


Lampiran 1: Supreme Decree 28701

SOUTH AMERICA

Bolivia

SUPREME DECREE
NO.28701**President nationalises all aspects of production and sale of hydrocarbons in Bolivia**

 Bolivia; Energy policy; Foreign investment; Nationalisation; Oil and gas industry; Oil and gas production

On May 1, 2006, the President of Bolivia, Evo Morales Ayma, promulgated Supreme Decree No.28701 to nationalise all aspects of the production and sale of hydrocarbons in Bolivia. On the same date, the Bolivian army took possession of the hydrocarbon facilities in Bolivia.

The Terms of Supreme Decree No.28701 ("the Nationalisation Decree")

Supreme Decree No.28701 consists of a Preamble and nine Articles. The Preamble establishes the political framework of the nationalisation, referring to provisions of the Bolivian Constitution, a national referendum and illegalities in the existing contracts in the oil and gas sector, and asserting Bolivia's sovereign right to its natural resources. The operative provisions of the Nationalisation Decree read as follows:

"Evo Morales Ayma
Constitutional President of the Republic

Considering:

(Preamble)

in the Council of Ministers,

Decrees:

Article 1.- In the exercise of national sovereignty, obeying the mandate of the people of Bolivia expressed in the binding Referendum

of July 18, 2004 and strictly in accordance with constitutional precepts, the natural resources of hydrocarbons¹ of the country are nationalised.

The State recovers the property, the possession and the total and absolute control of these resources.

Article 2.- I From May 1, 2006 the oil companies presently engaged in the production of gas and petroleum in national territory are obliged to deliver full rights to all the hydrocarbons production to Yacimientos Petroliferos Fiscales Bolivianos—YPFB.

II. YPFB, in the name of and in representation of the State, in the full exercise of rights to all the hydrocarbons produced in the country, takes responsibility for its sale, defining the conditions, volumes and prices both for the internal market as well as for export and industrialisation.²

Article 3.- I. Only those companies that immediately carry out the terms of the present Supreme Decree shall be able to continue operating in the country, until in a period of no more than 180 days from its promulgation their activity is regularised by means of contracts that comply with legal and constitutional prerequisites and conditions. At the end of this period, the companies that have not signed contracts will not be able to continue operating in the country.

II. In order to guarantee continuity of production, YPFB in accordance with the directives of the Ministry of Hydrocarbons and Energy will take charge of the operation of the fields of the companies that refuse to carry out or impede the performance of the provisions of this Supreme Decree.

⁵ "Hydrocarbons" are defined in Art. 138 of the Hydrocarbons Law No.3058, of May 17, 2005, as "The carbon and hydrogen compounds, including associated elements, that appear naturally, in or below ground, whatever their physical state, that comprise Natural Gas, Petrol and their derivative products, including Liquefied Petroleum Gas produced in refineries and liquefaction plants."

⁶ "Industrialisation" is defined in Art. 138 of the Hydrocarbons Law No.3058 of 2005 as "The chemical transformation of hydrocarbons, and the thermoelectric and industrial processes with the objective of adding value to Natural Gas; Petrochemicals, Gas to Liquids (GTL), production of fertilizers, urea, ammonium, methanol and others".

⁷ CL5 of Art. 59 of the Political Constitution of the Republic of Bolivia attributes to the Legislature (Congreso Nacional) the power to authorize or approve certain contracts, including contracts "relating to the exploitation of national wealth".

⁸ "Participations" (participaciones) is a general term to describe the rights to payments of carries in the extraction or production process, see Art. 138 of the Hydrocarbons Law No. 3058 of May 17, 2005.

⁹ Direct Hydrocarbon Tax, set at 32% by the Hydrocarbons Law No.3058 of May 17, 2005 (see Arts 53-57).

III. YPFB shall not execute Hydrocarbon exploitation contracts that have not been individually authorised and approved by the Legislature in full compliance with the requirements of clause 5 of the Article 59 of the Political Constitution of the State.⁷

Article 4.-I. During the transition period, for the fields whose daily average certified production of natural gas during the year 2005 has been in excess of 100 million cubic feet, the value of the production will be distributed in the following form: 82% for the State (18% for royalties and participations)⁸, 32% for the Impuesto Directo de los Hidrocarburos (IDH)⁹ and 32% through an additional participation for YPFBI and 18% for the companies (which covers operating costs, return on investment and utilities).

II. For the fields whose certified annual daily production of natural gas has been less than 100 million cubic feet, during the transition period the present distribution of the value of the hydrocarbons production shall be maintained.

III. The Ministry of Hydrocarbons and Energy shall determine, on a case by case basis and by means of audit, the investments made by the companies as well as their amortizations, operating costs and profits obtained in each field. The audit results shall serve as the basis for YPFB to determine the payment or participation of the companies in the contracts to be signed in accordance with Article 3 of this Supreme Decree.

Article 5. I. The State takes the control and the direction of the production, transportation, refinery, storage, distribution, sale and industrialisation of hydrocarbons in the country.

II. The Ministry of Hydrocarbons and Energy shall regulate and establish rules for these activities until new regulations are approved in accordance with Law.

Article 6.-I. In accordance with Article 6 of the Hydrocarbons Law N° 3058, full rights shall be transferred to YPFB, free of charge, to the shares of the Bolivian citizens in the capitalised oil companies Chaco

S.A., Andina S.A. and Transredes S.A. forming part of the Fondo de Capitalización Colectiva.¹⁰

II. In order that this transfer does not affect the BONOSOL,¹¹ the State guarantees the replacement of the contributions by way of dividends that these companies were making annually to the Fondo de Capitalización Colectiva.

III.- The shares in the Fondo de Capitalización Colectiva that are in the names of the Pension Fund Administrators in the companies Chaco S.A., Andina S.A. and Transredes S.A. shall be endorsed to the name of YPFB.

Article 7. I. The State recovers its full participation in the entire productive chain of the hydrocarbons sector.

II. The shares necessary for YPFB to control a minimum of 50% plus one in the companies Chaco S.A., Andina S.A., Transredes S.A., Petrobras Bolivia Refinación S.A. and Compañía Logística de Hidrocarburos de Bolivia S.A. are nationalized.

4. YPF shall nominate immediately its representatives to the respective directorates, and will sign new constitutive and administrative by-laws in which the state control and direction of the hydrocarbons activities in the country are guaranteed.

Article 8.- Within 60 days from the date of the promulgation of this Supreme Decree and within the process of re-establishment of YPF there will be a complete restructuring to convert it into a corporate entity, transparent, efficient and with shareholder control.

Article 9.- The laws and regulations presently in force will continue in their application insofar as they are not contrary to the provisions of the present Supreme Decree, until modified in accordance with law.

The Ministers of State, the President of YPF and the Armed Forces of the Nation are charged with the execution and performance of this Supreme Decree.

Done in the Government Palace in the city of La Paz, the first day of May of the year two thousand and six.

(Signatures)"



Lampiran 2: Press Release Petrobras



Petrobras Repudiates Bolivian Government Declarations

(Rio de Janeiro, May 11, 2006) – PETRÓLEO BRASILEIRO S/A - PETROBRAS, [Bovespa: PETR3/PETR4, NYSE: PBR/PBRA, Latibex: XPBR/XPBRA, BCBA: APBR/APBRA], a Brazilian international energy company, informs that during the meeting held yesterday in La Paz in the presence of the ministers of Mines and Energy for Brazil, Silas Rondau, and of Hydrocarbons for Bolivia, Andrés Soliz-Rada, Petrobras and YPFB agreed that to comply with the provisions contained in the Supreme Decree (DS) 27801, certain regulations must be respected and clarifications obtained as to contractual and operational conditions. It was also agreed that possible losses due to the nationalization of Petrobras' assets in Bolivia will be subject to compensation to be negotiated. Any proposals for the revision of the price of natural gas acquired by Petrobras from YPFB will be discussed in the framework of the natural gas supply agreement (GSA).

Petrobras is surprised by recent statements accusing it of illegalities in its Bolivian business, made immediately following the publication of the joint communiqué with the details of the points of agreement reached in La Paz last night. In view of these reports, the Company wishes to publicly clarify that:

- It has always acted strictly within the law both in Bolivia as well as all countries where it operates or has operated.
- Its business in Bolivia is the result of bilateral agreements between the Brazilian and Bolivian governments. These agreements were instrumental in the construction of the Bolivia-Brazil gas pipeline, the signature of the GSA, and the exploration of gas in the San Alberto and San Antonio fields in a partnership between Petrobras and YPFB. This partnership terminated with the privatization of YPFB's stake in the joint venture.
- As a result of these agreements, Petrobras financed and built the Bolivian stretch of the Bolivia-Brazil gas pipeline, investment in exploration (initially in partnership with YPFB), and in production facilities in San Alberto and San Antonio. As a consequence of these operations, the Company has been purchasing Bolivian gas since 1999, as well as generating employment and paying taxes in Bolivia, accounting for 25% of the total tax revenues raised in the country.
- The execution and the implementation of the contracts, to which Petrobras has adhered now for more than ten years, respected the prevailing legal framework in Bolivia, befitting the judicial tribunals and appropriate arbitration bodies, not the executive branch, to act as eventual arbiters regarding their legality.

In view of this, Petrobras declares its indignation with respect to the accusations that, at any time, it might have deliberately conducted its business outside the law, whether in Bolivia or in any other country where it operates.

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This document may contain forecasts that merely reflect the expectations of the Company's management. Such terms as "anticipate", "believe", "expect", "forecast", "intend", "plan", "project", "seek", "should", along with similar or analogous expressions, are used to identify such forecasts. These predictions evidently involve risks and uncertainties, whether foreseen or not by the Company. Therefore, the future results of operations may differ from current expectations, and readers must not base their expectations exclusively on the information presented herein.

Lampiran 3: Kontrak Operasi Bolivia

The Operations Contract: Characteristics and Main Terms

The Operations Contract is a sort of service contract between YPFB and one or more oil companies (the “**Contractor**”) whereby Contractor undertakes to conduct petroleum operations in the particular contract area at its sole risk and expense, assuming all costs and providing all required personnel, technology, facilities, materials and capital, in exchange for a compensation consisting of the reimbursement of certain recoverable costs and a profit. YPFB does not assume any risk or liability for the petroleum operations or its results, and Contractor does not acquire any ownership rights over the reserves or the hydrocarbons produced.

The main commercial and fiscal terms of the Operations Contract⁵ are the following:

Contract Term. The 2005 Hydrocarbons Law allows up to 40 year term contracts; however, the Operations Contract limits the term to 32 years and does not contemplate any extensions, not even as a result of Force Majeure.

Exploration Period and Work Obligations. The Exploration Period is divided into phases and their duration is in each case established in an Annex to the Operations Contract. During the Exploration Period Contractor has to carry out a minimum exploration work which is measured in *Unidades de Trabajo de Exploración* (“**UTE**”, Units of Exploration Work). The particular UTEs and their monetary equivalent for each phase of the Exploration Period are set forth in an Annex to the relevant Operations Contract. UTEs performed in a given phase in excess of the minimum can be carried over to the following phase. If Contractor fails to meet the minimum work for reasons not attributable to YPFB or Force Majeure, Contractor has to pay YPFB the monetary equivalent of the unfulfilled UTEs.

Declaration of Commerciality. In the event of a Commercial Discovery, Contractor has to submit a Declaration of Commerciality to YPFB, which has 30 days from the date of receipt of the corresponding evaluation report, to approve or reject the commerciality of the discovery.

Exploitation Period. Upon approval of the declaration of commerciality of a discovery, Contractor has to prepare the Development Plan and submit it to YPFB for approval, as well as the relevant Work Program and Budget for each year. If Contractor fails to begin performance of an approved Work Program and Budget within 30 days from its approval, YPFB has the right to terminate the Contract with respect to the relevant field.

Ownership and Control of Hydrocarbon Production. YPFB has at all times ownership of the production and full control over its commercialization. Contractor is, however, entitled to use the hydrocarbons produced for its own Petroleum Operations free of charge up to the percentages set by the Ministry of Hydrocarbons and Energy (the “**Ministry**”). The hydrocarbons produced, minus the hydrocarbons used in Petroleum Operations (the “**Net Hydrocarbons**”), must be delivered by Contractor to YPFB at the relevant Fiscalization Point where they are measured and certified. YPFB has to notify the Contractor of the destination that YPFB intends for the production and under which commercialization and transportation contracts YPFB will be placing the production. YPFB and Contractor must enter into an Agreement for Delivery of Hydrocarbons, where the terms and conditions for delivery of the production from the field shall be set forth in accordance with the terms of the relevant commercialization contracts. The price for the valuation of the hydrocarbons produced shall be determined in such Agreement on the basis of the terms of the relevant commercialization contracts. If new production requires the opening of new markets or new transportation capacity, Contractor is required to support and provide technical assistance to YPFB in the negotiation of the commercialization and/or transportation contracts.

Payment of Royalties, Taxes and Charges. The amounts received by YPFB from the commercialization of the Net Hydrocarbons must be first applied to pay royalties (the Departmental Royalty, the National Compensatory Royalty and the Participation of the General Treasury of the Nation), and to pay the Direct Tax on Hydrocarbons.

(i) **Royalties.** According to the 2005 Hydrocarbons Law, the Departmental Royalty is payable in favor of the relevant department where the production originates from and is equal to 11% of the hydrocarbons produced therein; the National Compensatory Royalty is payable to the departments of Beni and Pando and it is equal to 1% of the national production; and the Participation to the General Treasury of the Nation is equal to 6% of the national production and is payable to the National Treasury.⁶

(ii) **Direct Tax on Hydrocarbons ("DTH").** This tax was created by the 2005 Hydrocarbons Law and its rate is 32% of the total production of hydrocarbons. The law further adds that the summation of the total 18% royalties plus the 32% DTH shall in no case be lower than 50% of the total value of the production of hydrocarbons.⁷

YPFB is responsible for paying all royalties and the DTH and must deliver each month to the Contractor the documents evidencing such payments.

In addition, YPFB has to pay the so called "*Patentes*" which are a surface fee payable based on the number of hectares comprising each contract area. The *Patentes* are payable annually in advance, and Contractor must reimburse to YPFB the total amounts paid within 30 days from receipt of the documents evidencing the payment.⁸

Compensation for Contractor (*Retribución del Titular*). Contractor receives a compensation ("Contractor's Compensation") from YPFB once commercial production has begun in any of the fields in the Contract Area. Contractor's Compensation is the only payment made by YPFB to the Contractor for the Petroleum Operations carried out under the Operations Contract, and consists of recoverable costs and a profit.

(i) **Recoverable Costs.** Recoverable costs are all the costs, investments, expenses and obligations of the Petroleum Operations, including those related to exploration operations, evaluation operations, development operations, exploitation operations and abandonment. Such costs incurred by Contractor are subject to approval and audit by YPFB according to the Accounting Procedures attached as an Annex to the Operations Contract. YPFB pays Contractor up to a maximum of 100% of the approved Recoverable Costs.

(ii) **Contractor's Profit.** The profits resulting from the gross income produced from the sale of Net Hydrocarbons ("GI"), minus (a) the royalties, participations, and DTH ("T"), and (b) the costs recovered by Contractor in such month ("CR") are shared between YPFB and Contractor pursuant to formulas included in an Annex to the Operations Contract. According to such formulas the profits to be distributed ("PD") are equal to $GI - T - CR$. PD is then allocated between YPFB and Contractor; YPFB's share ("PDY") is determined based on percentages ("qb") set forth in tables attached in an Annex to the contract which vary depending on the production volumes and PDY is equal to PD times the applicable percentage ($PDY = PD * qb$). Lastly, Contractor's Profit is determined by multiplying PD times the remaining percentage ($(1 - qb) * PD$). Contractor's Profit is paid on a monthly basis in US Dollars to a bank account indicated by Contractor.

Guaranties. Contractor has to deliver to YPFB a Performance Guaranty and a Bank Guaranty. The Performance Guaranty must be delivered within 20 days from the date of approval of the Operations Contract by Congress. Such Performance Guaranty must be issued by the parent company of each of the companies comprising Contractor, and its form is included as an Annex to the Operations Contract. The Bank Guaranty has to be an irrevocable and unconditional stand-by letter of credit issued in favor of YPFB by a foreign bank with a credit rating of at least A- by Standard & Poors or Fitch, A3 according to Moody's or an equivalent credit rating by any other international credit rating agency. The Bank Guaranty backs the performance of the UTEs by Contractor. The form of such letter of credit is also included as an Annex to the Contract.

Assignment and Change of Control. Neither party comprising Contractor may assign, encumber or transfer the Operations Contract, either in whole or in part, or any rights or obligations thereunder, except with the prior written consent of YPFB and the Ministry. The contract does not provide that such consent shall not be unreasonably withheld, denied or delayed. No approval is required if the beneficiary is an entity directly or indirectly owned by the Bolivian State. Written approval by YPFB is also required for any voluntary change of control of the companies comprising Contractor and failure to comply with this requirement entitles YPFB to terminate the Operations Contract without having to pay any compensation to Contractor. In case of hostile or not voluntary change of control, the affected company has to notify YPFB within 30 days from its occurrence and YPFB can object such change of control for State policy reasons, or if the new controlling company has sued YPFB or the Bolivian State before international tribunals. If YPFB objects, it is entitled to demand that the interest belonging to the affected company be transferred to a third party within a term of maximum one year and failure to do so entitles YPFB to take over the participation of such company without compensation.

Abandonment. Contractor is required to have a provision for abandonment operations. The annual amount of the abandonment provision is determined pursuant to formulas set in the contract and once 75% of the reserves of the field have been produced, Contractor has to transfer the funds from the abandonment provision to a trust fund in US Dollars to be exclusively used to cover the costs of the abandonment operations. If any amount remains in the trust once all abandonment costs have been covered, such remainder shall be shared between YPFB and Contractor.

Applicable Law and Arbitration. The Operations Contracts are governed by the laws of the Republic of Bolivia and disputes that cannot be directly solved between the parties shall be settled by arbitration in La Paz, Bolivia, according to the procedures and the regulations of the International Chamber of Commerce. Technical disputes can be submitted to independent expert determination but the opinion of the independent expert is not binding for the parties.

The 44 New Operations Contracts

The new 44 Operations Contracts and their approval laws are listed below⁹. They came into effect on May 2, 2007 and 37 of them are already in production¹⁰.

Law N°	Company/ies	Contract Area	Law N°	Company/ies	Contract Area
3632	Empresa Petrolera Andina S.A.	Cascabel	3654	Empresa Petrolera Andina S.A.	Grigotá
3633	Empresa Petrolera Andina S.A.	Vibora	3655	Empresa Petrolera Andina S.A.	Boquerón
3634	Empresa Petrolera Andina S.A.	Sirani	3656	Empresa Petrolera Andina S.A.	Palacios
3635	Empresa Petrolera Andina S.A.	Guairay	3657	Empresa Petrolera Andina S.A.	Puerto Palos
3636	Empresa Petrolera Chaco S.A. y Compañía Petrolera Exploración y Explotación "Petrolex" S.A.	El Dorado	3658	Empresa Petrolera Andina S.A.	Camiri
3637	Empresa Petrolera Andina S.A.	Rio Grande	3659	Empresa Petrolera Andina S.A.	Enconada
3638	Matpetrol S.A. y Compañía Petrolera Orca S.A.	Taterenda	3660	Empresa Petrolera Andina S.A.	Sara Boomerang III

Law N°	Company/ies	Contract Area	Law N°	Company/ies	Contract Area
3639	Empresa Petrolera Andina S.A.	Punajú	3661	Empresa Petrolera Andina S.A.	La Peña-Tundy
3640	Empresa Petrolera Andina S.A.	Yapacani	3662	Dong Won Corporation Sucursal Bolivia	Palmar
3641	Empresa Petrolera Andina S.A.	Cobra	3663	Petrobras Bolivia S.A.	Ingre
3642	Repsol YPF E&P Bolivia S. A., Compañía Petrolera Exploración y Explotación "Petrolex" S.A., Empresa Petrolera Andina S.A. y Petrobras Bolivia S.A.	Monteagudo	3664	Total E&P Bolivia Sucursal Bolivia y BG Bolivia Corporation Sucursal Bolivia	Tarija Oeste
3643	Petrobras Bolivia S.A., Empresa Petrolera Andina S.A. y Total E&P Bolivia Sucursal Bolivia	San Alberto	3665	Repsol YPF E&P Bolivia S.A., BG Bolivia Corporation Sucursal Bolivia y PAE E&P Bolivia Limited Sucursal Bolivia	Caipipendi
3644	Petrobras Bolivia S.A., Empresa Petrolera Andina S.A. y Total E&P Bolivia Sucursal Bolivia	San Antonio	3666	Petrobras Bolivia S.A.	Irenda
3645	BG Bolivia Corporation Sucursal Bolivia	La Vertiente Los Suris Tarija Este	3667	Pluspetrol Bolivia Corporation S.A.	Yacuiba Rio Seco O'Connor-Huayco San Isidro
3646	Canadian Energy Enterprises CEE Bolivia SRL y Montroy Electrónica y Control "Monelco" SRL	Cascabel	3668	Repsol YPF E&P Bolivia S. A.	Tuichi
3647	Vintage Petroleum Boliviana Ltd. Sucursal Bolivia	Naranjillos Porvenir Chaco	3669	Empresa Petrolera Andina S.A.	Amboró-Espejos
3648	Pluspetrol Bolivia Corporation S.A.	Bermejo-Toro-Baeredero-Tigre y San Telmo	3670	Empresa Petrolera Andina S.A.	Sara Boomerang I
3649	Petrobras Energía S.A. Sucursal Bolivia	Copal y Canada	3671	Total E&P Bolivia Sucursal Bolivia y Tecpetrol de Bolivia S.A.	Aquino
3650	Total E&P Bolivia Sucursal Bolivia y Tecpetrol de Bolivia S.A.	Ipati	3672	Petrobras Bolivia S.A. y Total E&P Bolivia Sucursal Bolivia	Rio Hondo
3651	Repsol YPF E&P Bolivia S.A.	Manacé I	3673	Vintage Petroleum Boliviana Ltd. Sucursal Bolivia y Empresa Petrolera Chaco S.A.	Ñupaco
3652	Repsol YPF E&P Bolivia S.A.	Surubi	3674	Repsol YPF E&P Bolivia S.A., BG Bolivia Corporation Sucursal Bolivia y Empresa Petrolera Chaco S.A.	Charagua