

DECREE - LAW 87 / 90

16 MARCH 1990

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Decree-Law 90/90, dated 16 March 1990, establishes the new legal system governing the exploration, surveying and exploitation of natural geological resources, recommending under clause 51, that specific regulations applicable to each type of resource are enshrined in separate legislation.

Consequently, the principle guide lines governing the exploration, surveying and exploitation of geothermal resources are defined herein, with the objective of ensuring rational technical and economic utilization of the said resources and enhancing the value of the same, in accordance with contemporary technical and scientific understanding and in the best interests of the national economy. The National Association of Portuguese Local Authorities was consulted.

Accordingly, in execution of the legislative powers invested under clause 1 of Law N° 13/89, dated 29 June 1989, and pursuant to sub-sections 201.1) paragraph a) and b) of the Constitution, the Government hereby decrees:

SECTION 1
General Terms and Conditions

Clause 1

Scope

This document applies to the utilization of natural geothermal resources.

Clause 2

Definitions

- 1 - Hereinafter, it shall be understood that:
- a) Minister - the Minister of Industry and Energy;
 - b) Department - the Department of Geology and Mines;
 - c) Exploration and surveying - activities directed toward discovering and characterising geological fluids and formations and indicating possible economic utilizations of heat given off;
 - d) Exploitation - activity subsequent to exploration and surveying, involving the economic commercialisation of the said heat.
- 2 - The legal powers hereby invested in the Minister for Industry and Energy includes the power to delegate to other members of the Government and for the said members to further delegate to the respective departmental directors.

Clause 3

Qualification of the Resource

The qualification of a fluid or geological formation as a geothermal resource is the responsibility of the Minister, at the request of the Department, should technologies which permit the utilization and exploitation of the heat exist. The Department of Energy must be consulted.

SECTION II
Exploration and Surveying License

Clause 4

Initial Bids

1 - The contractual bids submitted by persons interested in exploration and surveying rights, are to be addressed to the Minister and submitted to the Department, and must contain all the information necessary for a full appreciation thereof, viz:

- a) Identification of the intended area;
- b) General plan of the works to be undertaken, duly substantiated;
- c) Level of investment anticipated and method of financing;
- d) Supporting documents testifying to the technical and financial capacity and aptitude of the applicant.

2 - The Department, after a hearing with the applicant, and within the term established by the former, is empowered to reject the bid directly, on the following grounds :

- a) If the Department considers that the bid for the project is not satisfactorily viable or that the satisfactory execution thereof is not guaranteed;
- b) For reasons of public interest.

3 - Pursuant to sub-clause 13.4), Decree-Law 90/90, dated 16 March 1990, the priority criteria when awarding the contract shall be, among others, those defined under sub-clause 4.1), paragraph b), c) and d) herein.

4 - The Department shall confirm, in general terms, the term referred to in sub-clause 4.2) above, and substantiate any rejection of the bid.

Clause 5

Provisional Guarantee, Notice and Particulars

1 - In the non-event of the situation provided for under sub-clause 4.2) above, the Department will instruct the applicant to present the provisional guarantee, pursuant to clause 48 herein. Once the said guarantee has been presented, the Department shall place public notices in the Diário da República, in a newspaper in the municipality in which the area in question is located, and in two newspapers having a wide circulation, one in Lisbon and one in Oporto, so that the contents of the application may be made known and duly substantiated evidence on the application invited within thirty (30) days.

2 - At the end of the term provided under sub-clause 5.1) above, the Department may ask the applicant for further particulars on the conditions proposed.

3 - Subsequently, and within ninety (90) days following the expiry of the term provided under sub-clause 5.1) above, the Department is required to submit the bid received for judgement and Ministerial decree, together with the written opinion of the Department thereon.

Clause 6

Tender

1 - The Minister, at the request of the Department and irrespective of the submission of any application, may determine the manner in which bids for exploration and surveying activities in the area defined shall be invited under public or limited tender.

2 - For the above-mentioned purposes, a public notice shall be placed in the Diário da República, in a newspaper in the municipality of the area in question, and in two newspapers having a wide circulation, one in Lisbon and one in Oporto, establishing the term during which bids and objections thereto shall be accepted.

3 - At the expiry of the said term, the Department will request further particulars from the candidates, examine any objections, gather other information deemed pertinent or necessary, and ultimately submit a written opinion for consideration by the Minister, who shall decide on the awarding of the exploration and surveying rights.

4 - In the event of the situation provided for under sub-clause 49.2), Decree-Law 90/90, dated 16 March 1990, a new tender will be announced, in accordance with the provisions of sub-clauses 6.1), 6.2) and 6.3) herein, immediately establishing the respective essential terms and conditions.

5 - If no bids are received for the tender pursuant to 6.4) above, a further tender shall be announced, without the imposition of any value for the contractual position.

Clause 7

Exploration and Surveying Contract

1 - Once the decision to award the exploration and surveying rights has been taken, the Department will notify the successful candidate that the respective contract is to be drawn up between the State, represented by the Minister, and the said candidate, which will contain the following details:

- a) Identification of the rights holder;
- b) Delimitation of area involved;
- c) Validity of the initial contract and respective renewals;
- d) General works plan and minimum investment projection;
- e) Periodic submission of activity reports and plans;
- f) Amount of the definitive guarantee, pursuant to clause 49 herein;
- g) Grounds for rescission of the contract, pursuant to clause 20, Decree-Law 90/90, dated 16 March 1990.

2 - Where necessary, conditions of particular application covering further rights and obligations may also form part of the said contract.

3 - The contract may also include conditions of particular application relating to possible future concessions, viz:

- a) Rights of the interested party;
- b) Term of the concession and conditions governing reversion of assets and rights to the State;
- c) Compensation due the State;

- d) Obligations with regard to matters of public interest or other obligations conducive to the development of the Country;
- e) Conditions under which the contract shall be reviewed.

4 - The Department shall publish an extract of the contract, detailing the main elements thereof in a public notice in the Diário da República.

Clause 8

Rights Under the License

Within the scope and validity of the exploration and surveying contract, the holder of the rights may conduct such surveys and works as deemed necessary to ascertain the geological structure of land adjacent to the area covered under the contract, whenever the Department recognises the said necessity, and provided that the conditions established by the latter are observed, without prejudice to third parties.

Clause 9

Obligations under the License

In addition to the obligations pursuant to clause 16, Decree-Law 90/90, dated 16 March 1990, the holder of the exploration and surveying rights is required to :

- a) Submit the work programmes and progress reports to the Department, in accordance with the terms and specifications defined by the latter or as provided under the respective contract, and promptly advise the Department of pertinent geological data on the area under the contract;
- b) Maintain in good order the sounding and boring survey results, submitting the duly classified and boxed results to the Department within the validity of the contract;
- c) Provide a written account of expenses, in a manner allowing correct analysis of investment made;
- d) Comply with the instructions of the Department under the contract.

Clause 10

Cautionary Measures

The Department, informally or upon application by the holder of the exploration and surveying rights, may order the implementation of duly substantiated cautionary measures as may be necessary to safeguard or protect the resource.

Clause 11

Transfer of the Contractual Position

1 - Should the holder of the exploration and surveying rights intend to transfer the said rights to another party, the holder is required to obtain the necessary authorization, and must apply to the Minister through the Department, indicating expressly, viz:

- a) The entity to which it is intended that the said rights are transferred;
- b) The motives and grounds for the application;
- c) Conditions of transfer.

2 - A declaration from the party to which the rights are to be assigned and which confirms that the said party accepts the indicated conditions of transfer must be attached to the application, together with supporting evidence of the technical and financial capacity of the said party.

3 - The Department shall assess the grounds for the transfer and the conditions of assignment, gather all particulars considered necessary and submit the application for decision by the Minister, accompanied with the duly substantiated written opinion of the Department.

4 - Should the application be conceded, the applicant and the party to which the rights are to be assigned will be notified that the contract of assignment of the contractual position is to be drawn up for signature by the parties involved.

Clause 12

Events leading to the Cancellation of the Contract

The exploration and surveying contract will be cancelled in the event of:

- a) Expiry of the validity of the contract;

- b) Death of the person or winding-up of the company holding the rights.

Clause 13

Cancellation by Agreement between the Parties

The cancellation by agreement between the parties involved in the exploration and surveying contract must be in accordance with the terms and conditions governing the signing of the said contract.

Clause 14

Rescission by the State

1 - The Minister may rescind the contract, pursuant to clause 20. Decree-Law 90/90, dated 16 March 1990, by substantiated decree, of which the holder of the respective rights shall be notified, and which shall be published in the Diário da República.

2 - The decree provided for under sub-clause 14.1) above, shall be drawn up at the request of the Department, after the conclusion of an inquiry undertaken at the instigation of the latter, and which must include :

- a) Notice to the holder of the exploration and surveying rights, an indication of the obligations violated and establishment of a term, never less than thirty (30) days, within which the said holder may appeal;
- b) Written defence, when submitted within the established term.

Clause 15

Rescission by the Rights' Holder

1 - The holder of the exploration and surveying rights who decides to exercise the rights invested under sub-clause 20.d), Decree-Law 90/90, dated 16 March 1990, must declare the rescission in the presence of the Department, and provide at the same time such evidence which, in the opinion of the former, substantiates the legal grounds for the rescission.

2 - The Department shall consider the particulars provided and all and any other elements considered necessary and pertinent thereto, and shall submit the declaration to the Minister, accompanied by the written opinion of the Department.

3 - In the event that the legal grounds invoked are not found to be duly substantiated, the Department will notify the holder of the exploration and surveying rights thereof.

4 - Should the Department not issue a report or notice within sixty (60) days of the declaration detailed in sub-clause 15.1) above, it shall be understood that the evidence provided has been tacitly accepted.

SECTION III
Exploitation Concession

Clause 16

Award of the Exploitation Concession subsequent to exploration and surveying

1 - In order to obtain the exploitation concession in the exploration and surveying contract area, the holder of the exploration and surveying rights is required to submit an application addressed to the Minister through the Department, which must contain all the pertinent elements necessary for a full appreciation thereof, viz:

- a) Identification of the individual or the company, either incorporated or to be incorporated, indicating the respective registered office and share capital of the same, in favour of which the said concession is petitioned;
- b) Location of the demarcated area, with an indication of the respective local parish, municipality and district;
- c) Indication of the delimitation proposed for the intended area;
- d) Definition of the characteristics, properties and composition of the geothermic resource;
- e) Indication of the person or persons responsible for the future technical management of the exploitation.

2 - The following documents must be attached to the application detailed in clause 16.1) above:

- a) Certificate of Incorporation of the company or group for which the concession is petitioned, or the plans of the company, should the same not yet be incorporated, as well as, if applicable, details of the shareholders and management, indication of the share capital which has been subscribed for and paid up, or the plan for the paying up of the share capital;
- b) Term of responsibility of the technical director proposed;
- c) Topographical map, scale 1:10,000, referenced to two geodesic bench marks, with layout of tapping and catchment sites and relevant demarcation;

- d) Geological survey of the area, with description of bores sunk, existing tapping sites and detailed characteristics of the resource;
- e) Definitive projection of volumes to be tapped;
- j) Specification of the economic utilization of the resource;
- k) All and any other details pertinent to a full appraisal of the application.

3 - The Department shall place a public notice in the *Diário da República*, in a newspaper in the respective municipality and in two newspapers having a wide circulation, one in Lisbon and one in Oporto, announcing the receipt of the application and inviting evidence and objections thereto within the period of thirty (30) days.

4 - Should the Department require further particulars in order to assess the application received, the Department will notify the applicant, giving substantial reasons, to submit further particulars within a reasonable period of time.

5 - Subsequently, and within a maximum period of one hundred and twenty (120) days following the expiry of the term established under sub-clause 16.3) above, the Department is required to submit the application for decision by the Minister, together with its written opinion thereon.

6 - Should the existence of a geothermal resource be duly recognised, and all the necessary conditions satisfied, the Minister will authorise the concession for which application is made, and an administrative contract shall be drawn up for signature.

7 - The Department will place a public notice comprising an extract of most pertinent aspects of the contract in the *Diário da República*.

Clause 17

Direct Award of Concession in response to Application by the Interested Person

1 - Any interested person may apply for the exploitation concession of a geothermal resource located in an area covered under a valid exploration and surveying contract, providing the said contract does not cover the same resource.

2 - The application, duly prepared and completed in accordance with the provisions of clause 16 herein, must be addressed to the Minister and submitted to the Department.

3 - The Department, following a hearing with the applicant, and within the term to be established by the former, is empowered to immediately reject the application on the following grounds:

- a) Should the Department consider that the conditions justifying award of the concession have not been satisfied, due to inadequacies either on the part of the applicant or with regard to current data and knowledge of the geothermal resource;
- b) For reasons of public interest.

Clause 18

Procedure for the Direct Award of the Concession

In the non-event of the situation provided for under sub-clause 17.3) herein, the Department will notify the applicant to present the provisional guarantee pursuant to clause 48. Subsequent to the presentation of the same, the provisions of sub-clause 16.3) to sub-clause 16.7) inclusive herein will be duly observed.

Clause 19

Direct Award of Concession through Tender

1 - The Minister, at the request of the Department, may announce a tender inviting bids for the direct award of a concession, pursuant to sub-clause 21.2), Decree-Law 90/90, dated 16 March 1990, for the purposes of which the Department will place a public notice as under sub-clause 6.2) herein.

2 - Having received the bids and any objections thereto, the Department may ask for further particulars on the bids, gather all and any other information considered pertinent, and submit a written opinion for consideration by the Minister, who shall determine whether or not the concession will be authorised.

3 - Should the situation be such as provided for under sub-clause 49.2) and sub-clause 50.2), Decree-Law 90/90, dated 16 March 1990, a new tender to award the concession in question will be announced, pursuant to the above clauses, and a value will be established immediately, calculated in accordance with the provisions of sub-clause 31.4) and sub-clause 31.5) herein.

4 - If no bids are received for the tender pursuant to sub-clause 19.4) herein, the tender shall be re-announced, without the imposition of any value for the contractual position.

Clause 20

Contract of Concession

Once the decision to award a concession has been taken, the Department will notify the successful candidate that the respective contract is to be prepared for signature and shall contain the following details:

- a) Identification of the person awarded the concession;
- b) Delimitation of the area granted under the concession, and respective demarcation of the same;
- c) Characteristic properties and features of the natural geothermal resource for which the exploitation concession is granted;
- d) Term of the concession and conditions governing the renewal of the concession;
- e) Indication of reciprocal rights and obligations, viz:
 - I) Conditions of reversion to the State;
 - II) Compensation due the State by the holder of the concession;
 - III) Purpose of the utilization;
 - IV) Approved volumes of heat to be tapped;
 - V) Legal and financial framework the holder of the concession must obey;
 - VI) Conditions under which the contract will be reviewed;
 - VII) Periodic submission of activity reports and plans;
 - VIII) Grounds for rescission of the contract,

pursuant to clause 29, Decree-Law 90/90, dated
16 March 1990;

- IX) Amount of the definitive guarantee, pursuant to clause 49;
- f) All and any conditions of particular application to which ultimately the holder of the concession may be subject, viz: the provisions of sub-clause 30.2), paragraph c) herein.

Clause 21

Assignment of Concession

Should the holder of a concession intend to assign his position under the contract, the said holder must apply for authorization to do so, pursuant to clause 11 herein, observing the respective due procedures thereof.

Clause 22

Demarcation of the Concession Area

- 1 - The area of the concession shall be demarcated by reference points, wherever possible defined by map co-ordinates.
- 2 - The demarcation of the area must allow maximum exploitation of the resource, without exceeding the reasonable area for this purpose.
- 3 - There should be no overlap between demarcated areas, even if relating to different resources.
- 4 - The specialist from the Department responsible for monitoring the demarcation shall check on site that the map submitted is accurate and that the demarcation proposed complies with the provisions of sub-clause 22.2) above.
- 5 - Should there be no grounds for objection, the specialist referred to in sub-clause 22.4) above shall accept the demarcation and prepare a title deed for signature by himself and the applicant.

6 - Should the map submitted by the applicant not be sufficiently accurate, a term shall be established within which the interested party may submit a new map.

7 - Should the Department specialist reject the demarcation proposed, he will amend the same, so as to satisfy the provisions of sub-clause 22.2) above, and prepare the respective title deed for signature by himself and the applicant, who, should he think it fit, may formulate his objections thereunto.

Clause 23

Amendment to the Concession

1 - In the event that the holder of the concession wishes to reduce or enlarge the demarcated area, the holder is required to submit a duly substantiated application to this effect.

2 - The Department will submit the application received, together with the written opinion of the Department, for decision by the Minister.

3 - The reduction or enlargement of the concession by the State shall be subject to Ministerial decree, at the request of the Department, the prior agreement of the holder of the concession having been obtained.

Clause 24

Exploitation Plan

1 - The holder of a concession shall exploit the geothermal resource in accordance with a plan previously approved by the Department.

2 - The exploitation plan must contain the following :

- a) Specification of the inherent characteristics and features of the resource;
- b) Detailed description of the exploitation procedure.

3 - The holder of the concession will also submit for prior approval by the Department, any necessary revisions to the exploitation plan, including all and any appropriate alterations and

amendments thereto in light of the increased knowledge brought to bear on the resource or the techniques, and the necessity for flexibility in the size of production.

4 - The Department is empowered to request, setting out the grounds of such requests, further particulars from the holder of the concession, require greater details and impose amendments to the exploitation plan as necessary to enhance the technical and economic utilization of the resource or to protect the environment.

5 - Revisions to the exploitation plan shall be considered to be tacitly approved, should sixty (60) days elapse subsequent to submission of the said plan, without any comment thereon being issued by the Department.

Clause 25

Technical Management of the Exploitation

1 - The concession may not be exploited unless managed by a technically able and competent person, who, for legal purposes, shall be designated "Technical Director".

2 - The duties of the technical director may only be carried out by persons possessing the following qualifications:

- a) Higher education course qualification issued by a polytechnic or equivalent, in the appropriate specialist field, the Department being empowered, in the instance of a major or technically complicated exploitation, to request university qualifications;
- b) Recognition by the Department as persons possessing the technical competence, experience and availability to carry out the job.

3 - The technical director is required to effectively assist the work, in the absence of which the Department may call for a replacement.

4 - The responsibilities of the technical director shall only cease once the Department has been notified, by the technical director or the holder of the concession, that the former has ceased to perform those functions.

5 - Should the position of technical director become vacant, the holder of the concession is required to advise the Department thereof as promptly as possible, and to propose a replacement technical director, and a respective term of responsibility.

Clause 26

Authorised Suspension of the Exploitation

1 - The holder of the concession must immediately inform the Department of the suspension of the exploitation as defined under clause 28, decree-Law 90/90, dated 16 March 1990.

2 - In the event that the holder of the concession desires authorization for the suspension, pursuant to Decree-Law 90/90, dated 16 March 1990, the said holder is required to address a duly substantiated application thereon to the Minister, submitted to the Department.

3 - The Department, in possession of all and any elements deemed pertinent and necessary, shall submit the application received for decision by the Minister.

4 - Renewal of the authority conceded must be petitioned annually during the month of January.

Clause 27

Unauthorised Suspension of the Exploitation

1 - In the event of an unauthorised suspension of the exploitation, the Department shall notify the respective holder of the concession so that, within the substantiated term established by the Department, the said holder may redress the situation.

2 - At the expiry of the term provided for under sub-clause 27.1) above, in the event of the continuing suspension of the exploitation, the said suspension shall be considered unlawful.

Clause 28

Termination due to Cancellation of the Contract

1 - The contract of concession shall be cancelled under the following circumstances:

- a) Expiry of the validity of the contract;
- b) Death of the person or winding-up of the company holding the concession;
- c) Drying up of the resource forming the object of the concession.

2 - Should the Department cancel the contract, the Department will place a public notice thereof in the Diário da República.

3 - Should the contract be cancelled on account of the expiry of the validity of the said contract, all exploitation assets shall become the property of the State, unless established otherwise.

4 - Should the contract be cancelled on account of the drying up of the resource forming the object of the concession, the said cancellation shall be announced by Ministerial decree, at the request of the Department and after consultation with the holder of the respective concession.

5 - For the purposes of this clause 28, drying up of the said resource shall be understood to be either the marked irreversible reduction in the yield or a decline in the characteristics and inherent properties of the resource.

6 - In the event of the cancellation of the contract on account of the drying up of the resource forming the object of the concession, the title to the exploitation assets will become the property of the owner of the said assets, notwithstanding any claims by third parties.

Clause 29

Termination by Agreement or by Rescission of the Holder of the Concession

The termination of the contract by agreement between the parties involved or by rescission of the holder of the said concession must comply with the conditions and regulations governing the signing of the same.

Clause 30

Termination due to Rescission of the Contract

1 - Rescission of the contract of concession by the State, pursuant to sub-clause 29.c), Decree-Law 90/90, dated 16 March 1990, shall be announced by Ministerial decree, published in the Diário da República.

2 - For the purposes of the rescission of the contract by the State, and without affecting the provisions of clause 29, paragraph c), Decree-Law 90/90, dated 16 March 1990, it will be considered that the holder of the concession has failed to fulfil his obligations under the concession in the following circumstances:

- a) Failure to adopt the urgent measures as ordered and duly substantiated by the Department to ensure the appropriate exploitation of the same;
- b) Failure to reinstate the definitive guarantee for its full amount or failure to provide the additional guarantee within the term established herein;
- c) Failure to begin the exploitation works within the legally established term or validity of the contract of concession;
- d) Unlawful suspension of the exploitation.

3 - The Ministerial decree announcing rescission of the contract of concession will be made at the request of the Department, prepared under inquiry instigated by the same, and must always contain:

- a) Notice to the holder of the concession, with a substantiated reasonable term during which the said holder may appeal;

- b) Written defense of the holder of the concession, when submitted within the established term.

4 - Rescission of the contract of concession shall not affect ownership of the assets of the holder of the concession. However, if, pursuant to Ministerial decree, the works and assets used in exploiting the resource must be left on site for two years, at the end of which, should the exploitation not recommence, the title for the goods will remain with the holder thereof, excepting the rights any third party may have thereto.

5 - Should the exploitation be recommenced within two (2) years, the works and assets used in exploiting the resource will remain subject to the same legal jurisdiction as when the said works and assets were found, excepting those owned by the holder of the concession, which shall be expropriated for the new holder thereof, should the latter intend to use the same to exploit the resource and fail to reach an agreement with the owner as to the purchase or lease thereof.

6 - The new concessionaire is required to contact the owner of the assets, within a period of sixty (60) days subsequent to the award of the new contract of concession, to advise the latter of any intention the former may have to use the said assets.

7 - Failure to make contact in accordance with the provisions of sub-clause 30.6) above, shall result in the title for the assets becoming the full property of their owner.

Clause 31

Discharge

1 - The concession may be discharged, against payment of fair indemnity, for reasons of the public good.

2 - Discharge of the concession shall be determined by resolution of the Council of Minister, at the request of the Minister.

3 - Discharge of the concession includes the subrogation of all credits and the assumption of all liabilities of the holder of the concessions for that year, and the expropriation for the public good

of the property of the holder of the concession used in exploitation of the said concession, as well as the property not directly used in the exploitation, should the same not be of interest to their owner.

4 - To calculate the indemnity to be paid in the event of the discharge of the concession, the real value of the exploitation assets will be used, at the date of the discharge. Any goodwill arising as a result of a prior transfer of the concession will not be taken into account.

5 - In addition to the amount pursuant to sub-clause 31.4) above, there shall be added :

- a) An amount equal to the net profits anticipated for an additional five (5) year period, estimated using the average net profits for the last three (3) years;
- b) Interest for the period between the date of the loss of the concession and the date of payment of the outstanding indemnity, calculated at the Banco de Portugal discount rate.

SECTION IV

Rights of Occupation and Expropriation

Clause 32

Occupation of Privately Owned Land

1 - The occupation of land by the holders of exploration and surveying rights pursuant to clause 32, Decree-Law 90/90, dated 16 March 1990, shall be subject to the prior consent of the respective landowners.

2 - In the absence of such consent due to a simple refusal by the land owner, or should the conditions imposed be considered unacceptable, the holder of the exploration and surveying or exploitation rights may call upon the landowner, requiring the latter, within ten (10) days, to put the refusal or the conditions stipulated in writing.

3 - The holder of the exploration and surveying or exploitation rights, in possession of the written communication from the landowner, or in the event that the latter does not respond within the established term, is empowered, as under the Code of Civil Proceedings, to petition the county judge to supply the consent.

4 - The petition must be accompanied by the written opinion of the Department issued at the request of the applicant, documenting the work to be undertaken and indicating how the said work may affect the land in question.

5 - The Judge will supply the consent of the landowner and will establish an annual rent payable for the occupation of the land, and arbitrate a guarantee payable against any eventual damages caused during the proposed works, the value of which may not exceed the annual rental value established.

6 - In principle, the annual rent shall be equivalent to the net income deemed likely for the most profitable cultivation of the said land, plus 20%, the judge, however, in his capacity as arbitrator, being empowered to take into account other potential uses of the land, in addition to agricultural purposes and establish the rent in accordance therewith.

7 - Should a verdict not be reached thirty (30) days subsequent to the receipt of the petition, the judge must establish, at the request of the respective holder of the exploration and surveying or exploitation rights, both a provisional rental charge and guarantee. Subsequently, the interested party may occupy the land from the date on which initial payment of the provisional rent is lodged at the court and the established provisional guarantee is provided, in a manner accepted by the said court.

Clause 33

Private Estate of Public Companies

1 - Consent to occupy the private estate of public companies, pursuant to clause 32, Decree-Law 90/90, dated 16 March 1990, and the definition of the corresponding rent payable thereon shall be the responsibility of the said public companies, and shall take into account the criteria provided for under clause 32 herein.

2 - The petition for consent to occupy the land must be accompanied by the written opinion of the Department as under sub-clause 32.4) above, and the decision must be made within a maximum thirty (30) days.

3 - In the event that the Department issues a favourable opinion and the petition is refused, or that the rent established is considered excessive by the holder of the exploration and surveying or exploitation rights, the provisions of sub-clause 32.3) to sub-clause 32.7) inclusive herein shall be applied, with the necessary adaptations thereto.

Clause 34

Public Land of Public Companies

1 - The necessary authorization to occupy public land entrusted to public companies, pursuant to clause 32, Decree-Law 90/90, dated March 16 1990, and the definition of the respective rent payable thereon shall be the responsibility of the said public companies.

2 - In the case of a petition being refused, notwithstanding submission of the said petition in conjunction with a favourable opinion from the Department as under sub-clause 32.4), or the rent established being considered excessive by the holder of the exploration and surveying or

exploitation rights, recourse may be made to the public administrative courts, and the provisions of sub-clause 32.3) to sub-clause 32,7) inclusive herein shall be applied, with the necessary adaptations thereto.

Clause 35

Public and Private Land owned by the State

1 - In the case of public and private land owned by the State, authorization for the occupation thereof pursuant to clause 32, Decree-Law 90/90, dated 16 March 1990, shall be granted by Ministerial decree, by the Ministry responsible for overseeing the respective administration thereof, which shall also establish the rent payable thereon, with power to delegate to the respective members of the Government.

2 - The petition for authorization to occupy the land must be accompanied by the written opinion of the Department, pursuant to sub-clause 32.4) above.

Clause 36

Tacit Authorization and Purposes of Administrative Authorization

1 - If, under clause 33, clause 34 and clause 35 herein, the body to which application for authorization or consent to occupy the land should fail to respond within thirty (30) days, the authorization shall be considered to be granted, free of all and any charge.

2 - Express or tacit administrative authorization to occupy common or public land, shall be considered, for all purposes, a legal act.

Clause 37

Terms and Conditions of Occupation

1 - The occupation of land shall be subject to the respective current legal conditions thereof, and to the decisions passed by the competent local authorities, made at the initiative of the said authorities or subsequent to objections made by interested parties, in order to safeguard buildings, works or other premises, the protection thereof being of general public interest.

2 - Whenever safeguards are imposed, the said safeguards must correspond to those defined in the written opinion of the Department.

Clause 38

Rights of Expropriation

1 - The holder of a concession who requires to occupy land on which privately owned premises are located within the demarcated area, must make all due endeavours to purchase or rent the said premises.

2 - In the absence of an agreement thereon, and whenever occupation of the property in question is recognised by the Department as an exploitation requirement or necessity, the respective holder of the concession may apply for expropriation of the same.

SECTION V

Supervision and Development of Activity

Clause 39

Exploration and Surveying Reports

Holders of exploration and surveying rights are required to submit six monthly activity reports to the Department, and to supply, in addition, all further particulars and information as may be directly and specifically requested.

Clause 40

Statistical Data and Technical Reports

1 - Holders of concessions are required to submit to the Department:

- a) By the end of March every year, a statistic chart for the previous year, prepared in accordance with the approved standard chart;
- b) By the end of the same month, a technical report containing all and any data allowing evaluation of the activity undertaken during the past year.

2 - In addition to the provisions of sub-clause 40.1) above, holders of concessions are required to provide the Department with all and any studies, analyses and reports contributing toward a greater understanding of the resource and exploitation procedures employed.

3 - All and any document submitted to the Department by holders of concession will be strictly confidential.

Clause 41

Support Provided by the Department

1 - Interested parties may be assisted by the Department, viz:

- a) Enabling those lacking certain technical and scientific knowledge to benefit from the relevant data acquired by various divisions of the Department;

b) Undertaking field, laboratory and other studies which may help resolve various technical problems.

2 - The assistance provided for under sub-clause 41.1) above, may or may not be remunerated.

3 - Where justifiable, the Department may provide administrative support where requested by third parties with a view to the smooth running of their activities.

4 - In return, the holders of the rights defined herein are required to provide the Department with all and any data and information in their possession conducive to a greater geological understanding of the territory or resource forming the object of the rights granted.

SECTION VI

Conservation of the Environment and Countryside during Activities

Clause 42

Protection of the Environment

1 - It is incumbent upon holders of exploration and surveying and exploitation rights to take the necessary provisions to guarantee that the environmental impact of the respective activities is minimal.

2 - The Department is empowered to impose particular constraints or measures upon the activities forming the object of the clauses contained herein, in order to safeguard and protect the environment, duly substantiating the same and in accordance with the technical recommendations supplied in reports or by the competent divisions of the Administration.

Clause 43

Recuperation of the Landscape

The exploitation and subsequent relinquishment of the natural resources forming the object of the present document shall be subject to the following measures, viz:

- a) Construction of installations adapted as much as possible to the surrounding landscape;
- b) Upon termination of activities, and whenever technically viable, the land will be recuperated and restored for use in accordance with the purposes established prior to the commencement of activities, unless another purpose has been designated for the said land under a plan approved by the competent authorities.

SECTION VII

Regulations governing the Activity

Clause 44

Inspection

- 1 - The Department will be responsible for inspecting activities undertaken by holders of exploration and surveying or exploitation contracts provided for herein, with the objective of ensuring compliance with the established legal and contractual requirements to which the said holders are subject, and which take into account maximum utilization and protection of the resources.
- 2 - In execution of sub-clause 44.1) above, the Department is consequently empowered to require the implementation of certain duly substantiated measures or the undertaking of certain works, to provide and cover for particular situations.
- 3 - Inspection of safety and hygiene standards at the work place shall be the responsibility of the General Inspectorate of Labour, while protection of the environment and recuperation of the countryside shall be entrusted to the respective regional coordination committee or the National Parks, Reserves and Nature Conservation Division.

Clause 45

Irregularities

- 1 - The performance of any activity provided for herein without the necessary contract, concession or authorization, as well as failure to implement the measures pursuant to clause 10 and sub-clause 42.2), and the provisions of clause 45, paragraph b) constitute an offence subject to a minimum fine of PTE 1,000,000.00 and a maximum fine of PTE 6,000,000.00.
- 2 - Violation of the provisions of sub-clauses 25.1) to 25.3) inclusive and sub-clause 25.5), constitutes an offence subject to a fine between PTE 250,000.00 and PTE 3,000,000.00.
- 3 - Infraction of the measure provided for under sub-clause 43 paragraph a) constitutes an offence subject to a fine between PTE 400,000.00 and PTE 2,000,000.00.

4 - Violation of the obligations and duties as provided for under clause 9, clause 39, clause 44, and pursuant to sub-clauses 40.1) and 40.2), and sub-clause 41.4), constitutes an offence subject to a fine between PTE 75,000.00 and PTE 1,000,000.00.

5 - Negligence always constitutes a punishable offence in all infractions provided for under this clause.

6 - The maximum fine to which an individual may be subject, under the terms of this clause, is PTE 500,000.00.

Clause 46

Legal Procedures

1 - The Department is responsible for instigating and instructing legal action against irregularities.

2 - The Director of the Department of Geology and Mines is empowered to enforce the fines and penalties provided for herein.

3 - 60% of the total of the fines shall due the State, and 40% of the same due the Department.

Clause 47

Performance of Public Administration Agents and Officers

Public Administration agents and officers charged herein with responsibility for inspection must endeavour to employ due consideration and efficiency when applying the regulations governing the activities mentioned herein, harmonising the interests of the State with the interests of the holders of exploration, surveying and exploitation rights.

SECTION VIII
Further Conditions

Clause 48

Provisional Guarantee

- 1 - The provisional guarantee required from an applicant for exploration and surveying or exploitation rights, and from a bidder in a tender for the award of the same, may take any normally acceptable form ie: bank guarantee or insurance company indemnity.

- 2 - The provisional guarantee shall guarantee the State that the applicant or candidate accepts the terms and conditions laid down or agreed for the exploration and surveying or exploitation concessions, and that the guarantee shall be called by the State should the holder of the concession refuse to accept his obligations under the said concession. It being understood that the holder of the concession has failed to comply with the terms and conditions thereof whenever the issue requiring redress by the holder of the concession has not been rectified within sixty (60) days.

- 3 - The provisional guarantee shall be returned to the applicant or candidate immediately the rights have been awarded.

Clause 49

Definitive Guarantee

- 1 - The holder of the exploration and surveying or exploitation rights shall be required to provide a definitive guarantee, which may take any normally acceptable form, viz: bank guarantee or insurance company indemnity.

- 2 - The definitive guarantee shall cover the fulfilment by the holder of the said rights of all the obligations assumed under the exploration and surveying or exploitation contract, in accordance with legal or contractual requirements, and in particular, any fines which may be charged, indemnities payable and works costs the payment of which are obligatory but not completed.

- 3 - The full value of the guarantee must always be reinstated within the period of thirty (30) days of any payment being made under the guarantee.

Clause 50

Additional Guarantee

In the event that the definitive guarantee is of an insufficient value, the holder of the exploration and surveying or exploitation rights is required to provide, within sixty (60) days, an additional guarantee the amount to be established by the Department, as a guarantee of the fulfilment of the said holder's obligation to implement the measures, pay fines or make compensation for damages.

Clause 51

Damages Resulting from Projects of Public Interest

1 - When projects of public interest may be detrimental to the exploitation of the resource, the issue must be brought to the attention of the Department and the holder of the concession, so that both parties may consider the necessary measures to minimise the resultant damage, with a view to the application of the said measures.

2 - In the case provided for in sub-clause 51.1) above, the Department may order the implementation of urgent provisions as may be deemed necessary and pertinent, duly substantiating the same and all costs and charges incidental thereon and pertinent thereto will be for the account of the body responsible for the project.

3 - The body responsible for the project shall be liable for undertaking the definitive works, which shall be carried out in accordance with plans approved by joint decree of the Minister and the authority responsible for overseeing activities under which the said project falls, the holder of the concession having been duly consulted.

Clause 52

Notices

All notices made pursuant to the provisions contained herein, prior or subsequent to the signing of any contract, shall be incumbent upon the persons interested in the allocation of the exploration and surveying or exploitation rights.

Clause 53

Existing Rights

1 - The holders of existing rights under legislation prior to Decree-Law 90/90, dated 16 March 1990, shall be notified by the Department that contracts provided for under the said legal decree are to be prepared for signature.

2 - The said contracts shall respect pre-existing rights and a period of adaptation shall be granted in accordance with the circumstances of each case.

Clause 54

Taxes

The acts provided for herein shall incur the payment of taxes, the amount of which are to be fixed by joint Ministerial decree of the Minister for Finance and the Minister for Industry and Energy.

Seen and approved at the Council of Minister dated this 28th day of December 1989.

- Aníbal António Cavaco Silva - Miguel José Ribeiro Cadilhe - Luís Francisco Valente de Oliveira
- Luís Fernando Mira Amaral - Roberto Artur da Luz Carneiro - José Albino da Silva Peneda.

Enacted on the 23rd day of February of 1990

Let it be so published,

President of the Republic of Portugal, MÂRIO SOARES

Countersigned on the 2nd day of March of 1990

Prime Minister, Aníbal António Cavaco Silva