

THE PETROLEUM ACT, 2020

ACT No. 18 of 2020



I ASSENT

MSWATI III
KING OF ESWATINI18th DECEMBER, 2020**AN ACT
ENTITLED**

AN ACT to provide for the reconnaissance, exploration, production and disposal of petroleum products, their administration and management and for incidental matters.

Enacted by the King and the Parliament of Eswatini.

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**PART I
PRELIMINARY PROVISIONS**

Short title and Commencement

1. (1) This Act may be cited as the Petroleum Act, 2020.
- (2) This Act shall come into force on a date to be appointed by the Minister by Notice in the Gazette.

Interpretation

2. In this Act, unless the context indicates otherwise requires-

“ancillary right” means such right or privilege which may be reasonably acquired by a holder of a licence to discharge petroleum operations and includes, where applicable –

- (a) right of ingress and egress on the land under a licence;
- (b) right of way and other easements;
- (c) right to erect buildings and tanks and to lay and install pipeline and to construct other works for purposes of such operations; or
- (d) right to supply water or other substances in connection with such operations subject to approval in writing, from the relevant entity;

“anhydrous ethanol” means denatured ethanol with a minimum purity of 99.3% which is used for blending petrol for use as fuel;

“assignment” means the act of transferring rights, obligations and interests under a licence, by exchange of shares or otherwise, including mergers or acquisitions;

“block” means -

- (a) any area on land or marine situated wholly or partly in Eswatini as may be determined by the Minister from time to time; or
- (b) an area as indicated on a map of Eswatini prepared in accordance with this Act;

“blending” means the process of mixing at a particular percentage ethyl alcohol that is derived from agricultural products with gasoline;

“biofuels” means liquid or gaseous fuels produced from biodegradable fraction of products, waste and residues from agriculture (including vegetable and animal substances), forestry and related industries as well as the biodegradable fraction of industrial and urban residues;

“change of control” includes change of control in a parent company, in or outside of Eswatini;

“commercial quantity” means a quantity of petroleum products, prescribed in regulations, to be purchased by a commercial consumer;

“commercial consumer” means any person other than a retailer or wholesaler, who does not import petroleum products, but procures petroleum products within Eswatini in commercial quantity, directly from a wholesaler for own use and not for sale;

“commercial stock” means the amount of fuel held in stock by any wholesaler for commercial

purposes and a reserve for an emergency situation;

"coal-bed methane" means gas produced from a reservoir found in a seam of coal, whether workable or unworkable;

"coal-bed methane well" means any drilled, deepened, converted, or reopened well initially used for coal mining-related purposes, for the purpose of capturing coal-bed methane for sale or use;

"company" means anybody corporate or un-incorporated association, including a partnership registered under the Companies Act of Eswatini and any other relevant laws of the Country;

"compressed natural gas" or "CNG" means natural gas compressed to a pressure at or above 200-248 bar (i.e. 2900-3600 pounds per square inch) stored in high-pressure containers and is used as a fuel for natural gas-powered vehicles;

"consumer" means any person, other than a retailer or wholesaler who acquires petroleum products for personal use and not for the purpose of sale, exchange or otherwise disposal to any other person;

"controlled product" means any petroleum product which has been declared as such by the Minister for the purpose of setting prices for which they are sold or purchased in Eswatini;

"crude oil" means any petroleum which at 15 degrees Celsius and 1 Kg/sq. cm, is in a liquid Kingdom of Eswatini at the well head or gas-separator or which is extracted from natural gas, including distillate and condensate;

"denaturing" means the act and or process of causing potable alcohol to be non-potable but still fit for the purpose of blending into petrol, diesel or other petroleum product for use by a consumer;

"diesel" means a distillate oil which can be used as fuel for the operation of a compression ignition engine and which has an approximate boiling temperature of between 150 °C to 400 °C;

"discovery" means the discovery of petroleum recoverable at the surface of the earth in a flow measurable by conventional petroleum industry testing methods;

"distributor" means any person not being a wholesaler or retailer who does not import a petroleum product but obtains a petroleum product in Eswatini and sells or distributes it to consumers;

"downstream activity" means all petroleum activities from the processes of distribution, marketing, and transportation of refining crude oil into petroleum products. for distribution, marketing, and transportation;

"drilling", in relation to a well, includes the fitting of wellhead, coring and logging and any operations carried out for purposes of preventing the sides of the well from collapsing or the well from being filled by any extraneous substance;

"energy hub" a centre or site in a rural area where energy technologies will be displayed or sold;

"exploration and production operations" means any operations carried out for or in connection with the exploration for and production of petroleum and includes –

- (a) reconnaissance operations;
- (b) drilling and other operations to appraise a discovery, get and produce

petroleum; and

(c) such other operations and works in connection therewith;

“filling or service station” means any place where an installation for petroleum product is constructed or installed and from where such petroleum product is offered for sale to consumers;

“force majeure” means any event beyond reasonable control and includes war, insurrection, cyclone or earthquake;

“fuel” means any petroleum product that can undergo a combustion process to produce energy and includes petrol or diesel;

“fuel grade ethanol” means ethanol (ethynol alcohol) made unfit for human consumption or inedible by adding an additive (denaturant) such as unleaded petrol to it;

“fuel oil levy” means a levy imposed under this Act;

“fuel oil” means products that include petrol, diesel oil, aviation spirits, kerosene, distillate fuel, residual fuel oil, naphtha, base oil, products of base oil, grease or petroleum gas;

“fuel price controller” means a person authorized by the Minister to perform any of the functions of carrying out the purposes of this Act;

“holder” includes where applicable the agents, representatives and assignees of a licence;

“installation” means any vessel, structure, device, equipment, mobile used or intended to be used for –

(a) exploration and production operations; and

(b) extraction, storing, holding, conveying, transporting, distributing, delivering or selling petroleum and petroleum products and includes –

(i) a well, from which petroleum is extracted; and

(ii) any pump, storage tank, pipeline or system of pipes used in relation to paragraph (a) and (b);

“key national development area” means a site in a rural area, approved by the Ministry, that has been assessed and found to have a deficiency in terms of petroleum products supply;

“licence” means a legal document granted in accordance with this Act;

“liquified petroleum gas” or “LPG” means a petroleum gas consisting of flammable mixtures of hydrocarbon gases, such as propane and butane, obtained as a by-product from the refining of petroleum or from natural gas: used chiefly as a domestic or industrial fuel and which can be stored as liquid under relatively low pressure for use as a liquid;

“marking” means the addition of such chemicals or dyes to petroleum or petroleum products for purposes of identification or volume monitoring;

“marine area” means any body of fresh water or otherwise;

“manufacture” means refining, re-refining or processing of petroleum products and natural gas which includes the blending, and “manufacturer” shall be interpreted accordingly;

“methane” means CH_4 is colourless gas that burns efficiently;

“midstream activity” means refining of petroleum, bulk storage and transportation by pipeline, rail, oil tanker, storage, and wholesale marketing of petroleum;

“Minister” means the minister responsible for the petroleum affairs;

“ministry” means the entity responsible for the petroleum sector under the auspices of the Minister;

“natural gas” means all gaseous hydrocarbons which at standard conditions of temperature and pressure (15 degrees Celsius and in 1 Kg/sq. cm) is in a gaseous form found in the Kingdom of Eswatini including but not limited to wet gas, Natural Gas Liquids, dry gas and casing head gas, all substances contained therein including helium, which are produced from an oil or gas well, in their natural in the Kingdom of Eswatini or residue gas remaining after extraction of Crude Oil from wet gas;

“natural gas liquids” or “LNG” means liquefiable hydrocarbons obtained from natural gas by condensation or extraction, including ethane, propane, butane or pentanes;

“outlet” in relation to petroleum product means any place where any petroleum product is offered for sale to consumers;

“petrochemical” means a chemical compound or a mixture of such compounds manufactured from petroleum or petroleum products;

“petrol” means a light distillate fuel which can be used as fuel for the operation of a spark ignition engine and which has an approximate boiling temperature of between 30 °C to 200 °C;

“Petroleum Inspector” means a person assigned in terms of this Act to ensure highest standard of safety, compliance and accepted environmental practices at all petroleum or petroleum products installations and operations within Eswatini;

“Head of Inspection” means a person assigned in terms of this Act to provide leadership and development to the inspection team, ensuring that a programme of high quality inspections is conducted and outcomes in the form of quality indicators, recommendations and or advice given are accurately and consistently recorded and that judgements are consistent, robust and stand up to external challenge;

“petroleum” -

- (a) means crude oil, natural gas and any naturally occurring hydrocarbons and hydrocarbon compounds and mixtures, whether in a liquid, solid or gaseous found in Kingdom of Eswatini, but shall not include coal, or bituminous shales, tar sands, asphalt or other like deposits; and
- (b) includes any hydrocarbon or hydrocarbon compounds which has been or otherwise recovered from its natural condition, but which has been returned to a natural reservoir for storage purposes;

“petroleum operations” means the operations related to the various phases of the petroleum industry and includes -

- (a) reconnaissance operations;
- (b) exploration and production operations; or
- (c) refining, processing, manufacturing, transportation and marketing of petroleum,

including wholesale and retail trading of petroleum products and petrochemicals, but does not include mining operations as defined under the Mines and Minerals Act, 2011, including such mining operations which involve the extraction of petroleum from bituminous shales, tar sands, asphalt or other like deposits;

“petroleum product” means any finished or partly finished product derived from petroleum by any refining process and includes fuel;

“pipeline” means all parts of those physical facilities through which petroleum, petroleum products or natural gases are transported including pipes, valves and other appurtenances attached to pipes, pumps, compressor units, meters, regulators and fabricated assemblies, excluding those located in the premises of a manufacturer of petroleum products, a storage facility, a retailer and a consumer;

“prescribed” means prescribed by regulation made by the Minister under this Act;

“reconnaissance operations” means any studies or operations carried out for or in connection with the search for petroleum or petroleum bearing or petroleum generating strata by geological, photo-geological, geophysical, geochemical, paleontological, aerial, magnetic, gravity or seismic surveys and includes any remote sensing techniques and the appraisal of such surveys;

“refining” means the process by which finished and partly finished petroleum products are produced and manufactured from petroleum, including the disposal of such products from the refinery;

“Regulator” means Energy Regulatory Authority established in terms of the Energy Regulatory Act, 2007;

“retailer”- means any person, whether or not the owner of the filling station, other than a wholesaler, commercial consumer or distributor, who has the right to-

- (a) construct or erect an outlet;
- (b) operate such an outlet by obtaining petroleum products directly from a wholesaler and selling petroleum products to consumers; or
- (c) possesses and stores petroleum products for sale directly to consumers;

“shale formations” means fine grained sedimentary rocks which have the potential of being petroleum and natural gas;

“shale gas” means natural gas that is trapped within shale formations;

“ shale oil” means petroleum that is found trapped within shale formations;

“supplier” means any wholesaler company which the Minister may , by Notice in the Gazette, licencedesignate as a supplier of fuel oil”;

“storage facility”, means any facility and its auxiliary equipment that is intended to be used or used solely for the storage of petroleum or petroleum product, in commercial quantity, including loading and unloading and such facility on the premises at which petroleum operations are conducted;

“strategic stocks” means both crude and refined products and are physical in nature, kept for severe fuel supply disruptions or catastrophes. They may exclude dead stocks in tanks, pipeline fills, refined products in road and rail tanker, stocks held on behalf of armed forces, commercial and safety stocks held by operators in the petroleum infrastructure;

"transportation" means the action of taking petroleum or petroleum products from one place to another by any means or mode of transport such as land, air or water and includes transport by pipeline;

"upstream activity" means the searching, recovery and production of crude oil or natural gas;

"well" means a borehole, made by drilling whether or not for the extraction of petroleum and includes any device on it for containing the pressure and any boreholes for re-injection purposes, but shall not include a seismic shot hole; and

"wholesaler" means any person who purchases and imports petroleum products and sells or distributes same in bulk commercial quantities to consumers, or commercial consumers, or retailers.

PART II

ADMINISTRATION RIGHTS IN RELATION TO PETROLEUM

Vesting of petroleum

3. All rights of ownership in and the exercise of control over petroleum its natural state under or upon any land or marine area of the Kingdom of Eswatini are vested in the *iNgwenyama* in trust for the Eswatini Nation.

Administration of Act

4. The Minister shall be responsible for the general administration of this Act.

Powers of Minister

5. (1) In the administration of this Act, the powers of the Minister shall, at all times, include the power –

- (a) to prescribe the price, or a maximum or minimum price at which any petroleum product may be sold or bought by any person and conditions under which the selling or buying of petroleum products other than in accordance with the prescribed, maximum or minimum price may take place;
- (b) to designate fuel oil suppliers, authorise, licence and regulate all petroleum activities;
- (c) to impose levies on any fuel at a rate prescribed in a notice published in the Gazette subject to section 253 of the Constitution Act, 2005;
- (d) subject to section 41 of the Public Finance Management Act, 2017, to establish any fund and strategic institutions for the security of supply of affordable fuel in the Kingdom of Eswatini;
- (e) to create an environment for empowerment and protection of locals in the petroleum industry;
- (f) prescribe the minimum percentage of fuel volumes to be stored or drawn by the oil companies from the strategic oil reserve facility;
- (g) to delegate to regulatory bodies or committee authority, to regulate, administer and enforce functions in the operations of this act; and

- (h) to issue permits for importers and exporters of petroleum and products; and
- (i) to prescribe the grades, specifications, and blending ratios of petroleum products and biofuels to be sold in the **Kingdom of Eswatini**.

(2) In the exercise of powers in the administration and implementation of this Act, the Minister shall consult with the relevant institutions.

Scope of powers

6. (1) Any specific permission, consent, authority or direction granted or issued by the Minister under this Act or any notices made thereunder may be—

- (a) general or specific;
- (b) revoked or varied by subsequent direction of the Minister;
- (c) absolute or conditional; or
- (d) limited so as to expire on a specified date, unless renewed and shall, except as otherwise provided in this Act or decided by the Minister, be published in—
 - (i) the Gazette; and
 - (ii) at least one (1) daily newspaper circulating in Eswatini.

**PART III
PETROLEUM OPERATIONS-
UPSTREAM ACTIVITIES**

Prohibition of Activity without a licence

7. A person shall not conduct any upstream activity or operation for which a licence is required except under a licence issued under this Act.

Applications for Upstream Petroleum Operations

8. (1) An application for upstream operations shall be made to the *iNgwenyama* through the Minister.

(2) The Minister shall, in consultation with the Petroleum Advisory Committee, advise the *Ingwenyama* on the grant of—

- (a) a Reconnaissance licence;
- (b) a Petroleum Exploration and Production licence; or
- (c) any other petroleum agreement,

upon such terms and conditions as determined by the Minister.

Establishment and qualification of a Petroleum Advisory Committee

9. There is established a Committee known as the Petroleum Advisory Committee under the Ministry responsible for natural resources, which shall be appointed and be accountable to the Minister.

Composition of the Petroleum Advisory Committee

10. (1) In appointing the Committee, the Minister shall ensure that the composition of the committee qualifications, comprises of experts in petroleum, in particular knowledge in the field of upstream activities, law, economics and petroleum engineering.

(2) The Committee shall consist of eight members which shall include -

- (a) the Principal Secretary in the Ministry responsible for petroleum affairs, who shall be the Chairperson;
- (b) the Director of Energy Affairs; and
- (c) a representative of the Traditional Authorities.

(3) The Committee may consult experts or any person to inform its decisions.

(4) Where the Chairperson is for any reason unable to perform the duties of being a chairperson, the Acting Principal Secretary in the Ministry responsible for Petroleum Affairs shall resume the duties of the Chairperson.

(5) A member of the Committee excluding the Principal Secretary and the Director Energy Affairs shall hold office for a period not exceeding three (3) years.

(6) The Minister may, to ensure continuity, re-appoint a member for one further period of office.

(7) A person may not be appointed to the Committee or have such appointment extended for a consecutive period longer than six (6) years.

(8) Where a member ceases to hold office for any reason, the Minister may appoint another person in that place for the remainder of the term of office to the Committee.

(9) A member of the Committee may be removed by the Minister where that member-

- (a) becomes of unsound mind;
- (b) has been absent from more than three (3) consecutive meetings of the Board without leave of the Chairperson;
- (c) resigns and has notified the Chairperson in writing of the resignation;
- (d) materially transgresses any duty imposed under this Act;
- (e) is guilty of maladministration;
- (f) has shown gross incompetence in exercise of the duties under this Act; and
- (g) becomes subject to the criteria specified in subsection (5).

Functions of Committee

11. The Committee shall advise the Minister on upstream or midstream operations or activities and the grant of upstream or midstream licences and agreements.

Remuneration

12. The Committee shall be remunerated through funds from the Strategic Oil Reserve Fund in terms of the Public Enterprises remuneration scale.

Meetings of the Committee

13. The members of the Committee shall meet at such times and places and in the manner as determined by the internal regulations issued by the Committee and duly approved by the Minister.

Immunity from personal liability

14. In performing functions provided for under this Act, personal liability shall not attach to-

- (a) Minister;
- (b) a member of the Petroleum Advisory Committee;
- (c) the Director of Energy; and
- (d) any officer or entity of the Government,

engaged in the Administration of this Act, for any act or omission in the exercise or discharge, or purported exercise of discharge, of a power, function or duty under this Act, which act or omission has been exercised or discharged in good faith and without gross negligence.

Petroleum Register

15. (1) The Minister shall cause a petroleum register to be created and maintained in the Ministry, in such form as may be determined by the Minister, for the registration of all applications for the grant, assignment, variation, renewal, surrender, suspension and termination of a licence, including the record of-

- (a) the name of every party to a licence, including participation interest;
- (b) the nature of the licence issued and the area in respect of which it has been issued;
- (c) the name of the person, if any, to whom any interest in any licence has been ceded or assigned and the nature of such interest;
- (d) the liabilities and obligations of the holder of every licence in relation to the payment of royalty and other fees in terms of this Act;
- (e) any Court decision, arbitration award, deed or licence of any kind relating to any petroleum rights or matters arising under this Act; and
- (f) such other particulars as may from time to time be determined by the Minister.

(2) The petroleum register referred to in sub section (1) shall during ordinary office hours, be open for inspection at the Ministry by any person upon payment of the fee set out under the Regulations.

(3) Any person may on payment of the fee so specified make or obtain copies of any entry in such register.

Offence

16. A person who -

- (a) makes or causes to make any entry in the petroleum register which is false; or
- (b) prepares or submits any copy of an entry in the petroleum register which is false, commits an offence and shall on conviction be liable to a fine of E4,000,000 (four million emalangeni) or five (5) years imprisonment or both.

Applications for downstream activities

17. An application for downstream activities shall be made to the Regulator in the form and manner as may be prescribed by the Regulator, except for those prescribed as key national development areas subject to section 24 (1) e).

Licences for downstream activities

18. The type of licences for downstream activities that may be granted under this Act shall be -

- (a) Wholesale Licence;
- (b) Retail Licence, which may be -
 - (i) Urban Area Retail Licence;
 - (ii) Rural Area Retail Licence;
- (c) Commercial Consumer Licence;
- (d) Distribution licence;
- (e) Storage licence;
- (f) Blending Licence;
- (g) Liquefied Petroleum Gas (LPG) licence;
- (h) Compressed Natural Gas Licence;
- (i) Liquefied Natural Gas (LNG) licence;
- (j) Petrochemical Licence; and
- (k) any other licence prescribed by the Minister from time to time by way of Gazette.

Functions Energy Regulatory Authority

19. In the administration of this Act, the Regulator may grant any other licence or permit, upon such terms and conditions as may be determined by the Minister and in consideration of prevailing circumstances.

Confidentiality

20. An officer or inspector performing functions in terms of this Act shall not -

- (a) divulge any information in relation to any matter in the exercise of powers, duties

or in the course of the administration of this Act; or

- (b) communicate any such matter to any other person or permit any person to have access to any licence or other documentation under possession or custody, save and except –
 - (i) if authorised by or under this Act;
 - (ii) with consent in writing obtained from the person from whom the information was obtained or to whom the information relates; or
 - (iii) for the purpose of any legal proceedings arising out of the administration or enforcement of this Act or any other law

Offence

21. Any person who contravenes or fails to comply with the provisions of section 20 commits an offence and shall on conviction be liable to a fine of E10,000 (ten thousand Emalangeni) or 6 (six) months imprisonment or both.

PART IV ESTABLISHMENT OF A NATIONAL OIL COMPANY

National oil company

22. (1) The company incorporated in terms of the Companies Act, 2005 known as the National Oil Company shall continue to exist as if established under this Act.

(2) The company shall be a Category A public enterprise as contemplated in the Public Enterprises (Control and Monitoring) Act, 1989.

(3) The Company is a body corporate having perpetual succession and may in its own corporate name sue and be sued and, for and in connection with the purposes of this Act and the energy laws, may perform and be capable of doing all such acts as a body corporate may by law perform.

(4) The organisational structure and administrative procedure of the Company shall be determined in accordance with internal regulations adopted by the Board.

Shareholding of National Oil Company

23. The Government shall be the sole shareholder of the shares of the National Oil Company and the rights attached to it shall be exercised by the Minister.

Objects of the Company

24. (1) The objects of the National Oil Company are-

- (a) to secure, market, trade in crude oil and petroleum products;
- (b) to carry out the business of supplying and distributing petroleum and petroleum products into and from the Kingdom of Eswatini;
- (c) to carry on the business of importing and exporting petroleum and petroleum products into and from the Kingdom of Eswatini;
- (d) to identify, build, own, manage crude oil and petroleum logistics investments,

including storage and handling terminals;

- (e) to carry out network surveys to determine key national development areas for the development of retail stations in key national development areas;
- (f) to issue rural area retail licences in key national development areas; licence
- (g) to identify, build, own and manage hydrocarbon terminals;
- (h) to carry out the blending of fuel for the production of biofuels such as the blending of Unleaded Petrol with ethanol;
- (i) to appropriate any part or parts of the property of the company for the purpose of, and to build or let, shops, offices and other places of business and to use or lease any part of the property of the company not required for the purposes aforesaid for any purpose for which it may be conveniently used or let;
- (j) to empower local companies through partnerships and joint ventures with indigenous Emaswati as may be prescribed in the regulations.
- (k) to do all or any of the above things in any part of the world and either as principals or agents and either alone or in conjunction with others; and
- (l) to do any business that may be necessary and incidental to the attainment of the above-mentioned objects.

Share Capital

25. (1) The initial share capital of the Company shall consist of the number of shares with the value set in the Memorandum and Articles of Association.

(2) The value of the shares shall from time to time be fixed based on a due diligence review and valuation of the Company by an internationally recognized registered firm of accountants to determine its net worth and fix the value of the shares of the company .

Selling of shares in Company

26. (1) The selling of the shares in the company shall be subject to prior approval and authorization by Parliament.

(2) The approval by Parliament of the plan for selling of shares is conditional on the presentation by the Minister of a full or partial privatization plan discussed and agreed with the Minister Finance and Director of the Public Enterprise Unit.

- (3) The privatisation plan shall cover as a minimum-
 - (a) the strategic objective of the partial or full privatization;
 - (b) reasons for the form chosen to sell shares either open bidding or negotiated sale;
 - (c) in case of negotiated deals, how the sales price is to be maximized, or how maximum expansion targets are to be reached at least on cost to Eswatini society;
 - (d) employment impact and redundancy plans;
 - (e) use of Sales revenue and its placement – expansion of the Capital of the company or transfer to the treasury;

- (f) implications for the pension fund; and
- (g) when privatization is considered, fifty percent (50%) or more of the shares shall be reserved for Emaswati.

Establishment of the Board of Directors.

27. There is established a Board of Directors which is the governing body of the National Oil Company and is responsible for carrying out the objects of and exercise the powers and functions conferred on the Company.

Composition and Qualifications of Board of Directors.

28. (1) In appointing the Board, the Minister shall ensure that the composition, qualifications of the committee comprises of experts in petroleum, economics, finance and law.

(2) The Board shall consist of a maximum of nine members, appointed in terms of the Public Enterprises (Control and Monitoring) Act 1989, which shall include-

- (a) a Chairperson, appointed by the Minister;
- (b) the Chief Executive Officer who is secretary of the Board;
- (c) a representative of the Traditional Authorities; and
- (d) not less than three (3) and not more than six (6) other members appointed by the Minister which includes the Principal Secretary of the Ministry of Natural Resources and Energy, a representative of the Principal Secretary of the Ministry of Finance and a representative of rural business community.

(3) If the Chairperson for any reason is unable to perform his duties, the other members shall choose another chairperson from amongst themselves as chairperson until the chairperson can resume his duties or another chairperson is appointed by the Minister.

(4) A member of the Board shall hold office for a period not exceeding 3 years.

(5) The Minister, may re-appoint a member to the Board for a further consecutive period to ensure continuity.

(6) A person other than the Chief Executive Officer may not be appointed to the board for a consecutive period longer than 6 years.

(7) Where a member ceases to hold office for any reason, the Minister may appoint another person in that place for the remainder of the term of office on the Board.

(8) A member of the Board shall be paid such remuneration or allowances as prescribed by the Public Enterprise Unit Circulars and guidelines unit.

(9) A member of the Board may be removed by the Minister where that member —

- (a) becomes of unsound mind;
- (b) has been absent for more than three consecutive meetings of the Board without leave of the chairperson;
- (c) resigns and has notified the chairperson in writing of the resignation;

- (d) materially transgresses any duty imposed under this Act;
- (e) is guilty of maladministration;
- (f) has shown gross incompetence in exercise of the duties under this Act; or
- (g) is convicted of an offence.

(10) The Chairperson of the Board shall fulfil the following functional qualification requirements —

- (a) the Chairpersons shall have strong knowledge and experience in either engineering, economics or finance; or
- (b) have strong knowledge and experience in legal matters, particularly in matters relating to commercial and administrative law.

(11) A person may not be appointed as a member of the Board if —

- (a) that person is an unrehabilitated insolvent;
- (b) that person has been convicted of an offence involving an element of dis-honesty; or
- (c) there is a possibility that a material conflict of interest may arise between the interest of that person as a member of the Board and the personal professional or business interests of that person.

(12) All members of the Board shall on appointment disclose their personal, professional or business interests in writing to the Minister and advise the Minister whenever those interests change.

Meetings of the Board of Directors.

29. (1) The members of the Board shall meet at such times and places and in the manner as guided by the Public Enterprise Act and related circulars.

(2) At all meetings of the Board —

- (a) the quorum shall be a majority of all the members of the Board;
- (b) the decisions of a majority of the members present at that meeting shall constitute the decision of the Company; and
- (c) in the event of an equality of votes on any matter the person presiding at a meeting has a casting vote in addition to a deliberative vote.

(3) A decision taken by the Company or act performed under the authority of the Board is not invalid by reason only of a casual vacancy on the Board or of the fact that any person not entitled to sit as a member of the Board sat at that meeting at the time the decision was taken or the act was authorised.

(4) Where the Board takes a decision in any manner other than at a formal meeting such decision comes into effect immediately provided the decision is reduced to writing and submitted for noting at the first formal meeting of the Board following that decision.

Duties of members of the Board.

30. (1) A member of the Board shall —

- (a) act in a justifiable and transparent manner whenever the exercise of discretion is required;
- (b) at all times act in the interests of the Board and not in any sectoral interest;
- (c) act independently of any outside influence or instruction; and
- (d) act in a manner that is required of any holder of a public office.

(2) A member of the Board having any interest, directly or indirectly, in any matter under discussion by the Board, shall as soon as possible after the relevant facts have come to the knowledge of that member, disclose to the chairperson the facts of the interest and the nature of that interest.

(3) A disclosure under subsection (2) shall be recorded in the minutes of the Board and, after the disclosure, the member —

- (a) shall not take part nor be present in any deliberation or decision of the Board; and
- (b) shall be disregarded for the purpose of constituting a quorum by the Board on the meeting in connection with the matter.

(4) Any member of the Board who fails to disclose an interest as provided under subsection (2) commits an offence and liable on conviction to a fine not exceeding five (5000,00) thousand Emalangeni or to imprisonment for a period not exceeding twelve (12) months or both.

Personnel.

31. (1) There shall be a Chief Executive Officer Managing Director of the Company who shall be recommended nominated by the Board and appointed by SCOPE the Minister in accordance with Section 8 of the Public Enterprises (Control and Monitoring) Act 1989 and whose terms and conditions of service shall be determined by the Minister in his instrument of appointment or otherwise in writing from time to time.

(2) The Chief Executive Officer shall be the chief executive of the company and shall be responsible for the conduct of the Company's business.

(3) There shall be a Chief Financial Officer of the Company who shall be recommended for appointment by the Board to SCOPE in accordance with section 8 (2) of the Public Enterprise Act and whose terms and conditions of service shall be determined by the Board in consultation with the Minister.

(4) There shall be an Auditor of the Company who shall be nominated by the Board and appointed by the Minister in accordance with Section (9) of the Public Enterprise Act.

(5) The Chief Executive Officer is responsible for —

- (a) the management of the affairs of the Company, subject to the directions of the Board; and
- (b) administrative control over the appointed employees of the organisation

Other Staff

32. (1) The company shall employ such officers and other persons as are reasonably necessary for the proper management and operation of the Company's undertakings and on such terms and conditions as the Company on recommendation of the Chief Executive Officer and the approval of the Minister may determine.

(2) Apart from the position of Chief Executive Officer Managing Director, The Chief Financial Officer Director of Finance, the Auditor, the appointment and dismissal of all other employees shall be made by the Chief Executive Officer, Managing Director or such senior officer as he may delegate to perform this function.

(3) The Company shall pay the Chief Executive Officer and Company executive and the employees such remuneration, allowances, subsidies and other benefits in accordance with a remuneration structure as shall be determined from time to time by the Board and approved by the Minister and in line with the Public Enterprise Unit ACT.

Funding.

33. (1) The revenues of the Company may consist of —

- (a) such sums as may be appropriated by Parliament from time to time for the purposes of this Act;
- (b) an initial fuel levy of 35 cents per litre which shall be reviewed from time to time by the Minister by notice published in the gazette in terms of section 5 (1) (c);
- (c) storage fees of strategic Stocks for the country;
- (d) storage fees of fuel for other oil companies and the sale of fuel; and
- (e) any other funds that may be mobilized and whose acceptance is approved in writing by the Minister.

(2) The Minister may, on receipt of the Company's Strategic Plan, Business Plan and Budget, by notice put in place a levy on petroleum products for the funding of the said Company's Strategic Plan, Business Plan and Budget.

Accounting and accountability.

34. (1) The Chief Executive Officer is the responsible officer of the Company and shall -

- (a) cause proper records to be kept of all financial transactions, assets and liabilities of the Authority;
- (b) open one or more bank accounts in its name with one or more recognised financial institutions and deposit therein all the money received from the sources referred to in section 16(1); and
- (c) as soon as possible after the end of each financial year, cause an income statement and balance sheet of the Company for that financial year to be prepared.

(2) The accounts of the Company shall be audited annually by independent auditors appointed by Government on the recommendation of the Company.

(3) The financial year of the Company is the same as that of the Ministry being from April to March.

Relationship between the National Oil Company and Government

35. (1) The National Oil Company shall reach an agreement with the Government, which shall set out –

- (a) the extent of the relationship between the Government and the National Oil Company, including social objectives to be met by the National Oil Company; and
- (b) the powers and functions of the Company, and the dividends (if any) to be paid to the Government.

(2) Notwithstanding subsection (1) (b), the National Oil Company shall source, manage, distribute strategic stocks, trade in crude oil and petroleum products.

**PART V
FINANCIAL PROVISION**

Royalty

36. (1) Subject to the provision of this Part, the holder of –

- (a) an exploration and production licence, or
- (b) a petroleum agreement,

shall pay a royalty calculated –

- (i) at the well head of the petroleum produced from the area thereunder;
- (ii) on the selling value of petroleum referred to in section 331 (2); and
- (iii) subject to such arrangements as approved by the *iNgwenyama*.

(2) For the purposes of section 334 (1), the selling value of any petroleum shall be such value as may be based upon –

- (a) the average selling price of petroleum then prevailing in the market; or
- (b) other valuation parameters as determined and stipulated by the Minister and in accordance with accepted international valuation practice.

(3) Payment of the royalty shall be accompanied by a statement in a prescribed form that includes details of the gross production figures, gross sale figures when the petroleum was sold, to whom it was sold and the price at which it was sold.

Petroleum in lieu of Royalty

37. (1) In the national interest and in consultation with the holder of –

- (a) an exploration and production licence; or
- (b) any other petroleum agreement,

petroleum may be taken in kind *in lieu* of the whole or part of the royalty.

(2) The petroleum taken in kind shall be delivered free of all transportation or handling charges.

(3) The Minister may require the holder of -

- (a) an exploration and production licence; or
- (b) any other petroleum agreement,

to hold such petroleum as elected to take in kind in storage at the field or at a storage facility free of any storage charge, but not for a period exceeding ninety (90) days.

(4) Any petroleum which the Minister does not dispose of within the period mentioned in sub-section (3) or for which further terms of disposal have not been agreed upon, may be sold to the holder of -

- (a) an exploration and production licence; or
- (b) any other petroleum agreement, at the same prices as apply in the calculation of royalty.

Royalty not payable in certain cases

38. All petroleum that is proved to the satisfaction of the Minister to have been used by the holder of -

- (a) an exploration and production licence; or
- (b) any other petroleum agreement,

for the purpose of conducting exploration or production, including pumping or transportation of petroleum to field storage or refineries, shall be free of royalty.

Currency

39. All royalties, taxes, fees, rents, duties, financial licences and any other charges shall be paid in the currency of Eswatini, save and except where otherwise approved in writing by the Minister, in consultation with the Minister responsible for finance.

Taxes, Fees, rents, etc.

40. (1) All taxes, payable in respect of any licence may be determined by the Minister in consultation with the Minister of Finance and after Parliament's approval and shall be paid in accordance with this Act and any other applicable laws after.

(2) All fees, rents, charges and any other payments payable in respect of any licence may be determined by the Minister in consultation with the Minister of finance or Parliament approval and shall be paid in accordance with this Act and any other applicable laws.

Exemption from duties and other charges

41. (1) Notwithstanding the provisions of any other Act, any duties or other charges payable in respect of taking out a bond or the importation into Eswatini of equipment or materials peculiar to and necessary for the purposes of a licence may be exempted from the payment of duties and other charges, provided that—

- (a) approval in writing is obtained from the Minister, in consultation with the Minister responsible for Finance;
- (b) a professional valuation report on the value of the equipment and materials is

provided;

- (c) the equipment or materials so imported or for which a bond has been taken out, shall be used for the aforesaid purposes and for no other purpose;
- (d) the holder of a licence shall —
 - (i) at all times have and retain the beneficial ownership of the equipment or materials for which the exemption is sought; and
 - (ii) enter into a bond for the amount of the duties, taxes or other payable, which shall be forfeited in the event any such exempted equipment or materials are used otherwise than the aforesaid purposes.

Security for performance of operations

42. (1) Within sixty (60) days on which -

- (a) a reconnaissance licence;
- (b) an exploration and production licence; or
- (c) any other petroleum agreement, comes into force, the Minister shall require the holder to lodge security with the Minister, to guarantee due performance of operations undertaken thereunder.

(2) The quantum and form of the security referred to in section 39 (1) shall be subject to the approval by the Minister in writing and calculated having regard to -

- (a) the nature of the operations to be undertaken;
- (b) the total amount of the minimum sum per annum which is required for exploration and production operations to be conducted; and
- (c) any other factors which the Minister may deem appropriate.

(3) The quantum of the security referred to in sub-section (2) shall be reduced at such time, in such manner and for such sum as may be approved by the Minister subject to the submission of such documentation as the Minister may require.

(4) Where the holder of a licence fails to discharge the operations under -

- (a) a reconnaissance licence;
- (b) an exploration and production licence; or
- (c) any other petroleum agreement in respect of which security was lodged with the Minister in accordance with sub-section (1), any rights to the security may be forfeited and it may be enforced by the Minister.

Security against damage to the environment

43. (1) The approved quantum for such security shall be deposited with a Fund to be determined by Minister.

(2) Where in the conduct of operations under a licence, the holder, causes damage to the environment, the said holder shall take steps to address and remedy the damage to the environment in accordance with the environmental laws of Eswatini.

Rehabilitation

44. (1) On the date on which a licence comes into force, the Minister shall require the holder to lodge with the Minister, security for the rehabilitation of the area under which operations were conducted under a licence and any affected areas, in such a form, subject to approval by the Minister, in writing.

(2) The quantum of the security referred to in section 39 (2) shall be determined by the Minister, in consultation with the Minister responsible for the environment.

Minister may remedy default

45. Notwithstanding section 42 and section 43 and where in the course of operations under a licence, the holder fails to execute works required including to abandon a well, decommission an installation or implement safety, health and environmental measures, the Minister shall notify in writing, the holder of the said licence and afford an opportunity to undertake and implement such works and measures within a specified period of time, failing which if it is considered expedient and in the case of an emergency, the Minister shall —

- (a) cause such works and measures to be executed and implemented; or
- (b) recover from the holder of the licence, all costs and expenses incurred.

Compulsory insurance

46. The holder of a licence shall with the approval of the Minister in writing, take out an insurance policy against liability for —

- (a) personal injury or damage;
- (b) damage to property; or
- (c) employees of the holder of every licence involved in petroleum operations.

**PART VI
JOINT DEVELOPMENT**

Joint development

47. (1) Where applicable and if at any time during the term of a licence, the strata in whole or in part, forms part of a single geological reservoir in respect of other parts of which any other licence is in force, the Minister shall be notified in writing and no further activity shall be conducted without the approval of the Minister, in writing.

(2) Subject to sub-section (1) and in order to secure the maximum ultimate recovery of petroleum and avoid unnecessary competitive drilling —

- (a) the holder of each relevant licence shall co-operate; or
- (b) the Minister may require the holder of each relevant licence to co-operate and submit for approval by the Minister in writing, a joint development programme for the working of the reservoir as a unit and such other documentation, as the Minister may determine.

(3) Where no joint development programme is submitted to the Minister in accordance with sub-section (2) (b) or where the Minister does not approve the submitted joint development, the Minister may, in the public interest cause a programme that is fair and equitable to be

prepared in order for the reservoir to be jointly worked and developed as a unit and shall communicate it to all the relevant parties to be put into effect.

(4) Where one or more holders of a licence objects to the joint development programme prepared by the Minister, within thirty (30) days of receipt of the programme, the matter may be determined in accordance with the dispute resolution procedure provided under this Act.

(5) The holder of a licence shall -

- (a) reserve a minimum percentage of the company shares for locals as may be prescribed in regulations; and
- (b) give priority to the employment of locals, purchase of products and services from Eswatini whenever they are competitive in terms of price and quality.

Cross border operations

48. Where at any time during the term of a licence, the strata or a discovery, in whole or in part extends over the boundary of Eswatini into the territory of another country the Minister shall be notified in writing, within seven (7) days.

PART VII RELINQUISHMENT

Relinquishment of original area

49. In the case of any exploration and production licence or petroleum agreement as provided for under the Act and no later than its expiry date, the holder shall -

- (a) relinquish the original area by fifty percent (50%);
- (b) furnish the Minister with a description of the boundaries of the part of the original area to be relinquished; and
- (c) notify the Minister no less than ninety (90) days in advance of the relinquishment date.

Relinquishment of greater or lesser portion

50. Notwithstanding section 49, the holder of any exploration and production licence or petroleum agreement as provided for under the Act may relinquish a greater or lesser portion of the original licenced area, subject to approval by the Minister in writing.

Area to be relinquished

51. Any area to be relinquished shall consist as far as practicable of rectangular blocks bounded by lines running either due North and South or due East and West in a manner to be specified in the licence.

Exception to relinquishment

52. Where the original area under an exploration and production licence or petroleum agreement as provided for under the Act, does not exceed 5000 (five thousand) acres, no relinquishment of the area shall take place.

Relinquishment for public purpose

53. The holder of an Exploration and Production licence or petroleum agreement as provided for under the Act, shall relinquish without compensation any rights with respect to a portion of the surface of the area, not exceeding in the aggregate one-tenth, if requested by the Minister in writing and required by the Kingdom of Eswatini for a public purpose.

**PART VIII
ASSIGNMENT AND TRANSFER**

Consent to assign

54. (1) Save and except as provided for under this Act, the holder of a licence shall not assign or transfer any interest, rights or obligations, without the consent of the Minister in writing.

(2) Failure to comply with section (1) shall result in such assignment or transfer being null and void and may result in suspension or forfeiture of the licence.

Application to assign or transfer

55. Subject to section 54 (1), an application to assign or transfer a licence, shall-

- (a) be made to the Minister in writing;
- (b) accompanied by the requisite application fee as provided for under this Act or any other law;
- (c) cite all the material and relevant background information concerning the proposed assignment or transfer;
- (d) demonstrate that as at the date of such application, the holder of the licence has duly fulfilled all rights and obligations thereunder;
- (e) demonstrate that the holder of the licence or the proposed assignee or transferee shall fulfill any unfulfilled or accrued obligations related thereto;
- (f) include evidence to demonstrate that the proposed assignee or transferee possesses the technical knowledge, experience, financial resources and managerial competence to enable it to effectively carry out the responsibilities under the licence which is to be assigned or transferred, including-
 - (i) detailed information on the proposed assignee or transferee, its shareholding and corporate structure, its financial standing supported by relevant documentation; and
 - (ii) a valuation of the proposed assignment or transfer, including net book value of the assets and value of intangible assets, where applicable.
- (g) demonstrate that the proposed assignee or transferee is not a company incorporated in or trading with a Eswatini which the Minister has specified by notice to the holder of the licence or is publicly known to a Eswatini as hostile or unfriendly, or with which the Government, for reasons of national security or national policy has restricted trade and economic relations;
- (h) provide the Minister with an undertaking from the ultimate parent company of the proposed assignee or transferee to be the bound by the assignment or transfer and

all covenants contained in the applicable licence-

- (i) demonstrate that the assignment or transfer will not adversely affect the performance of obligations under the licence and will not be contrary to the interest of Eswatini;
- (j) submit a draft of the proposed legal document to effect the assignment or transfer and ensure that all material terms and conditions of the assignment and transfer are cited therein, including an express clause that the proposed assignee or transferee is bound by all covenants contained in the applicable licence; and
- (k) such other particulars as the Minister may require.

Evaluation of Application

56. The Minister may approve or refuse to consent to an application to assign or transfer any rights, obligations and interest under a licence.

Approval of application before Consent

57. Where the State has considered and consents to an application, to assign or transfer any rights, obligations and interest under a licence, consent may be granted upon such terms and conditions as the Minister may determine and such assignment or transfer shall be subject to any charges payable in accordance with this Act or any other law.

Duty to perform obligations

58. The assignment or transfer of a licence shall not in any way absolve the assignor or transferor from the existing obligations, except to the extent that such obligations are performed by the assignee or transferee and an unconditional undertaking, in writing, is obtained from the assignee or transferee to that effect.

Date of assignment or transfer

59. Any assignment or transfer shall be done and executed in accordance with the relevant applicable laws of Eswatini and shall become effective on the date of execution of the assignment or transfer.

Documents to assign or transfer

60. Within thirty (30) days of the date on which an assignment or transfer is effective, copies of all conveyances, assignments, deeds and any other relevant documentation shall be submitted to the Minister.

Deemed assignment and transfer

61. For the purposes of this Act, where the holder's a licence is taken over by another company or merges, or is acquired by another company, either by acquisition or exchange of shares, including a change of control of a parent company outside of Eswatini, shall be deemed to be treated as an assignment and transfer and shall be subject to the laws of Eswatini.

Penalty

62. Where the holder of a licence contravenes the provisions of section 58, the Minister shall, be entitled to terminate such licence in accordance with the provisions of this Act.

PART IX
PETROLEUM INFRASTRUCTURE
Mid-stream activities

Establishment of a Refinery

63. (1) The Minister may, by notice in the Gazette, designate the establishment of a Refinery or Mini-Refinery in the country in consultation with Cabinet.

(2) All suppliers of fuel will be mandated to purchase their products from the local refinery where applicable unless justifications are clearly laid down in writing to the Minister responsible.

(3) The Minister shall ensure that a refinery established in the country shall justify its viability and existence in line with being competitive to international refineries.

(4) A person may not without a licence issued under this Act construct a refinery in the country.

Establishment of Petroleum pipelines

64. (1) The Minister may, through the advice of the Petroleum Advisory Board, Regulator or any Authority established under this Act, grant licences for petroleum and natural gas pipelines.

(2) A person shall not construct a petroleum or natural gas pipeline without a licence issued by the Ministry or appropriate Authority.

(3) Any cross-border petroleum or natural gas pipelines licence shall be granted upon proof that all requisite licences have been acquired from the importing or exporting countries.

(4) The Minister through the advice of an appropriate regulatory body or authority may grant licences for a bulk storage for petroleum and liquefied natural gas (LNG).

(5) The Minister on the recommendation of the regulatory body or appropriate authority shall set as a condition for bulk petroleum storage, transport and pipeline licences parameters for establishing tariffs to be charged on such licences to a third party served by such operations.

Bulk Petroleum Storage

65. The parameters of the tariffs to be charged shall be based on the systematic methodology applicable on a consistent and comparable basis involving fairness, non-discrimination, predictability and transparency.

Prices for storage and transport

66. All tariffs shall enable the licensee to recover the investment, operate, maintain the system and make profit commensurate with the risk.

PART X
SUPPLIERS OF FUEL
Commercial Stocks

67. (1) In order to assure continuity of the petroleum products supply in Eswatini, all wholesale licences shall maintain minimum commercial stocks of petroleum products.

(2) The level of stocks shall not be less than fourteen (14) days or such number of days as may be prescribed by the Minister, supply per controlled product sold by the respective

wholesale licensee.

(3) For the purposes of this subsection, the minimum commercial stocks shall include all petroleum products held by any licensee in storage facilities in Eswatini and shall exclude Petroleum Products-

- (a) in transit within Eswatini;
- (b) held in retail services or filling stations; or
- (c) held in the consumer installations.

(4) Any person who fails, without a lawful excuse, to comply with the requirement under this Part commits an offence and shall on conviction be liable a fine not exceeding four million emalangenani (E4,000,000.00) or five (5) years imprisonment, or to both.

Power of the Minister to impose a levy

68. (1) The Minister may, impose levies on any fuel at a rate prescribed in a notice through the Gazette subject to section 253 of the Constitution Act, 2005.

(2) As from the date of such imposition the levy shall be charged and collected in respect of every unit of such petroleum sold or imported, at a rate prescribed in such notice.

(3) The levy imposed under sub-section (1) may differ according to the purpose, for which the product in question is used, or the place where it is used, or the method by which the product in question is delivered.

(4) The holder of the licence shall be required to reserve a minimum percentage of the company shares for locals as prescribed in the regulations.

Method of collection and payment of the levy

69. Every wholesaler shall -

- (a) upon the sale or import of any petroleum product which is liable to a levy, record the amount sold or imported and the levy payable there upon;
- (b) not later than the fourteen (14) day after the end of each month remit the record as referred in paragraph (a) above with the total amount of the levy payable on the petroleum product sold during the preceding month; and
- (c) every wholesaler shall maintain a record, in a prescribed form which shall be open for inspection and examination by an authorized officer.

Interest on unpaid levy

70. (1) Any wholesaler who fails to pay levy as prescribed in section 69 (b) shall be liable to pay interest on the amount of any payment or part not made on the due date, calculated at the rate of the prevailing prime lending rate as set by the Central Bank of Eswatini and any such amount together with the interest which shall, be treated as a debt to the Fund.

(2) A prescribed penalty shall be charged in addition to the interest as prescribed in subsection (1).

Establishment of the Strategic Oil Reserve Fund

71. (1) There is established a fund known as the Strategic Oil Reserve Fund.
- (2) The income of the Strategic Oil Reserve Fund shall come from-
- (a) money paid to the Government by the suppliers of petroleum products in accordance with this Act and applicable regulations;
 - (b) levies, charges and money collected from petroleum products;
 - (c) interest and penalties on the amounts not paid on the due date;
 - (d) money received by donations, gifts or grants in aid made for the benefit of the Fund; and
 - (e) money accruing to the Fund from any other source.

Purpose of the Fund

72. (1) The Strategic Oil Reserve Fund shall be utilized for-
- (a) the financing of any increase in the cost of purchasing fuel;
 - (b) the connection with the purchase, acquisition, distribution, sale, saving, conservation, storage or utilization of fuel oil; or
 - (c) the carrying out of petroleum studies, fuel quality assurance activities and subscriptions for fuel pricing information.
- (2) Notwithstanding subsection (1), the funds of the Strategic Oil Reserve Fund may be utilised for any other purpose as as may be authorized by Parliament.
- (3) The Minister shall, in consultation with the Minister responsible for finance, make regulations as may be necessary for proper management of the Fund established in section 71.

**PART XI
PRICING OF PETROLEUM PRODUCTS**

Designation of Fuel Price Controller

73. The Minister shall, by notice in the Gazette, designate the Principal Secretary responsible for Energy or Director for Energy Affairs as a Fuel Price Controller, who shall perform such functions and exercise such powers as conferred by section 75.

Designation of Deputy Fuel Price Controllers

74. The Minister may designate any officer in the petroleum section-
- (a) as Deputy Fuel Price Controller who shall, subject to the control of the fuel price control perform such functions and exercise such powers as may be delegated to the Deputy Fuel Controller; and
 - (b) as fuel price control Supervisors' or Inspectors', who shall, subject to the fuel price control, perform such functions and exercise such powers as may be assigned to or conferred upon them.

Price Setting for Wholesale and Retail

75. (1) The Fuel Price Controller shall be assigned to-
- (a) set the wholesale and retail prices to be charged for controlled petroleum products; or
 - (b) determine from time to time the return on investment and compensation for operational costs for the oil industry in selling of controlled petroleum products.
- (2) The Minister, shall based on the recommendation of the Fuel Price Controller, establish the rules to administer the controlled petroleum products price determination methodology.
- (3) The Minister shall establish by notice the specific petroleum products that are subject to the price setting rules.
- (4) The Fuel Price Controller shall using the rules referred in sub-section (3) above, adjust the wholesale and retail prices for petroleum products.
- (5) The Fuel Price Controller shall inform the public of the new prices for petroleum products and the date in which the prices come into force.
- (6) Whenever the fuel price has been fixed under this Act, the Fuel Price Controller shall direct that any person dealing or rendering services under this Act to display the price in such a manner as the fuel price controller may determine.
- (7) A wholesaler shall not grant or allow a rebate or discount to any customer without first obtaining the consent of the Fuel Price Controller.

Price Controls

76. (1) The Fuel Price Controller may give notice to a wholesaler or retailer of petroleum products directing the person to appear at a hearing for the purpose of assisting in determining whether or not the prices being charged by such wholesaler or retailer are in accordance with the officially set prices.
- (2) The Fuel Price Controller may conduct investigations to determine whether a price being charged by a wholesaler or retailer of petroleum products is the gazetted price.
- (3) When the Fuel Price Controller as a result of investigations conducted under sub-section (2), believes that the wholesaler or retailer has charged or is charging a price that is not gazetted, the wholesaler or retailer commits an offence and, shall, on conviction be liable to pay a fine not exceeding four million Emalangeni (E4,000,000) or five (5) years imprisonment or to both.

**PART XIII
NATIONAL STRATEGIC STOCKS**

National Strategic Stocks

77. (1) The Government through the National Oil Company may, at its expense or in partnership with the private sector, establish and maintain strategic stocks of petroleum products, in this Act referred to as National Strategic Stocks.
- (2) All installations and operations for the purpose of establishing and maintaining national strategic stocks under this section, including, but not limited to, the storage, transport and sale or any other form of disposition of the stored products, shall be subject to the provisions

of this Act.

Emergency Petroleum Products Supply Plan

78. (1) In order to respond to interruptions in or serious distortions of the supply, occasioned by accidents, political disturbances, natural disasters or similar events or by the negligence of any person, the Ministry shall in cooperation with wholesalers and other relevant entities prepare an emergency petroleum products supply plan.

(2) The Minister shall submit the Emergency Petroleum Products Supply Plan prepared to the Government for approval.

(3) Where the Government is satisfied that the event described in sub-section (1) occurred, the Government may by statutory order declare that a petroleum products supply emergency has occurred.

(4) The Minister shall regulate the distribution of petroleum products in the country in the event of any declaration of a national emergency in accordance with the Emergency Petroleum Products Supply Plan.

**PART XIII
LICENCING CONDITIONS**

Referral of application for recommendation

79. Save and except where otherwise provided in this Act and where an application for a licence under this Act, including the grant, assignment, variation, renewal, surrender, suspension and termination, may pose a threat or risk to the public interest or impact any other sector in the country or the safety, health or the environment, the Minister where necessary, may in relation to the said application refer that fact to a relevant person or entity, for its recommendation in writing, within no more than twenty one (21) days of receipt of the referral.

Consideration of application by the Minister

80. In accordance with this Act and in the consideration of any application and the terms and conditions subject to which such application shall be granted, the Minister shall take into account –

- (a) any objections which may have been submitted;
- (b) any recommendations made by the person or entity to which the matter has been referred in section 78;
- (c) the extent to which an applicant can demonstrate local ownership and participation;
- (d) where applicable, the need to conserve and protect the natural resources in or on the area to which the application relates and in or on adjoining and neighbouring land; and
- (e) any other particulars as the Minister may determine.

Objections

81. (1) Any person may object to the grant, of a licence, on the ground that it is inconsistent with or would interfere with rights held by that person.

- (2) An objection shall be in writing and lodged with the Minister within thirty (30) days

of the publication of a notice of an application for a licence.

Decision of Minister to grant or refuse to grant an application

82. (1) The Minister may grant or refuse to grant an application for a petroleum licence, on the advice of the Petroleum Advisory Board and taking into consideration any terms and conditions as may have been requested by the applicant.

(2) Where the Minister considers an application for the grant, variation, renewal, assignment, surrender or suspension of a licence, the Minister shall in writing –

- (a) notify the applicant of the decision; and
- (b) give the reasons for the decision.

(3) Any decision by the Minister to approve an application for the grant, assignment, variation, renewal, surrender, suspension and termination of a licence shall be upon such terms and conditions as determined and in light of circumstances prevailing.

(4) A person aggrieved by the decision of the Minister under sub-section 2 may appeal to the high court.

Publication of grant

83. (1) Upon approval by the Minister of an application for a licence including the grant, assignment, variation, renewal, surrender, suspension and termination, the Minister shall cause a notice to be published-

- (a) in the Gazette; and
- (b) at least one (1) daily newspaper circulating in Eswatini, stating, among other things, the name of the holder of the licence, the general nature, the location of the area concerned and any other particulars which the Minister shall deem fit.

(2) The Minister may specify any other method or medium of publication where deemed necessary for wider public participation in the decision making process.

Disqualification

84. A licence shall not be granted to a person, nor may any person hold a licence under this Act, if such person –

- (a) during ten (10) years preceding the application for the licence or during the term, has been convicted of an offence under this Act;
- (b) in the case of a natural person, during the currency of the term of the licence, is not a citizen of Eswatini or is not lawfully resident in Eswatini, or as the case may be, loses Eswatini citizenship, or the right to be lawfully resident in Eswatini;
- (c) in the case of a juristic person, during the currency of the term of a licence, is not registered or incorporated under the Companies Act, or as the case may be, its registration in Eswatini is cancelled;
- (d) is or becomes insolvent or is in liquidation other than a liquidation which forms part of a scheme for the reconstruction or amalgamation of such company or enters into any arrangement or scheme of composition with creditors;

- (e) has been served with an order which has been made by a Court of competent jurisdiction for its winding up dissolution; or
- (f) fails to comply with the Companies Act.

Prohibitions and restrictions on grant of a licence

85. (1) The Minister, a member of the Petroleum Advisory Committee, Head of Petroleum Inspection or any Public Officer in the Ministry responsible for energy, while holding office or within two (2) years of such person ceasing to hold such office shall not acquire, whether directly or indirectly, any right or interest under a licence granted under this Act.

(2) For the purposes of sub-section (1), the acquisition or holding of an interest in a company by the Minister, the Director of Energy, the Head of Petroleum Inspection or any Public Officer in the Ministry by affinity or consanguinity, shall be deemed to be an offence by the Minister, Director of Energy, the Head of Petroleum Inspection or any public officer.

(3) Any document or transaction purporting to grant any right or interest referred to in section (2) upon or by the Minister, Director of Energy, the Head of Petroleum Inspection or any public officer in the Ministry shall be null and void.

Offence

86. (1) Any person who contravenes section 85 commits an offence and shall, on conviction be liable to pay a fine not exceeding (E1,000,000) One Million Emalangeni or 2 years imprisonment or to both.

(2) In any prosecution for contravention of section 85, it shall be sufficient defence if the accused proves –

- (a) that the interest in question was acquired by operation of law and that all reasonable steps necessary have been taken, and are being taken to dispose of such interest; or
- (b) that such interest was acquired before admission to office as Minister, Director of Energy or a public officer in the Ministry and that as from the date of assumption of duty, all reasonable steps necessary have been taken, and are being taken, to dispose of such interest.

Renewals

87. (1) Save and except where otherwise provided under the Act and where applicable, an application for renewal of a licence shall be submitted in writing to the Minister within no less than one hundred and twenty days (120) days of the expiration date.

(2) Subject to sub-section (1) and within no less than ninety (90) days of the expiration date of the licence, the Minister shall, in writing notify the applicant of the decision of the Minister to grant or not grant a renewal.

(3) Where an application to renew a licence has not been granted by the Minister, the Minister shall conduct a hearing, if a request was submitted in writing to the Minister, within thirty (30) days of receipt of the Minister's notice of refusal.

(4) The decision of the Minister at the said hearing shall be final and binding upon the said applicant.

Government sale or Lease of any State Land under a licence

88. (1) Where the Government considers it expedient at any time to sell or lease the surface

of any portion of land included under the licence the Minister shall give notice of such intention in writing to the holder.

(2) Subject to sub section (1) and where the holder of a licence considers that the rights would be prejudiced by the proposed sale or lease, the holder shall lodge a dispute and notify the Minister in writing.

(3) In exercise of the powers conferred by sub section (2) and where the Minister fails to resolve the dispute, the dispute shall be settled in accordance with such dispute resolution provision as provided under this Act.

Damage to private land

89. (1) When, in the course of any operations under a licence, damage is caused to the surface of any private land, cultivation or building as a result of such operations, the holder of the licence shall be liable to pay compensation to the owner of the land on which such damage occurred or is situated.

(2) When a dispute arises between the holder of a licence and the owner of land referred to in section (1), in relation to the liability for, or the amount of, compensation payable, the holder of the licence may make application in writing to the Minister to have the matter determined.

(3) The provisions of this subsection shall not be construed as prohibiting an owner of private land or an authority administering land, from instituting civil proceedings in any court of law against the holder of a licence for any damage referred to in sub section (1).

Notice directing purchase of land

90. (1) When the owner of land or any authority administering land on which operations are conducted under a licence is prevented from the proper use of the land wholly or partly for farming purposes or otherwise, an application may be made to the Minister in writing, requesting such holder of a licence be required to purchase so much of the land as cannot be so used.

(2) Subject to sub section (1) where the Minister is satisfied that such operations prevent the land from being used, the Minister may by notice in writing, direct such holder to purchase so much on the land as cannot be used, subject to and upon such conditions as may be determined by the Minister.

(3) When the holder of a licence, owner of land or an authority administering land are unable to agree on the price to be paid for land to which a direction in sub section (2) relates, the price and mode of payment shall be subject to and such dispute resolution provisions in accordance with this Act.

**PART XIV
RECORDS, REPORTS, AND ACCOUNTS**

Duty to furnish information to Minister

91. A holder of a licence shall prepare and furnish to the Minister such information and data concerning their operations in such a manner and detail as the Minister may determine from time to time and be responsible for all costs related thereto.

Duty to keep records

92. At all times, in accordance with this Act and any other law and without prejudice to any other condition upon which a licence may be granted under this Act, the holder of every

licence shall prepare, organize, keep and maintain at its registered address and be responsible for such related costs, separate records, reports and accounts of its activities and operations, including where applicable –

- (a) geological maps, plans, tapes, diagrams, profiles, charts and reports in respect of the area to which the licence relates;
- (b) inventory of infrastructure and equipment for petroleum operations;
- (c) maintenance and calibration of equipment;
- (d) such particulars as may be so specified in relation to-
 - (i) any activities performed in connection with petroleum operations, including drilling, deepening, plugging or abandonment of wells; and
 - (ii) the results of the analysis of any substances extracted from any well;
 - (iii) the nature of substances, including petroleum, water etc found in wells drilled for purposes of or in connection with such operations, and the depths at which it has been found;
 - (iv) the casing of wells;
 - (v) the areas in which any reconnaissance operations have been carried out, a summary of the work carried out under such operations and any surveys carried out in such areas;
- (e) a return in which it is recorded particulars in relation to-
 - (i) the results of petroleum operations, if any, carried out by such holder during the preceding year; and
 - (ii) the estimates of petroleum recoverable in the area to which the licence in question relates for the period ending on the last day of the succeeding year.
- (f) the progress and results of the operations;
- (g) volume of petroleum and petroleum products produced, stored, transported, exported, imported, sold or otherwise;
- (h) annual income and expenditure in relation to the operations in Eswatini;
- (i) records and reports related to safety, health and the environment;
- (j) records of employee competence, skills and training; and
- (k) such other particulars as the Minister may require from time to time.

Abstracts and copies

93. At any time, the Minister may obtain or cause abstracts or copies of records, books and accounts of the holder of a licence to be inspected or examined.

Audited annual report

94. During the licence term, the holder shall forward *per annum*, an audited report to the Minister detailing the particulars specified in section 92 no later than one hundred and eighty days (180) days after the end of the holder's financial year.

Delivery of all documents upon termination or expiration

95. In the event of termination of a licence in accordance with this Act or its expiration, on a date not later than ninety (90) days after the date of such termination or expiration, the former holder of the licence shall deliver to and in such form as determined by the Minister –

- (a) all information kept in accordance with section 92; and
- (b) any other books, documents, records, accounts and reports as the Minister may require, in writing.

Offence

96. The holder of any licence, who contravenes or fails to comply with sections 92, 93, 94 and 95 commits an offence and shall on conviction be liable to a fine not exceeding E4,000,000 (four million emalangeni) or 5 (five) years imprisonment or both.

**PART XV
STANDARDS**

Conduct of petroleum operations in accordance with standards prescribed by the authority

97. At all times, petroleum operations shall be conducted in accordance with any –

- (a) national standards;
- (b) internationally published standards; and
- (c) any other technical standard or technical regulations acceptable by the entity responsible for national standards and applicable to the petroleum industry.

Creation and implementation of standards for the petroleum industry

98. The Standards Authority, in consultation with the Minister, may issue standards which are applicable to the petroleum industry in Eswatini.

**PART XVI
SAFETY, HEALTH AND THE ENVIRONMENT**

Safety, Health and Environment

99. At all times, petroleum operations shall be conducted in accordance safety, health and environmental requirements and provisions as provided under this Act and any other applicable law.

Buffer or safety zone

100.(1) There shall be a buffer or safety zone surrounding every installation, unless otherwise determined by the Minister in consultation with such entities responsible for safety, health and the environment in Eswatini.

(2) The Minister may, in cases of accidents and emergencies, establish or extend a buffer or safety zone, however, such zone shall not extend across the border line of another country, save and except in accordance with and subject to an agreement in writing with that relevant country.

(3) The Minister may direct that there shall be a buffer or safety zone around and above abandoned or dumped installations.

(4) The conduct of petroleum operations in a buffer or safety zone, without authorization, in writing by the Minister is prohibited.

Precautions for damage to the environment

101. The holder of a licence shall bear all expenses and adopt all practicable precautions to avoid damage to the environment.

Liability for damage to the environment.

102. The holder of a licence shall be strictly liable for damage to the environment, without regard to fault save and except where it is demonstrated and proven to the satisfaction of the Minister that the damage to the environment arose from a major environmental incident which was caused by -

- (a) force majeure
- (b) an act of terrorism;
- (c) an act of belligerency against Eswatini; and
- (d) damage to the environment.

Spills

103. In the course of operations carried out under any licence provided for under this Act and where any petroleum, petroleum product or other substance is spilled on the surface of, in or under the land, water bodies or marine area, thereby endangering, polluting, destroying or causing damage or loss to safety, health of the environment, the holder of such a licence shall address and remedy the damage to the environment in accordance with the environmental laws of Eswatini.

Abandonment and decommissioning

104. The holder of a licence shall not without the approval of the Minister in writing -

- (a) abandon a well;
- (b) withdraw a cemented string or other permanent form of casing; or
- (c) decommission an installation, save and except as provided for under this Act.

Offence

105. Any person who contravenes section 104 commits an offence and shall, on conviction be liable to a fine not exceeding one million Emalangeni (E1,000,000 or two (2) years imprisonment or both.

**PART XVII
INSPECTIONS**

Appointment of Inspectors

106.(1) The Minister shall designate inspectors who shall assist in the exercise of any power or performance of any function conferred or imposed upon the Minister under this Act.

(2) Any inspector designated in accordance with sub-section (1), shall produce evidence of such designation, as soon as practicable when exercising any power under this Act.

Powers and duties of Inspectors

107. To ensure compliance with this Act or any other applicable law, for the effective exercise of powers conferred in this Act, the head of inspection or such designated inspector, shall be allowed –

- (a) to inspect and carry out studies regarding the manner in which operations provided for under any licence are being carried out;
- (b) to enforce and monitor compliance with all laws and any standards applicable to the petroleum industry;
- (c) at any time, to enter, access and inspect any place, vehicle or installation, taking such measures as are reasonably necessary, including:
 - (i) the breaking of seals and the resealing; or
 - (ii) marking of petroleum and petroleum products;
- (d) to seize, take control and possession of any place, vehicle or installation which poses an immediate risk to safety, health and the environment;
- (e) to gather information and take samples in connection with the operation or administration of this Act;
- (f) to investigate any offence relating to this Act or any other applicable law;
- (g) in cases of abandonment or decommissioning, to inspect, audit premises and take samples to determine whether such premises have been sufficiently restored with regard to activities conducted thereon; in order not to pose a threat to safety, health and the environment;
- (h) to conduct investigations and gather evidence to determine whether a price being charged by a wholesaler or retailer of petroleum products is the prevailing gazetted price;
- (i) to conduct risk analysis and such inspections to determine emergency preparedness;
- (j) to obtain full access to and to require any information, records or other documents held under a licence; and
- (k) to be accompanied by such officers as may be necessary or desirable in the circumstances.

Inspection with or without warrant

108. Subject to section 107 and where any inspector is refused or denied entry into premises where the inspector believes on reasonable grounds that a contravention of this Act, any applicable law or any notices issued, is occurring or has occurred, the inspector may, with or without a warrant, enter those premises and take such actions as are necessary.

Inspector's Report

109. Subject to section 107, an inspector shall issue a related written report.

Confidentiality of information obtained upon inspection

110. Any information submitted to the Minister in accordance with any inspection conducted pursuant to this Act or any other law, shall be treated as confidential, for such period as may be determined by the Minister

Prohibited actions

111. A person shall not—
- (a) falsely represent by words or conduct to be an inspector, or impersonate an Inspector;
 - (b) hinder or obstruct the exercise of any of the powers conferred by this Act;
 - (c) use abusive, threatening or insulting language toward the Head of inspection or any designated inspector;
 - (d) refuse or fail to comply with a requirement, direction or notice conferred by or under this Act; or
 - (e) refuse or fail to answer a question to the best of the person's knowledge, information and belief, when interrogated by the Head of Inspection or any designated inspector.

Prohibition notices

112. Where any inspector is of the opinion that a dangerous situation exists in or on any premises or other place, a prohibition notice may be issued to the holder of the applicable licence.

Nature of Prohibition notice

- 113.(1) A prohibition notice shall be in writing and it shall—
- (a) contain the provision of the act which in the opinion of the Inspector is being or has been violated;
 - (b) identify the relevant place or activity giving rise to the danger or risk;
 - (c) contain the Inspector's opinion or findings;
 - (d) include where applicable, reasonably practical measures to be taken to avert, eliminate or minimise the danger or risk to which the notice relates;
 - (e) have the period of time during which the said notices shall be valid and in effect; and

(f) include any other particulars as may be determined by the Minister.

(2) Subject to sub section (1), a prohibition notice shall prohibit the conduct of activity until an inspector is satisfied that adequate measures have been taken to avert, eliminate or minimise the danger or risk.

(3) An Inspector may withdraw an existing prohibition notice, or issue a new prohibition notice

Failure to comply with prohibition notice

114.(1) Where a person receives a prohibition notice and contravenes or fails to comply with any of the requirements within the period of time set out, the inspector who issued the notice may –

- (a) enter and take control of any place, taking such measures as are reasonably necessary for the purpose;
- (b) do or cause to be done, such things as full and proper compliance which the notice may require; and
- (c) recommend to the Regulator and the Minister, that the licence to which the prohibition notice relates may be suspended or terminated in accordance with this Act.

(2) The Government may recover as a debt in the High Court from any person or entity that contravenes or fails to comply with a prohibition notice, the costs and expenses reasonably incurred by an inspector or duly authorized personnel and representatives of the Minister, exercising powers under this Act.

Action in emergency situations

115.(1) Where the Head of Inspection or an inspector on reasonable grounds, is of the opinion that a dangerous situation exists and that there is insufficient time to issue a prohibition notice in accordance with section 112, the Head of Inspection or inspector may, after giving such notice orally, as may be reasonable in the circumstances, take such action as may be necessary to avert, eliminate or minimise the danger or risk.

(2) Subject to sub section (1) in the case of an emergency situation where an inspector gives a prohibition notice orally and five (5) days later, the inspector shall be required to give the prohibition notice in writing and include an account of any action which was undertaken.

Offence

116. Any person who contravenes, or fails to comply with section 111 and 114, commits an offence and shall, on conviction be liable to a fine not exceeding ten thousand Emalangeni (E10,000) or six (6) months imprisonment or both.

**PART XVIII
MISCELLANEOUS**

Delivery of petroleum in the public interest

117. At any time, the Minister may call upon the holder of an exploration and production licence to deliver to the Minister without compensation and free of royalty, any quantity of petroleum not being required by the holder in its operations or for sale, which may be needed in the public interest, except that where the recovery, delivery or storage of such petroleum

requires the construction of any new facilities, such facilities shall be provided by Government.

Domestic obligation

118. If it is in the public interest and where it is shown to be economically feasible, the Minister shall require the holder of a refining licence or petrochemical licence to give preference in his operations to the processing of indigenous petroleum and to the manufacturing of such petroleum products, petrochemical products or both, as are required for domestic consumption.

**PART XIX
VARIATION**

Variation of a licence

119. A licence shall not be varied without the approval of the Minister, in writing.

Application to vary a licence

120.(1) Any application to vary a licence shall be made to the Minister –

- (a) in writing;
- (b) in such form as may be determined by the Minister; and
- (c) accompanied by such documentation as required by the Minister.

(2) At any time during the duration of a licence, the Minister may in writing, vary the terms and conditions of a licence under the following circumstances–

- (a) upon consideration of an application;
- (b) if it has come to the knowledge of the Minister that any particulars related to the licence have changed and the holder has failed to inform the Minister;
- (c) subject to mutual agreement, in writing with the holder of a licence;
- (d) in the public interest or national security; or
- (e) if any other sufficient cause exists.

(3) Subject to sub section (1), and if the Minister varies a licence, the Minister shall within a period of fourteen (14) days after such variation, inform the holder of such variation, in writing and any variation shall be effected by way of an addendum.

**PART XXI
ANCILLARY RIGHT**

Application for ancillary right

121. In accordance with this Act and any other written law relating to land, an application for an ancillary right shall be made in writing, to the Minister and shall include -

- (a) particulars of the right required;
- (b) any circumstances under which the holder of a licence is prevented from obtaining or exercising such right; and

- (c) any other particulars as the Minister may require.

Publication of application

122. Upon receipt of an application for an ancillary right, the Minister shall cause –
- (a) a notice to be published at least in one (1) newspaper circulating in the area in which the land in question is situated setting out the name of the holder of the licence concerned, the nature of the ancillary right required and a description of the land in respect of which it is so required; and
 - (b) copies of such notice and application to be addressed and delivered to the owner or person competent to grant any such right, if known, calling upon such owner, person or other interested person to make representations, if that person so wishes, in opposition to such application in such manner and within such period as may be specified in the said notice.

Obtain comments and recommendations

123. When an application for an ancillary right relates to a right which appears to be under the administration, control, management or regulation of another entity, the Minister shall provide such entity with a copy, in order to obtain comments and recommendations accordingly.

Evaluation of application for ancillary right

124. Subject to section 121, the Minister shall grant an ancillary right if satisfied that —
- (a) the applicant is in compliance with the licence, this Act and all requirements related to it;
 - (b) it is expedient in the public interest and reasonably necessary that the ancillary right applied for should be granted; or
 - (c) there has been consultation and consent from the relevant entity or persons where applicable, having the disposition to grant an ancillary right.

Grant of ancillary right

125.(1) The grant of an ancillary right is subject to such terms and conditions and for such period as may be determined by the Minister.

(2) Where it is alleged that the ancillary right in question cannot be obtained by reason of any person -

- (a) not having the necessary powers of disposition;
- (b) having unreasonably refused to grant it;
- (c) having demanded terms that are unreasonable; or
- (d) having any other arguable reason,

the Minister shall communicate with such person with a view of obtaining the ancillary right in question by private arrangement.

Determination of ancillary right by the court

126. (1) Where under this Act, the Minister is unable to make a determination on the grant of an ancillary right or an applicant fails to obtain an ancillary right, the matter may be referred to the High Court.

(2) Any person whose interests is or may be prejudicially affected by the grant of an application referred to in sub section (1) shall be entitled to-

- (a) notify the Minister in writing; and
- (b) seek determination of the matter by the High Court, making such representations in person or by way of a legal representative.

Grant of ancillary right and compensation

127. (1) Where a matter is referred to the High Court under section 126(2), the High Court in determining whether to grant an ancillary right shall take into account -

- (a) the effect of a grant of an ancillary right on the amenities of the locality concerned;
- (b) the public interest; and
- (c) any other matters the Court deems fit.

(2) In accordance with this Act, the High Court may grant an ancillary right subject to such terms and conditions as and for such period of time as the High Court deems fit.

(3) The High Court may impose as a condition of the grant of an ancillary right and a condition precedent before an ancillary right can be exercised that -

- (a) any compensation to be paid; and
- (b) any security shall be paid to such persons as the High Court may determine as entitlement.

(4) Where the person to whom any such compensation is payable cannot be found or ascertained such compensation shall be paid to the High Court.

(5) Such compensation shall, in every case, be assessed on the basis of what would be fair and reasonable having regard to the conditions subject to which the ancillary right is granted.

Effect of grant of ancillary right

128. An ancillary right granted under this Act shall not -

- (a) confer on the person to whom it is granted any greater or other power than if the ancillary right had been granted by a person legally entitled to grant such right; or
- (b) relieve the grantee of an ancillary right from any obligation or liability to which he would have been subject to had the right been granted otherwise than as provided for by this Act.

Restriction on granting ancillary right

129. (1) No ancillary right shall be granted under this Act unless it is shown that it is not reasonably practicable to obtain the ancillary right in question by private arrangement for any

of the following reasons —

- (a) that the person with power to grant the ancillary right are numerous or have conflicting interests;
- (b) that the person with power to grant the ancillary right, or any of them, cannot be ascertained or cannot be found;
- (c) that the person from whom the ancillary right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect in title, legal disability or otherwise; or
- (d) that the person with power to grant the ancillary right unreasonably refuses to grant it or demands terms which, having regard to the circumstances are unreasonable.

(2) For the purposes of this Act, a person whose concurrence is necessary for the exercise of an ancillary right shall be deemed to be a person having power to grant the ancillary right, or a person from whom the ancillary right must be obtained, as the case may be.

PART XXII FORCE MAJEURE

Force Majeure

130. Where the holder of a licence fails to comply with any term or condition or any provision of this Act because of *force majeure*, such failure shall not be treated as a failure to comply with the provisions of the licence, if it is proved and accepted by the Minister to be the necessary consequence of such *force majeure*.

Notice of Force Majeure

131. (1) Where the holder of a licence fails to comply with any term or condition or any provision of this Act due to the occurrence of *force majeure*, within a period of twenty four (24) hours, the Minister shall be notified in writing of the particulars and effects of the *force majeure*.

(2) Subject to sub section (1) and upon receipt of a notice of *force majeure*, the Minister may refuse or accept that *force majeure* has occurred.

(3) Subject to subsection (2) and where the Minister has accepted that *force majeure* has occurred, the Minister and the holder of the licence shall agree upon the period in which the holder shall undertake steps to remedy the effects of the *force majeure*.

(4) Where the Minister has accepted that *force majeure* has occurred, the holder of the licence may apply to the Minister in writing to extend the period for which the licence was issued.

(5) Upon receipt and consideration of an application referred to in subsection (4), the Minister may, in writing-

- (a) extend the period for which the licence has been issued, for such period during which the fulfilment of such obligation is rendered impossible due to *force majeure* and upon such terms and conditions as may be determined by the Minister; or
- (b) refuse to extend the period for which the licence has been issued, where the Minister has determined that the holder can still comply with any term, condition or any provision of this Act, by taking reasonable steps which are available, at that time, within the original period of the licence.

(6) The provisions of this section shall not be construed as absolving the holder of any licence from complying with any obligation in this Act to pay any royalties, annual charges, rent or fees.

**PART XXIII
SURRENDER, SUSPENSION, TERMINATION**

Notice of Surrender

132. (1) Where applicable and subject to section 103, the holder of a licence may at any time, notify the Minister in writing of the intention to surrender –

- (a) the licence; or
- (b) a portion of the area under the licence,

within no more than one hundred and twenty (120) days of the intended date of surrender.

(2) Subject to sub-section (1) and within no more than thirty (30) days of receipt of the notice of surrender, the Minister and the holder of the licence shall discuss the terms and conditions upon which surrender will occur, after which the Minister shall notify the holder of the licence, in writing of such terms and conditions, as agreed.

Suspension or Termination of Licence

133. Subject to section 132, the Minister may without a hearing, by notice in writing, addressed and delivered to holder of a licence, suspend the licence for such period of time as the Minister may determine or terminate the licence if –

- (a) there is a breach or contravention on the part of the holder of the licence, by failing to comply with the terms and conditions, in a particular material, the Minister being sole judge of such materiality;
- (b) there is a contravention of any provision of this Act, or any law, enactments concerning the protection of health, safety and the environment;
- (c) the holder of the licence is wound up, becomes bankrupt or goes into voluntary or involuntary liquidation; unless such company has been wound up for purposes of an amalgamation or reconstruction and has previously obtained the approval of the Minister for such amalgamation or reconstruction;
- (d) there is wilful misrepresentation by the holder of a licence, of any material particular in the process of applying for the licence; and
- (e) there is failure on the part of the holder of a licence to pay any sum which may have been awarded against him in arbitration proceedings carried out in accordance with this Act, within hundred-eighty (180) days of the date fixed in the award, provided that the said holder was duly notified of the obligation to make such payment.

Notice to suspend or terminate

134. (1) The Minister shall not suspend or terminate a licence in terms of section 133, unless the Minister has by advance notice, in writing, informed the holder of the intention to suspend or terminate such licence.

(2) Subject to sub section (1), a notice of suspension or termination shall set out particulars of the alleged contravention or failure and require the holder of the licence-

- (a) to make such representations to the Minister as necessary or expedient in defence of suspension or termination of the licence; and
- (b) to remedy any breach or pay compensation therefore within a period of no more than sixty (60) days as from the date of the said notice of the Minister or such other period as may be specified in such notice.

Determination to suspend or terminate

135. Subject to section 134 (1) and upon determination of whether or not to suspend or terminate a licence, the Minister may take into account -

- (a) any steps taken by the holder of a licence to remedy the failure in question or to prevent any such failure from being repeated during the duration of the licence; and
- (b) any other matters submitted to the Minister by way of the representations made in section 134 (2) (a).

Repeated violations

136. Subject to section 133 and in the case of serious and repeated violations of any of the terms and the conditions of a licence, contravention of directions of the Minister or any law, the Minister may order that such operations as provided for under the licence, be suspended or terminated, subject to such terms and conditions as may be determined by the Minister.

Effect of suspension

137. Where a licence is suspended, operations or activities shall not be performed -

- (a) save and except in accordance with such terms and conditions as approved by the Minister, in writing; and
- (b) until the suspension period has expired or is lifted by the Minister.

Obligations and liabilities upon surrender, suspension, termination or expiration

138. (1) Surrender, suspension, termination or expiration of a licence shall not affect or discharge the holder from any obligation or liability that may have been incurred before the date of surrender, suspension, termination or expiration.

(2) Within no more than ninety (90) days after the surrender, suspension, expiration or termination of any licence and with the approval in writing of the Minister, the holder of a licence, where applicable, shall restore, so far as may be possible, to their natural and original condition, the surface of the area, and all buildings and structures that may have been damaged in the course of petroleum operations and for such purposes shall have power during that period to enter on such area subject to the rights of the surface owner.

Offence

139. Any person who contravenes section 138 commits an offence and shall, on conviction be liable to a fine not exceeding E1,000,000 (one million emalangi) or 2 (two) years imprisonment or both.

**PART XXIV
APPEALS AND ALTERNATIVE DISPUTE RESOLUTION**

Appeals

140. (1) A person who is aggrieved by any action or decision taken or made by an agent under this Act, may within thirty (30) days from the date on which such action or decision was made known to such person, lodge an appeal in writing to the Minister, against any such action or decision, setting out the grounds on which such appeal is made.

(2) Subject to sub section (1), the Minister may consider an appeal and decide to confirm, set aside or amend any such action or decision.

(3) Subject to sub section (2), the decision of the Minister shall be final, save and except where an appeal against the decision of the Minister is filed at the High Court of Eswatini.

(4) Pending the final determination of an appeal pursuant to sub-section (3), operations may be continued under a licence, until such determination is made, provided they are conducted in a safe manner with authorization by the Minister, in writing.

Alternative dispute resolution

141. (1) Save and except as provided for in writing, under a licence entered into under this Act, any difference or dispute arising under any term or condition shall be determined by -

- (a) amicable negotiation;
- (b) mediation;
- (c) expert determination;
- (d) arbitration; or
- (e) such other alternative dispute resolution procedure as mutually agreed upon in writing, and in accordance with the laws of Eswatini.

(2) A licence entered into under this Act may provide that in any particular case where there is a recourse to effect a dispute resolution procedure in accordance with this section, suspension or termination of the licence under this Act, shall be of no effect, unless confirmed by the award or decision of such dispute resolution procedure, except that where it does not so provide, the licence shall be suspended or terminated by the Minister, in accordance with this Act.

**PART XXIV
OFFENCES AND PENALTIES**

Offences

142. If the holder of a licence fails to comply with any term or condition or contravenes any provision of this Act, save and except where the provision under which an offence is created provides the penalty to be imposed, the Minister may by notice, in writing, direct the holder of the licence to comply with the applicable term, condition or statutory provision, within such time as specified in the notice

General Penalty

143. Where there is no specific penalty provided in this Act, any person who contravenes

the provisions of this Act commits an offence, and shall, on conviction be liable-

- (a) to a fine not exceeding twenty million Emalangeni (E 20, 000,000);
- (b) to imprisonment for a term not exceeding twenty-five (25) years;
- (c) to both such fine and imprisonment;
- (d) in the case of a continuing offence, to a further fine of one million Emalangeni (E 1,000,000) for every day during which the offence continues; or
- (e) in the case of a second or subsequent offence, to a further fine not exceeding twenty million Emalangeni (E 20,000,000).

False or misleading information

144. (1) A person shall not furnish false or misleading information, or make any false or misleading information knowing such information to be false or misleading, in connection with any application in the country, record or other document submitted to any authority in accordance with this Act.

(2) With respect to any application, notice, report, return, issued or given under any provision of this Act, or the terms and conditions of a licence, any person who makes, submits or causes to be made or submitted in connection with an application, information or particulars that are false or misleading, knowing it to be false or misleading, commits an offence, and upon conviction, liable to -

- (a) a fine not exceeding one million Emalangeni (E1,000,000);
- (b) imprisonment for a term not exceeding two (2) years;
- (c) to both such fine and imprisonment; or
- (d) in the case of a continuing offence, to a further fine of fifty thousand Emalangeni (E50,000) for every day during which the offence continues.

Other offences

145. Any person who -

- (a) violates, participates in causing another person to directly or indirectly violate this Act;
- (b) falsely claims or purports to be the holder of a licence;
- (c) fails to maintain or provide any information, reports, records or accounts as required under this Act;
- (d) fails, neglects, omits or refuses to act as ordered by an authorized person under this Act;
- (e) without reasonable excuse, obstructs, hinders or prevents the holder of a licence, the Minister or any officer duly authorized by the Minister, to exercise or perform any right, power, duty or function under any of the provisions of this Act; or
- (f) fraudulently and with the intent to mislead any other person to believe that a petroleum reservoir exists at any place, places or deposits or causes to be so placed

or deposited any petroleum or substance in any such place, commits an offence and shall upon conviction be liable to a fine of E4,000,000 (four million emalangeni) or 5 (five) years imprisonment or both.

Liability to forfeiture

146. If a person is convicted of an offence under this Act, the High Court which has convicted such person may, in addition to any other penalty imposed, order forfeiture to the Kingdom of Eswatini of any installation and all machinery, tools, plant, buildings and other property or thing used, intended to be used or recovered in the commission of the offence or in contravention of this Act, or any other law in Eswatini.

Proceeds of fees and penalties

147. All proceeds of the fees and penalties charged under this Act, shall be paid into a Fund to be stipulated by the Minister.

**PART XXV
FINAL PROVISIONS**

Regulations

148. (1) The Minister may make regulations to give effect to this Act.

(2) Without prejudice to the generality of the foregoing, the Minister may make regulations for -

- (a) the manner and form in which an application for a licence shall be made, including competitive bidding and applications for renewal, assignment, or surrender;
- (b) evaluation process of any application for a licence and the terms and conditions upon which it may be granted;
- (c) prescribing the fees, royalties, rent and other charges in respect of a licence;
- (d) administration of the strategic oil reserve fund and any other fund;
- (e) administration of prices for petroleum products;
- (f) determining the form and quantum of security or guarantee to be provided for under this Act;
- (g) the regulation of the assignment or transfer of a licence;
- (h) prescribing standards for the petroleum and petroleum products, the design, construction, importation, operation and maintenance of installations and buildings;
- (i) prescribing the manner in which tests and measurements may be applied to petroleum and petroleum products for any purpose;
- (j) for the storage, sale, use, transport, discharge and landing of petroleum and petroleum products;
- (k) for the maintenance of security of supply of petroleum products in Eswatini and the establishment and maintenance of reserves or strategic stock of petroleum products;

- (l) the conservation of petroleum;
- (m) the blending of petroleum products;
- (n) the protection of health, safety and the environment in the conduct of petroleum operations;
- (o) the prevention of pollution of land, water or air from petroleum operations;
- (p) safety measures to be adopted, including measures for the prevention and extinction of fires, avoidance of accidents, and protection of premises adjacent to the sites of authorised petroleum operations;
- (q) determining the manner in which inspection of petroleum operations shall be made, on behalf of the Government, including the power and duties of Inspectors; or
- (r) the issuance and maintenance of a register of any licences issued or orders, judgments or awards.

Transitional provisions

150. (1) Any licence which is in force before the commencement of this Act and was issued under any law repealed under this Act, shall remain in force and have effect for so much of that period as falls after commencement of this Act.

(2) The terms and conditions including the rights and obligations under a licence or petroleum agreement in force immediately before the commencement of this Act, shall not be less favourable than those that applied immediately before the commencement of this Act.

Repeal

151. The following laws are repealed-

- (a) the Fuel Oil Levy Act, 1980;
- (b) the Control of Supplies Order, 1973;
- (c) the Disposal and Use of Petrol Regulations, 1974; and
- (d) the Petrol Regulations, 1941.