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Arrangement of Sections

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No. 2 of 2016

PETROLEUM ACT, 2016

AN ACT TO PROVIDE FOR THE EXPLORATION AND PRODUCTION
OF PETROLEUM AND FOR MATTERS INCIDENTAL THERETO

[Date of Assent - 1st March, 2016]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Petroleum Act, 2016.
- (2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette, appoint.

2. Interpretation.

In this Act —

“**ancillary right**” means any right or privilege required by the holder of an instrument to discharge such operations thereunder and includes where applicable, the right to —

- (a) enter upon land or submarine areas and to geophysically examine and explore for petroleum;
- (b) to drill wells or sink boreholes;
- (c) use and occupy land for the erection of buildings and facilities; or
- (d) obtain a supply of water or other substance;

“**block**” means —

- (a) in relation to any submarine area, an area of one hundred square miles, in the shape of a square with each side ten miles in length,

individually identifiable on a base map of The Bahamas approved by the Minister;

- (b) in relation to any land area, such area as may be determined by the Minister from time to time;

“change of control” includes a change of control of a parent company in or outside of The Bahamas;

“court” means the Supreme Court;

“discovery” means discovery of petroleum;

“environmental damage” means damage to the environment, including persons, as a consequence of operations under an instrument;

“explore” or **“exploration”** means any activity undertaken for the purpose of identifying petroleum, or petroleum bearing or petroleum generating strata, and includes geological or geophysical studies or surveys, including seismic and drilling of a well;

“exploration licence” confers an exclusive right to explore for petroleum within the land or in any submarine area referred to therein;

“facility” means an installation, plant, pipeline or other equipment utilised in connection with exploration or production or the storage or transportation of petroleum;

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

“installation” means any vessel or structure used or intended to be used for —

- (a) drilling a well;
- (b) the extraction and production of petroleum;

and includes —

- (i) a well, by which petroleum is extracted;
- (ii) a pipe or system of pipes to transport petroleum from a well to a vessel or structure or to transport gas or liquids from a vessel or structure to a well;
- (iii) in respect of an offshore installation, all other works within five hundred metres of any part of the vessel or structure used in conjunction with exploration and production,

but does not include —

- (i) a vessel or structure during mobilisation or demobilisation; or
- (ii) equipment solely used to drill a hole for conductor casing at a well site;

“instrument” means a permit, licence, lease or petroleum agreement;

“**land**” includes all marshes, lands underlying lakes, coastal marine swamp land and lands underlying all bodies of water connected with the sea and extending inland and excludes submarine areas;

“**lease**” means a production lease;

“**lessee**” means the holder of a production lease;

“**licence**” means an exploration licence;

“**licensee**” means the holder of an exploration licence;

“**major environmental incident**” means any unforeseen event or incident, which presents a serious threat to the health and safety of persons and the environment, or causes or is likely to cause disruption to the operations of a facility, pollution or other unforeseen damage to the environment;

“**mile**” means 5280 linear feet;

“**Minister**” means the Minister responsible for petroleum;

“**operator**” means —

- (a) the holder of an instrument where no other person is appointed to be responsible for the operations thereunder;
- (b) any person appointed by the holder of an instrument to manage and control the operation of a facility and includes —
 - (i) any contractor or manager appointed by the holder; and
 - (ii) any agent or employee of any person referred to in subparagraph (i); or
- (c) where the holder of an instrument, notwithstanding paragraph (b), notifies that the holder is to be treated as the operator for the purposes of these Regulations;

“**permit**” confers a non-exclusive right to carry out anywhere within the land, or in any submarine area referred to therein any geological or geophysical studies or surveys, including seismic;

“**petroleum**” —

- (a) means any naturally occurring hydrocarbon or a mixture of hydrocarbons, other than coal, whether in a gaseous, liquid, or solid state; and
- (b) includes any petroleum 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 stages of the petroleum industry and includes natural gas processing, exploring for, producing, refining, transporting and

marketing petroleum or petroleum products or both and manufacturing and marketing of petro chemicals; but does not include mining operations involving the extraction of petroleum from bituminous shales, tar sands, asphalt or other like deposits;

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

“production” means the extraction of petroleum from a well and includes —

- (a) the separation, treatment and initial processing of petroleum;
- (b) the injection of gas and liquids into underground geological formations; and
- (c) the recovery of gas stored in underground geological formations;

“production lease” confers an exclusive right to produce and develop a discovery within the land or in any submarine area referred to therein;

“submarine area” means the submerged prolongation of the land mass of The Bahamas, including the seabed and subsoil situated beneath the territorial sea and extending beyond the limit of the territorial sea throughout the natural prolongation of the land territory of The Bahamas —

- (a) to the outer edge of the continental margin; or
- (b) to a distance of two hundred nautical miles from the base line of the territorial sea where the outer edge of the continental margin does not extend up to that distance;

“unit” means an area of four square miles, in the shape of a square with each side two miles in length, individually identifiable on a base map of The Bahamas approved by the Minister;

“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 borehole for re-injection purposes.

RIGHTS OF GOVERNMENT TO PETROLEUM RESOURCES

3. Vesting of petroleum resources in the Government.

The property in all petroleum vested in the Government by virtue of section 3 of the Petroleum Act, 1971 shall continue so vested in the Government.

POWERS OF MINISTER

4. Minister to be a Corporation Sole.

- (1) All property vested in the Minister pursuant to this section shall be held by the Minister in trust for Her Majesty in right of Her Government of The Bahamas for the purpose of the aforementioned functions.
- (2) The Minister responsible for petroleum shall as regards his functions in relation to that responsibility be a corporation sole with power to acquire, hold, lease and dispose of land, to enter into contracts and to sue and be sued.
- (3) Notwithstanding subsection (2), the Minister shall not sell or make any other disposition of the fee simple of any land vested in him without the prior approval of both Houses of Parliament signified by resolution thereof.

5. Power of Minister to grant permits, licences, etc.

- (1) No person shall carry out any activities for which an instrument is required except as provided for under this Act.
- (2) Subject to the provisions of this Act, and any rights under any other law the Minister may, upon application in the manner prescribed, grant as he thinks fit —
 - (a) a permit;
 - (b) an exploration licence;
 - (c) a production lease.
- (3) Notwithstanding subsection (2), the Minister may determine that the grant of a licence, lease or petroleum agreement shall be subject to a procedure of competitive bidding.
- (4) Notwithstanding subsection (1) and (2) and where a licensee has made a discovery and made an application for a lease, the grant of the lease shall not be subject to any procedure of competitive bidding.
- (5) Where a licensee has failed to prove a commercial discovery and such licence has expired, been terminated or surrendered, the Minister may prior to the grant of any new licence, cause for such procedure to be subject to competitive bidding.
- (6) A permit, licence or lease may be granted severally or jointly.
- (7) A licence or lease may be granted to a company, wholly owned by the Government.
- (8) The Government may elect to participate under an instrument and its participating interest thereunder shall be subject to mutual agreement in writing by the parties thereto.

- (9) Subject to the provisions of this Act, more than one licence or lease may be granted to the same company.
- (10) Any person who contravenes the provisions of subsection (1) commits an offence and is liable on conviction—
 - (a) to a fine not exceeding five million dollars;
 - (b) to imprisonment for a term not exceeding ten years; or
 - (c) to both such fine and imprisonment,and, in the case of a continuing offence, to a further fine not exceeding one hundred thousand dollars for every day during which the offence continues.

6. General powers of Minister.

In the administration of the Act, the Minister may, in writing, delegate any powers, duties or functions under the Act, save and except the power of delegation and may —

- (a) inspect and carry out studies regarding the manner in which petroleum operations are being conducted;
- (b) enforce and monitor compliance with all laws and any standards applicable to the petroleum industry;
- (c) at all times, have the power to inspect operations and audit any accounts and records in respect of any operations conducted under this Act;
- (d) at any time, to enter, access and inspect any place, mobile vehicle or installations, taking such measures as are reasonably necessary, including inter alia —
 - (i) the breaking of seals and the resealing thereof; and
 - (ii) marking of petroleum and petroleum products;
- (e) seize, take control and possession of any place, mobile vehicle, installations which poses an immediate risk to health, safety and environment;
- (f) gather information and take samples in connection with the operation or administration of this Act and investigate any offence relating to this Act;
- (g) in cases of abandonment or decommissioning, inspect, audit premises and take samples to determine whether such premises has been sufficiently restored with regard to the activities conducted thereon; in order not to pose a threat to the environment or to the safety and health of the public;
- (h) conduct risk analysis and such inspections to determine emergency preparedness;

- (i) obtain full access to any information, records or other documents held under a licence or other contract;
- (j) be accompanied by such officers as may be necessary or desirable in the circumstances.

7. Petroleum agreements.

- (1) Notwithstanding section 5(2) or any rule of law to the contrary, the Minister may in his discretion and subject to an application, enter into a petroleum agreement —
 - (a) for the purpose of exploration and production of petroleum within the land or any submarine area referred to therein upon such terms and conditions as determined by the Minister;
 - (b) for terms, conditions and fiscal provisions relating to a permit, licence or lease.
- (2) Where there is any conflict or variance with reference with any matter between the provisions of an agreement pursuant to subsection (1)(a) and this Act, the provisions of the agreement shall prevail, provided that the provisions thereunder were agreed upon by the Minister, in accordance with the Act and any other prevailing law.

8. High water and survey marks.

For the purposes of this Act, the Minister shall in consultation with the Minister responsible for lands and surveys, public works and maritime affairs, where applicable —

- (a) fix a line which shall be deemed to be the high water mark with respect to any land or submarine area, by a chart maintained and authenticated by him;
- (b) direct the holder of an instrument to —
 - (i) erect and maintain at its own expense such survey marks or monuments, as the Minister may consider necessary for the delimitation of any submarine area;
 - (ii) illuminate between the hours of sunrise and sunset with respect to land or any submarine area all derricks, piers, survey marks, vessels, facilities, plants or any other installations erected or anchored in any submarine area or land included in a licence or lease.

PART II – PETROLEUM OPERATIONS

RESTRICTIONS ON GRANT OF PERMITS, LICENCES AND LEASES

9. Restrictions to whom permits, etc. may be granted.

- (1) A permit, licence or lease shall only be granted to a company—
 - (a) which has been incorporated and registered in The Bahamas under the provisions of the Companies Act (*Ch. 308*); or
 - (b) which has been incorporated outside The Bahamas and has been duly registered in The Bahamas under the provisions of the Companies Act (*Ch. 308*).
- (2) The requirement for the grant of a permit under this Act shall not apply to a scientific research organisation approved by the Minister.
- (3) The grant of a permit shall not entitle the holder thereof to a right to the grant of an instrument.
- (4) No licence or lease shall be granted to a company which —
 - (a) is a member of, or is directly or indirectly owned or controlled by, another company to which an equivalent licence or lease has formerly been granted under the repealed Act and this Act; or
 - (b) is a subsidiary of a parent company that has more than one subsidiary company holding an equivalent licence or lease.
- (5) Subject to section 10(2) and section 11(2)(c), a company which has been granted a licence or lease under the repealed Act may apply for and be granted a licence or lease under this Act.

10. Restriction on grant of licence.

- (1) A licence shall not be granted for an area in excess of five blocks.
- (2) A licensee shall not be granted a licence for an area which in the aggregate is in excess of twenty-five blocks whether held severally or jointly.
- (3) Notwithstanding subsection (2), where the Government is a party to a licence, the Minister may in his discretion in respect of such licence grant jointly to a licensee and the Government, a larger area which in the aggregate is in excess of twenty-five blocks.

11. Restriction on grant of lease.

- (1) A lease shall only be granted in respect of an area divided into units.
- (2) Subject to subsection (3), a lessee shall not be granted a lease in respect of an area —
 - (a) of less than one unit;

- (b) in excess of seventy-five units under a lease;
 - (c) in excess of three hundred and twelve and a half units in the aggregate under all the leases held by such a lessee (including in such aggregate the proportionate interest in any area subject to a lease jointly held with another lessee).
- (3) Upon application to the Minister in writing, the Minister may in his discretion, grant to any lessee a larger area than that specified in subsection (2)(b) and (c), upon such terms and conditions as he deems appropriate.
- (4) Notwithstanding subsection (2), where the Government is a party to a lease, the Minister may in his discretion in respect of such lease grant jointly to a lessee and the Government, a larger area which in the aggregate is in excess of twenty-five blocks.

PERMITS, LICENCES AND LEASES

12. Application for permit.

An application for a permit may be made by two or more persons jointly, provided that the agreement between the parties thereto is submitted with such application.

13. Grant of permit.

- (1) The Minister may —
- (a) grant a permit, upon such terms and conditions as he considers appropriate; or
 - (b) refuse a permit.
- (2) The grant of a permit shall be subject to the rights of any owner of the surface of the land or submarine area in respect of which the permit is granted.
- (3) The term for which a permit is granted shall not exceed one year.

14. Renewal of permit.

- (1) An application for the renewal of a permit shall be —
- (a) made in the form prescribed; and
 - (b) accompanied by the prescribed fee.
- (2) Subject to subsection (1), the Minister may in his discretion renew a permit for a period not to exceed one year.

15. Application for licence or lease.

- (1) An application for a licence or lease may be made by two or more persons jointly, provided that the agreement between the parties thereto is submitted with such application.
- (2) Notice of every application under subsection (1), shall be published in the *Gazette* and in at least one daily newspaper printed and circulating in The Bahamas and in such other manner as the Minister thinks fit.

16. Considerations for grant of licence.

In determining whether to issue a licence, the Minister shall take into consideration —

- (a) whether the applicant is a fit and proper person whose prior conduct, regard for the law, reputation and associations do not pose a threat to the good order and general welfare of the citizens of The Bahamas;
- (b) the experience, technical and financial capability of the applicant; and
- (c) any other particulars as the Minister may deem appropriate.

17. Grant of licence.

- (1) Where the Minister determines to grant a licence, he shall do so upon such terms and conditions as he deems appropriate and in accordance with the provisions of this Act.
- (2) The term for which a licence may be granted shall not exceed three years.

18. Considerations for grant of lease.

In determining whether to grant a lease, the Minister shall take into consideration —

- (a) whether the applicant is a fit and proper person whose prior conduct, regard for the law, reputation and associations do not pose a threat to the good order and general welfare of the citizens of The Bahamas;
- (b) the experience, technical and financial capability of the applicant;
- (c) whether there is a discovery and in so doing, he shall consider —
 - (i) the quality and estimated quantity of recoverable petroleum reserves;
 - (ii) the site and depth at which petroleum is located;
 - (iii) the expected petroleum production rate;
 - (iv) the costs and investment required;
 - (v) the future fair market price of petroleum; and
- (d) any other particulars as he may deem appropriate.

19. Grant of lease.

- (1) Where there is a discovery within an area under a licence, a licensee, by application in writing to the Minister and subject to and in compliance with the provisions of this Act, shall be entitled to the grant of a lease.
- (2) The term for which a lease may be granted shall not exceed thirty years.
- (3) Where the Minister determines to grant a lease, he shall do so upon such terms and conditions as he deems appropriate and in accordance with the provisions of this Act.
- (4) Upon the grant of a lease, the balance of the original area under the licence shall remain subject to relinquishment in accordance with the provisions of the Act.

20. Execution of permit, licence and lease.

Upon receipt of notice of approval of an application for the grant of a permit, licence or lease, the applicant shall be required to accept and execute the same within sixty days thereof, failing which such approval shall be rescinded unless the Minister upon satisfactory evidence considers that the delay is not due to the fault of the applicant.

21. Extension.

- (1) An application for an extension of the term of an instrument shall —
 - (a) be made in writing to the Minister; and
 - (b) include any other particulars as the Minister may deem appropriate.
- (2) Subject to subsection (1), an application shall be made —
 - (a) in the case of a licence, not less than three months prior to the expiry date thereof;
 - (b) in the case of a lease, not less than one year prior to the expiry date thereof.
- (3) In light of circumstances prevailing and in determining whether to grant the extension of the term of an instrument, the Minister shall take into consideration —
 - (a) whether the applicant has complied in accordance with the terms and conditions of the instrument, the provisions of this Act and any other prevailing law;
 - (b) whether the extension of the term of a licence or lease will enable the holder of an instrument to further assess the extent and characteristics of a discovery in order to determine if such a discovery would result in a commercial discovery; and
 - (c) any particulars which the Minister may deem appropriate.

- (4) Subject to subsection (3) and in accordance with this Act, the Minister may grant an extension of the term of an instrument upon such terms and conditions as the Minister may determine and in light of the circumstances then prevailing.
- (5) The term for which a licence may be extended shall not exceed a term of four years.
- (6) The term for which a lease may be extended shall be determined by the Minister.

22. Renewal of licence or lease.

- (1) Where the holder of a licence or lease has not applied for an extension in accordance with section 21, an application may be made in writing to the Minister to renew the licence or lease for the original area identified thereunder and shall —
 - (a) in the case of a licence, be made not less than three months prior to the expiry date thereof;
 - (b) in the case of a lease, be made not less than one year prior to the expiry date thereof;
 - (c) include a map showing the area and boundaries of the land or submarine area related thereto; and
 - (d) include any other particulars as the Minister shall determine.
- (2) In determining whether to renew a licence or lease, the Minister shall take into consideration —
 - (a) whether an applicant has complied with the terms and conditions of the licence or lease, provisions of this Act and any other prevailing law; and
 - (b) any other particulars which the Minister may deem appropriate.
- (3) Subject to subsection (2) and in accordance with this Act, the Minister shall grant the renewal of a licence or lease upon such terms and conditions as the Minister may determine and in light of circumstances then prevailing.
- (4) The term for which a licence may be renewed shall not exceed a term of three years.
- (5) The term for which a lease may be renewed shall be determined by the Minister.
- (6) Notwithstanding subsection (4) and within no less than three months prior to the expiry date of the first renewed term of the original licence, an application may be made to further renew the duration of the licence.
- (7) Subject to subsection (6), an application shall —

- (a) be made in writing to the Minister; and
 - (b) include any other particulars as the Minister may deem appropriate.
- (8) The term for which a licence may be further renewed by the Minister, shall not exceed a period of three years.

23. Relinquishment under licence or lease.

- (1) The Minister shall require the holder of a licence or lease to relinquish an amount of the original area thereunder.
- (2) Subject to subsection (1), the area to be relinquished under a licence or lease shall be determined by the Minister and in the case of a licence, the original area granted shall be reduced by no less than fifty per cent upon the expiry of—
 - (a) the original term of the licence; and
 - (b) the first term of the renewal of the original licence.
- (3) The holder of a licence or lease shall submit to the Minister a map of the area which is required to be relinquished within the time frame specified by the Minister.

24. Surrender of licence or lease.

- (1) In accordance with the provisions of the Act, where the holder of a licence or lease desires to surrender all or any part of an area thereunder, the Minister shall be notified in writing ninety days prior thereto.
- (2) A surrender pursuant to subsection (1), shall not affect any obligation or liabilities of the holder of a licence or lease, that have not been performed or discharged prior to the date of the surrender.

25. Joint operations

- (1) If a discovery extends beyond the boundaries of an area under a licence or lease the Minister shall be notified in writing within seven days.
- (2) Subject to subsection (1), no further activity shall be carried out without the prior approval of the Minister in writing.
- (3) Subject to subsection (2), the Minister may require the licensee or lessee to submit such documentation as the Minister may determine and in consultation with the licensee or lessee, the Minister may require efforts to be made to conduct or coordinate operations in connection with the discovery.

26. Cross border operations.

- (1) If a discovery extends over the maritime boundary of The Bahamas into the territory of another country the Minister shall be notified in writing within seven days.
- (2) Subject to subsection (1), no further activity shall be carried out without the prior approval of the Minister in writing.
- (3) Subject to subsection (2), the Minister shall in consultation with the relevant authorities take such steps as considered fit.

VARIATION, ASSIGNMENT, TRANSFER AND TERMINATION

27. Variation by Minister.

The Minister may, vary the terms and conditions of an instrument, in writing —

- (a) at any time during the duration of an instrument, in the interest of public safety or national security;
- (b) upon consideration of a written application and such documents which were required by the Minister to be submitted in support of the application; or
- (c) subject to mutual agreement, in writing with the holder thereof.

28. Assignment and transfer.

- (1) The holder of a licence, lease or petroleum agreement shall not assign or transfer any rights and obligations thereunder without the prior approval in writing of the Minister.
- (2) A permit shall not be assigned or transferred.
- (3) An application to assign or transfer any rights or obligations under a licence, lease or petroleum agreement shall —
 - (a) be made in writing to the Minister;
 - (b) be accompanied by the requisite application fee;
 - (c) be accompanied by such particulars as are required under the Act for application for an instrument; or
 - (d) include such other information and documentation as the Minister may require.
- (4) The Minister may in his discretion approve or refuse an application to assign or transfer any rights and obligations under a licence, lease or petroleum agreement and such assignment or transfer shall be subject to any fees payable in accordance with any other law.

- (5) The assignment or transfer of a licence, lease or petroleum agreement shall not in any way relieve the assignor or transferor from the obligations thereunder, except to the extent to which such obligations are in fact performed by the assignee or transferee.
- (6) Within one month of the date of the execution of an assignment or transfer, copies of all conveyances, assignments, agreements, deeds and any other documentation relating to the area under a licence, lease or petroleum agreement shall be submitted to the Minister.
- (7) For the purposes of this Act, where the holder of a licence, lease or petroleum agreement 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 The Bahamas, it shall be deemed to be and treated as an assignment and shall be subject to the laws of The Bahamas.
- (8) Where the holder of an instrument contravenes the provisions of this section, the Minister shall be entitled to terminate such instrument in accordance with the provisions of this Act.

29. Termination.

- (1) The Minister may in writing at any time, subject to subsections (2) and (5), terminate an instrument in any case where he is satisfied that —
 - (a) it was obtained as a result of wilful misrepresentation in any material particular;
 - (b) there is failure to provide any security or pay any royalties, taxes, rents or any other payments payable under this Act or any other prevailing law;
 - (c) there is a failure to keep accurate and complete records, books and accounts in accordance with this Act;
 - (d) there is a contravention of any provisions of the Act or a breach of any terms and conditions contained therein;
 - (e) the holder thereof shall become bankrupt, enters into any arrangement with its creditors, or where a receiver or trustee is appointed;
 - (f) the holder thereof shall enter into liquidation, whether compulsory or voluntary; or
 - (g) the holder thereof fails to adhere to an award made against him in arbitration proceedings carried out in accordance with any law governing arbitration, this Act or any other law.
- (2) Subject to subsection (1), the Minister shall give prior written notice of the intention to terminate an instrument and such notice shall set out —
 - (a) the reasons for termination;

- (b) the action to be taken and the period of time within which to resolve the matter; and
 - (c) the period of time upon receipt of the notice, within which the the holder of the instrument may inform the Minister in writing of a desire to show cause why termination should not be effected.
- (3) Upon giving notice in accordance with subsection (2), the Minister may terminate the instrument, where the holder thereof has failed within the specified period of time under the said notice —
- (a) to resolve the matter; or
 - (b) to show cause why termination should not be effected.
- (4) Where an instrument has been terminated by the Minister in accordance with this Act or the holder thereof, disputes the reasons for termination —
- (a) the Minister shall be notified in writing of the dispute; and
 - (b) the dispute shall be referred to arbitration save and except where otherwise provided thereunder or under any other law.
- (5) The termination of an instrument under this section shall not prejudice any other outstanding obligations of the holder thereof.
- (6) The Minister shall cause notice of the termination of an instrument —
- (a) to be sent to the holder thereof by registered post to its registered office;
 - (b) to be published in the *Gazette*.

PART III - FINANCIAL PROVISIONS

ROYALTIES

30. Royalty.

- (1) Subject to such arrangements approved by the Minister in writing, and as set out in a licence or lease, every licensee and lessee shall pay to the Minister a royalty calculated —
- (a) at the well head of the petroleum produced from the area under a licence or lease;
 - (b) on the selling value of petroleum as determined by mutual agreement between the Minister and the licensee or lessee; and
 - (c) at such intervals as the Minister may determine.
- (2) For the purposes of subsection (1)(b), the selling value of any petroleum shall be such value —

- (a) as may be stipulated by the Minister based on the average selling price of petroleum then prevailing in the market, or
- (b) as may be based upon other valuation parameters as determined by the Minister.

31. Petroleum in lieu of royalty.

- (1) In the national interest and in consultation with the lessee, the Minister may elect to take petroleum in kind in lieu of the whole or part of the royalty due.
- (2) Such petroleum as the Minister elects to take in kind shall be delivered by the lessee free of all transportation or handling charges.
- (3) The Minister may require a lessee to hold such petroleum as elected to take in kind in storage at the field or at a facility free of any storage charge, but not for a period exceeding ninety days.
- (4) Any petroleum which the Minister does not dispose of within the period mentioned in subsection (3) or for which further terms of disposal have not been agreed upon, shall be deemed to have been sold to the lessee at the same prices as apply in the calculation of royalty.

32. Royalty not payable in certain cases.

All petroleum that is proved to the satisfaction of the Minister to have been used by the holder of a licence or lease for the purpose of conducting exploration or production, including pumping or transportation of petroleum to field storage or refineries, shall be free of royalty.

33. Currency.

All royalties, taxes, fees, rents, duties, financial instruments and any other charges shall be paid in the currency of The Bahamas, except where otherwise approved by the Government in writing.

FEES, RENTS AND OTHER CHARGES

34. Fees, rents, etc.

- (1) The application fees specified in the *Schedule* shall be paid in respect of any instrument.
- (2) Rents shall be payable in respect of any instrument, as may be determined by the Minister in accordance with best industry practices.
- (3) Any taxes, charges and other payments in relation to any instrument shall be paid in accordance with this Act and any other law.
- (4) The Minister may by Order amend the *Schedule* to the Act.

35. Exemption from customs duties.

Notwithstanding the provisions of any other Act, any duties or other charges payable in respect of taking out a bond or the importation into The Bahamas of equipment or materials peculiar to and necessary for the purposes of an instrument shall be exempt from the payment provided that—

- (a) prior approval by the Minister responsible for finance in writing is obtained;
- (b) 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;
- (c) the holder of an instrument 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 charges payable, which shall be forfeited in the event any such exempted equipment or materials are used otherwise than for the aforesaid purposes.

SECURITY

36. Security for due performance of operations.

- (1) On the date on which a licence, lease or petroleum agreement comes into force, the Minister shall require the holder thereof 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 subsection (1) shall be subject to prior approval by the Minister in writing and calculated having regard to the nature of operations to be undertaken or the total amount of the minimum sum per annum which is required for exploration work to be conducted and any other factors which the Minister may deem appropriate.
- (3) The quantum of the security referred to in subsection (2) shall be reduced at such time, in such manner and for such sum as may be approved by the Minister in writing subject to the submission of such documents as the Minister may require.
- (4) Where the holder of an instrument fails to discharge the operations under a licence, lease or petroleum agreement in respect of which security was lodged with the Minister in accordance with subsection (1), any rights to the security may be forfeited and it may be enforced by the Minister.

DAMAGE AND COMPENSATION

37. Liability for environmental damage.

The holder of an instrument shall be strictly liable for environmental damage, without regard to fault save and except—

- (a) where it is demonstrated and proven to the satisfaction of the Minister that the environmental damage arose from a major environmental incident which was caused by —
 - (i) force majeure;
 - (ii) an act of terrorism; or
 - (iii) an act of belligerency against The Bahamas; and
- (b) where the holder of the instrument has undertaken all reasonable preventative measures to reduce and mitigate the environmental damage.

38. Precautions for environmental damage.

The holder of an instrument at its own expense shall adopt all practicable precautions to avoid environmental damage.

39. Indemnification.

The Minister and any person engaged in the administration of the Act shall not be personally liable for any act or omission in the exercise, discharge or purported exercise of discharge, of a power, function or duty under the Act, which act or omission has been exercised or discharged in good faith and without gross negligence.

40. Financial Security.

- (1) On the date which an instrument comes into effect, the Minister and the holder thereof shall mutually agree upon the date and period during which the holder of an instrument shall obtain and maintain insurance or other acceptable financial security against liability for —
 - (a) personal injury;
 - (b) damage to property;
 - (c) damage to employees;
 - (d) damage to the environment; and
 - (e) economic loss,arising out of petroleum operations conducted thereunder and as a result of a major environmental incident.

- (2) Subject to subsection (1), the scope, nature and quantum of insurance or other financial security, shall be subject to prior approval by the Minister, in writing and the holder of the instrument shall be able to demonstrate the validity of such security, for so long as the instrument is in force.
- (3) At all times, the holder of an instrument shall be responsible to pay compensation to any person or business, where such person or business has incurred expense or suffered economic loss or damage to property as a result of a major environmental incident.
- (4) The compensation payable under subsection (3) shall be commensurate with the loss incurred and shall take into account —
 - (a) the geographic proximity between the claimant's activities and the contamination;
 - (b) the degree to which the claimant is economically dependent on an affected natural resource;
 - (c) the extent to which the claimant's business forms an integral part of economic activities in the area which is directly affected by the contamination;
 - (d) the scope available for the claimant to mitigate their loss; and
 - (e) the effect of any concurrent causes contributing to the claimant's loss.
- (5) Any person who contravenes or fails to comply with the provisions of this section commits an offence and is liable on conviction to —
 - (a) a fine not exceeding ten million dollars;
 - (b) imprisonment for a term not exceeding twenty years; or
 - (c) to both such fine and imprisonment,and in the case of a continuing offence, to a further fine of five thousand dollars for every day during which the offence continues.
- (6) Subsection (5) does not prejudice any right that the Minister may have to pursue a civil claim against the licensee or lessee.

41. Minister may remedy default.

Notwithstanding sections 36 and 40 and where in the course of operations under an instrument, the holder thereof fails to execute works required inter alia to abandon a well, decommission a facility or implement safety, health and welfare measures, the Minister shall notify the holder of the said instrument in writing 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;
- and

- (b) recover from the holder of the instrument, all costs and expenses incurred related thereto.

INFORMATION, RECORDS, ETC.

42. Duty to furnish information to Minister.

Every holder of an instrument shall at his own expense prepare and furnish to the Minister such information and data concerning their operations in such manner and detail as the Minister may determine from time to time.

43. Records.

- (1) The holder of an instrument shall keep at its registered office in The Bahamas accurate and detailed records, books and accounts in such manner as determined by the Minister of —
 - (a) the progress and results of its operations;
 - (b) the quantities of petroleum produced and disposed;
 - (c) annual income and expenditure in relation to its operations in The Bahamas; and
 - (d) such other particulars as the Minister may from time to time require.
- (2) The Minister may, at any time, cause such records, books and accounts of the holder of an instrument to be inspected and obtain abstracts or copies thereof.
- (3) During the term of an instrument, the holder thereof shall forward annually a report to the Minister detailing the particulars specified in subsection (1) no later than the 30th day of December.

44. Annual reports.

The Minister shall lay upon the table of each House of Parliament before the end of June or as soon as practicable thereafter in every year a report dealing with —

- (a) the progress and results of all petroleum operations;
- (b) the quantities of petroleum produced and disposed;
- (c) annual income and expenditure in relation to all petroleum operations in The Bahamas.

PART IV - ANCILLARY RIGHTS

45. Application for ancillary rights.

Where an instrument is granted and the holder thereof requires an ancillary right, an application shall —

- (a) be made to the Minister in writing; and
- (b) be accompanied by such information as determined and verified by the Minister.

46. Evaluation of application for ancillary rights.

- (1) The Minister shall consider and grant an application for an ancillary right if satisfied that —
 - (a) the requirements of this Act are complied with in the case of the applicant;
 - (b) it is expedient in the public interest that the ancillary right applied for should be granted; or
 - (c) there has been prior consultation and consent from the relevant entity or persons where applicable, having the disposition to grant an ancillary right.
- (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 to obtaining the ancillary right in question by private arrangement.
- (3) Where under this Act an applicant fails to obtain an ancillary right, or the Minister is unable to make a determination on the grant of an ancillary right, the matter may be referred to the court.

47. Right to be heard.

- (1) Any person whose interests are or may be prejudicially affected by the grant of an ancillary right shall be entitled to be heard by himself or by an attorney before the court.
- (2) The Rules Committee constituted under section 76 of the Supreme Court Act (*Ch. 53*) shall make rules of court prescribing the procedure to be followed, the forms to be used and the fees to be paid in relation to references to the court under section 46.

48. Grant of ancillary right and compensation.

- (1) Where a matter is referred to the court under section 46(3), the 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;
 - (c) any other matters the court deems fit.
- (2) In accordance with this Act, the court may grant an ancillary right subject to such terms and conditions as and for such period of time as the court deems fit.
- (3) The 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 in respect thereof; and
 - (b) any security shall be paid to such persons as the court may determine to be entitled thereto.
- (4) Where the person to whom any such compensation is payable cannot be found or ascertained such compensation shall be paid into the 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 or is to be granted.

49. Effect of grant of ancillary rights.

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 had the right been granted otherwise than provided for by this Act.

50. Restriction on granting ancillary rights.

- (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 V – MISCELLANEOUS

51. General penalty.

Any person who contravenes any of the provisions of this Act or any regulations made thereunder commits an offence and where there is no specific penalty provided, is liable on conviction —

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

52. Regulations.

The Minister may make regulations for the purpose of carrying this Act into effect and for the better carrying out of the objects and purposes of this Act and, in particular, but without prejudice to the generality of the foregoing, for or with respect to —

- (a) establishing the manner and form in which an application for an instrument shall be made;
- (b) establishing the form and procedure for a grant and renewal for an instrument, including competitive bidding;
- (c) establishing the terms and conditions upon which an instrument may be granted renewed, surrendered and terminated;
- (d) regulating and prescribing standards for petroleum and petroleum products;

- (e) prescribing the fees, royalties, rent and other charges in respect of an instrument or renewals thereof;
- (f) determining the form and quantum of security to be provided for under the Act;
- (g) governing the assignment or transfer of a licence, lease or petroleum agreement;
- (h) specifying the terms and conditions relating to relinquishment;
- (i) establishing a base map of The Bahamas;
- (j) requiring petroleum produced in The Bahamas to be refined in and or supplied to The Bahamas;
- (k) the responsibility of an operator in respect of health, safety and environmental protection for the conduct of operations of a facility under the Act;
- (l) governing the standards and operations of a facility;
- (m) governing the storage, refining, transport and transshipment of petroleum within The Bahamas;
- (n) determining the manner in which the inspection of operations shall be conducted;
- (o) prescribing any other matter or thing required, authorized or contemplated by this Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to this Act.

53. Savings.

Notwithstanding section 54, any permit, licence or lease which was in force under the Petroleum Act (*Ch. 219*) immediately before the date of commencement of this Act and any provision of the said Act or of any regulations made thereunder and in force immediately before that date regulating the interpretation, enforcement or control of any such permit, licence or lease shall continue in full force and effect until the expiry of such permit, licence or lease according to its tenure, as if this Act had not been passed.

54. Repeal.

The Petroleum Act (*Ch. 219*) is hereby repealed.

SCHEDULE

(section 34)

APPLICATION FEES

For a Permit	\$10,000.00 per block
For a Licence	\$20,000.00 per block
For a Lease	\$20,000.00 per block
For the assignment of a licence, lease or other agreement	\$20,000.00 per block
For the transfer of a licence, lease or other agreement	\$20,000.00 per block
For renewal of a Permit	\$10,000.00 per block
For renewal of a Licence	\$20,000.00 per block
For renewal of a Lease	\$20,000.00 per block