain efficient measures for emergency preparedness with a view to dealing with incidents which may lead to loss of life or personal injury, pollution or damage to property.

(2) The contractor shall ensure that the measures taken to prevent or reduce harmful effects, include measures to ensure that the environment is restored as much as possible to its original condition prior to commencement of operations.

Emergency
preparedness measures

105. (1) The contractor shall initiate and maintain emergency preparedness measures to prevent and mitigate against any hazards occurring within facilities and shall at all times have contingency plans to deal with such emergencies.

(2) The contractor shall place facilities at the disposal of the relevant authorities for emergency and security drills and shall, where necessary, participate in such drills.

(3) The contractor shall take all reasonable measures to—

(a) identify the hazards and evaluate the risks associated with any work performed in the course of upstream petroleum operations carried out under the license which constitute a hazard to the health of persons employed for the purposes of that work and the steps to be taken to comply with the provisions of this Act and Regulations made herein, and

(b) as far as practicable, prevent the exposure of the persons referred to in paragraph (a) to the hazards.

Disaster preparedness,
prevention and
management unit.

106. (1) There shall be established a disaster preparedness, prevention and management unit under the Ministry to coordinate response to accidents, disasters and other emergencies that may occur within upstream petroleum operations.

(2) The disaster preparedness, prevention and management unit shall collaborate with the National Disaster Operations Centre and other relevant Ministries and agencies to ensure a timely response and emergency preparedness resource sharing.

(3) The Cabinet Secretary shall formulate and periodically update a risk assessment of upstream petroleum operations and implement appropriate risk mitigation programs.

Safety zones

107. (1) There shall be a safety zone surrounding every facility carrying out upstream petroleum operations, unless otherwise determined by the Cabinet Secretary on advice by the Authority.

(2) The Cabinet Secretary may upon advice by the Authority, in cases of accidents and emergencies establish or extend the safety zones under subsection (1).

(3) The extent of the safety zones referred to in subsection (1) and (2) shall be determined by the Cabinet Secretary in consultation with the Authority; except where a safety zone extends across the border line with another state, the Cabinet Secretary shall consult Parliament.

(4) The Cabinet Secretary may direct that—

(a) a zone corresponding to the safety zone shall be established in reasonable time before the placing of the facilities as mentioned in subsection (1);

(b) there shall be a safety zone around and above abandoned or dumped facilities, or part of the facility; or

(c) a person shall not carry out unauthorized activity in the safety zones.

Suspension of upstream petroleum operations pursuant to emergency

108. (1) Where an accident or an emergency referred to in Section 100 occurs, the contractor or other person responsible for the operation and use of the facility shall, to the extent necessary, suspend the upstream petroleum operations for as long as the requirement of prudent operations warrants.

(2) Where special circumstances exist, the Cabinet Secretary may order that upstream petroleum operations be suspended to the extent necessary, or may impose particular conditions to allow continuation of the activities.

(3) The contractor shall at all times ensure that any person carrying out work for the contractor possesses the necessary skills and qualifications to perform the work in a prudent manner in accordance with regulations made under this Act.

Liability for damage due to pollution

Liability of contractor for damage due to pollution

109. The contractor shall be liable for damage from pollution without regard to fault from whichever source related to the upstream petroleum operations of the contractor when the damage occurs in Kenya or within its territorial waters.

PART IX

USE OF LAND FOR UPSTREAM PETROLEUM OPERATIONS

Access to land

110. (1) Where a contractor intends to enter upon any land for the purposes of conducting upstream petroleum operations, access to such lands shall be governed pursuant to the provisions of the Constitution and the relevant land laws.

(2) A person who wishes to enter upon any land, other than his own to—

(a) undertake exploratory activities relating to upstream petroleum operations; or

(b) carry out a survey of the land for the purposes of paragraph (a);

shall seek the prior consent of the owner of such land, which consent shall not be unreasonably withheld.

Provided that where the owner cannot be traced, the applicant shall give fifteen days' notice, by public advertisement, in at least two newspapers of nationwide circulation.

(3) The Cabinet Secretary shall prescribe the forms and procedures for seeking and granting of the consent.

Power of entry to inspect land.

111. The National Land Commission may authorize in writing, any person to enter upon any land specified in section 110 to inspect the land and to do all things that may be reasonably necessary to ascertain whether the land is suitable for the intended purpose.

Provided that if there is any damage resulting from such entry the applicant shall pay in full, just compensation as is payable under the Land Act.

Consent to proposal.

112. (1) An owner, after receipt of a request for consent under section 110 may consent in writing to the development of upstream petroleum operations, upon agreement being reached with the applicant as to the amount of compensation payable, if any, and any consent so given shall be binding on all parties having an interest in the land, subject to the following provisions—

(a) that any compensation to be paid by the contractor giving notice to the owner, in cases where the owner is under incapacity or has no power to consent to the application except under this Act, shall be paid to the legal representative of the owner; or

(b) that an occupier or person other than the owner interested in the land shall be entitled to compensation for any loss or damage he may sustain by the development of upstream petroleum infrastructure so long as the claim is made within three months after the development.

(2) No consent expressed in writing in accordance with subsection (1) shall be void by reason only of non-compliance with any statutory requirements as to registration.

Objection to proposal.

113. (1) Any person who objects to a proposal to develop upstream petroleum infrastructure on his land shall raise his objection in accordance with the provisions of section 112 of the Land Act.

(2) In the case of acquisition of rights of way or way leaves, the person shall raise the objection in accordance with the provisions of section 146 of the Land Act.

Payment of compensation.

114. If any difficulty or question arises as to the person entitled to compensation payable under this Act, the determination on entitlement shall be made in accordance with the provisions of the Land Act.

Power of the contractor to enter land to inspect or repair upstream petroleum infrastructure.

115. (1) After upstream petroleum infrastructure has been laid in accordance with this Act, the contractor or any person authorized by the contractor may, from time to time as it becomes necessary, enter the land on which the upstream petroleum infrastructure is laid with such assistance as may be necessary, for the purpose of operating, inspecting or repairing the infrastructure, or removing such infrastructure in case where the infrastructure is no longer required.

(2) Where upstream petroleum infrastructure is removed, the surface of the land shall forthwith be restored to its former condition as far as possible and in default thereof restoration may be carried out by the owner of the land, and the costs thereof shall be recoverable from the contractor.

Liability of contractor to make compensation for damage.

116. The provisions of this Act shall not relieve a contractor of the liability to make compensation to the owner or occupier of any land or the agents, workmen or servants of the owner or occupier of any land which is the subject of the provisions of this Act, for damage or loss caused by the exercise or use of any power or authority conferred by this Act or by any irregularity, trespass or other wrongful proceeding in the execution of this Act, or by the loss or damage or breaking of any upstream petroleum infrastructure, or by reason of any defect in such infrastructure.

Installation of upstream petroleum infrastructure along roads, railways, etc.

117. (1) For the purpose of the production and transportation of upstream petroleum, a contractor may erect, fix, install or lay any oil or gas pipelines, other infrastructure or apparatus in, through, upon, under, over or across any public street, road, railway, tramway, river, canal, harbor or Government property, including forests, national parks, reserves and heritage sites, in the manner and on the conditions as provided in this Act.

(2) Notwithstanding the provisions of any other written law, but subject to the provisions of this section, a contractor may break up any street within his area of operation, and may erect upstream petroleum infrastructure along, under or over any such street, and may, from time to time, operate, repair, alter or remove any such infrastructure so erected, laid or constructed:

Provided that the person having the control of such street road, railway, tramway, river, canal, harbour or Government property shall have a prior right to break up and repair such street with reasonable despatch upon payment to him of a reasonable charge by the contractor.

(3) A contractor shall, not less than thirty days before exercising any power conferred upon him by this section, give notice in writing to the person concerned of the intention to do so, except in a case of emergency and in such case the contractor shall notify the person concerned as soon as possible after the emergency has arisen.

(4) The powers conferred upon a contractor by this section shall, except in a case of emergency, be exercised only under the superintendence of the person concerned and according to a plan showing the location or route and in terms of specifications approved by the person concerned, or, if any dispute arises in respect of such plan, route or specifications, as may be approved by the licensing authority.

Provided that if the said person concerned fails to exercise the powers of superintendence conferred by this section the contractor may, after giving notice, exercise those powers without such superintendence.

(5) Whenever a contractor carries out any work authorized by this section, he shall comply with the legislation, if any, of the County Government concerned and shall complete that work with reasonable despatch and reinstate the street broken up and remove any debris or rubbish occasioned thereby and shall, while the street is broken up or obstructed, cause the works to be, at all times, fenced and guarded and during the night, adequately lit.

(6) If the contractor fails or unreasonably delays in carrying out the work referred to in subsection (5), the County Government concerned may cause the work to be executed at the expense of the said contractor.

(7) A contractor shall pay to the said County Government the costs reasonably and necessarily incurred by it in executing such work.

(8) Nothing in this section shall be construed as relieving a contractor of any liability in respect of any loss or damage caused by his negligence in carrying out such work or by his failure to comply with the provisions of this section.

Compulsory acquisition
of land.

Act No. 6 of 2012

118. (1) If the Cabinet Secretary is satisfied that the holder of a license under this Act—

(a) reasonably requires land for purposes of constructing, modifying or operating any upstream petroleum infrastructure or for incidental purposes; and

(b) has failed to acquire the land by agreement after making reasonable attempts to do so,

the Cabinet Secretary may apply to the National Land Commission to acquire the land compulsorily under the Land Act.

(2) Compensation for compulsory acquisition of land or rights in land shall be determined pursuant to the provisions of the Constitution and the relevant land laws and any other relevant law.

(3) Whenever, in the course of carrying out upstream petroleum operations, any disturbance of the rights of the owner or occupier of private land, or damage to the land, or to any crops, trees, buildings, stock or works therein or thereon is caused, the contractor shall be liable on demand to pay to the owner or occupier such compensation as is fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land.

(4) If the contractor fails to pay compensation when demanded under subsection (3), or if the owner or occupier is dissatisfied with the amount of compensation offered to him, the owner or occupier may, within six months of the date on which the demand or offer is made, take proceedings before a court of competent jurisdiction for the determination and recovery of compensation (if any) properly payable under subsection (3).

PART X

MISCELLANEOUS

Dispute Resolution

119. (1) All disputes between parties to a petroleum agreement arising from upstream petroleum operations shall be resolved through alternative dispute resolution mechanisms in the first instance.

(2) Any other disputes arising from a regulated function under this Act shall be referred to the Authority for determination in the first instance.

(3) Any person who is dissatisfied with the decision of the Authority under subsection (2) may appeal to the Tribunal.

Indemnity of the
Government of the
Republic of Kenya

120. A contractor under a petroleum agreement shall keep the Government indemnified against all actions, claims and demands that may be brought or made against the Government by reason of anything done by the contractor in the exercise of the rights under the petroleum agreement.

Transparency and accountability

Framework for
reporting transparency
and accountability

121. (1) In accordance with this Act, the Cabinet Secretary shall develop a framework for reporting, transparency and accountability in the upstream petroleum sector, which includes the publication of all petroleum agreements, records, annual accounts and reports of revenues (fees, taxes, royalties and other charges), as well as, any other relevant data and information that support payments made by the contractor and payments received by the Government, County Governments, and local communities.

(2) For reporting purposes, the transparency and accountability framework for the upstream petroleum sector shall be disaggregated into each petroleum agreement, non-exclusive permit, drilling permit, production permit, and plug and abandonment permit in the following categories—

- (a) payment type by each contractor (i.e., taxes, fees, royalties, and other charges);
- (b) production volumes by each contractor measured at the delivery point of sale;
- (c) transfers of all upstream petroleum sector revenues from national Government to County Governments and communities, including royalties; and
- (d) all contractor contributions in cash or in kind to County Governments and local communities.

Offences

Orders for forfeiture.

122. Where a person is convicted of an offence under this Act, in addition to any other penalty imposed, an order shall be made—

- (a) for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence;

- (b) for the forfeiture of petroleum recovered in the course of the commission of the offence;
- (c) for the payment by that person to the Government of an amount equal to the proceeds of the sale of the petroleum so received; or
- (d) for the payment by that person to the Government of the value at the wellhead, assessed by the court in respect of the quantity recovered or for the payment of such a part of that amount as the court, having regard to all the circumstances, deems fit.

Offences deemed to be economic crimes.

123. (1) A person who willfully—

- (a) encroaches, illegally acquires or deals in land set aside for upstream petroleum infrastructure projects;
- (b) vandalises or attempts to vandalise upstream petroleum installations and infrastructure;
- (c) steals or attempts to steal any upstream petroleum equipment or appliance or handles any upstream petroleum equipment or appliance (otherwise than in the course of stealing) knowing or having reason to believe the equipment or appliance may be stolen, or dishonestly receives or retains the equipment or appliance, or dishonestly undertakes, or assists in its retention, removal, disposal or realization by or for the benefit of himself or another person or if he arranges to do so;
- (d) destroys or damages upstream petroleum infrastructure; or
- (e) maliciously misinforms the public on matters of upstream petroleum with criminal intent or driven by gain leading to economic sabotage.

commits an offence which is deemed to be an economic crime and shall on conviction, be liable to a fine of not less than one hundred million shillings, or to a term of imprisonment of life, or to both.

(2) Any vessel used to convey the vandalised equipment or appliance in the attempted vandalism detailed in subsection (1) shall be forfeited to the state.

(3) Civil recovery may also be instituted in a court of competent jurisdiction to make good the loss suffered.

Offences by
bodycorporates or their
employees

124. An employer or principal shall be liable for an offence committed by an employee or agent under this Act, unless the employer or principal proves that the offence was committed against the employer's or principal's express or standing directions.

Penalties not to affect
other liabilities

125. The penalties imposed under this Act shall be in addition to and not in derogation of any liabilities in respect of payment of compensation or revocation of a petroleum agreement or permit as the case may be.

General penalty

126. Where any default in or contravention of any of the provisions of this Act is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall on conviction be liable to a fine of not less than five million shillings.

Community Rights

Community rights

127. Subject to the provisions of the Constitution of Kenya, 2010 and any other written law the community shall have the right to—

- (a) be informed through an appropriate communication strategy prior to carrying out of any upstream petroleum operations within their county and sub-county;
- (b) put forward any inquiries, interrogate planned activities which directly or indirectly affect their interaction with the ecosystem during the preliminary phase of awarding of petroleum licenses for consideration;
- (c) adequate compensation for land taken over for upstream petroleum operations in accordance with relevant land laws and the Constitution;
- (d) be compensated by any contractor who causes environmental damage and/or pollution;
- (e) be compensated for any injury and/or illness directly or indirectly related to the upstream petroleum operations if the contractor was in a position to take measures to prevent the occurrence of the same;
- (f) compensation for damage to property and lost source of revenue or livelihood as a result of upstream petroleum operations taking place in their immediate surroundings;
- (h) be educated and sensitized on upstream petroleum operations within their county and sub-county; and

(g) participate in planning for corporate social responsibility projects that are to be implemented within the contract area by the contractor in consultation with the Government and the County Government.

Regulations

Cabinet Secretary may make regulations generally.

128. (1) The Cabinet Secretary may, on the recommendation of the Authority and subject to sections 6 and 129, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations to be made under this Act may be formulated by the Authority on its own motion or may be proposed to the Authority by any contractor, Operator or person.

(3) Before making recommendation of any regulations to the Cabinet Secretary under this Act, the Authority shall publish the proposed regulations for purposes of inviting proposals from the public, in such manner as it may deem fit, at least thirty days before the regulations are submitted to the Cabinet Secretary.

(4) The regulations made by the Cabinet Secretary in accordance with this section may, impose conditions, requiring acts or things to be performed or done to the satisfaction of the Authority, prohibiting acts or things from being performed or done and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or within which such conditions shall be fulfilled.

(5) The regulations made under this Act may be made for a limited period or without limit of period, and may be made subject to such conditions as the Cabinet Secretary deems fit, and may contain such supplemental and consequential provisions as the Cabinet Secretary considers necessary for giving full effect to this Act.

Regulations

129. Without limiting the generality of section 128, the Cabinet Secretary may make regulations with respect to the following—

- (a) the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum reservoir;
- (b) the fees including and not limited to surface fees, training fees and signature bonus, royalties or any other payments to be made by the contractor under a petroleum agreement;
- (c) the opening up of areas for upstream petroleum operations;
- (d) terms and conditions for petroleum agreements;

- (e) requirements and procedures for unitization;
- (f) terms and conditions for the application and approval of non-exclusive exploration permit;
- (g) terms and conditions for the application and approval of drilling permits;
- (h) authority granted under a drilling permit, procedures and methods for drilling wells;
- (i) terms and conditions for the application and approval of production permits;
- (j) authority granted under a production permit, procedures and methods for the production wells;
- (k) terms and conditions for the application and approval of plugging and abandonment permits;
- (l) authority granted under a plugging and abandonment permit, procedures and methods for the plugging and abandonment of wells;
- (m) the contractor's schedule for exploration and production within a block;
- (n) obligations for exploration operations and associated expenditures;
- (o) procedure, conditions and terms for the assignment or transfer of rights and obligations of a contractor under a petroleum agreement
- (p) registration of contractors;
- (q) operations and management of the National Data Centre;
- (r) the manner in which reports, data, information and accounts relating to upstream petroleum operations shall be submitted to the Authority;
- (s) conduct of field inspections, controls and enforcement methods and procedures of the contractors' operations;
- (t) procedures regarding the revocation or termination of petroleum agreements and decommissioning, abandonment and site rehabilitation;

- (u) conduct of upstream petroleum operations, conservation of petroleum resources and measures relating to safety, environmental protection and the management, production, transportation, storage, treatment and disposal of waste, pollution and accidents;
- (v) procedures and terms for performance security measures required to be provided by contractors;
- (w) procedures for protection, safety, and security of contractor personnel, equipment, materials, facilities, and supplies in petroleum operations;
- (x) criteria for the evaluation of the petroleum agreement applications and approval of requests for extensions of petroleum agreements;
- (y) terms and conditions for the exploration, production, development, allocation and sharing of petroleum;
- (z) terms and conditions for flaring of natural gas during facility and well testing, emergencies or for safety reasons;
- (aa) regulations to govern the interests of the County Governments and local communities where upstream petroleum operations are being conducted;
- (bb) local content development, capacity building and development in the upstream petroleum sector;
- (cc) construction, erection, maintenance, operation or use of upstream petroleum facilities;
- (dd) pressure maintenance in, or the re-pressuring of a petroleum reservoir by re-injection of natural gas;
- (ee) secondary or tertiary recovery of petroleum from a petroleum reservoir and the methods to be used in such recovery;
- (ff) re-injection wells that are for sub-surface disposal of petroleum waste, brine, waste water and other substances produced in association with the exploration for or the recovery of petroleum;
- (gg) viable use and sustainable markets for (associated and/or non-associated) natural gas discoveries;

- (hh) methods to be used for the measurement of petroleum, brines and liquid wastes, and other substances produced from a well or petroleum reservoir;
- (ii) requirements for the submittal of well samples, including petroleum, brine and liquid wastes, gas, rock chips, and rock cores to the Authority, receipt and analysis of well logs, geophysical surveys, geologic mapping, down-hole geological and engineering investigations, well construction and other forms of technical reports and research documents;
- (jj) coordination of contractor safety, emergency preparedness and evacuation procedures, and suspension of upstream petroleum operations;
- (kk) framework for transparency and accountability in the upstream petroleum sector;
- (ll) guidelines for accreditation of institutions offering or intending to offer training in upstream petroleum operations; and
- (mm) formation of business relationships between international oil companies and Kenyan companies for the purpose of technology, experience, knowledge and expertise acquisition.

PART XI

REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal, savings and
transitional provisions
Cap 308

130. (1) Subject to the provisions of subsection (2), the Petroleum (Exploration and Production) Act is repealed.

(2) Notwithstanding the provisions of subsection (1)—

- (a) anything done under the provisions of the Petroleum (Exploration and Production) Act or the Cabinet Secretary under the Petroleum (Exploration and Production) Act before the commencement of this Act shall be deemed to have been done under the provisions of this Act;

- (b) any statutory instrument issued by the Cabinet Secretary under the provisions of the Petroleum (Exploration and Production) Act before the commencement of this Act shall be deemed statutory instruments granted by the Cabinet Secretary under the provisions of this Act and shall remain in force until specifically revoked under this Act;
 - (c) any revocation of a license under this Act shall not exempt the contractor from any liabilities to which the contractor may have become liable under the Act before such revocation;
 - (d) taxes, profit petroleum and royalties arising from upstream petroleum operations from the effective date of this Act shall be collected by the body responsible for collection of taxes and revenues in Kenya;
 - (e) any subsidiary legislation issued before the commencement of this Act shall, as long as it is not inconsistent with this Act, remain in force until repealed or revoked by subsidiary legislation under the provisions of this Act and shall, for all intents and purposes be deemed to have been made under this Act; and
 - (f) the contractual rights and obligations existing pursuant to the Petroleum (Exploration and Production) Act are preserved.
- (3) The powers and functions of the Authority under this Act shall in the interim period before the Authority is operationalized be exercised by the Energy Regulatory Commission established under section 4 of the Energy Act, 2006.
- (4) The Cabinet Secretary shall at an appropriate time operationalize the Authority through a notice in the *Kenya Gazette*.

FIRST SCHEDULE

MODEL PETROLEUM AGREEMENT

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide a framework for the contracting, exploration and development of petroleum together with production of petroleum discovered within licensed petroleum exploration blocks. The Bill also provides a framework for the safe cessation of upstream petroleum operations. The Bill proposes to repeal the Petroleum (Exploration and Production) Chapter 308 of the Laws of Kenya. The Bill further seeks to give effect to the relevant articles of the Constitution of Kenya, 2010 in so far as they apply to upstream petroleum operations.

Part I deals with Preliminary issues such as definition of terms as used in this Act, commencement, application and supremacy of the Act on matters relating to upstream petroleum operations.

Part II deals with the National Upstream Petroleum Policy and Plan. This part entrenches policy making and implementation by way of master plans in law so that obligations are placed and timelines determined to ensure that the same are done and done on time. This part also places obligations on the Government to create a conducive environment for upstream petroleum investments while ensuring that the investments are carried out to equitably benefit the people of Kenya.

Part III deals with petroleum institutions. This part details the powers and functions of the following institutions:

1. Cabinet Secretary;
2. National Upstream Petroleum Advisory Committee; and
3. Upstream Petroleum Regulatory Authority.

Part IV deals with upstream petroleum rights and management of petroleum resources. The part vests all petroleum existing in its natural condition on the Government in trust for the people of Kenya. The part further provides for the constitution of blocks, upstream petroleum licensing, exploration, development and production of petroleum and cessation of upstream petroleum operations.

Part V deals with information and reporting. The part provides for the reporting requirements of the contractor and information that may be required by the Cabinet Secretary. The part also provides for offences relating to refusal to provide information and furnishing of false information to the Cabinet Secretary or the Authority.

Part VI deals with local content. Local content has been defined to mean the added value brought to the Kenyan economy from petroleum related activities through systematic development of national capacity and capabilities and investment in developing and procuring locally available work force, services and supplies, for the sharing of accruing benefits.

The part authorises the Authority to monitor and enforce local content requirements in upstream petroleum operations. The part further provides for the training of Kenyans and the formulation of local content regulations in upstream petroleum operations.

Part VII deals with payments and revenues. The part obligates all contractors to pay all the relevant fees and levies as may be prescribed in the petroleum agreement and any other relevant legislation.

The part further provides for sharing of petroleum revenues and the establishment of a Sovereign Wealth Fund to provide endowment to support development for the benefit of future generations and to enhance the development of Kenyan infrastructure among other purposes.

Part VIII deals with environment, health and safety in upstream petroleum operations. The part obligates all contractors to comply with all environment, health, safety and maritime laws in upstream petroleum operations. This part further prohibits venting and flaring of oil and natural gas except with the authorisation of the Authority and the Government agency responsible for environment during production testing or for emergency reasons.

This part also establishes a disaster preparedness, prevention and management unit under the Ministry to coordinate response to accidents, disasters and other emergencies with relevant Ministries and agencies.

This part in addition provides for the establishment of a trustee fund and board of directors by relevant County Governments in consultation with the local community for purposes of management and accountability of the share of petroleum revenues earmarked for the local community.

Part IX deals with use of land in upstream petroleum operations.

Part X deals with miscellaneous provisions. This part provides dispute resolution mechanisms, provisions on transparency and accountability and offences under the Act. The part further provides for the rights of the communities in petroleum resource areas and regulations in upstream petroleum operations.

Part XI deals with repeals, savings and transitional provisions.