

Nepal Petroleum Act, 2040 (1983)

Date of Authentication and the Publication

2040-6-24 (10 Oct. 1983)

Amendments

- | | |
|---|--------------------------|
| 1. Administration of Justice Act, 2048 | 2048.2.16 |
| 2. Income Tax Act, 2058 | 2058.12.19 |
| 3. Republic Strengthening and Some Nepal Laws
Amendment Act, 2066 (2010) | 2066.10.7 (21 Jan. 2010) |

An Act made to provide for Petroleum

Preamble: Whereas, it is expedient to make legal provision with respect to the development of Petroleum resources occurring within the country in order to promote the welfare and economic interest of the people in general and the economic development of the nation,

Now, therefore, be, it enacted by His Majesty King Birendra Bir Bikram Shah Dev, on the advice and with the consent of the *Rastriya Panchayat*.

- Short Title and Commencement:** (1) This Act may be called the "Nepal Petroleum Act, 2040".

(2) This Act shall come into force on such date as Government of Nepal may, by a Notification published in the Nepal Gazette, appoint.[∇]

- Definition:** Unless the subject or context otherwise requires, in this Act:

[∇] This Act is enforced from 2041.12.1 by notification published on Nepal Gazette in 2041.11.14.

- (a) "Crude Oil" means Petroleum produced at the wellhead in the liquid state and asphalt, ozokerite and liquid Petroleum known as distillate or condensate obtained from Natural Gas by condensation or extraction.
 - (b) "Contractor" means any Nepalese or foreign investor who may be a party to a Petroleum Agreement with Government of Nepal as referred to in Section 8.
 - (c) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.
 - (d) "Petroleum" means Crude Oil, Natural Gas and all other liquid, gaseous, solid or semisolid hydrocarbons in their natural state and this term also includes sulphur, helium and all other similar substances associated with such hydrocarbons.
 - (e) "Petroleum Operations" means exploration, development or production of petroleum and this term also includes the treatment, transportation, storage and sale or disposal of Petroleum so produced.
 - (f) "Petroleum Agreement" means a contract between Government of Nepal and a Contractor in respect of Petroleum Operations as referred to in Section 8.
 - (g) "Natural Gas" means wet gas, all other gaseous Petroleum produced from oil or gas wells and the residue gas remaining after the extraction of liquid Petroleum from wet gas.
 - (h) "Department" means the Department of Mines and Geology of Government of Nepal.
3. **Property of Government of Nepal:** All Petroleum occurring or found in any private or public land within Nepal shall be the property of Government of Nepal.
4. **Right to Conduct Petroleum Operations:** (1) Government of Nepal shall have the exclusive right to carry out Petroleum Operations.

(2) Government of Nepal may conduct Petroleum Operations by itself or cause such Petroleum Operations to be conducted by any Contractor.

(3) Government of Nepal shall have the right to participate as an investor or otherwise in Petroleum Operations to be conducted under a Petroleum Agreement.

5. Conduct of Petroleum Operations: (1) Subject to the provisions of this Act and Rules framed hereunder and the Petroleum Agreement, Petroleum Operations shall be conducted:

- (a) With due diligence, efficiency, economy and in accordance with sound petroleum industry practices.
- (b) With due regard to the safety of persons and property, with particular care to avoid damage to forest and other natural resources and to avoid pollution and ecological damage.
- (c) In accordance with the best conservation practices in order to secure the maximum ultimate recovery of Petroleum.

(2) All samples, data and information obtained from Petroleum Operations shall be the property of Government of Nepal.

(3) All permanent facilities constructed and all other materials and equipments permanently installed for the production, treatment, transportation or storage of Petroleum shall be the property of Government of Nepal.

6. Application for permission, consent or approval: (1) A person requiring any permission, consent, or recommendation of any authority in connection with Petroleum Operations shall apply to the Department by stating the reasons and necessary particulars thereof.

(2) The Department shall initiate necessary action on applications submitted under Sub-section (1).

7. **Petroleum Advisory Board**: (1) For advising Government of Nepal on matters relating to Petroleum Operations, a Petroleum Advisory Board shall be constituted as prescribed.

(2) The functions, duties, powers and procedure of the Board constituted under Sub-section (1) shall be as prescribed.

8. **Petroleum Agreement**: (1) If Government of Nepal has to conduct Petroleum Operations upon employing of a Contractor pursuant to Sub-section (2) of Section 4, it may do so by executing a Petroleum Agreement as may be prescribed.

(2) A Petroleum Agreement may be entered into only with such Contractors who are qualified to carry out Petroleum Operations and possess such capital, technical competence and professional skill as may be prescribed.

(3) No Contractor shall be entitled to assign or transfer the rights and obligations under a Petroleum Agreement to any other person without the prior approval of Government of Nepal.

9. **Special Arrangement**: (1) Government of Nepal may declare any area as prohibited area for Petroleum Operations for reasons of national security, public interest, historical importance or tourism development or may allow Petroleum Operations in any specific area prescribing special conditions.

(2) Government of Nepal may itself conduct all kinds of geological exploration or grant permit to any person for the exploration or production of minerals other than Petroleum within an area subject to a Petroleum Agreement provided such activities do not in any way interfere with Petroleum Operations.

10. **Power to issue orders**: Government of Nepal may issue such orders as may deem necessary to preserve national security or public interest or to

prevent damage to Petroleum reservoirs, injury to person or property arising out of Petroleum Operations and to secure compliance with this Act, Rules made hereunder and Petroleum Agreement.

11. Inspection and investigation: (1) Government of Nepal may authorize any individual, official or authority for the purpose of making inspection and investigation to ensure compliance with this Act, Rules made hereunder and Petroleum Agreement.

(2) It shall be the duty of all concerned persons including Contractors to allow any individual, official or authority authorized under Sub-section (1) to enter into any of the places where Petroleum Operations are being conducted or is to be conducted for the purpose of making inspection and investigation and to furnish such other documents and particulars as may be requested by such authorized individual, official or authority.

12. Export of Petroleum: A Contractor is entitled to export its entitlement of Petroleum subject to the terms of the Petroleum Agreement, except Government of Nepal shall have right to issue orders temporarily prohibiting the export of such Petroleum for the purpose of national security or in order to ensure an adequate supply of Petroleum to meet domestic demand, as provided in the Petroleum Agreement.

13. Tax facilities: In the conduct of Petroleum Operations, a Contractor shall be exempt from payment of all taxes, charges, duties and fees leviable under prevailing law except:

- (a) A royalty of at least 12½ percent as prescribed on the value of Petroleum sold or disposed of. Such royalty shall be paid either wholly or party in Crude Oil or in cash or both as may be fixed by Government of Nepal.
- (b) Such annual surface rental as may be prescribed.

(c) ✕

(d) Registration charges or any other fees for services rendered by Government of Nepal at generally applicable rates for such services.

(e) Any other taxes or charges as may be specified in the Petroleum Agreement or prescribed in Rules made under this Act.

14. Customs facilities: (1) A Contractor and his/her Sub-contractor shall have the right to import into Nepal such materials and equipments as may be certified by the Department as necessary for Petroleum Operations.

(2) All materials and equipments imported by a Contractor or his/her Sub-contractor under Sub-section (1) shall be exempted from all import duties and taxes.

(3) A Contractor and his/her Sub-contractor may export all the materials and equipments imported by them under Sub-section (1), but not permanently installed for Petroleum Operations, subject to exemption of all duties and taxes.

15. Foreign Currency Facilities: (1) Notwithstanding anything contained in the prevailing law, a Contractor may retain any funds derived from his/her Petroleum Operations in Nepal or in a foreign country or transfer such funds anywhere inside or outside Nepal or from one country to another.

Provided that, the Contractor shall furnish to the *Nepal Rastra Bank* (Central Bank) as to such particular of each transaction as the Bank may prescribe.

(2) A Contractor may repatriate funds brought into Nepal for Petroleum Operations or derived from the Petroleum Operations as may be stipulated as his/her entitlement under Petroleum Agreement by converting into foreign currency under the prevailing law.

✕ Deleted by Income Tax Act, 2058.

16. **Employment of foreign Nationals**: Subject to prior approval of the Department, foreign nationals may be employed in the conduct of Petroleum Operations if qualified and skilled Nepalese nationals are not available.

17. **Land acquisition or right of access to land**: (1) Except for any land situated in an area prohibited for Petroleum Operations under Sub-section (1) of Section 9, if any land is required on either a temporary or permanent basis for conducting Petroleum Operations such land may be used or acquired as follows:

(a) If the land belongs to Government of Nepal , such land may be placed at the Contractor's disposal in consideration of a reasonable surface rent fixed by Government of Nepal .

(b) If the land is privately owned, Government of Nepal may, after acquiring the land on either temporary or permanent basis in accordance with the prevailing law at the Contractor's cost, allow the Contractor to make use of such land.

(2) If any specific land is required for installing temporarily any equipment, tools or machinery or to conduct survey or any other works related to it in connection with Petroleum Operations, then in such a case, subject to the provision of Sub-section (3), anyone may enter into such land to carry out any of these works.

(3) If the performance of Petroleum Operations by Government of Nepal or a Contractor causes disturbance of the rights of the lawful owner or damage to crops, trees, buildings, or any other property, Government of Nepal shall, by itself or by realizing from the Contractor, pay such compensation as may be determined in accordance with the prevailing law.

18. Information and report to be submitted: A Contractor shall submit to the Department such information and report as may be prescribed.

19. Penalty: (1) If any person conducts Petroleum Operations without entering into a Petroleum Agreement when such Petroleum Agreement is required under this Act, Government of Nepal may stop such Petroleum Operations, confiscate the materials and tools used in Petroleum Operations as well as the Petroleum produced by such unauthorized means, and impose a fine extending up to One Hundred Thousand Rupees.

(2) If a Contractor does not comply with an order issued under Section 10, Government of Nepal may suspend Petroleum Operations so long as the Contractor does not comply with such order and if non-compliance of such order causes injury to person or property, or damage to Petroleum reservoir, Government of Nepal may realize reasonable compensation there for from the Contractor.

(3) If a Contractor fails to submit any information or report to the Department pursuant to Section 18, Government of Nepal may, so long as such information or report is not submitted, suspend or stop the facilities provided to the Contractor under this Act.

(4) If a Contractor acts in contravention of any of the provisions of this Act, Government of Nepal may either impose a fine which may extend to One Hundred Thousand Rupees or suspend or stop the facilities provided to the Contractor under this Act for a stipulated period.

(5) Before initiating any action under Sub-sections (1), (2), (3) or (4), Government of Nepal shall provide to the concerned person a reasonable opportunity for submitting his/her clarification.

(6) Any person, who without reasonable excuse obstructs, molests or hinders any Contractor from undertaking Petroleum Operation under a Petroleum Agreement or any authorized act under this Act, shall be liable to imprisonment for a term which may extend upto Six months or fine which

may extend upto One Thousand Rupees or with both by an order of the authority specified by Government of Nepal in a Notification published in the Nepal Gazette.

(7) Any person not satisfied with the penalty imposed under Sub-sections (1), (2), (3), (4) or (6) may appeal to the [∘] Court of Appeal within Thirty-Five days.

20. Arbitration: Except as provided in Section 19, any dispute, controversy or claim between Government of Nepal and a Contractor arising out of or relating to Petroleum Agreement or the interpretation, breach or termination thereof, and which cannot be mutually resolved shall be settled by arbitration in accordance with the procedure specified in the Petroleum Agreement.

21. Provision as to Petroleum refinery: (1) Any one desirous of establishing a Petroleum refinery shall be required to obtain permission from the Department.

(2) The particulars to be furnished by the person seeking permission under Sub-section (1), the form of the permission and the terms and conditions to be fulfilled in connection with petroleum refining shall be as prescribed.

(3) The prevailing law shall apply in matters other than those mentioned in Sub-sections (1) and (2).

22. Power to frame Rules: (1) Government of Nepal may frame Rules for the purpose of achieving the objectives of this Act.

(2) Without limiting the generality of the power given by Sub-section (1), such Rules may provide for the following:

(a) provisions of Petroleum Agreements,

[∘] Amended by Administration of Justice Act, 2048

- (b) configuration, survey and relinquishment of areas subject to Petroleum Agreement,
- (c) selection of Contractors,
- (d) safety measures to be adopted in the conduct of Petroleum Operation,
- (e) reports and information to be provided by Contractor,
- (f) procedure for inspection and investigation.

23. Delegation of authority: Government of Nepal may, if it deems necessary, delegate to any authority all or any of the powers vested in it under this Act or the Rules framed hereunder.

24. Savings: (1) The provisions of Sections 5 and 13 of the Bonus Act, 2030 (1974) shall not be applicable to a Contractor and Sub-contractor.

(2) The provisions of the [⊠]Foreign Investment and Technology Act, 2038 (1981) and the Industrial Enterprises Act, 2038 (1981) shall not be applicable to a Contractor and Sub-contractor.

(3) Notwithstanding anything contained in the prevailing law the provisions of this Act and the Rules framed hereunder shall prevail.

25. Repeal: (1) In Section 2 of the Nepal Mines Act, 2023 (1966):

(a) The phrase "and the word includes any gas occurring in natural state or any such place where oil-well is situated" occurring in clause (a) is deleted.

(b) Clause (d) is substituted by the following clause (d):

"(d) "Minerals" means all such natural substances that can be extracted from the ground except the petroleum.

(2) Clause (f) of Sub-section (2) of Section 16 is deleted.

[⊠] Foreign Investment and Technology Transfer Act, 2049 and the Industrial Enterprises Act, 2049 are prevailing now.