



**ECOWAS COMMISSION
COMMISSION DE LA CEDEAO
COMISSÃO DA CEDEAO**

ECOWAS REGIONAL PETROLEUM CODE

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CHAPTER I

OBJECT, SCOPE AND DEFINITIONS

Article 1 Object

1. This Code aims to promote the development of petroleum operations within the ECOWAS Region and defines the fundamental principles and rules relating thereto.
2. It also determines the fiscal, customs and foreign exchange regime for oil operations as well as the rights and obligations related to the said operations.

Article 2 Scope

1. This Code applies to the upstream activities of the hydrocarbons sector of the ECOWAS Region.
2. It also applies to Companies, Enterprises and Establishments carrying out their activities in the ECOWAS Region, regardless of their legal status, the location of their registered office or principal establishment and the nationality of the owners of their share capital or their managers. .

Article 3 Definitions

For the purposes of this Code, the following terms mean:

“Abandonment” activities of plugging and sealing of wells, dismantling of facilities, cleaning of hazardous substances, rehabilitation and depollution, decontamination of sites in accordance with international standards and best practices of the oil industry;

“Upstream activities” prospecting, exploration, development, exploitation and pipeline transportation of crude Hydrocarbons;

“Calendar year” period of twelve (12) consecutive months beginning on January 1 and ending on December 31;

“Prospecting authorization” act by which the Member State authorizes one or more legal persons to carry out, on a non-exclusive basis, prospecting activities in a given area;

“Authorization for the transport by pipeline of hydrocarbons” act by which the Member State authorizes one or more legal persons to carry out activities for the transport of Hydrocarbons by pipeline;

“Competent authority” Minister in charge of hydrocarbons or any legal or natural person duly authorized to act on behalf of the Member State in the hydrocarbons sector;

“Discovery bonus” bonus that the holder of an oil contract is obliged to pay to the Member State after the discovery of a deposit;

“Production bonus” bonus that the holder of an oil contract is obliged to pay to the Member State according to the quantities of hydrocarbons produced;

“Signature bonus” bonus that the holder of an oil contract is obliged to pay to the Member State after the conclusion of the contract;

“Code” ECOWAS Regional Petroleum Code;

“Community” Economic Community of West African States, referred to in Article 2 of the ECOWAS Revised Treaty;

“Concession contract” petroleum contract relating to the award of a hydrocarbon exploration permit or an exploitation concession; it lays down the rights and obligations of the Member State and of the holder during the period of validity of the exploration permit and, in the event of the discovery of a commercially exploitable hydrocarbon deposit, during the period of validity of the exploitation concession;

“Production sharing contract” petroleum contract attached to a mineral title for exploration hydrocarbons, and if applicable, exploitation, under which the contracting party undertakes to carry out petroleum operations at its own risk and peril, and receives, in the event of the discovery and exploitation of a commercial deposit, a part of the production called "Cost oil" allocated to the reimbursement of oil costs and a part of the "Profit oil" representing the balance of the production, as remuneration;

“Risk services Contract” oil contract attached to a mineral title for exploration hydrocarbons, and if applicable, exploitation, under which the contractor assumes the conduct and financing of oil operations, at its own risk, and receives in return the reimbursement of oil costs and the payment of remuneration paid in cash;

“Petroleum contract” concession contract, production sharing contract or risk services contract, concluded between the State and an oil company to carry out, on an exclusive basis, the exploration and exploitation of hydrocarbons within a defined scope;

“Contractor” legal person(s) party to an oil contract as well as any legal person benefiting from a regular transfer of a participating interest in an oil contract;

“Cost oil” share of total hydrocarbon production net of the ad valorem royalty, if any, allocated to the reimbursement of the oil costs actually borne by the holder and recoverable under the terms of the production sharing contract;

“Petroleum costs” all the expenses borne and paid by the contractor under a production sharing contract necessary, according to the rules in use in the international petroleum industry, for the conduct of petroleum operations in a contractual area and determined according to the accounting procedure appended to this production sharing contract;

“Commercial discovery” deposit for which an assessment or a feasibility study has shown that it can be developed and exploited under economic conditions, in accordance with the rules in use in the international oil industry;

“Development” all activities, without limitation, relating to the studies, design, supply, construction and installation of all the infrastructures necessary to start up and maintain production, including, drilling and completion of development wells;

“Petroleum data” geological, geophysical, geochemical and production information and data, obtained by the State, by the national oil company or by any holder during petroleum operations or within the framework of the performance of a provision of services, including logs, maps, studies, study reports, drill cuttings, cores, samples, assay results, test results, measurements on producing wells, evolution of the pressures and all technical reports defined in the petroleum contract;

“Maritime space” internal and territorial waters as well as the continental shelf and the Exclusive Economic Zone defined in accordance with international law;

“Member State” Member State of ECOWAS as defined in Article 2 of the ECOWAS Revised Treaty;

“Feasibility study” report stating the feasibility of the exploitation of an oil field within the perimeter and setting out the program proposed for this exploitation which includes, for information only and without limitation, an assessment of the size and quality of the exploitable reserves, a planning of oil exploitation, an environmental and social impact study, a work program detailing the equipment, installations and supplies required for the commercial production of the deposit as well as the estimated costs relating thereto, and all economic, technical and financial studies making it possible to establish the commercial character or not of the deposit highlighted;

“Evaluation” evaluation and delimitation of a deposit within a contractual zone as well as all the economic and technical studies, making it possible to establish the commercial character or not of the deposit highlighted;

“Exploitation” operations intended to extract hydrocarbons for commercial purposes;

“Exploration or Research” geo-scientific studies and operations carried out for or in connection with the search for petroleum in the license area by geological, geophysical or photo geological studies (including seismic techniques and site studies), drilling and

exploration well testing, appraisal operations (including drilling and appraisal well testing) and related activities;

“Natural gas” gaseous hydrocarbons obtained from oil wells including wet gas and associated or non-associated dry gas as well as residual gas from the separation of liquid hydrocarbons;

“Deposit” natural accumulation of hydrocarbons made up of one or more reservoirs;

“Hydrocarbons” liquid, gaseous or solid organic hydrocarbon compounds existing in their natural state in the ground and subsoil, likely to be exploited by techniques specific to the oil and gas industry as well as all the products extracted in association with these compounds;

“Petroleum operations” prospecting, research, development, exploitation, transportation, storage and processing of hydrocarbons under the upstream activities, excluding refining, storage and distribution of petroleum products and gas Activities relating to petroleum operations constitute acts of commerce;

“Site restoration operations” operations of any kind whatsoever, necessary to ensure the rehabilitation of sites, in particular the securing and definitive abandonment of wells, the complete or partial dismantling of installations and the immersion or elimination of materials or waste resulting from the dismantling as well as all work related to the abandonment of deposits that have not been exploited;

“Participation” participation interest of the contractor, including the national oil company, in the rights and obligations relating to the oil contract;

“Interest held” interest held by the Member State or the national oil company whose contractor fully supports the financing of the oil operations without any financing or reimbursement by the State or the national oil company of its participation;

“Crude oil” liquid hydrocarbons in their natural state or obtained from natural gas by condensation or separation, as well as asphalt;

“Profit oil” balance of the total production of hydrocarbons from a mineral exploitation hydrocarbon title, after deduction of the ad valorem royalty, if any, and the share deducted for cost oil under a production sharing;

“Prospecting” superficial investigations and preliminary general reconnaissance work intended to detect signs of the existence of hydrocarbon deposits, in particular by the use of geological, geophysical and geothermal methods, excluding deep drilling;

“Affiliate” with respect to a person, any other person who directly or indirectly: controls that person; is controlled by that person; or is under common control with that person;

“Oil company” commercial company or public establishment of an industrial and commercial nature justifying technical, financial and legal capacities to carry out oil operations;

“National oil company” commercial company or company set up with a view to carrying out oil operations in the form of a public establishment, a national company or a limited company with majority public participation;

“Subcontractor” legal person linked to the contractor to whom the execution of all or part of the petroleum operations under the petroleum contract is entrusted;

“Community taxes” statistical fee, community levy, community solidarity levy or other similar taxes;

“ECOWAS Region” land part constituted by the Member States as well as the maritime areas over which, in accordance with international law, the Member States exercise their rights of sovereignty or their jurisdiction;

“Hydrocarbon mineral title” exclusive research or exploration authorization, exclusive exploitation authorization, exploration permit, exploitation concession, issued by the competent authority acting on behalf of the Member State;

“Holder” oil company or consortium authorized to carry out oil operations. It also designates the co-holders, if any;

“Flaring” operation consisting of burning natural gas in the atmosphere;

“Unitization” joint development and exploitation of a deposit which extends over one or more contiguous contractual perimeters on which different holders operate, under separate hydrocarbon mineral titles.

CHAPTER II

FUNDAMENTAL AND GUIDING PRINCIPLES

Article 4

Ownership of petroleum resources

The discovered or undiscovered deposits of hydrocarbons contained in the soil and subsoil of the land surface area, the territorial waters, the continental shelf and the exclusive economic zone, over which the Member State exercises its sovereignty or its sovereign rights, are the property of that Member State. The State ensures its management and optimal valorisation for sustainable development.

Article 5 Petroleum data

1. Each Member State has exclusive ownership of petroleum data. The holder of a hydrocarbon mineral title or petroleum contract is required to communicate the said data to the competent authority under the conditions and according to the procedures defined by the regulations in force in the Member State.
2. The competent authority shall ensure their management and conservation. These data cannot be reproduced, published, used or be the subject of transaction without the prior consent of the competent authority.

Article 6 Institutional framework

Member States shall create or reform an appropriate institutional framework capable of establishing an environment conducive to sustainable economic development. In this regard, it is setting up administrative institutions and independent regulatory bodies to efficiently manage the upstream hydrocarbons sector within the Community.

Article 7 Management of petroleum resources

The exploitation and management of hydrocarbon resources are carried out according to the principles of good governance including transparency, sustainability and responsibility for the purpose of preserving the interests of present and future generations.

Article 8 Authorization to undertake petroleum operations

No one may undertake petroleum operations in ECOWAS Member States without prior authorization, in accordance with the national regulation of each Member State.

Article 9 Entitled persons

1. Petroleum Operations may only be undertaken by oil companies or consortia including at least one oil company, duly authorized by the competent authority under the conditions set by the national regulation of each Member State.
2. Any oil Company governed by foreign law which requests the granting of a hydrocarbon mineral title must provide proof of representation in the Member State.
3. As soon as the title is obtained, the Oil Company governed by foreign law creates a subsidiary under national regulation registered according to the law on commercial companies in force in the Member State, to which the hydrocarbon mineral title is transferred.

Article 10
Application of standards

1. Activities relating to petroleum operations are conducted according to the best techniques, technologies and practices in force in the international oil industry.
2. The rules relating to the conservation of deposits and the optimal exploitation of hydrocarbon resources are fixed, in the absence of Community texts, by the national regulation of each Member State.

Article 11
Prevention of risks inherent in petroleum operations

1. Petroleum operations are conducted in such a way as to prevent all inherent risks.
2. Their performance requires compliance with the obligations relating in particular to:
 - a. the safety, security and health of people;
 - b. hygiene and public sanitation;
 - c. the protection of biological resources;
 - d. rational use of natural resources and energy;
 - e. protection of aquifer resources;
 - f. the protection of the archaeological heritage;
 - g. environmental protection and industrial safety.

CHAPTER III

**PROSPECTING, RESEARCH, EXPLOITATION AND TRANSPORT OF CRUDE HYDROCARBONS
BY PIPELINE**

Article 12
Transparency in the procedures for granting permits

The process of granting hydrocarbon mineral titles is based on clear, transparent and fair rules.

Article 13
Competitive bidding process

1. The granting of a hydrocarbon mineral title or a petroleum contract is done by call for tenders or by direct negotiation.
2. The rules governing the competitive bidding as well as the terms and conditions for the submission and selection of tenders are defined by the national regulation of each Member State.

Article 14
Scope of rights

The hydrocarbon mineral titles issued do not confer property right of the soil or subsoil.

Article 15
Prospecting authorization

1. Prospecting operations can only be undertaken under an prospecting authorization issued by the competent national authority, for a maximum period of two (2) years, renewable once for a maximum period of one (1) year.
2. The conditions and procedures for granting, renewal and withdrawal as well as the rights and obligations attached to the prospecting authorization are defined, in the absence of community texts, by the national regulation of each Member State.

Article 16
Exploration permit

1. Petroleum exploration operations may only be undertaken under a hydrocarbon mineral title issued by the competent authority for a consecutive period not exceeding ten (10) years, including an initial period and two renewal periods.
2. This period may be extended in accordance with the national regulation of each country if necessary.
3. For the granting of the hydrocarbon mineral title, the competent authority takes account in particular of the applicant's proposals with regard to the minimum work program to be carried out, the signature bonus and the guarantees offered to cover the commitments to which the latter has subscribed.
4. The terms and conditions of granting, renewal, renunciation and withdrawal, as well as the rights and obligations attached to the hydrocarbon mineral titles are defined, in the absence of community texts, by the national regulations of each Member State.

Article 17
Commercial discovery

Any discovery is notified to the competent authority which authorizes the evaluation work of this discovery and, if necessary, the conduct of a feasibility study to determine the commercial character or not of the deposits discovered, in accordance with the national regulations of each Member State.

Article 18 Exploitation permit

1. Petroleum exploitation operations can only be undertaken under an exploitation permit issued by the competent authority, for an initial period not exceeding thirty (30) years.
2. This duration may be renewed if necessary, for a period not exceeding ten (10) years at the request of the holder, if the circumstances justify it.
3. The terms and conditions for the granting, renewal, renunciation and withdrawal as well as the rights and obligations attached to the hydrocarbon mineral title are defined, in the absence of community texts, by the national regulations of each Member State.

Article 19 State participation

1. The granting of a hydrocarbon mineral title relating to the exploitation opens the right to a participation for the benefit of the Member State or the national oil company. This participation must be between 20% and 40% distributed as follows:
 - a. 10% to 15% carried interest;
 - b. 10% to 25% contributory paying interest. This is accompanied by an implementation schedule set in the petroleum contract.
2. However, Member States may take a higher participation than the rates indicated above.
3. The participation of the Member State or the national company is effective from the date of granting exploitation permit. It concerns exclusively the development phase of the deposit subject to commercial discovery and the exploitation phase.
4. The terms and conditions for implementing participation are specified in the petroleum contract.

Article 20 Authorization to Transport

1. Pipeline transportation activities for crude hydrocarbons shall be carried out on the basis of a pipeline transport authorisation issued by the competent authority.
2. The terms and conditions for issuing the pipeline transport authorization are defined by the national regulations of each Member State.

Article 21 Determination of the applicable tariff

The tariff applicable to hydrocarbon pipeline transportation is set taking into account the coefficient of use of the net working rate of facilities, the operating costs, the depreciation

costs, the cost relating to abandonment and rehabilitation of sites while allowing the operator to have a reasonable rate of return.

Article 22

Free access by third parties to infrastructure for transporting of crude hydrocarbons by pipeline

1. The right to use the hydrocarbons pipeline transportation is guaranteed to third parties subject to the payment of a non-discriminatory tariff.
2. The tariff applied is fair for the users of the pipeline transport infrastructure and allows the holder of the pipeline transport authorization to achieve a reasonable rate of return.

Article 23

Cross-border pipelines

1. Pipelines coming from outside the territory of a Member State to cross it, totally or partially, are subject to a prior agreement between the States concerned as well as to a right of passage.
2. Member States shall take the necessary measures to promote the development and management of cross-border pipelines to optimize oil operations in the ECOWAS Region.

CHAPTER IV

OBJECT AND DIFFERENT TYPES OF CONTRACTS

Article 24

Purpose of the petroleum contract

1. A petroleum contract, attached to the hydrocarbon mineral title, fixes the respective rights and obligations of the parties, during the exploration period and, possibly, during the exploitation period.
2. The petroleum contract is negotiated and concluded between the State and the holder of the hydrocarbon mineral title in accordance with the procedures defined by the national regulation of each Member State. In particular, it must comply with the principles set out in Articles 9, 12 and 13 of this Code.
3. The parties ensure the general balance of the contract.

Article 25

Different types of contracts

The petroleum contract may take the form of a concession contract, a production sharing contract or a risk services contract as determined by the national regulation of each Member State.

CHAPTER V

FINANCING OF OPERATIONS AND PRODUCTION SHARING

Article 26

Financing of petroleum operations

Notwithstanding the provisions of Article 19 of this Code, the holder of the hydrocarbon mineral title provides the financing of the petroleum operations at his own expense and risk. No financing obligation rests with the Member State or the national oil company, unless the petroleum contract provides otherwise.

Article 27

Production sharing mechanisms

1. The production sharing contract defines the terms and conditions for carrying out exploration activities within the contractual scope, and, in the event of the discovery of one or more commercially exploitable deposits, exploitation activities.
2. It defines the production sharing mechanisms, in particular the production intended for the reimbursement of oil costs and the remuneration of the contractor.
3. The share of production that the contractor receives as reimbursement of oil costs may not exceed:
 - a. 70% for deposits located in the land area and,
 - b. 75% for deposits located in the maritime zone.
4. The balance of the total hydrocarbon production after deducting the ad-valorem royalty, if any, and the share of production deducted for oil costs, is shared between the Member State and the contractor according to the procedures provided for by the national regulation of each Member State and in the production sharing contract.

CHAPTER VI

OBLIGATIONS ATTACHED TO THE EXECUTION OF PETROLEUM OPERATIONS

Article 28

Sources of obligations

1. The obligations of the parties are legal or contractual.
2. They are governed by this Code, national regulation, regularly concluded contracts and best practices in the international petroleum industry.

Article 29
Compliance with the legislation in force

Any holder of a hydrocarbon mineral title or contracting party is required, throughout the territory of the Community, to comply with the national regulation of his place of activity concerning, in particular, the creation and operation of private companies, the environmental protection measures as well as all the accounting, financial and tax obligations provided for by community and national texts.

Article 30
Conduct of petroleum operations

1. All work performed by the Contractor under this Code shall be diligently performed in accordance with generally accepted industry standards and best practices in the petroleum industry in accordance with Articles 10 and 11 of this Code to ensure the health and the safety of people and property, the optimal recovery of the hydrocarbons contained in the deposits and the preservation of resources.
2. The contractor must ensure that its subcontractors comply, in their respective fields, with the standards and best practices generally accepted in the international petroleum industry and with the national regulation of each Member State.

Article 31
Flaring and release into the atmosphere of natural gas

1. Flaring and release of natural gas into the atmosphere are prohibited.
2. An authorization for flaring and the release into the atmosphere of natural gas may, exceptionally, be granted under the conditions and according to the procedures provided for by the national regulation of each Member State.

Article 32
Occupation of land

The occupation of the land necessary for the execution of petroleum prospecting, exploration or exploitation operations and related activities as well as the relations between the owners of the land or holder of customary rights and other occupants and the holders hydrocarbon mineral titles are carried out, in the absence of community texts, under the terms and conditions set by the national regulation of each Member State.

Article 33
Health, safety, security, and the environment

The rules relating to health, safety, security, hygiene, protection of the environment and cultural and archaeological heritage as well as those applicable to environmental and social

impact assessments and studies, abandonment works, rehabilitation and restoration of sites are determined, in the absence of community texts, by the national regulation of each Member State in accordance with Article 11 of this Code.

Article 34

Financing of demobilization and abandonment operations

1. The decommissioning, abandonment and rehabilitation works of the sites are financed by provisions made by the holder of the hydrocarbon mineral title each calendar year from the date of the start of production of the deposits.
2. The methods of managing these funds are defined by the national v regulation of each Member State.

Article 35

Respect for human rights

The holder of a hydrocarbon mineral title operating in a Member State as well as the entities intervening on its behalf ensure strict compliance with national and international provisions relating to the protection of human rights.

Article 36

Governance and transparency

1. Pursuant to Articles 7 and 12 of this Code, holders of hydrocarbon mineral titles or petroleum contracts are required to participate in the implementation of the principles of transparency in the extractive industries. In particular, they must file the declarations to which they are subject and participate in the reconciliation of data relating to their activities in accordance with international norms and standards.
2. The petroleum contracts signed between the State and the holders of hydrocarbon mineral titles or the contractors are published in full in the Official Journal of each Member State.
3. All information relating to petroleum revenues due to the State and actually collected by the latter, including social investments made by holders of hydrocarbon mineral titles under corporate social responsibility (CSR), can be communicated to any person and are made public through the official channels of publication of each Member State.

Article 37

Local content

1. Holders of hydrocarbon mineral titles, contractors and sub-contractors involved in carrying out petroleum operations shall take all measures with a view to the use of local goods and services, the transfer of technology and know-how, the training and employment of a skilled and competitive local workforce, local development as well as the development and use of

national capacities, including local small and medium-sized enterprises throughout the value chain of the oil industry.

2. The measures for the promotion of local content and the arrangement for their implementation shall be determined by the national regulation of each Member State.

Article 38 **Products from the Community**

Holders of hydrocarbon mineral titles or petroleum contracts and their subcontractors use as much as possible the products manufactured or sold in the ECOWAS Region insofar as these services and products are available at competitive conditions of price, quality, guarantee, and delivery time.

Article 39 **Domestic market supply**

1. Holders of hydrocarbon mineral titles or contractors may be required to allocate the products resulting from their exploitation to the supply of the ECOWAS Region, after having satisfied, as a priority, the needs of the internal consumption of the Member State.

2. The competent authority shall take, where applicable, for the execution of this provision, the necessary measures to ensure the control of exports outside the ECOWAS Region, of the hydrocarbons extracted from these deposits.

3. The details rules for the application of these provisions are fixed, in the absence of Community texts, by the national regulations of each Member State and specified in the petroleum contract.

Article 40 **Unitization**

1. When a commercial hydrocarbon deposit extends over one or more perimeters allocated to holders of separate hydrocarbon mineral titles, they must endeavour to carry out its joint exploitation under the best possible conditions of technical and economic efficiency and with a concern for the conservation of the deposit.

2. Any joint exploitation project, accompanied by the contracts concluded between the holders concerned, is subject to the approval of the competent national authority under the conditions and according to the procedures laid down by the national regulations of each Member State.

3. When a commercial hydrocarbon deposit is located between the borders of two or more Member States, the States concerned shall be required to conclude an agreement relating to the terms and conditions for the optimum exploitation of the said deposit.

Article 41
Local development

1. The holder of a hydrocarbon mineral title undertakes to promote corporate social responsibility with a view to fostering local development.
2. In consultation with local communities and other stakeholders, the hydrocarbon mineral title holder develops and implements, under the control of the competent national authority, social investment programs intended to support economic and social development actions, and sustainable development for the benefit of the populations of the impacted areas.

Article 42
Accounting obligations

1. The holder or the contractor shall keep separate accounts of his petroleum operations for each hydrocarbon exploitation permit.
2. This accounting must comply with the accounting standards in force in each Member State and with the accounting standards generally accepted in the international oil industry.

Article 43
Compensation for damage

1. Any holder of a hydrocarbon mineral title or petroleum contract and the companies working on its behalf are required to comply with the best practices in the international oil industry in order to prevent any risks or damage to persons, property, facilities and the environment in accordance with the provisions of the aforementioned Article 11 of this Code.
2. Without prejudice to the law and regulations in force, any damage caused to the environment and resulting from the execution of petroleum operations gives rise to compensation by the author of the damage.
3. This repair is made either in kind by taking charge of the operations of environmental protection and site restoration, or failing that, by monetary compensation under the conditions provided for by the national regulations of each Member State and the relevant international conventions.

Article 44
Communications and information

The holder of a hydrocarbon mineral title or petroleum contract must provide the competent national authority with the petroleum data obtained during the execution of the petroleum operations as well as the documents and reports required in the forms and according to the periodicities established by the national regulations of each Member State.

CHAPTER VII

RIGHTS ATTACHED TO THE EXECUTION OF PETROLEUM OPERATIONS

Article 45 Free choice of partners

Member States shall guarantee holders of hydrocarbon mineral titles or petroleum contracts the free choice of suppliers, subcontractors and partners subject to the provisions of Articles 37 and 38 of this Code.

Article 46 Free disposal and management of assets

1. Within the framework of the exercise of petroleum activities, the Member States guarantee to the holders of hydrocarbon mineral titles or petroleum contracts, in particular to their suppliers and their subcontractors:

- a. the right to freely dispose of their property, which is protected against any measure of expropriation, requisition or nationalization;
- b. The right to organize their business freely in compliance with the texts in force within the Community and in each Member State;
- c. The right to import capital goods, materials, equipment, machinery, spare parts and consumable goods for the purposes of their activities, subject to compliance with this Code and the national regulation in force in the Member States;
- d. The right to sell all or part of the interests held in the securities or participations subject to the prior approval of the competent national authority. The terms and conditions of the transfer are specified by the national regulation of each Member State and in the oil contract.

CHAPTER VIII

TAX, CUSTOMS, EXCHANGE AND BONUS PROVISIONS

Article 47 Taxes, duties, bonuses and royalties

1. The holder of a hydrocarbon mineral title is subject to the payment of the taxes, duties and royalties provided for by this Code as well as those provided for in the common law tax system in force in each Member State in its provisions not contrary to Community regulations.

2. The rules for assessment, liquidation, recovery, control, sanction, prescription and litigation relating to taxes, duties and fees are those laid down by the tax legislation of each Member State, subject to the specific provisions of this Code.

3. The tax and customs provisions to which imports of materials and equipment intended for carrying out work relating to the operations of transporting hydrocarbons by pipeline are subject are fixed by the national regulation of each Member State.

Article 48

Signature, discovery and production bonuses

1. The holder of a hydrocarbon mineral title may be subject to the payment, as the case may be, of a signature bonus, a discovery bonus or a production bonus.

2. These bonuses are not recoverable as oil costs and do not constitute a deductible expense for the determination of corporation tax.

3. The amount as well as the terms of payment of the bonuses are specified in the petroleum contracts.

Article 49

Fixed rights

Applications for the allocation, renewal, extension, waiver, transfer of hydrocarbon mineral titles are subject to the payment of fixed fees. The amounts of these fixed duties and the methods of their payment are determined, in the absence of Community texts, by the national regulation of each Member State.

Article 50

Surface rentals

Any holder of a hydrocarbon mineral title or an authorization for the transportation of crude hydrocarbons by pipeline is subject to the payment of a surface rental, the amount and terms of payment of which are fixed, in the absence of Community texts, by the national regulation of each Member State.

Article 51

Ad valorem royalty

The holder of a hydrocarbon exploitation permit is subject to the payment of a royalty relating to the value of the hydrocarbons produced, known as the “ad valorem royalty”. The rate, the methods of calculation and payment of the ad valorem royalty, in the absence of community texts, are fixed by the national regulations of each Member State.

Article 52

Valorisation of hydrocarbons

1. The unit selling price of crude oil and natural gas produced taken into account for the calculation of the ad valorem royalty, the oil costs and the profits resulting from the activity of the holder of the hydrocarbon mineral title or petroleum contract is the Free on Board (FOB) price at the hydrocarbon delivery point.
2. This export price must conform to the current international market price.
3. The methods for calculating the selling price are specified, in the absence of Community texts, by the national regulations of each Member State and in the petroleum contract.

Article 53

Corporation tax

The holder of a hydrocarbon exploitation mineral title or petroleum contract as well as the entities associated with them within the framework of consortia are subject to the payment of corporation tax or tax having an equivalent effect as provided for by the national regulation in force in each Member State.

Article 54

Additional oil levy

1. The holder of a hydrocarbon mineral title or petroleum contract may be subject to an additional oil levy calculated on the basis of the evolution of oil prices on the international market and exceptional profits made on petroleum operations.
2. The conditions and procedures for calculating this tax are specified, in the absence of community texts, by the national regulations of each Member State and in the petroleum contract.

Article 55

Other taxes and duties

The tax on capital gains on disposal and the withholding tax as well as the other taxes, duties and taxes due by the holder of the hydrocarbon mineral title or petroleum contract and the entities associated with them are payable under the conditions fixed by the national regulation of each Member State.

Article 56

Penalty on gas flaring

1. Flaring operations are subject to the payment of a penalty, non-deductible for the establishment of corporation tax, which is determined on the basis of the quantities flared during a given calendar year.

2. The methods for calculating the penalty are specified by the regulation in force in each Member State.
3. However, they are excluded from the payment of the aforementioned penalty, the quantities of gas flared during the execution of exploration operations and during the start-up period of new facilities for periods not exceeding the thresholds set by the competent authority.

CHAPTER IX

TAX AND CUSTOMS BENEFITS DURING THE RESEARCH PERIOD

Article 57

Tax exemptions

1. The holder of exploration hydrocarbons mineral title benefits from a total exemption from taxes, duties and taxes in the execution of petroleum operations.
2. Excluded are fixed fees, surface area fees, taxes on land clearing and felling of trees, stamp and registration fees, and applicable community taxes.

Article 58

Customs exemptions

1. With the exception of community taxes, the holder of an exploration hydrocarbon mineral title may be exempt from all import duties and taxes, including value added tax (VAT) on the importation of products, equipment, materials, machinery, utility vehicles and equipment, fuels, lubricants and spare parts assigned directly to petroleum operations.
2. This exemption is granted only when the materials, capital goods, machinery and consumable products are not available in the ECOWAS Region under equivalent conditions of quantity, quality, price, delivery time and payment.
3. Passenger or executive vehicles, office equipment, consumables, current office operating equipment and food products are subject to the tax regime in force in each Member State.

Article 59

Total suspension of import duties and taxes

1. Capital goods, materials, machinery, engines imported for the performance of petroleum operations and intended to be re-exported or transferred after use, may benefit from the temporary admission regime with total suspension of import duties and taxes during the period of validity of the hydrocarbon mineral title.

2. The re-export of the aforementioned equipment, materials, machinery and equipment having benefited from the suspense regime is not subject to the payment of export duties and taxes.
3. In the event of release for consumption of these materials and capital goods, customs duties and taxes are collected, in the absence of Community texts, according to the national regulation of each Member State.

Article 60
Regime applicable to prospecting operations

The holder of a prospecting authorization benefits from the same tax and customs advantages provided for in articles 57, 58 and 59 set out above within the framework of the execution of prospecting operations.

CHAPTER X
CUSTOMS BENEFITS DURING DEVELOPMENT AND OPERATION

Article 61
Customs exemptions

1. Capital goods, equipment, machinery, materials, products, supplies, utility vehicles and spare parts, intended directly for the performance of development operations, imported by the holder of a hydrocarbon mineral exploitation title under the conditions provided for in article 58 above, may be exempt from all import duties and taxes, including value added tax (VAT), with the exception of community taxes, during the development phase following the allocation of the hydrocarbon exploitation mineral title.
2. At the end of the development phase, imports of equipment, capital goods, machinery, products and utility vehicles are subject to the ordinary law regime or the national regulation of each Member State.

Article 62
Total suspension of import duties and taxes

The advantages provided for in Article 59 above, with regard to the suspension of import duties and taxes granted under the temporary admission regime, apply to the holder of a hydrocarbon mineral title from operation or petroleum contract throughout the period of validity of the title.

Article 63
Subcontractors

1. The benefit of the exemptions and suspensive regimes provided for during periods of exploration, development and exploitation in Chapters IX and X of this Code is extended to the

subcontractor who operates on behalf of the holder of the hydrocarbon mineral title or petroleum contract as part of the execution of petroleum operations.

2. Any subcontractor who performs services on behalf of the holder of a hydrocarbon mineral title or petroleum contract, for a period exceeding six (6) months, is required to create a company in accordance with national regulations in force in each Member State.

Article 64
Petroleum list

Materials, products, capital goods and consumables exempt from customs duties and import taxes during the exploration and exploitation phases are subject to a petroleum list. This list is established by the national regulation of each Member State and is periodically updated.

Article 65
Tax stabilization

1. Petroleum contracts may include provisions relating to fiscal stability in order to guarantee to the holders a stabilization of the economic and fiscal conditions applicable to petroleum operations.

2. In the event that the initial economic balance of the petroleum contract is broken following a subsequent substantial modification of national laws and regulations in force at the time of signature of the petroleum contract, the parties shall seek in good faith an agreement with a view to restoring the initial economic balance of the contract.

3. The terms and conditions of application of the stability clauses are determined by the national regulation of each Member State or the petroleum contract.

CHAPTER XI

EXCHANGE REGULATIONS

Article 66
Compliance with exchange regulations

1. Petroleum operations carried out by the holder of a hydrocarbon mineral title or petroleum contract as defined in Article 3 of Chapter I of this Code are subject to the exchange regulations in force in the Member States.

2. Subject to compliance with the obligations to which it is bound, in particular with regard to the exchange rate regime and tax legislation, the holder benefits from the guarantees set out in Article 67 below.

Article 67
Free transfer of funds

1. The Member States guarantee to the holders of hydrocarbon mineral titles, their suppliers and their subcontractors:
 - a. the free transfer of currencies necessary for the performance of oil operations, in order to ensure the correct performance of their commitments vis-à-vis their foreign creditors and suppliers;
 - b. the free transfer of dividends as well as the proceeds of invested capital;
 - c. the free transfer of all sums used to amortize loans and financing obtained from financial institutions or affiliated companies;
 - d. the free transfer of sums resulting from the liquidation of assets or the realization of their assets;
 - e. the free transfer by the expatriate personnel employed by the holder of the hydrocarbon mineral title or oil contract, of the sums due to them on the occasion of their activity after payment of the taxes and duties provided for by the national regulation of each State member.

Article 68
Obligation to repatriate export earnings

Notwithstanding the guarantees listed in the preceding Article, any holder of a hydrocarbon mineral title or petroleum contract is required to repatriate, within the prescribed time limits, the proceeds of export earnings resulting from the sale of hydrocarbons, in accordance with the exchange regulation in force in each country.

CHAPTER XII

PETROLEUM FUND AND MISCELLANEOUS ADMINISTRATIVE MEASURES

Article 69
Petroleum Development Fund

Member States are to set up a fund for the development of hydrocarbon resources. This fund is responsible for ensuring the financing of various investment activities and studies of all kinds in relation to activities in the oil sector.

Article 70
Sovereign Wealth Fund

1. Sovereign wealth funds may be set up by Member States. They are fed by surplus revenues from the exploitation of hydrocarbons and are allocated, according to the priorities defined by each Member State, to the achievement of various objectives, namely:

- a. Stabilization of revenues from the exploitation of oil resources subject to high volatility;
- b. The constitution of intergenerational savings to meet the needs of future generations;
- c. Economic diversification and infrastructure development.

2. The methods of organization and operation of sovereign wealth funds are determined by the national regulation of each Member State.

Article 71
Academic training centers

Member States shall endeavour to promote the creation of national or regional academic centers and research laboratories specializing in upstream oil, responsible for the development of human and institutional capacities in the hydrocarbons sector.

Article 72
Insurance

1. Petroleum operations carried out under a hydrocarbon mineral title, a petroleum contract or an authorization of transportation of crude hydrocarbons by pipeline are covered by insurance taken out with reference insurance companies operating regularly in the ECOWAS Region.

2. This insurance subscription must be made in accordance with the regulations in force in each Member State and with the standards and best practices generally accepted in the international oil industry. Holders and their subcontractors subscribe to adequate insurance policies which are subject to the control of the competent authority.

Article 73
Non-compliance with regulations

Failure to comply with the provisions of this Code can lead to the withdrawal of the advantages granted to the holder of the hydrocarbon mineral title without prejudice to the penalties provided for by the national regulation in force in the Member States.

CHAPTER XIII

APPLICABLE LAW AND SETTLEMENT OF DISPUTES

Article 74
Applicable law

1. The law applicable to the petroleum contract is that in force in each Member State as it results from domestic law and duly ratified international conventions.
2. The application of sanctions under this Code is a matter for national jurisdictions.

Article 75
Settlement of disputes

1. Any dispute arising between a Member State and the contractor resulting from the interpretation or application of the petroleum contract shall be settled in accordance with the dispute settlement mechanisms in force in that Member State.
2. Priority will initially be given to settling disputes through alternative mechanisms. In the event of non-resolution, the Parties may appeal to the competent national courts.
3. The petroleum contract may contain a clause providing for recourse to an amicable dispute settlement method. Failing amicable settlement, disputes should be submitted to the ECOWAS Community Court of Justice, or if necessary, by international arbitration if the regulation of the Member state allow it

CHAPTER XIV

MISCELLANEOUS AND FINAL PROVISIONS

Article 76
Safeguard clauses

1. It applies to contracts concluded after its entry into force.
2. The procedure for modifying this Code is the same as that which governed its development and adoption.

Article 77
Publication

1. This Code shall be published in the Official Journal of the Community by the Commission within thirty (30) days after its date of signature by the Heads of States and Government.
2. This Code shall also be published within the same time frame in the Official Gazette of each Member State after notification by the Commission.

Article 78
Entry into force

1. This Code comes into force on the date of its publication.
2. This Code repeals and replaces all previous provisions to the contrary.