

# LAW ON GEOTHERMAL ENERGY CONCESSIONS LAW N° 19.657

## MINISTRY OF MINING (NON-OFFICIAL TRASLATION)

### SECTION I

#### General provisions

**Article 1.-** The provisions set forth in this law shall govern:

- a) Geothermal energy;
- b) The concessions and tenders for the exploration or exploitation of geothermal energy;
- c) Constitution of the necessary easements required for the exploration or exploitation of geothermal energy;
- d) Safety conditions to be maintained while carrying out geothermal activities;
- e) The relationships between holders of concessions, the Government, owners of surface lands, holders of mining properties and parties to oil operation contracts or companies authorized by law to prospect or develop hydrocarbons, holders of water exploitation rights, in all matters relating to the exploration or exploitation of geothermal energy, and
- f) Government responsibilities related to geothermal energy.

**Article 2.-** The provisions set forth in this law shall not apply to thermal waters, whether mineral or not, used for sanitary, tourism or recreational purposes.

The exploitation and drawdown of thermal waters referred to in the above subparagraph shall be governed by the provisions set forth in Statutory Decree N° 237, year 1931, or by the general or special regulations which, in each case, shall be applicable.

The scope of this law shall cover the continental, insular and Antarctic territory, including inland waters, territorial sea and exclusive economic zone.

**Article 3.-** Geothermal energy shall mean the energy obtained from the natural heat of the earth, which may be drawn from steam, water, gases – except for hydrocarbons – or through fluids artificially injected for such purposes.

**Article 4.-** Geothermal energy, regardless of the location, form or conditions of its manifestation or existence, is state property, susceptible to exploration and

exploitation, upon obtaining a concession, in the form set out and in compliance with the requirements under the law.

**Article 5.-** The concession of geothermal energy is a property right in rem, different and independent from the property of surface land holdings, despite having the same owner, opposable against the Government and any person, assignable and transferable, subject to any act or contract.

The holder of a geothermal energy concession holds a property right over such concession, protected by the surety set forth in Article 19 of the Constitution and in other legal rules that are applicable to the same right.

Upon obtaining a concession in conformity with the regulations set forth in this law, the holder thereof shall have the right to keep such concession and shall not be deprived thereof except on the grounds of forfeiture or expiration as contemplated in the law itself.

Any constructions, facilities and other objects permanently destined by the owner thereof to the investigation, exploration or exploitation of geothermal energy, as appropriate, which may be necessary to carry out the activities inherent to the concession shall be deemed accessory properties under such concession, provided such accessory properties are located within the leased area.

**Article 6.-** The geothermal energy concession may be for exploration or exploitation. Any time the law refers to a geothermal energy concession, it is deemed to include both types of concessions.

Exploration operations are all the activities that are carried out in order to ascertain the geothermal energy potentialities of an area, including drilling and measurement of geothermal gradient wells and deep wildcat wells. In consequence, exploration concessions grant the right to carry out studies, measurements and other research to determine the existence of sources of geothermal resources, their physical and chemical characteristics, geographic extension, and suitability and conditions for exploitation thereof.

Exploitation concessions consist in a series of drilling, construction, startup and operation activities within a system designed for drawing, production, and transformation of geothermal fluids into thermal or electric energy. In consequence, exploitation concessions grant the right to utilize and develop the geothermal energy existing within its boundaries.

**Article 7.-** The territorial extension of the geothermal energy concession constitutes a solid cubic volume having a top surface which horizontally forms a right angled parallelogram, where two of its sides are U.T.M. North-South oriented, and its depth is indefinite within the vertical planes limiting the same.

The length and width of the parallelogram shall be, for exploration concessions, multiple integers of one thousand meters, and for exploitation concessions, multiple integers of one hundred meters.

In any event, the ratio between length and width of the parallelogram shall not exceed ten to one.

The surface area of each exploration concession shall not exceed one hundred thousand hectares, or twenty thousand hectares, in the case of exploitation concessions.

The area of the geothermal energy concession shall be set out in the Decree of constitution thereof.

The object of the geothermal energy concession shall be the total amount of such energy existing within its limits.

**Article 8.-** The Ministry of Mining shall be responsible for the application, control and enforcement of this law and regulations therein, notwithstanding the authorities conferred upon the National Energy Commission and other agencies specifically mentioned in the regulations thereof.

The Ministry of Mining shall be responsible for the inspection and enforcement of the regulations in this law and the rules being issued, and fulfillment of the obligations of concession holders, as provided in the concession decrees.

**Article 9.-** The production, transportation, distribution, the concession regime and the rate regime of electric power derived from geothermal energy and the Government's responsibilities in that regard shall be governed, as appropriate, by the regulations set forth in Statutory Decree N° 1, Ministry of Mining, June 22<sup>nd</sup>, 1982.

## Section II

### Of the concessions

**Article 10.-** Every natural Chilean person and every corporate body organized under Chilean laws shall be entitled to apply for geothermal energy concessions and to participate in a public bidding for granting such concessions.

**Article 11.-** Applications for geothermal energy concessions which are filed directly or submitted through public tenders shall contain and be accompanied by at least the following references and background information:

- a) Name, nationality and legal address of the applicant, and, as appropriate, of the person filing such application on behalf of another person. In the event of natural persons, the profession or specific trade and civil status thereof shall be indicated as well;
- b) The location, extension and dimensions of the land holding in which respect the concession is being applied for and map thereof, indicating UTM coordinates and vortexes, and precisely identifying the Region, Province, and Municipality thereof.

If the leased property shall extend over more than one Region, Province or Municipal Governments, such identification shall include all Regions, Provinces or Municipal Governments included, and

c) The general, technical and economic information of the geothermal energy exploration or exploitation project, and projected investment for its implementation.

**Article 12.-** The Ministry of Mining may request, from any public authority or agency, the reports deemed relevant to avoid or foresee conflicts of rights or interests between an applicant for a geothermal energy concession and the holders of other rights in the area applied for, for better resolution of the application for such geothermal energy concession.

The authorities from which reports are requested shall furnish such reports within a period of sixty calendar days, counted as from the date when such requirement had been received from the Ministry of Mining. Upon expiry of such period without having received such report, it shall be deemed to be in favor of granting such concession.

**Article 13.-** An abridgment of the application for geothermal energy concessions shall be published in the Official Gazette, only once, on the 1<sup>st</sup> or the 15<sup>th</sup> or on the following business day if any of these two days were to be a holiday, of the month following the filing date of such application to the Ministry of Mining, in an outstanding advertisement. Such outstanding advertisement shall be published twice in a nationwide newspaper, and in a regional newspaper circulating in the territories covered by the concession being applied for, within the month following the date of filing such application.

The abridgment shall include the identification of the applicant or petitioner; type of concession being applied for; purpose of such concession, and location, extension and dimensions of the area covered thereby.

In the case of areas with difficult access, the abridgment shall be additionally communicated through three radio messages broadcasted in the sector. These messages shall be broadcasted within the same month referred to in the first subparagraph of this Article. The legal representative of the broadcasting means or any person appointed thereby, shall place on record the broadcasting of such messages, indicating date and hour, in a record having characteristics to be determined by the Rules and Regulations. This record shall be public, for any person to examine it.

**Article 14.-** The holder of the exploration concession shall have an exclusive right to the Government's grant of the exploitation concession over the respective exploration area. This right may be used during the period of effectiveness of such exploration concession and up to two years after expiry thereof. The right set forth in this subparagraph shall be transferable in every respect.

In the event of an application for a exploration concession, or a exploitation concession in respect of which the right referred to in the above subparagraph

shall not be in order, other natural or corporate persons may request such concession over the property included in the original application, within a term of forty-five calendar days, counted as from publication in the Official Gazette of the abridgement of such application.

**Article 15.-** Upon expiry of the forty-five calendar day term set out in the second subparagraph of the above Article, and there being no other applications for such concession, the Ministry of Mining shall resolve whether to grant or deny such concession, unless any claims or objections are filed in accordance with the provisions under Article 18.

If, within the same term period, other concession applications are filed covering part or the whole territorial extension already applied for, the Ministry of Mining shall call for public bids to grant one or more concessions on the area in question, within a period of ninety days, counted as from expiry of such period.

Notwithstanding the above, the Ministry of Mining may, at any time, call for public bids for granting one or more concessions of geothermal energy from unlikely sources.

**Article 16.-** Notwithstanding the stipulations in the preceding Articles, and except as provided in the first subparagraph in Article 14, the geothermal energy concessions bearing on a probable source shall be always granted by the Ministry of Mining upon a call for public bidding. This bidding process shall be carried out once a year at the government's initiative or upon the petition of one or more private persons.

In the event one or more private persons shall apply for a geothermal energy concession of probable source, the Ministry of Mining shall call for public bids within a period of ninety days, counted as from the date of filing the respective application.

For the purposes of this law, probable sources of geothermal energy are any spontaneously outcropping waters having some heat inside the earth, and the surrounding geographical area which shall not surpass the surface areas indicated in subparagraph fourth in Article 7 for a exploration or exploitation concession.

Probable sources of geothermal energy shall be identified in a special regulation to be issued by the Ministry of Mining within a term of one hundred and twenty days, counted as from the date of publication of this law.

This identification shall include specification of the Region, Province, and Commune where such sources are located, the U.T.M. coordinates of their vortexes and estimated surfaces of such sources, expressed in hectares.

Notwithstanding to the above, for the purposes of this law, the following shall be deemed probable sources of geothermal energy: Jurasi, Untupujo, Chiriguaya, Surire, Polloquere, Enquelca, Berenguela, Quiritari, Puchuldiza, Chuzmiza, Pampa Lirima, Colpagua, Mamiña, Pica, Ascotán, El Tatio, Alitar, Aguas Calientes,

Tilopozo, and Tuyaito. The regulation mentioned in this Article shall set forth the geographical areas encompassed in each of these probable sources.

**Article 17.-** The public bidding called by the Ministry of Mining for the purposes of this Section shall include two stages. First, the technical qualification of bidders, and secondly, the appraisal of the economic bids. All bidders selected in the first technical qualification stage shall be entitled to submit bids in the second stage, and the successful bidder shall be chosen according to the price offered thereby for the concession.

All natural or corporate persons who wish to participate in the bidding process called by the Ministry of Mining for granting a geothermal energy concession shall meet the following requirements, as a minimum:

- a) To have capital assets amounting to a minimum of five thousand Unidades de Fomento (UF)<sup>0</sup>, or minimum capital of ten thousand Unidades de Fomento in the case of corporate persons, and
- b) To accompany the general, technical and economic information of the project for the geothermal energy exploration or exploitation concession and the information on the projected investment for implementation thereof.

The bidding conditions may set forth the authority of the Ministry of Mining to reject, with expression of cause, all the bids and consequently declare the bid void.

The call for bids shall be published in the manner set forth in Article 13.

For the appointment of the successful bidder, the proceedings shall follow the provisions set forth in Article 19.

**Article 18.-** Notwithstanding the legal actions that they may be entitled to, as appropriate, within a period of forty-five calendar days counted as from publication of the abridged application or of the advertisement calling for bids, the owners of surface lands, holders of mining claims or water rights, holders of exploration or exploitation rights on liquid or gaseous hydrocarbons or lithium, or the holders of rights to territorial areas covered by the respective geothermal energy concessions may, by submitting the instruments and information evidencing their title, file with the Ministry of Mining the claims and objections of such that may cause them detriment.

The Ministry of Mining shall inform the petitioner on the claims and objections filed, granting the petitioner a period of sixty calendar days counted as from the date of reception of such communication, for the petitioner to make any statements deemed convenient for its rights. Upon expiry of this sixty-day period, with or without the applicant's reply, the Ministry of Mining shall resolve on the concession application, if appropriate, within the term provided under Article 19.

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<sup>0</sup> (Chilean peso-denominated monetary index the value of which is determined monthly by the Central Bank of Chile for each day of the immediately succeeding month according to variations in the CPI during the immediately preceding month).

If such claims or objections shall have been filed upon a call for public bids for granting a geothermal energy concession, the Ministry of Mining shall resolve as appropriate within a period of sixty calendar days, counted as from expiry of the due date set forth in the first subparagraph. Should the Ministry fail to resolve within such term period, the call for bids shall be deemed null and void.

In any event, the right to file claims or objections referred to in this Article shall not be used whenever the application for a exploitation concession shall have been preceded by a exploration concession over all or part of the same surface area.

**Article 19.-** If no claims or objections shall have been asserted, or if such claims or objections shall have been resolved, the Ministry of Mining, through Supreme Decree, shall determine the merits for the concession application or decide on the call for bids, as appropriate, upon the report issued by the Comisión Nacional de Energía (National Energy Commission). For this, the Ministry of Mining shall have a ninety calendar day period counted, in the case of a concession application, as from the expiry of the sixty-day term set forth in the second subparagraph of the preceding Article, and in the case of a call for bids, as from expiry of the period provided in the third subparagraph of that same provision. In absence of any objections or claims, the ninety-day term shall be counted as from expiry of the term provided in the first subparagraph in Article 15, in the case of a concession application, and as from the opening of bids, in the case of a call for bids.

The Supreme Decree rejecting an application for a concession or declaring void a public tender called for granting a geothermal energy concession shall be well-founded.

**Article 20.-** The decree granting the exploration concession shall contain, as essential references, the following: a) term of the concession; b) holder to whom such concession is granted; c) location, with U.T.M. coordinates of vortexes and extension of the concession, and d) general, technical, and economic information on the geothermal energy exploration project and the projected investment for implementation thereof.

The decree granting a exploitation concession shall contain, as essential references, the following: a) the holder such concession is granted to b) location of the U.T.M. coordinates of the vortexes, and extension of the concession, and c) projected investment.

Copy of any such decree shall be submitted to the Servicio Nacional de Geología y Minería de Chile (Chilean National Geology and Mining Service), which shall keep a record of the granted concessions and their geographical location determined in U.T.M. coordinates.

In qualified cases, and upon the request of the holder of exploration or exploitation concessions, the Ministry of Mining may modify the conditions for such concession, promulgating for such purposes, a new decree.

**Article 21.-** Geothermal energy concessions shall become effective on the date of publication in the Official Gazette of the Supreme Decree granting such concessions.

### **Section III**

#### **Of the rights of holders of concessions**

**Article 22.-** Solely the holders of exploration or exploitation concessions, as appropriate, shall be entitled to carry out exploration or exploitation activities, respectively, of the geothermal energy found at the area of the respective concessions.

No geothermal energy concessions shall be granted in respect of land properties which are subject to another geothermal energy concession, the existence of which shall be previously inquired by requesting a report from the Chilean National Geology and Mining Service.

**Article 23.-** Notwithstanding the recourses and actions provided by law, the applicants of a geothermal energy concession and bidders in a tender called for awarding any such concessions, may claim before the Minister of Mining against any acts or deeds affecting their rights which may have occurred during the processing of the application or call for bids. Equally, such applicants or bidders may contest before the referred authority, the rejection of such application or decision on the bidding. The term to assert the claims shall be fifteen calendar days counted as from the date of acknowledgement of the act or deed giving rise to such claim.

The Minister shall issue its decision based on a well-founded report from a Commission. Such Commission shall be formed by the Undersecretary of Mining, Chief Legal Advisor for the Ministry of Mining, and the National Director of Geology and Mining.

Such well-founded report shall be submitted within a maximum period of ten calendar days, except if additional reports are required to make such decision, case which shall be placed on record in the claim records. In this case, the period shall be extended by a maximum of ten additional days.

The filing or assertion of the claim shall suspend the term periods referred to in Article 19 to decide on the concession application or bidding process which shall have been called for granting such concession.

The claims referred to in this Article which are filed after the date when the processing of the Supreme Decree granting the concession is complete, shall be dismissed flatly.

**Article 24.-** Geothermal energy concessions may be assigned to third parties, in whole or in part. Such transfer shall be made through public deed.

Upon execution of such public deed of assignment, the new holder of a concession shall surrogate the previous holder thereof, solely by operation of law, in the liabilities and rights under the concession.

The geothermal energy concession and machinery and other personal property destined to the execution or implementation thereof may be furnished as surety.

**Article 25.-** Concessions shall be transferable because of death. Heirs shall inform the Ministry of Mining, merely for registration purposes, the death of the principal, holder of a concession, within a term of sixty calendar days counted as from the death thereof. Within the same term, the heirs' representative before the Ministry and their intention to continue or cease in the exercise of their rights shall be stated.

**Article 26.-** As from the date of effectiveness of the geothermal energy concession and in order to facilitate exploration or exploitation operations, as the case may be, the surface land holdings where the territorial extension covered by the concession is located shall be subject to the following easements:

1.- Easements to occupy all the required area of such land holdings, with works and facilities for exploration and exploitation of geothermal energy; communication systems, ports, and piping, constructions and other supplementary works;

2.- Easements set out in benefit of electric services licensee companies, according to the applicable legislation, and

3.- Rights of way for traffic and location of roads, railways, piping, tunnels, inclined planes, cableways, conveyor belts, and any other systems used for connecting such concession to public roads, railroad stations, airports, ports, and geothermal energy commercial or industrial production stores and consumption centers.

If easements shall affect any houses or ancillary spaces or land holdings planted with vineyards or orchards, such easements shall only be constituted by mutual agreement with the owner of the surface land holding.

The constitution of easements, exercise thereof and the corresponding indemnities for any damages caused thereby to the owner of the lands or any other person shall be determined by mutual agreement between the interested parties, to be recorded in public deed, or by judicial resolution, issued in conformity with the preliminary procedures. However, once the preliminary proceedings are carried out, the continuation thereof may be requested and decreed in conformity with the rules of ordinary procedure, if well-founded motives exist therefore. The application wherein the substitution of the proceeding is requested shall be processed as an incidental plea. The provisions set forth in Article 125, Mining Code shall be applicable.

For the easements provided in this Article to be opposable against third parties such easements shall be registered with the Registry of Mortgages and

Encumbrances of the Registro de Hipotecas y Gravámenes del Conservador de Bienes Raíces (Registrar of Property, Mines and Real Estate).

Such easements shall not be utilized for purposes other than those inherent to the respective concession and for which they shall have been constituted and shall cease whenever such utilization is completed.

**Article 27.-** The holder of geothermal energy concessions shall have, by the sole operation of law, and in the measure required for exercising such concessions, the right to develop, consume and exercise on an ongoing basis, the underground waters outcropping in the exploration or exploitation works. This right of utilization is inherent to the geothermal energy concession and shall expire therewith.

Within a six month term, counted as from the outcropping of underground waters, the holder of a geothermal energy concession shall inform the Dirección General de Aguas (General Bureau of Waters) in respect of the location of the tapping point, the technical characteristics of drawdown and the flows that have been drawn.

Upon termination of the geothermal utilization of the waters referred to in the first subparagraph of this Article, the holder of the geothermal energy concession shall become the owner of the respective exploitation right and may dispose of the waters, as long as the geothermal energy concession is in effect. The same regulation shall be applied to other geothermal fluids.

Waters proceeding from the exercise of a geothermal energy concession, referred to in subparagraphs first and third, once abandoned to a natural stream, shall be subject to the provisions in the Código de Aguas (Code of Waters) and, as appropriate, to the regulations governing spillage of pollutant matter into such streams.

The utilization of waters other than those referred to in the first subparagraph in this Article, shall abide by the regulations in the Código de Aguas (Code of Waters) and other applicable regulations.

**Article 28.-** In land holdings covered by a geothermal energy concession, mining claims, water rights may be constituted or underground water exploration permits may be granted. Equally, management leases may be granted or special operating contracts may be entered into in the case of substances that are not subject to mining claims, in conformity with Article 7, Mining Code. Likewise, the Government or government-owned companies may explore or develop such substances in land holdings covered by a geothermal concession.

If activities under mining claims, concessions for exploration underground waters or water rights, management leases or special operating contracts which have been started after the constitution of a geothermal concession shall affect the exercise of such concession, the holders thereof shall carry out, at their sole charge, any works required to correct any difficulties or else indemnify the holder of

such geothermal concession for any proprietary damages that are actually caused thereto.

Geothermal energy concessions may be granted on land properties where mining claims exist or water rights have been constituted, or in the case of substances that are not subject to mining claims under the provisions of Article 7, Mining Code, or whereon management concessions have been granted or special operating contracts have been entered into. If the activities inherent to geothermal energy concessions affect the exercise of such mining claims or special operating contracts or management leases on substances not subject to licensing or water rights, the holder of a geothermal energy concession shall carry out, at its sole charge, any works required to remedy any difficulties or else indemnify the holders of such concessions, water rights, management leases or special operating contracts for the proprietary damages actually caused thereto.

**Article 29.-** If, on account of the exploitation of geothermal energy, the existence of a substance which may be licensed and which shall be the object of a mining property shall be detected, the mining or retrieval of which shall be obtained as a consequence of the exploitation of geothermal energy, the holder of the geothermal energy exploitation concession shall notify this fact to the owner of such mining property, who may demand recovery thereof, provided such owner of such mining property shall previously pay the holder of the geothermal concession any expenses and investment in modifications and supplementary works to be incurred in for such mining, retrieval and its delivery, in which case such owner shall equally pay any indemnities for damages caused on account of the execution of such modifications and supplementary works. These latter works shall be the property of the owner of the mining property. Nevertheless, if such holder of the mining property refuses to take delivery of such substances, the holder of the geothermal concession shall become the owner thereof.

The same rule shall apply, as appropriate, to the Government in respect of substances which are not subject to concessions.

**Article 30.-** Any difficulties arising between two or more holders of concessions on account of the regulations set forth in Articles 27 and 28 or of their respective operations shall be subject to the decision of an arbitrator selected from among those mentioned in Article 223, final subparagraph, Código Orgánico de Tribunales (Organic Code of Courts).

**Article 31.-** The holder of geothermal energy concessions may defend its concession by any means provided by law, against both the Government and private persons, exercising for such purposes the actions that may be in order, such as actions for recovery of possessions based on title or possessory actions, and collect, in addition, any relevant indemnities.

The holder of a concession may impetrate from a competent judge any precautionary measures, legal proceedings or pre-judicial measures destined to preserve and defend its concession.

## Section IV

### Of the duties of concession holders

**Article 32.-** The geothermal energy exploitation concession shall be confirmed by compliance with the obligations set upon the concession holders in the Decree of Concession and by payment of an annual license fee as taxable profit. This license fee shall be equivalent to one tenth of an Unidad Tributaria Mensual<sup>1</sup> (Monthly Tax Unit) for each complete hectare of territorial area covered by such concession.

Payment of the license fee shall be made in advance and in March, each year, at any bank or agency authorized to collect taxes.

Upon expiry of the term period set forth in the above subparagraph, payment of license fees shall have a surcharge of 10% on its value plus an additional 5% for every month of delay.

The amount of the first license fee shall be proportional to the time elapsed between the date when the exploitation concession was granted and the last day of the following February. Once the first license fee has been paid, license fee payments shall continue yearly, on the date and in the manner provided in the second subparagraph.

Refunding of license fees paid for concessions that subsequently expire, fall due or are wholly or partially waived, on any grounds, shall not be in order.

**Article 33.-** An amount equal to the proceeds from the license fees referred to in the previous Article shall be distributed among the Regions and Communes of the country as follows:

- a) 70% of such amount shall be ratably included in the yearly installment of the Fondo Nacional de Desarrollo Regional (National Fund for Regional Exploitation), in the Presupuesto Nacional (National Budget), that the Region or Regions where the concession is located are entitled to.
- b) The remaining 30% shall be paid to the Municipalities of the Communes where the geothermal energy exploitation concessions are located.

In the event that a geothermal energy concession is located on the territory of two or more Regions or two or more Communes, the Servicio Nacional de Geología y Minería (National Geology and Mining Service) shall determine the ratable amount

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<sup>1</sup> Unidad Tributaria Mensual = Monthly Tax Unit, the value of which is present by the IRS.

corresponding to each, by dividing the amount ratably to the surface of each Region or Commune covered by such concession.

The Treasurer's Office shall dispose of the funds referred to in this Article to the Regions and Municipalities, as appropriate, within the next month following collection of license fees.

**Article 34.-** The General Treasurer's Office of the Republic shall report, in April each year, to the Ministry of Mining in respect of the geothermal exploitation license fees that are still outstanding, for the purposes of the provisions set forth in Article 39.

## Section V

### Of the exploration and exploitation operations by holders of geothermal energy concessions

**Article 35.-** Holders of exploration concessions shall, yearly in the month of March and throughout the term of effectiveness of such concessions, report to the Ministry of Mining the confirmed progress during the preceding calendar year in the implementation of the project submitted in accordance with Article 11.

**Article 36.-** The term of effectiveness of geothermal energy exploration concessions shall be two years, counted as from the date of effectiveness of the Concession Decree.

Notwithstanding, holders of concessions shall, prior to the last six months of the term of effectiveness set out in the previous subparagraph, request from the Ministry of Mining, for a single instance, the extension of such concession term for a period of two years, counted as from the end of the first period, by vouching for a progress of no less than 25% in the implementation of the investment set forth in letter c), Article 11. The Ministry of Mining shall approve or reject such extension on well-founded grounds, and inform such approval or well-founded rejection to the holder of such concession through written notice, addressed thereto within a period of no more than three months counted as from the date such extension was requested. This same notice shall be sent to the Servicio Nacional de Geología y Minería (National Geology and Mining Service) and to the Comisión Nacional de Energía (National Energy Commission).

**Article 37.-** Holders of exploitation concessions shall inform the Ministry of Mining, during March each year, about the commercial or industrial exploitation activities carried out during the preceding calendar year.

**Article 38.-** In the event two or more exploitation concessions are utilizing the same geothermal fluid yield reservoir, the respective holders of such concessions shall agree upon the technical procedures for their joint exploitation. In lack of agreement, such procedures shall be determined, upon request of any such

holders, by an arbitrating arbitrator who shall settle the matter ensuring an optimal exploitation of the resources and safeguarding the rights of such holders of concessions.

## Section VI

### Of the termination of geothermal energy concessions

**Article 39.-** The geothermal exploitation concession shall irrevocably expire, and solely by operation of law, if the holder of a concession shall fail to pay two consecutive license fees. This expiration shall occur at twelve o'clock on the night of March 31<sup>st</sup>, in the year when the second license fee payment is defaulted.

The Ministry of Mining shall inform this circumstance to the National Geology and Mining Service, and to the Comisión Nacional de Energía (National Energy Commission).

**Article 40.-** The qualified judge for the territory where the geothermal energy concession is located, or any of such judges, if more than one exists, shall be competent to declare the exploitation concession terminated, upon a request from the Ministry of Mining, if the holder of a concession, having paid a license fee, shall have failed to carry out the exploitation activities under its concession, being capable to do so under reasonable profitability conditions, with the purpose of obtaining profits or additional advantages through the exploitation of other energy sources.

The judge shall hear and decide upon this request in accordance with the procedure set forth in Section XI, Book III, Code of Civil Procedure.

The judgement declaring the concession terminated shall be published, in abstract, in the Official Gazette. The judge shall arrange this publication, chargeable to the Ministry of Mining.

**Article 41.-** The geothermal energy concession may be partially or wholly waived through public deed executed by the holder of a concession. Authorized copy of such deed shall be submitted to the Ministry of Mining within a period of one month counted as from the date of execution thereof. Failure to timely perform this obligation shall render such waiver non opposable for the sole purposes of making such holder's money liabilities due and payable.

In the event of partial waiver of the concession, payment of the annual license fee required from the holder of a concession shall be reduced by the corresponding ratable amount, as from the year following such waiver.

**Article 42.-** In the event of expiration, termination or waiver of a geothermal energy concession, the holder of such concession shall be entitled to remove the equipment, facilities and works owned thereby, within a term of one year counted as from the date of expiration, termination or waiver, or as from the date of

notification of such expiration, except if, before the due date of such term, the holder of such concession shall have requested an extension thereof, extension which shall solely be granted once and for a term of up to one year.

In the event the equipment, facilities and works shall not be removed within the period set forth in the previous subparagraph, they shall be deemed abandoned by the owner thereof.

## **Section VII**

### **Final provisions**

**Article 43.-** Any infringement of the provisions set forth in this law that shall not be expressly penalized herein, shall be penalized by a fine or penalty, as taxable profit, ranging from five to one hundred Unidades Tributarias Mensuales (Monthly Tax Units). The Ministry of Mining shall administratively apply such penalty, and resolution thereof shall have the right of execution.

The affected holder may file a claim before the ordinary justice against such penalties imposed by the Ministry. Such claim shall be filed within a term of thirty days, counted as from the date of remittance of the certified letter whereby the application of such penalty is notified. Justice shall hear of the claim briefly and summarily.

**Article 44.-** Any person subtracting geothermal energy from a holder of a concession shall incur, regardless of the value of such subtraction, in the penalties provided in number 1, Article 446, Penal Code. In the event of recurrence, the procedure provided in Article 451, Penal Code, shall be applied.

**Article 45.-** Let the following text be added to the third subparagraph in Article 2, Organic Law N° 9.618 of Empresa Nacional del Petróleo (National Oil Company), after the full stop (.), which becomes a period in the same paragraph (.): "Finally, the Company may participate, through companies wherein the company holds a share of less than 50% of equity capital, in activities relating to geothermal energy, being allowed for such purposes, to file applications for concessions, participate in tenders, provide any type of services to holders of concessions for carrying out the geothermal energy exploration and exploitation activities, and in general, carry out any industrial and commercial operations relating to the exploration and exploitation of such energy. Such companies may equally have the purpose of utilization of outcropping underground waters in the geothermal exploration and exploitation activities."

**Transitory Article.-** Natural or corporate persons evidencing geothermal research or exploration activities, carried out before the effectiveness of this law, which befall on a specific geographical area, shall have the exclusive right, for a period of one year counted as from the publication of this law, to apply for a geothermal energy concession from the Ministry of Mining."