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The new regulatory framework for the pre-salt areas



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Political background

Pre-salt Committee

Minister of Mining and Energy

Secretary of State

Minister of Planning

Secretary of the Treasury

Petrobras' President

BNDES' President

ANP's President

Projects

- Projects n. **5.938** / 5.939 / 5.940 / 5.941



Head of the Executive



Art. 64 - Constitution



Chamber of Deputies



Federal Senate



- **The rules of the new project apply to (art. 1):**

- 1. Pre-salt areas**

- 2. Strategic areas**

- **These areas will be defined by a Decree of the Executive branch. (art. 2, IV-V)**



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The new model: production sharing

- **Production sharing:** oil and gas exploration and production regime, in which the partner, at his own risk, executes the activities of exploration, appraisal, development and production and, in the event of a commercial discovery, acquires the right to receive restitution of oil cost, as well as his share in oil profit, in the proportion, conditions and terms set forth in the contract. (art. 2, I)



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The new model: production sharing

1. **Cost oil:** A portion of produced oil that the operator applies on an annual basis to recover defined costs specified by a production sharing contract.
2. **Profit oil:** The amount of production, after deducting cost oil production allocated to costs and expenses, that will be divided between the participating parties and the host government under the production sharing contract.



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Petrobras' role

- **Petrobras will be the Operator in all blocks. (art. 4)**
- **Petrobras will have a minimum participation of 30% in each consortium. (art. 10, III, c)**
- **Petrobras may take part in the bidding rounds in order to get more participation in the consortium (art. 14).**



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Forms of celebrating the contracts

- **FIRST FORM:**

The contract will be directly celebrated between the Union and Petrobras with no bidding procedure. (art. 8, I)

- **Polemic point about this first form:**



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Forms of celebrating the contracts

- **SECOND FORM:**

The contract with the Union will be signed after a block is awarded for the winner of a bidding procedure. (art. 8, II)

- A minimum of 30% of the block is already awarded to Petrobras. (art. 10, III, b)

- **CNPE (art. 9):**

I – the rate of celebration of contracts;

II – the blocks destined to direct contracting with Petrobras;

III - the blocks that will be offered through a bidding procedure;

IV – the technical and economic parameters of the contracts;

V – the definition of pre-salt and strategic areas;

VI – oil commercialization policy regarding the portion of oil belonging to the Union;

VII – gas commercialization policy for the natural gas coming from pre-salt areas.



- **MME (art. 10):**

I – planning the effective use of oil and gas

II – proposing to CNPE, after ANP is heard, the definition of blocks that are going to be submitted to concession or production sharing;

- **MME:**

III – proposing to CNPE the following technical and economic parameters for production sharing contracts:

- a) criteria for the Union's oil profit;
- b) the Union's minimum percentage of oil profit;
- c) the minimum percentage of Petrobras participation in the consortium, not inferior to 30%;
- d) the criteria and maximum percentage of annual production destined to the payment of oil cost;
- e) minimum local content;
- f) the fixed amount of signature bonus.



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Competences

- **MME:**

IV – establishing the directives to be followed by ANP in the bidding rounds and in the elaboration of contracts and tender protocols;

V – approving the drafts of tender protocols and production sharing contracts.

- **ANP (art. 11):**

I – promote technical studies to help MME decide which blocks are to be submitted to production sharing contracts;

II – elaborate the contracts and tender protocol drafts and subject them to MME's approval;

III – promote the bidding rounds;

IV – supervision of compliance to the best practices of the industry;

V – analyze and approve the exploration plan, appraisal and development of production plans, as well as annual work and production programs;

VI – supervision of the activities under the production sharing contract.



- **Old model:** 3 bid factors (all 3 variable)
 1. Signature bonus
 2. Minimum Exploratory Program
 3. Local Content

- **New model:** 1 bid factor
 1. Best offer in oil profit portion to be given to the Union.
There will be a minimum percentage to be offered. (art. 18)



- **Consortium:**
 - The winner of the bidding will be obliged to set up a consortium with Petrobras and Petro-sal. (art. 20)
 - Petro-sal will be part of the consortium representing the interests of the Union in the production sharing contract (art. 21).
 - Petro-sal will have the prerogative of indicating half of the members of the committee, including its president. (art. 23)
 - The president shall have powers of veto and casting vote. (art 25).
 - The administration of the consortium will be attributed to an operational committee. (art. 22)



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Interesting features of the contract

- **Some interesting features of the contract:**
 - Length: up to 35 years. (art. 29, XIX)
 - Controversies may be solved by arbitration and conciliation. (art. 29, XVIII)
 - *Farmin* and *farmout* procedures will need authorization from MME. (art. 31)
 - The portion of Minimum Exploratory Program that is not accomplished may be fulfilled through payment of the equivalent in money to the Union. (art. 32, V)

- **Contract termination hypotheses (art. 32):**
 - I – when it reaches its term;
 - II – by agreement of the parties;
 - III – by termination for reasons expressed in the contract;
 - IV – by the end of exploration phase, if no commercial discovery is made.
 - V – by exerting the withdrawal right during the exploration phase, provided that the Minimum Exploratory Program is fully accomplished or through payment of the equivalent in money to the Union.
 - VI – by refusal to sign the Unitization Agreement after ANP's decision.

- **Production Unitization:**
 - Reservoir located in the pre-salt and strategic area extending to areas not yet granted: Petro-sal will represent the Union in the celebration of the Agreement. (art. 36)
 - Reservoir located out of the pre-salt and strategic area extending to areas not yet granted: ANP will represent the Union in the celebration of the Agreement. (art. 37)
 - In any case, ANP will determine the time limit for parties to reach a production unitization agreement. (art. 33, § 2)
 - All agreements must be submitted to ANP for approval. (art. 39)
 - If parties do not reach an Agreement, ANP will arbitrate the rights and duties of each party. (art. 40)



- **Governmental Take:**
 - The new model preserves the payment of royalties and of signature bonus. (art. 42, I-II)
 - Royalties and signature bonus cannot be included in oil cost. (art. 42, § 1 and § 2).
 - There is no special participation in the project.
 - For onshore blocks, a participation of up to 1% of the production shall be payed to the landowner. (art. 43)
 - The revenue coming for the Union from the trade of oil will be deposited in the new Social Fund that is established by another project of law. The resources of this Fund shall be used for anti-poverty, educational, cultural, scientific and environmental projects and programs. (art. 45)

THANK YOU!

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