

## **NATIONAL ASSEMBLY**

### **Law No. 8/2004**

### **Oil Revenue Law**

#### **Preamble**

The Democratic Republic of Sao Tome and Principe shall soon be starting to receive oil revenues resulting from the exploitation of its oil resources. Related to this reality are complex strategic matters that must be anticipated, resolved and regulated so that such revenues can foster progress and sustainable social and economic development in Sao Tome and Principe.

Based on these principles, this law is adopted, guided by two fundamental ideas. The first idea is centered on the payment and management of oil revenues. An attempt was made to address the concerns shown by the international experience taking into account the national reality and the need for the Saotomean people to make strategic decisions regarding their future.

For that purpose an account is established – the National Oil Account – in which all oil revenues shall be deposited directly, and mechanisms are introduced which are intended to ensure that such revenues will not be used indiscriminately. Thus, limits are set forth for the use of the oil revenues, such limits not excluding, however, the need to make decisions about spending on priority sectors on which expenditures will focus and the respective revenue allocation.

Similarly, this law introduces mechanisms to prevent the revenues being channeled to other accounts. Revenues may only be deposited in the State Treasury Accounts or in accounts established for that specific purpose in the name of the State, as authorized by the National Assembly.

This law establishes quantitative and qualitative limits on the amount of oil revenues that shall be used for annual budgetary expenditures. The quantitative limits define, in certain breadth, the maximum amount of annual expenditures to be financed by oil revenues. The qualitative limits determine the basic principles for the calculation of the annual expenditures within the maximum fixed limits, as follows: (I) planned and forecasts of future revenues; and (II) absence of distortions in the economy.

The finite nature of oil resources was also taken into account, as well as the need to introduce mechanisms that will allow Sao Tome and Principe to face the post-petroleum era with minimum economic distress. For that purpose, a reserve sub-account was established – the Permanent Fund of Sao Tome and Principe – in which part of the oil revenues shall be deposited, and whose use shall be strictly conditioned, except for the earnings generated from investments of its funds. Thus, it is intended for the Saotomean people to continue to benefit from the yields generated by the investments of the reserve sub-account even after the oil resources come to an end.

\* This translation was prepared for reference purposes only by the Columbia University Oil Advisory Group, composed of Mr. Joseph Bell (jcbell@hhlaw.com), Ms. Teresa Maurea Faria (tmfaria@hhlaw.com), Professor Macartan Humphreys (mh2245@columbia.edu), Professor Peter Rosenblum (prosen@law.columbia.edu), and Dr. Martin E. Sandbu (sandbu@post.harvard.edu). The translation has no official status. For legal purposes, one should rely only on the official Portuguese version.

## Unofficial Translation

The management and investment of the oil revenues are assigned to an Investment and Management Committee, which is the institution with the authority ascribed by law for that purpose. The Investment and Management Committee shall act pursuant to the prudent investor rule, the principles established by this law and by the management and investment policy.

This law introduces mechanisms to ensure the effective management and investment of oil revenues, and establishes different priorities according to their allocation. All revenues allocated to finance public expenditure shall be managed aiming immediate liquidity, while the revenues deposited in the permanent fund shall be managed for medium- and long-term profitability. The management and investment policy, which will guide revenue management and investment, shall reflect these principles.

The second fundamental idea of the law is centered on oil revenue management auditing, transparency and oversight mechanisms, which are considered to be of great importance to ensure that this law be enforced according to its objectives.

Two annual audits of the oil accounts, in which the oil revenues shall be deposited, shall be carried out: one by the Auditor General and the other by an internationally recognized international auditing firm.

The law establishes clear transparency and publicity rules with respect to all acts and documents related to the oil activity. On one hand, mechanisms are introduced that limit the confidentiality of contracts concerning oil resources or oil revenues, mandatory registration and disclosure is introduced for all documents and information related to the oil sector. On the other hand, all people have the ample rights to access the information.

The law also creates a Petroleum Oversight Commission, with independence and administrative and financial autonomy to ensure its effectiveness, with oversight, investigative and sanctioning powers.

Finally, this law clarifies that its dispositions apply to the Joint Development Zone; it establishes a range of irreconcilable conflicts with regard to the exercise and placement in positions in the bodies created by the law; and it aggravates by one third, in their minimums, the penalties established by the general law to punish behaviors that violate the provisions of this law.

In these terms, the National Assembly sets forth, pursuant to Article 97(b) of the Constitution, the following:

### **Chapter I Definitions and Scope of Application**

#### **Article 1 (Definitions) <sup>1/</sup>**

1. For the purpose of this law:

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<sup>1/</sup> Translator's Note: For the purpose of this translation, the terms and expressions defined in this Article are listed in the same order as they appear in the original Portuguese language alphabetical order.

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- a) “Administration” or “State Administration” – shall mean the direct, indirect, autonomous or independent administration of Sao Tome and Principe , including all ministries, entities, agencies, departments, offices, institutes, services, support services to the sovereignty bodies, as well as local and regional branches of the state and all their services, departments and all entities, companies and production unities controlled, in whole or in part, directly or indirectly, by the central, regional or local administration.
- b) “National Petroleum Agency” – shall mean the governmental legal entity with authority to regulate the national petroleum industry;
- c) “Official” or “State Administration Official”– shall mean any individual occupying any position in, employed by, contracted by or otherwise acting on behalf of or representing the State Administration, including ministers, directors, administrators, managers, attorneys-in-fact, commissioners or concessionaires of any entities controlled by the Public Administration;
- d) “Year” – shall mean the period between January 1st and December 31st.
- e) “Business Association” – shall mean any permanent association of entrepreneurs or professionals created in order to defend and promote their business or professional interests;
- f) “Joint Development Authority” – shall mean the collective body established for the purposes described in the Treaty.
- g) “Central Bank” – shall mean the Central Bank of Sao Tome and Principe , as established by Law No.8/92, dated as of August 3, 1992.
- h) “Custody Bank” – shall mean any financial institution, or its branches or agencies, in an international foreign center, which is rated the highest by two internationally recognized risk analysis agencies, able to receive and hold cash balances in an internationally convertible currency, act as the custodian itself or by an Official, keep operation records of the National Oil Account, and provide to the public, directly or through competent entities, the information subject to the transparency principle under the terms of this law;
- i) “Approved Bank” – shall mean any foreign commercial bank, or its branches or agencies, in an international financial center, which is rated the highest by two internationally recognized risk analysis agencies.
- j) “Management and Investment Committee” – shall mean the committee organized to ensure the management of the Oil Accounts and the investment of the oil revenues deposited in such accounts;
- k) “Petroleum Oversight Commission” – shall mean the independent organization that ensures the oversight of all the activities related to the national oil resources and revenues;
- l) “Oil Accounts” – shall mean the National Oil Account and the Permanent Fund of Sao Tome and Principe, when collectively referenced;

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- m) “Treasury Account” – shall mean any account or sub-account referred to as Public Treasury Account, established by the Treasury with the Central Bank, pursuant to Decree No. 51/96, dated as of October 29, 1996;
- n) “National Oil Account” – shall mean the account established and held by the Central Bank with the Custody Bank, pursuant to this law;
- o) “Oil Contracts” – shall mean transaction instruments having Oil Resources or Oil Revenues as an object.
- p) “Abuja Joint Declaration” – shall mean the declaration regarding transparency and good governance signed on June 26, 2004 by the Presidents of the Federative Republic of Nigeria and the Democratic Republic of Sao Tome and Principe.
- q) “State” or “Saotomean State” – shall mean the Democratic Republic of Sao Tome and Principe , as defined in article 1 of the Constitution;
- r) “Permanent Fund” or “Permanent Fund of Sao Tome and Principe” – shall mean the sub-account established with the Custody Bank, with the purpose of establishing a permanent savings reserve, pursuant to paragraph 1 of Article 3, and to Article 10 of this Law;
- s) “Public Registration and Information Office” – shall mean the public registration and information service, as defined in Article 18 of this law;
- t) “Natural gas” – shall mean all hydrocarbons that are gaseous at atmospheric pressure and temperature;
- u) “Approved Foreign Government” – shall mean the government of any foreign country or any agency or instrumentality of such foreign government, which is rated the highest by two internationally recognized risk analysis agencies;
- v) “Production Commencement” – shall mean the date on which the commercial production of hydrocarbons shall commence in any block of the national territory, including the Exclusive Economic Zone and the Joint Development Zone.
- w) “Hydrocarbons” – shall mean the hydrocarbons as defined in the Treaty, the Treaty Regulations, and sub-paragraph (m) of Article 1 of the Oil Activities Law;
- x) “Oil Activities Law” – shall mean Law No. 4/2000, dated as of August 23, 2000, and all amendments thereto;
- y) “State General Budget” – shall mean the State General Budget as defined in Law No.1/86, dated as of December 31, 1986;
- z) “Non-Governmental Organizations” – shall mean any association, organization, legal entity, foundation, institution or company and other bodies deemed as legal entities represented in Sao Tome and Principe, non-for-profit, that predominantly pursue scientific, cultural, charitable, aid, social solidarity, social and economic development, human rights protection, environmental protection goals, and other related goals;

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- aa) “Unrestricted Part of the National Oil Account” – shall mean the balance of the National Oil Account, excluding the Permanent Fund of Sao Tome and Principe;
- bb) “Person” – shall mean any individual or legal entity, whether national or foreign, resident or non-resident of Sao Tome and Principe;
- cc) “Petroleum” or “oil” – shall mean all hydrocarbons that are liquid at atmospheric pressure and temperature;
- dd) “Management and Investment Policy” – shall mean the document containing the management and investment rules for the Oil Revenues deposited in the Oil Accounts, pursuant to the principles set forth in this Law;
- ee) “Expected Average Prices” – shall mean the price calculated according to paragraph 1(a) of Article 7 of this law;
- ff) “International Reference Prices” – shall mean, for the period of ten 2/ years as from the Production Commencement Year, the official price of hydrocarbons publicly rated by the Brent FOB Sullom Voe, and, and for the seventh 3/ year after Production Commencement and subsequent years, the actual sale price of crude oil in Sao Tome and Principe, including the sales of hydrocarbons of the Joint Development Zone;
- gg) “Oil Production” – shall mean the commercial production of oil or any other hydrocarbon in the Exclusive Economic Zone or in the Joint Development Zone;
- hh) “Field Development Program” – shall mean the detailed document, which, pursuant to the Treaty, the Treaty Regulations or Oil Revenue Law, as the case may be, is submitted by an oil operator for the establishment, construction and operation of facilities and services for the recuperation, processing, storage and transportation of hydrocarbons in the contracted operator’s block;
- ii) “Oil Revenue” – shall mean any payment or payment obligation owed by any Person to the State, directly or indirectly, with respect to the oil resources of Sao Tome and Principe, including, but not limited to:
  - I) Any and all payments from the Joint Development Authority arising out of hydrocarbon-related activities developed in, or in connection with, the Joint Development Zone,
  - II) All payments arising out of activities related to Exclusive Economic Zone Oil Resources, namely, but not limited to Sao Tome and Principe’s share of crude oil and gas sales; signature bonuses and production bonuses; *royalties*; rents; proceeds from sale of assets; taxes; fees; duties and customs taxes; public service fees; net profits of state-owned oil companies; revenues from State share rights in oil contracts; crude oil sales; commercial activity resulting from transaction of oil, gas, or refined products; return on investments of the oil revenues; any and all payments generated in connection with the commercial production of hydrocarbons;

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2/ Translator’s Note: Discrepancy between periods in first and second clauses in original.  
3/ *Id.*

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- III) Other revenues of analogous nature or revenues deemed as having an analogous nature by law.
- jj) “Extraordinary Oil Revenue” – shall mean, for the period after the Oil Production Commencement, any signature bonus or any other payment, including the payments received from the Joint Development Zone related to an area that is not yet in production;
- kk) “Oil Resource” – shall mean any deposit, block or area where hydrocarbons can be found, regardless of its commercial potential, within the national territory, including the Exclusive Economic Zone, and pursuant to the terms of the Treaty, in the Joint Development Zone;
- ll) “Prudent Investor Rule” – shall mean that in performing any investment transactions or services, the agent shall ensure high quality and efficiency standards, and shall discharge his or her duties protecting the legitimate interests of the State with the diligence of a discerning and orderly manager, pursuant to the risk sharing principle and the safety of the investments, in accordance with the investment rules approved by the Management and Investment Committee pursuant to this Law;
- mm) “Operation Rules” – shall mean the document containing the operation rules for the Oil Accounts;
- nn) “Treaty Regulations” – shall mean the regulations approved by the competent authorities in accordance with the Treaty;
- oo) “Royalties” – shall mean the liquidated revenues from the sale or disposition of crude oil or natural gas, as defined in the Treaty, in the Treaty Regulations and in the Oil Activities Law;
- pp) “Long Term Real Rate of Return” – shall mean the rate calculated pursuant to paragraph 4 of Article 8 of this law;
- qq) “Service Fee” – shall mean any charges for Oil Accounts administration, management and maintenance services, as well as by the investments of the Oil Revenues deposited in such accounts;
- rr) “Treaty” – shall mean the treaty dated as of February 21, 2001, between The Federative Republic of Nigeria and The Democratic Republic of Sao Tome and Principe concerning the Joint Development Zone for petroleum and other resources;
- ss) “Union” – shall mean any permanent workers association formed to defend and promote their social-professional interests;
- tt) “Expected Present Value of Future Oil Revenues” – shall mean, for any period, the amount calculated pursuant to paragraph 1(c) of Article 7 of this law;
- uu) “Annual Funding Amount” – shall mean the amount to be transferred to the Treasury Account pursuant to this Law;
- vv) “Joint Development Zone” – shall mean the area defined for the purposes of the Treaty;

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ww) “Exclusive Economic Zone” – shall mean the maritime area as defined by Law No. 1/98, dated as of March 31, 1998;

2. The terms listed above may be used in the singular or in the plural, provided the adequate alteration, unless the context clearly indicates otherwise.

**Article 2  
(Scope of Application)**

This law shall regulate the payments, management, use and oversight of oil revenues resulting from oil operations in the entire national territory, including its terrestrial and maritime areas, including the Exclusive Economic Zone and the Joint Development Zone created by the Treaty.

**Chapter II  
Oil Accounts**

**Section I  
General Provisions**

**Article 3  
(Establishment of Oil Accounts)**

1. The Central Bank, acting in the name of the State, shall establish and hold the Oil Accounts with a Custody Bank selected by the Government pursuant to this law.
2. The Central Bank shall deliver to the Custody Bank upon execution of the Oil Accounts opening and management agreement the Operation Rules, which shall be an integral part of such agreement, and the Treasury Account number into which the Annual Funding Amount shall be transferred.

**Article 4  
(Prohibition on Liens or Encumbrances)**

1. Any and all acts are prohibited by the State or its Officials if such acts directly or indirectly create, permit, assume, or promise the existence of public loans, public bonds, security interests or any other liens or encumbrances relating to the Oil Accounts or any other Oil Resources, whether existing or future, or related thereto.
2. The prohibition contained in paragraph 1 above shall not apply to financial charges in connection with the maintenance and management of the Oil Accounts maturing no more than one year after the date on which such lien is initially incurred.
3. Any attempt to violate paragraphs 1 and 2 above shall be null and void.

**Article 5  
(Operation Rules)**

1. All transfers out of and in to the Oil Accounts shall be effected electronically.

Unofficial Translation

2. The Central Bank shall prepare and present to the Government, who will submit to the National Assembly for approval by statute the Operation Rules of the Oil Accounts, which shall include:
  - a) Authorization for transactions and transfers between the National Oil Account and the Permanent Fund;
  - b) Deadlines for transfers to the Oil Accounts;
  - c) Certification, registration and proof of transactions;
  - d) Authorizations for Oil Accounts investment transactions;
  - e) Payment of fees, commissions, emoluments, and other Service Fees for bank services and operations;
  - f) Other rules regarding deposits and remittance of oil revenues to the State.
3. Oil Accounts debt transactions will require signature of the following persons:
  - a) President of the Republic;
  - b) Prime-Minister;
  - c) Director of the Treasury and Patrimony;
  - d) Director of International Transactions of the Central Bank;
4. The contract referred to in paragraph 2 of Article 3 above shall provide that no transfer of the Oil Revenues deposited in the Oil Accounts may be effected to any bank account that is not held in the name of the Saotomean State, or any other account not authorized by a law approved for that purpose by the National Assembly.

**Section II  
National Oil Account**

**Article 6  
(Deposits)**

1. All monies owed to the State as Oil Revenue shall be deposited directly into the National Oil Account by the Persons liable to pay such monies. The Central Bank and other institutions that are currently or in the future in charge of the matter shall approve all necessary regulations and instructions.
2. Any Oil Revenue shall be considered paid by the Persons when fully and effectively deposited in the National Oil Account.



**Article 7**  
**(Forecast of the Oil Revenues)**

1. No later than June 30 of each Year, the National Petroleum Agency shall calculate and make public:
  - a) The expected average price of the oil barrel which shall be the average international reference price of Brent FOB Sullom Voe publicly quoted in the 10 prior years, which reference price shall be adjusted by a price differential resulting from the difference in quality between Brent and the different types of Sao Tome and Principe oil. The expected future average price for natural gas shall be the reference future average price adopted in natural gas contracts and adjusted pursuant to the terms set forth for oil.
  - b) The expected future sales of hydrocarbons by or on behalf of the State, based solely in the production in the blocks under production or commercial development and consistent with the production estimates updated by the block operators.
  - c) The Expected Present Value of Future Oil Revenues, as estimated by the sum of the revenues deposited in the National Oil Account during the previous twelve months ending on June 30 of such Year, plus the expected revenues for all future Years, with the proper discounts. Expected future revenues shall be estimated using the expected average future price of oil and natural gas, as defined in paragraph (a) and the expected future hydrocarbons sales, as defined in paragraph (b) of this article. A rate of not less than 7% shall be used to discount expected future revenues.
2. The National Petroleum Agency shall submit the calculations in writing to the President of the Republic, the National Assembly, the Government, the Governor of the Central Bank, the Petroleum Oversight Commission, and shall effect the respective registry.
3. Within 30 days from the date of submission of the calculations by the National Petroleum Agency pursuant to this Article, the Petroleum Oversight Commission shall check if the calculations were done according to the provisions of this law.

**Article 8**  
**(Determination of and Limits on the Annual Funding Amount)**

1. The Government shall include in the proposed State General Budget an Annual Funding Amount that shall be transferred out of the National Oil Account for the expenditures set forth in Article 9 of this law, and which shall only be transferred out of the National Oil Account to the Treasury Account after the definitive approval of the State General Budget.
2. The Annual Funding Amount for 2005 will be as set forth in the National State Budget as approved by the National Assembly.
3. In the following years, the Annual Funding Amount shall be subject to the following limits:
  - a) Starting in 2006, for each Calendar Year until the end of the first Year after the Production Commencement, the Annual Funding Amount shall not exceed the greater of the following amounts:

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- I) 20% of the balance of the National Oil Account on December 31, 2005, as estimated by the Central Bank;
  - II) 20% of the total estimated balance of the National Oil Account at the end of previous Year, as estimated by the Central Bank;
  - III) Each Year, after the date of announcement of commercial hydrocarbon discovery and after the assurance of production, the amount equal to the total forecast balance for the National Oil Account at the end of the immediately preceding Year, as estimated by the Central Bank, *divided* by the number of remaining years until the end of the first Year after the expected Production Commencement Year.
- b) For each Year starting with the second Year after the Production Commencement, the Annual Funding Amount shall not exceed be lesser of the following amounts:
- I) An amount equivalent to the sum of:
    - A) The Long Term Real Rate of Return multiplied by the balance of the Permanent Fund on June 30 of the previous Year, and
    - B) The Long Term Real Rate of Return multiplied by the Expected Present Value of Future Oil Revenues on June 30 of the previous Year.
  - D) An amount equivalent to the sum of:
    - A) The Long Term Real Rate of Return multiplied by the balance of the Permanent Fund on June 30 of the previous Year, and
    - B) The balance of the unrestricted part of the National Oil Account on June 30 of the previous Year.
4. For the purpose of this Article, the Long Term Real Rate of Return shall be the Real Rate of Return expected on a portfolio composed of assets proportionate to the assets held in the Permanent Fund during the same period. The Long Term Real Rate of Return shall never exceed 5%. The inflation adjustment shall use the variation rates of the official price indexes of the currencies in which the Permanent Fund asset portfolio is invested.

**Article 9**  
**(Allocation of the Annual Funding Amount)**

- 1. The allocation of the Annual Funding Amount shall be decentralized with respect to sectors and territory, and aimed at the elimination of poverty and the improvement of the quality of life of the Saotomean people, the promotion of good governance, and social and economic development. In addition, such allocation shall be used, namely, to strengthen the efficiency and effectiveness of the State Administration, to ensure a harmonious and integrated development of the Country, a fair sharing of the national wealth, the coordination between economic policy and social, educational and cultural policies, rural development, preservation of the ecological balance, environmental protection, the protection of human rights, and equality among citizens before the law.

## Unofficial Translation

2. The Annual Funding Amount may only be used pursuant to the policies and actions defined in a national, regional or local development plan and a national poverty reduction strategy.
3. Should the policies, plans and strategies referred to in paragraph 2 above not be in place, the Annual Funding Amount shall be allocated essentially and in first priority for the education, health, infrastructure and rural development sectors, as well as in the strengthening of the State's institutional capacity, as proposed by the Government and approved by the National Assembly.
4. An amount not less than 7% of the Annual Funding Amount shall be annually reserved to the public expenditures of the Autonomous Region of Principe.
5. An amount not less than 10% of the Annual Funding Amount shall be annually reserved for the State share of local budgets, and shall be distributed pursuant to the Local Finance Law.
6. The allocation of the reserves provided in this article shall be part of the State General Budget. The National Assembly shall approve budgetary and accounting procedures and mechanisms that are sufficient to ensure efficient monitoring of such use.
7. The proposals for the allocation of the Annual Funding Amount shall be accompanied by explanatory reports.

### **Section III Permanent Fund of Sao Tome and Principe**

#### **Article 10 (Permanent Fund)**

1. No later than the first Production Commencement Year, the Central Bank shall establish a sub-account of the National Oil Account that shall constitute the Permanent Fund, and whose transactions may only be effected pursuant to the following paragraphs.
2. No later than January 31 of each year starting in the second Year after the Production Commencement, and after the transfer from the National Oil Account of the Annual Funding Amount and the Service Fees owed, the balance of the National Oil Account on June 30 of the previous Year shall be transferred to the Permanent Fund.
3. After the Production Commencement, any Extraordinary Oil Revenue deposited in the National Oil Account shall be transferred to the Permanent Fund within 30 days from the date of such deposit.
4. No later than January 31, as from the second Year after the Production Commencement, an amount not greater than the amount set forth in subparagraphs (b)(I)(A) and (b)(II)(A) of paragraph 3 of Article 8 of this law may, if necessary, be transferred from the Permanent Fund to the National Oil Account for the payment of the Annual Funding Amount.
5. Any and all transfers of Oil Revenues deposited in the Permanent Fund in violation of paragraph 4 above shall be prohibited and shall be null and void, without prejudice to the transfers explicitly and exclusively authorized for investments pursuant to the Operation Rules and the Management and Investment Policy.

**Section VI**  
**Management and Investment of the Oil Accounts**

**Article 11**  
**(Management principles and rules)**

The management and investments of the Oil Revenues deposited in the Oil Accounts shall be the responsibility of a Management and Investment Committee, which shall act according to the Prudent Investor Rule, following the principles and rules set forth in this law and in the Management and Investment Policy.

**Article 12**  
**(Management and Investment Committee)**

1. A Management and Investment Committee shall be established, chaired by the Minister of Planning and Finance and also including the Governor of the Central Bank as the deputy chair, and three other members, one appointed by the President of the Republic and the other two appointed by the National Assembly, one of the latter appointed by the opposition parties.
2. The Persons appointed by the President of the Republic and the National Assembly shall be nationals, individuals or legal entities, resident or legally represented in Sao Tome and Principe, and shall have proven previous experience in managing international investment portfolios.
3. Each one of the members appointed by the President of the Republic and the National Assembly shall serve a two-year term commencing on the date of the respective appointment, renewable only once for an identical period.
4. In case of vacancy, the new member shall commence a new term.
5. The Management and Investment Committee may only meet if the majority of its members is present, and decisions shall depend upon the affirmative vote of at least three of its members.
6. The members of the Management and Investment Committee, with the exception of the Minister of Planning and Finance and the Governor of the Central Bank, shall be paid a fee to be fixed by the Government, and shall receive no other remuneration other than reimbursement of previously authorized expenses.
7. The Management and Investment Committee shall establish its internal operating rules, subject to the approval of the National Assembly.
8. The State General Budget shall include an allocation for the annual budget of the Management and Investment Committee.

**Article 13**  
**(Management and Investment Policy)**

Unofficial Translation

1. The Management and Investment Committee shall design and propose to the Government, which shall submit it for approval by the National Assembly, the Management and Investment Policy which shall meet on the following objectives:
  - a) Sufficient investment liquidity to ensure the availability of cash for the Annual Funding Amount;
  - b) Maximum profitability of the Permanent Fund of Sao Tome and Principe, subject to specified levels of acceptable risk for the investment horizon;
  - c) Transparent, modern and diversified management of the financial assets that are part of the investment portfolio of the Oil Accounts.
2. The Management and Investment Policy shall apply to each one of the Oil Accounts and shall include, at a minimum:
  - a) The types of permitted investments, including categories of assets and instruments;
  - b) Minimum required ratings and classifications for permitted high-risk investments, based on classifications proposed by expert firms of international reputation;
  - c) The rules relating to asset diversification by sector and issuer;
  - d) The rules to determine and monitor market risks, notably currency risks and interest rates risks;
  - e) The acceptable level of market value fluctuation during the term of the investment;
  - f) The rules established to ensure sufficient liquidity according to the Annual Funding Amount requirements.
3. The National Oil Account investments shall be held only in internationally convertible currency, in the form of the following instruments:
  - a) Cash bank deposits with an Approved Bank;
  - b) Negotiable direct obligations issued by any Approved Foreign Government;
  - c) Securities issued or directly guaranteed or insured by any Approved Foreign Government, maturing no later than two years after the date of acquisition, provided that the full faith and credit of such Approved Foreign Government is pledged in support thereof;
  - d) Bankers' acceptances, and floating rate certificates of deposit issued by the Approved Bank, maturing no later than two years after the date of acquisition;
  - e) Investment funds, the assets of which shall comprise securities of the type described in sub-paragraphs (a) and (c) above, regardless of the maturity date of such assets;

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- f) Other financial instruments of similar risk, profitability and liquidity to the ones referred to in the preceding sub-paragraphs, as approved by the Management and Investment Committee.
4. The Management and Investment Committee may delegate to managers specialized in investments the operational aspects of their powers and duties.
5. It is prohibited to invest the Oil Revenues deposited in the Oil Accounts in investments domiciled <sup>4/</sup> in Sao Tome and Principe, or in any investments controlled directly or indirectly, totally or partially, by any national Person, whether or not resident of Sao Tome and Principe, or who falls within the circumstances described in paragraph 1 of Article 30 of this law.

### **Chapter III Auditing**

#### **Article 14 (Annual Audits)**

1. The management and activity of the National Oil Account, including all investments, deposits, withdrawals and transfers, shall be subject to two annual audits, one by the Auditor General and the other, external and independent, by an international auditing firm, and such audits shall be concluded within six months of the end of each audited Year.
2. The audits referred to in paragraph 1 above shall assess compliance with this law and with other laws relating to the financial administration of the State, the Investment Policy, the Operation Rules, as well as all other rules relating to the Oil Accounts management and operation in the previous Year, namely, any investments, deposits, withdrawals and transfers.
3. Audit reports shall be simultaneously sent to the President of the Republic, the National Assembly, to the Government, to the Petroleum Oversight Committee, to the Sao Tome and Principe's Solicitor's Office and to the Public Registration and Information Office, within 30 days upon completion, under the terms of this article.
4. The reports mentioned in paragraph 3 of this Article shall include, necessarily, all documents, notes and observations that contribute to the full understanding of such reports.

#### **Article 15 (Selection of the Auditing Firm)**

1. The auditing firm shall be selected by the Petroleum Oversight Commission pursuant to competitive public procurement open to internationally recognized accounting firms with international experience.
2. Without prejudice to the requirements of paragraph 1 above, the competing audit firms shall present proof of their technical competence to audit corporations listed in official stock markets, according to international auditing and accounting standards.

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<sup>4/</sup> Translator's Note: Original Portuguese version refers to "investments domiciled" (sic.) in the country, likely meaning investments "located" in the country or "companies" domiciled in the country.

Unofficial Translation

3. The provisions of Article 22 shall be applicable accordingly.

**Article 16  
(Public Debate)**

1. After the beginning of each legislative session, the National Assembly shall schedule and debate, in separate plenary sessions, according to its internal organization:
  - a) General policy concerning hydrocarbons, to which members of the Government shall be present to answer the Deputies' questions and clarification requests;
  - b) The Oil Accounts audit reports, to which the ministries in charge of finance and hydrocarbons matters, the members of the Management and Investment Committee, the Governor of the Central Bank, the President of the Auditor General, the President and the members of the Petroleum Oversight Commission, one administrator from the external auditing firm that should have participated in the audit, the Executive-Director of the National Petroleum Agency, shall all be present and shall have the right to address the floor.
2. The topics mentioned in paragraph 1 above shall be discussed with civil society in public sessions organized by the Petroleum Oversight Commission prior to the debates at the National Assembly.

**Chapter IV  
Public Integrity**

**Section I  
Transparency and Publicity**

**Article 17  
(Transparency)**

1. All payments, management, use and investment of Oil Revenues or Oil Resources shall be subject to the transparency principle.
2. The transparency principle implies disclosure of, and public access to, namely:
  - a) Payments and respective receipts, management, and debit and credit transactions, as well as balances of the Oil Accounts;
  - b) The agreement for the opening and management the Oil Accounts entered into between the Central Bank and the Custody Bank;
  - c) The distribution of revenues arising out of the oil activity carried out in the Joint Development Zone;
  - d) The Operation Rules of the Oil Accounts and any amendments thereto;
  - e) The forecast of Oil Revenues prepared by the National Oil Agency;

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- f) All liens and encumbrances levying on the Oil Accounts, as permitted under paragraph 2 of Article 4;
  - g) Reports and other audit-related documents prepared by the Auditor General and the auditing firm with respect to the management and execution of the Oil Accounts;
  - h) The Investment Policy concerning the Oil Accounts;
  - i) The annual report of the Petroleum Oversight Commission;
  - j) All budgets that benefit from transfers from the Annual Funding Amount, including the State General Budget and the Joint Development Authority Budget;
  - k) All contracts relating to the participation of the State or any enterprise or entity owned or controlled in whole or in part by the State, the scope of which directly or indirectly concerns activities related to Oil Resources or Oil Revenues;
  - l) Conflict matters as described in Article 30, as well as related lawsuits and sanctions.
3. All activities subject to the transparency principle shall be made public through a website in the Internet for inquiry purposes.

### **Article 18 (Public Registration and Information Office)**

1. A Public Registration and Information Office shall be established, where all documents and information about activities related to Oil Resources and to the management of the Oil Revenues mentioned in the previous Article shall be filed, compiled, kept and made available to the public.
2. The documents and information referred to above shall be submitted for filing purposes to the entity in charge of the organization and maintenance of the Public Registration and Information Office, by the entities of the State Administration or Persons responsible for the elaboration, submission, receipt or approval of such documents and information, within ten business days of the occurrence of the event subject to registration.
3. The organization and maintenance of the Public Registration and Information Office shall be under the responsibility of the National Assembly.
4. A special law shall regulate the establishment and operation of the Public Registration and Information Office.

### **Article 19 (Publicity and Access to Information)**

1. Information subject to transparency shall be conveyed in such a way that an addressee with basic comprehension and knowledge can apprehend its meaning and scope, and such information shall:
  - a) Be presented in the Portuguese language;



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- b) Be complete, whole, clear, objective, truthful and current;
  - c) Be of universal and free access.
2. Without prejudice to the universal and free access to information, the Government shall regulate the forms of public disclosure and access, and shall establish the fees for the provision of certificates, shipping or copies, as well as the time for the information to be obtained and the guarantees of the public access to information.

**Section II  
Oil Contracts**

**Article 20  
(Confidentiality Clauses)**

1. Confidentiality clauses or other mechanisms included in Oil Contracts or in any other transaction instrument concerning any Oil Revenue or Oil Resource that prevent or attempt to prevent access to documents and information pursuant to Article 17 of this law shall be null and void, and contrary to public policy.
2. Information concerning proprietary industrial property rights shall be exempted from the scope of mandatory disclosure to the extent that confidentiality in such cases is protected by a national law, by the Treaty, by the Treaty Regulations or by any an international law.
3. In no case shall the provision of the above paragraph apply to any financial information.
4. Any Person intending to avail itself of the protection granted in the above paragraph shall have the burden to prove its right to confidentiality protection pursuant to the rules of evidence applicable to documents contained in the Civil Code.

**Article 21  
(Implicit contract clauses)**

1. All Oil Contracts or other transaction instruments concerning Oil Resources or Oil Revenues shall contain, and in the absence thereof shall be construed to imply, the following provisions:
  - a) “No loan, reward, advantage or benefit of any kind has been given to any Official or to any person for the benefit of such Official or person or third parties, as consideration for an act or omission by such Official in connection with the performance of such person’s duties or functions or to induce such Official to use his or her position to influence any acts or decisions of the Administration with respect to this Agreement. Any breach of this representation shall cause this Agreement to be invalid and voidable by the State Administration”;
  - b) “The validity and effectiveness of this agreement shall be subject to the full compliance with all applicable administrative procurement rules relating to State contracting.”
  - c) “This Agreement is elaborated and filed in the Portuguese and English languages, in case of non-conformity, the Portuguese language version shall prevail.”;
  - d) “This Agreement shall be made public and a copy hereof shall be provided to the Public Registration and Information Office within 10 days from its execution”.

**Article 22  
(Public Competition)**

1. All Oil Contracts or other transaction instruments to be entered into with the State Administration concerning Oil Resources or Oil Revenues, services relating to Oil Resources

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or in any way related to the oil sector or related activities, shall be preceded by public competitive tender pursuant to general law.

2. In the absence of legislation applicable to public tender, Oil Contracts or any other instruments mentioned in paragraph 1 above shall be approved by the Petroleum Oversight Commission prior to execution.
3. All Oil Contracts or other transaction instruments mentioned in paragraphs 1 and 2 above shall be made public by the State or by any Person, no less than ten days prior to execution, without prejudice to the terms of paragraphs 2, 3 and 4 of Article 20.
4. Oil contracts and other transaction instruments entered into in violation of this Article shall be considered void and without any effect, without prejudice to the liability of Officials and Persons perpetrating such violation.
5. The provisions of this Article shall not exempt any Person or State Administration Official of any legal obligation, except those obligations that are not consistent with this Article.

### **Chapter V Ensuring Public Oversight and Enforcement**

#### **Section I Petroleum Oversight Commission**

#### **Article 23 (Establishment of the Petroleum Oversight Commission)**

1. A Petroleum Oversight Commission having legal entity status and administrative and financial autonomy shall be established to ensure the permanent oversight of all payment, management and use of the Oil Revenues and Oil Resources.
2. The Petroleum Oversight Commission shall be composed of eleven members, appointed or elected as follows:
  - a) One member appointed by the President of the Republic;
  - b) Three representatives of the National Assembly, one necessarily appointed by the parliamentary groups from the opposition;
  - c) One counselor judge with at no less than five years of professional experience, appointed by the Superior Judiciary Council;
  - d) One representative from the Autonomous Region of Principe;
  - e) Two representatives from local governments;
  - f) One representative from Business Associations;
  - g) One representative from the Unions;
  - h) One representative from Non-Governmental Organizations.

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3. The decisions of the Petroleum Oversight Commission shall require the affirmative vote of at least six of its members.
4. The organic law regulating the Petroleum Oversight Commission shall regulate the form of appointment and dismissal of the members of the Petroleum Oversight Commission, the duration of their terms, their compensation, and internal rules and conflicts of interests, as well as the organization and operation of the Petroleum Oversight Commission.

**Article 24**

**(Authority and Powers of the Petroleum Oversight Commission)**

1. Without prejudice to the oversight powers provided by the law to other government bodies, the Petroleum Oversight Commission shall have the authority to oversee the compliance of all activities with this law, namely:
  - a) The verification and regularity of the expenditures of the Annual Funding Amount;
  - b) Management and investment of Oil Revenues, including the exchange operations to the credit and debit of the Oil Accounts and their respective flow of funds in accordance with the Operation Rules and the criteria defined in the Investment Policy;
  - c) The enforcement of the transparency rules;
  - d) The external auditing firm's audit;
  - e) The certification of the Production Commencement date.
2. To carry out its duties, the Petroleum Oversight Commission shall have the power to:
  - a) Request relevant information and documents from any Person;
  - b) Inquire about violations of any nature related to oil resources or oil revenues;
  - c) Initiate investigations and inquiries based on its own knowledge or on third parties' complaints of irregularities or violations of the requirements of this law;
  - d) Carry out searches, inspections, and seizure of any documents or personal property that are the object, tool, product of any infraction, or that are necessary to the opening of the respective process;
  - e) Present reports that may include detailed description of any act subject to oversight, the investigation process, and inquiries initiated and closed, as well as recommendations as to the appropriateness of the adoption of new procedures;
  - f) Hear, judge and enforce administrative proceedings and minor infractions consisting of violations of this law;
  - g) Report to the competent authorities any irregularities or apparent violations of the provisions of this law that are subject to disciplinary, civil or criminal sanctions;

- h) Act as a party to judicial actions.

**Section II**  
**Ensuring the Enforcement of the Law**

**Article 25**  
**(Mechanisms for law enforcement)**

The mechanisms to ensure the enforcement of this law shall be defined by a special law, which shall regulate, in particular, the civil, criminal, and administrative responsibilities for acts performed in violation of the requirements of this law.

**Article 26**  
**(Public Prosecutor's Office and Police Authority)**

1. Upon knowledge of violation of this law, the Public Prosecutor's Office shall on its own motion initiate judicial action to enforce the responsibilities of Officials or Persons pursuant to the Public Prosecutor's Office's organic law, as well as criminal, civil, and other applicable law.
2. Police authorities shall cooperate as may be requested by the Petroleum Oversight Commission in the exercise of its oversight functions.

**Article 27**  
**(Injunctions)**

1. At any time prior to the issuance of a final decision, a governmental body with decision-making authority shall on its own motion, or upon request, issue any necessary injunction in case of a justifiable fear of grave injury to the public interest which would be difficult to repair.
2. Any decision to issue or amend any injunction shall set out the grounds therefor and the term of any injunction shall be fixed.
3. The grounds for the revocation of any injunction shall also set out the grounds therefor.
4. The appeal of injunctions shall stay the effectiveness of the appealed decisions, except when the appellate body shall determine otherwise.
5. Except as expressly provided otherwise, any injunction shall expire:
  - a) When a definitive decision is made;
  - b) If the fixed term of the injunction or its extension has expired;
  - c) If the deadline for a definitive decision has elapsed;
  - d) If the injunction is revoked by a judicial decision that becomes *res judicata*.

**Article 28**  
**(Court actions)**

1. Any Person whose rights are protected under this law may appeal final decisions made by any Administration body to judicial courts with jurisdiction.
2. Any appeal filed pursuant to paragraph 1 above shall stay the appealed decision unless such stay results in grave injury to public interest and the court so declares in a reasoned decision.
3. In the case of appeal of decision made by the Petroleum Oversight Commission in the exercise of its oversight power, it is presumed that any stay of any Petroleum Oversight Commission's decision constitutes grave injury to public interest.

**Chapter VI**  
**Final Dispositions**

**Article 29**  
**(Joint Development Authority)**

1. Without prejudice to the provisions of the Treaty, the provisions of this law shall apply to all Oil Revenues of the State arising out of the Joint Development Zone and all State Administration Officials or any other Person employed, hired, or otherwise acting on behalf of or representing the Saotomean State Administration in the Joint Ministerial Council or in the Joint Development Authority.
2. In particular, such Persons and Officials mentioned in paragraph 1 above shall act so as to implement, jointly with the Federative Republic of Nigeria, the Abuja Joint Declaration as applicable to the Joint Development Authority.
3. All information that shall be made public pursuant to the Abuja Joint Declaration shall also be made public in accordance with paragraph 3 of Article 17 and paragraph 2 of Article 18 of this law.
4. In no case shall the State make any financial contribution to the budget of the Joint Development Authority or carry out any other obligation under the terms of the Treaty, without the approval of the National Assembly.

**Article 30**  
**(Conflicts)**

1. No Person may be appointed or stay in office if such Person holds, directly or indirectly, on its own or through a third party, any economic, financial, participatory or other interest in activity related to Oil Revenues, or if such Person serves on boards, or is a representative, attorney-in-fact, agent or commissioner of, or otherwise represents any Person in which the Oil Revenues deposited into the Oil Accounts are held or invested.
2. Any Person in a situation described in paragraph 1 of this Article shall refuse his or her nomination, or shall resign from the position he or she has been appointed to, as the case may be.

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3. Any person or entity who nominates, appoints, accepts or serves terms with the State Administration having knowledge of a conflict as described in paragraph 1 of this Article shall be punished with a fine equivalent to three times the amount such Person earned as compensation from the time he or she engaged in such activity until the time the conflict was uncovered.
4. Any Official who, due to the interest or resulting from his or her appointment, receives directly or through a third party, by any way or nature, an economic advantage from the violation of the provisions of this Article, will be punished with a fine equivalent to three times the economic advantage received.
5. In addition to the fines prescribed in this Article, the Official shall disgorge to the State the amount equivalent to the economic benefit including all proceeds earned by him or her or by a third party in connection with the violation.
6. Attempted violations shall always be punishable with a fine equivalent to half of the fine established for the consummated illegal act.

**Article 31**  
**(Violation of the law)**

1. Until the law defined in Article 25 is approved, and without any prejudice to the penalties explicitly prescribed by this law, any violations of this law that constitute either a crime or a misdemeanor shall have their minimum terms increased by one third if related to Oil Resources or Oil Revenues.
2. For the purposes of this law, the daily fine is equivalent to the amount of three national minimum wages in effect at the time when the action or omission occurs.
3. Any violations of the mandatory provisions of this law shall be void and shall not bind or produce any legal effect against the State, except for the rights of bona fide third parties, as provided for and protected under applicable law, and the liability of Officials.

**Article 32**  
**(Secondary Application)**

Matters not specifically addressed in this law or in regulations pursuant to this law shall be subject to the rules applicable to analogous matters specifically subject to this law and regulations pursuant to this law. In the absence or insufficiency of rules in this law and in regulations pursuant to this law, such matters shall be subject, by secondary application, to the provisions of the Oil Activities Law.

**Article 33**  
**(Effectiveness)**

This law shall become effective five days after its publication in the Official Gazette.

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Approved by the National Assembly of Sao Tome and Principe on November 26, 2004. –  
The *acting* President of the National Assembly, *Jaime Jose da Costa*.

Promulgated on December 29, 2004.

For publication.

The President of the Republic, *Fradique Bandeira Melo de Menezes*.