

DRAFT BILL

NATIONAL OIL COMPANY OF LIBERIA (NOCAL) ACT 2013

REPUBLIC OF LIBERIA

Preamble

WHEREAS, the petroleum (Exploration and Production) Act of 2013 has revised the legal and institutional framework governing the upstream petroleum sector, consisting of petroleum exploration development and production operations, in the Republic of Liberia.

WHEREAS, it is desirable that the provisions of the Act to Amend the Executive Law of 1972 to provide for the Establishment of the National Oil Company of Liberia (NOCAL), as amended by the Act of 20 April 2000, be further amended to conform to the purposes and functions assigned to NOCAL under the petroleum (Exploration and Production) Act of 2013 and to enhance its governance, and that the aforesaid act be restated;

NOW THEREFORE, it is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislative Assembled.

1. Short Title

The Act may be cited as the NOCAL Act of 2013

2. Amendment of Existing Law

THE Act to amend the Executive Law of 1972 to provide for the establishment of the National Oil Company of Liberia (“NOCAL”), (the “2000 NOCAL ACT”), is hereby amended and restated to read as set forth below.

3. Definitions

Terms used without other definition in this Act have the respective definitions assigned thereto in the Petroleum (Exploration and Production) Act of 2013

For the purposes of this Act:

“Public Finance Management Act” means the Public Finance Management Act of 2009 and the regulations promulgated thereunder, as each of them may from time to time be amended, modified or supplemented, and “Consolidated Fund” means the fund provided in said Act.

“Petroleum agreement” means a production sharing contract entered into pursuant to the Petroleum (Exploration and Production) Act of 2013.

“2002 Petroleum Law” means the Act Adopting the New Petroleum Law of the Republic of Liberia 2002.

“2013 Petroleum Law” means the Act Adopting the Petroleum (Exploration and Production) Law of 2013.

4. Corporation Established

There is created and established a wholly-owned State corporation with the name and style, the National Oil Company of Liberia, or “NOCAL”, which shall be an agency and instrumentality of the Liberian State with its principal office in the city of Monrovia, and with additional offices in such other places within and without the State as the board of directors may deem necessary in order to carry out the purposes of the corporation.

5. Purposes of the Corporation

The corporation is established for the purposes of managing on behalf of the State the commercial aspects of the exploration, development and production of crude oil and natural gas and the cessation of such activities or decommissioning of facilities.

6. Powers of the Corporation

The corporation shall have the following powers in furtherance of its corporate purposes:

- (a) To sue and be sued;
- (b) To adopt a corporate seal;
- (c) To have succession in its corporate name;
- (d) To enter into, perform and modify contracts, leases, agreement or other transactions on such terms as may be deemed appropriate with any agency or instrumentality of the State, with any foreign governmental agency, or with any other person, partnership, association, corporation, organization or other entity, public or private;
- (e) To borrow or raise money for any legitimate or lawful purpose of the corporation, subject to the prior authorization of the Minister of Finance;
- (f) To collect or compromise any obligations assigned or held by and any legal and any equitable rights accruing to the corporation;
- (g) To take any and all actions determined by the board of directors to be necessary or desirable to carry out the functions of the corporation;
- (h) To have all powers, rights and privileges specifically granted or conferred upon corporations by the laws of the State now or hereinafter in force;
- (i) To do any and all things legally necessary and appropriate in carrying out these powers.

7. Functions

The Corporation shall have the following functions:

- (a) Managing any and all commercial activities related to exploration and production and shall managing any state participation which the state may take in the rights and interests of a

contractor in any petroleum agreement under section 35 of the 2013 Petroleum Law and in any production sharing agreement under the 2002 Petroleum Law.

- (b) Lifting and marketing the State's entitlements of petroleum on account the state's share of production pursuant to the production sharing provisions of any petroleum agreement and of any production sharing agreement in the event such share is taken in kind in accordance with the provisions of section 31 (1) of the 2013 Petroleum Law or section 7(1) of the 2002 Petroleum Law.
- (c) Managing any citizen participation which the state may take in the rights and interests of a contractor in any petroleum agreement under section 36 of the 2013 Petroleum Law and in any production sharing contract agreement under the 2002 Petroleum Law.
- (d) Lifting and marketing the share of petroleum on account the citizen participation pursuant to the citizen participation provisions of any petroleum agreement and of any production sharing agreement.
- (e) Conducting or arranging for the conduct of such geological geophysical and other technical studies, carry out such technical data management services, generally provide such technical assistance and advice, as the Petroleum Directorate may request.

8. Capitalization and Funding

- (a) The corporation is authorized to issue a maximum of one hundred (100) shares of stock, all of which shall be no par value. All of the corporation's shares shall be owned by the state.
- (b) The corporation shall have an initial stated capital of two hundred and fifty thousand US dollars (US \$ 250,000). The President of Liberia is authorized to provide in the budget for an increase in the capital of the corporation from time to time, as may be deemed necessary. Such amounts as actually appropriate shall be paid to the corporation by the Minister of Finance in the manner provided by law.
- (c) The funds of the corporation shall consist of:
 - (i) Revenues derived from its participating interest referred to in subsection 7 (a) of this Act;
 - (ii) Fees and commissions earned on account of its marketing activities under subsection 7 (b) and (d) of this Act, as provided in a marketing agreement and the State represented by the Petroleum Directorate and the Minister of Finance;

- (iii) Fees for services rendered under subsection 7 (e) of this Act, as provided in a service agreement with the Petroleum Directorate;
 - (iv) Loans obtained in accordance with subsection 6 (e) of this Act, and
 - (v) Any other income derived by the corporation from its commercial activities.
- (d) Fees provided in the preceding subsection shall be commensurate with the service rendered and consistent with fees paid to independent international providers of similar services.
- (e) The funds of the corporation shall be applied for the settlement of:
- (i) Its participating interest share of costs and expenses incurred under any petroleum agreement or production sharing agreement, including any cash calls due and other liabilities incurred under any joint operating agreement between the corporation and the other entities constituting the contractor in relation to the aforesaid petroleum agreement or production sharing agreement;
 - (ii) The repayment of any sums borrowed pursuant to subsection 6 (e) of this Act, including interest thereon;
 - (iii) Any tax due by the corporation;
 - (iv) All other expenditures, including administrative costs and personnel costs, properly incurred by the corporation in carrying out the functions described in section 7 of this Act; and
 - (v) Any dividend payable by the corporation to the State in accordance with subsection (f) of this section.
- (f) The board of directors shall declare and pay dividends to the State in accordance with a dividend policy set by the President of Liberia, on recommendation of the Minister of Finance, which shall ensure that the retained earnings of the corporation shall be sufficient to cover known and reasonably anticipated financial requirements of the corporation.
- (g) Application of these funds is subject to the budgeting and other fiscal provisions of section 14 of this Act

9. Board of Directors

- (a) The general supervision and direction of the management of the affairs of the corporation shall be vested in and exercised by the board of directors consisting of not less than three (3) or more

than seven (7) members, as established from time to time in the by-laws of the corporation. There shall initially be five (5) directors.

- (b) The Minister of Finance and the Minister in charge of petroleum matters shall be ex officio members of the board of directors. The remaining board members shall be appointed by the President of Liberia with the consent of the Senate, shall serve at pleasure of, the President of Liberia, and shall be persons having qualifications and experience relevant to geosciences, engineering, management, law or taxation and finance in relation to the petroleum sector. The President of Liberia shall designate the chairman of the board of directors.

AMENDMENT: THE MINISTER OF FINANCE AND THE MINISTER IN CHARGE OF PETROLEUM MATTERS SHALL BE EX-OFFICIO MEMBERS OF THE BOARD OF DIRECTORS. THE REMAINING BOARD MEMBERS SHALL BE APPOINTED BY THE PRESIDENT OF LIBERIA AND SHALL BE PERSONS HAVING QUALIFICATIONS AND EXPERIENCE RELEVANT TO GEOSCIENCES; ENGINEERING; MANAGEMENT; LAW OR TAXATION AND FINANCE IN RELATION TO THE PETROLEUM SECTOR. THE CHAIRMAN OF THE BOARD AND MEMBERS SHALL BE NAMED AND APOINTED BY THE PRESIDENT WITH THE CONSENT OF THE LIBERIAN SENATE.

- (c) The term of office of each member of the board of directors other than the ex officio members shall be three years. No such board member shall serve more than two consecutive terms.

10. Power of the Board of Directors

In furtherance and not in limitation of the powers conferred to directors by the laws of the State governing corporations, the board of directors shall have the following powers:

- (a) To formulate policies and direction of management of the corporation;
- (b) To make, approve, alter, amend and repeal the by-laws of the corporation;
- (c) Upon the vote of a majority of the directors then authorized under the by-laws of the corporation and with prior notice to the President of Liberia, to remove from office the president and chief executive officer of the corporation for gross breach of duty, proven misconduct or inability to perform;

AMENDMENT: THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE CORPORATION SHALL BE REMOVED BY THE BOARD OF DIRECTORS ON PRIOR NOTICE TO THE PRESIDENT OF LIBERIA FOR GROSS BREACH OF DUTY, PROVEN MISCONDUCT AND INABILITY TO PERFORM.

- (d) To approve, subject to the Public Finance Management Act, the establishment of all bank accounts of the corporation;

- (e) To authorize the management of the corporation to borrow or obtain other financing with the consent of the Minister of Finance within or without the State for the purposes of financing cash contributions required to be made by the corporation to contractors in which the corporation holds a participation or otherwise to fund projects, programs or the operations of the corporation;
- (f) To authorize any officer(s) or agent(s) to enter into any contract, or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances;
- (g) To set apart, from time to time, out of any funds of the corporation, a reserve or reserves for any purpose(s) and to abolish any such reserve(s), subject to the Public Finance Management Act;

AMENDMENT: TO SET THE STIPEND, IF ANY, TO BE RECEIVED BY MEMBERS OF THE BOARD OF DIRECTORS, AND ANY PER DIEM, ALLOWANCE TO BE GRANTED TO MEMBERS OF THE BOARD OF DIRECTORS FOR TRAVEL OUTSIDE OF LIBERIA ON BUSINESS FOR THE CORPORATION SUBJECT TO THE PUBLIC FINANCIAL MANAGEMENT ACT.

- (h) To set the stipend, to be received by members of the board of directors, and any per diem allowance to be granted to members of the board of directors for travel outside of Liberia on business for the corporation subject to the Public Management Act;
- (i) To set the salaries, benefits and other compensations to be received by the management of the corporation;
- (j) To declare and pay dividends to the Republic of Liberia in accordance with a dividend policy set in accordance with subsection 8(e) of this Act; and
- (k) To exercise all other rights and powers of the board of directors expressly set forth in this Act.

11. Meetings of the Board of Directors

- (a) The board of directors shall hold its meetings at such places within the Republic of Liberia as it may from time to time decide.
- (b) The Board of Directors shall act by a vote of the majority of the number of directors than authorized under this act and the by-laws of this corporation and such majority shall constitute a quorum of the board of directors.

- (c) Other than as provided under subsection 10 (g) of this Act, the member of the board of directors shall receive no compensation for their services on the board of directors other than actual expenses in connection with meetings held in Liberia outside Monrovia.

12. President and Chief Executive Officer

- (a) The day-to-day affairs of the corporation shall be managed by a president and chief Executive Officer who shall be appointed by the President of Liberia on the recommendation of the board of directors on terms and conditions specified in his/her instrument of appointment.
- (b) The president and chief executive officer shall be a person of high moral character and proven integrity and who has qualification and experience in petroleum geosciences, petroleum engineering, petroleum management, petroleum law or petroleum taxation and finance. The President and Chief Executive Officer shall not be a member of the board of directors, shall be a full time employee of the corporation and shall be responsible for the day-to-day operations of the corporation under the general supervision and direction of the board of directors.

AMENDMENT: THE PRESIDENT AND CHIEF EXECUTIVE OFFICER SHALL BE A PERSON OF HIGH MORAL CHARACTER AND PROVEN INTEGRITY AND WHO HAS QUALIFICATIONS AND EXPERIENCE IN PETROLEUM GEOSCIENCES OR PETROLEUM ENGINEERING; PETROLEUM MANAGEMENT; PETROLEUM LAW OR PETROLEUM TAXATION AND FINANCE. SUCH QUALIFICATIONS SHALL BE APPLICABLE TO THE VICE PRESIDENT. THE PRESIDENT AND CHIEF EXECUTIVE OFFICER SHALL NOT BE A MEMBER OF THE BOARD OF DIRECTORS, SHALL BE A FULL-TIME EMPLOYEE OF THE CORPORATION AND SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE CORPORATION UNDER THE GENERAL SUPERVISION AND DIRECTION OF THE BOARD OF DIRECTORS.

- (c) The President and Chief Executive Officer shall serve at the pleasure of the President of Liberia, and may be removed by the board on prior notice to the President of Liberia for dishonesty, of any offense in violation of the Liberian Criminal laws or on grounds of verified physical, mental or administrative incapacity. If the President and chief executive officer is removed or resigns his positions, the board of directors shall designate an executive officer of the corporation as the acting President and chief executive officer pending the appointment by the President of Liberia of a replacement.
- (d) The President of chief executive officer shall, subject to the approval of the board of directors, recruit employees (i) for such positions and in such numbers as are necessary for the efficient operation of the corporation, (ii) under conditions of service which shall be at levels sufficient to attract and retain qualified professionals within the petroleum industry, taking into account the specialized nature of the work to be performed by each employees, the need to ensure financial prudence of the corporation and the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

AMENDMENT: THE PRESIDENT AND CHIEF EXECUTIVE OFFICER SHALL, WITH THE APPROVAL OF THE BOARD OF DIRECTORS, APPOINT ONE OR MORE VICE PRESIDENTS. A TREASURER AND A CORPORATE SECRETARY, AND MAY DELEGATE TO THEM SUCH AUTHORITY AS IS APPROVED BY THE BOARD OF DIRECTORS.

- (e) The President and chief executive officer shall, subject to the approval of the board of directors recruit employees (i) for such positions and in such numbers as are necessary for the efficient operation of the corporation, and (ii) under conditions of service which shall be at levels sufficient to attract and retain qualified professionals within the petroleum industry, taking into account the specialized nature of the work to be performed by each employee, the need to ensure financial prudence of the corporation and the salaries paid in the private sector to individuals with equivalent responsibilities, expertise and skills.

AMENDMENT: THE PRESIDENT AND CHIEF EXECUTIVE OFFICER SHALL, SUBJECT TO THE APPROVAL OF THE BOARD OF DIRECTORS, RECRUIT EMPLOYEES (I) FOR SUCH POSITIONS AND IN SUCH NUMBERS AS ARE NECESSARY FOR THE EFFICIENT OPERATION OF THE CORPORATION, (II) UNDER CONDITIONS OF SERVICE WHICH SHALL BE AT LEVELS SUFFICIENT TO ATTRACT AND RETAIN QUALIFIED PROFESSIONALS WITHIN THE PETROLEUM INDUSTRY, TAKING INTO ACCOUNT THE SPECIALIZED NATURE OF THE WORK TO BE PERFORMED BY EACH EMPLOYEE, THE NEED TO ENSURE FINANCIAL PRUDENCE OF THE CORPORATION AND THE SALARIES PAID IN THE SECTOR TO INDIVIDUALS WITH EQUIVALENT RESPONSIBILITIES, EXPERTISE AND SKILLS.

13. Indemnification

The corporation shall indemnify its directors, officers or former directors, or any person who may have served at its request as a director or officer of another corporation in which it owns shares or capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they, or any of them, are made parties, or party, by reason of being or having been directors or officers, except in relation to an action, suit or proceeding in which they are held to be liable for negligence or misconduct in performance of duty. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, or otherwise.

14. Application of the Public Finance Management Act to the Corporation and Other Fiscal Matters

- (a) The Corporation shall be subject to and shall comply with the provisions of the Public Finance Management Act as are applicable to State-owned enterprises, including but not limited to: (i) Financial reporting requirements to the Minister of Finance, the Auditor General and the Bureau

of State Enterprises; (ii) rules governing the maintenance of funds of the corporation and application by the corporation of surplus funds; (iii) the incurrence and reporting of borrowings by the guarantees issued by the corporation; (iv) accounts and audits; and (v) the preparation of budgets.

- (b) The Corporation shall be subject to tax on its income in accordance with the Revenue Code.
- (c) The Board of Directors shall ensure the efficient management of the financial resources of the corporation, including the collection and receipts of moneys due to the corporation. The corporation shall maintain its financial books and records in accordance with international financial reporting standards, and shall prepare annual financial statements including a balance sheet, a sources and uses of funds statement and an income statement.

AMENDMENT: THE BOARD OF DIRECTORS SHALL ENSURE THE EFFICIENT MANAGEMENT OF THE FINANCIAL RESOURCES OF THE CORPORATION, INCLUDING THE COLLECTION AND RECEIPTS OF MONIES DUE TO THE CORPORATION. THE CORPORATION SHALL MAINTAIN ITS FINANCIAL BOOKS AND RECORDS IN ACCORDANCE WITH INTERNATIONAL FINANCIAL REPORTING STANDARDS, AND SHALL PREPARE ANNUAL FINANCIAL STATEMENTS INCLUDING A BALANCE SHEET, THE SOURCES AND USES OF FUNDS STATEMENT AND AN INCOME STATEMENT.

- (d) In addition to any audits which the Auditor-General may conduct of the books and accounts of the corporation, the annual financial statements of the corporation shall be audited by a reputable international accounting firm within four(4) months after the expiry of each financial year.
- (e) The audited financial statements of the corporation and the audit report shall be published on the corporation's website within 90 days of their delivery to the corporation.
AMENDMENT: THE AUDITED FINANCIAL STATEMENTS OF THE CORPORATION AND THE AUDIT REPORT SHALL BE PUBLISHED ON THE CORPORATION'S WEBSITE WITHIN 90 DAYS OF THEIR DELIVERY TO THE CORPORATION.
- (f) The corporation shall cause all amounts received by it pursuant to subsection 8 (c) of this Act to be deposited in an enterprise fund of the corporation and may be utilized only to discharge liabilities of the corporation incurred under a budget of the corporation approved by the Minister of Finance.
- (g) The Corporation shall cause all amounts accruing as a result of participation on behalf of the citizens of the State in a contractor under a petroleum agreement or production sharing

agreement to be deposited with the designated third-party trustee or agent, after deduction of the marketing fees and commissions accruing to the corporation as provided in subsection 8 (c) of this Act.

- (h) The Corporation shall cause all amounts due on account of the lifting and marketing of petroleum to which the state is entitled under the terms of the relevant petroleum agreement or production sharing agreement to be deposited in the Consolidated Fund, after deduction of the marketing fees and commissions accruing to the corporation as provided in subsection 8 (c) of this Act.
- (i) The corporation shall publish on its website quarterly all amounts received under subsection 8 (c) of this Act.
- (j) The corporation shall publish on its website not more than forty-five (45) days after the end of each calendar quarter a statement of (i) all amounts received on account o the sale of its share of petroleum and on account of the sale of the State's share of petroleum under all petroleum agreements and production sharing agreements, and (ii) all amounts paid to the Consolidated Fund as required under subsection 14 (h) of this Act. Such statement shall indicate separately for each sale (i) the date of each sale, (ii) the volume of petroleum transferred in each sale, (iii) the sales price per unit, (iv) the total amount received , (v) whether the sale was made by the corporation or arranged for the corporation by the operator under the relevant petroleum agreement or production sharing agreement, and (vi) if the sale was arrange by a trader or agent, the commission or other fee paid to each such trader or agent, and the particulars of such trader or agent. The publication following the fourth calendar quarter of each year shall also include consolidated data for the calendar year then ended.

15. Transition provisions

Until the transfer completion date set forth in section 80 of the 2013 Petroleum Law, the corporation shall retain all power and authority under the 2000 NOCAL Act necessary to carry out its functions, rights and privileges.

16. Effective date

This Act shall take effect immediately upon publication in hand bills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING