

No. 49 of 1998.

***Oil and Gas Act 1998.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 49 of 1998.

*Oil and Gas Act 1998.*

ARRANGEMENT OF SECTIONS.

**PART I – PRELIMINARY.**

1. Compliance with constitutional requirements, etc.
2. Application of provisions of Organic Law on Provincial Governments and Local-level Governments.
3. Interpretation.
  - “access arrangements”
  - “affected Local-level Government”
  - “affected Provincial Government”
  - “annual fee”
  - “approved”
  - “arbitration”
  - “authorized officer”
  - “block”
  - “the Board”
  - “buffer zone”
  - “the Chief Inspector”
  - “the Chief Warden”
  - “commence to construct”
  - “commencement date”
  - “the Company”
  - “Customary land”
  - “customary land owner”
  - “dedicated project facility”
  - “Department”
  - “development agreement”
  - “development forum”
  - “the Director”
  - “document”

“domestic gas operator”  
“domestic gas supplier”  
“domestic utilisation”  
“drilling”  
“equity benefit”  
“Expenditure Implementation Committee”  
“flow lines or gathering lines”  
“former Act”  
“gas agreement”  
“gas field”  
“gas operations”  
“gas project”  
“good oilfield practice”  
“graticular section”  
“improvements”  
“incorporated land group”  
“in-plant piping”  
“inspector”  
“land”  
“licence”  
“licence area”  
“licensee”  
“location”  
“low water line”  
“major modification”  
“month”  
“MRDC”  
“natural gas”  
“NGC”  
“offshore area”  
“operator”  
“operating agreement”  
“option”  
“option agreement”  
“Orogen option project”  
“participating interest”  
“petroleum”  
“petroleum development licence”  
“petroleum development licensee”  
“petroleum pool”  
“petroleum processing”  
“petroleum processing facility”  
“petroleum processing facility licence”  
“petroleum processing facility licensee”  
“petroleum product”  
“petroleum project”

“petroleum prospecting licence”  
 “petroleum prospecting licensee”  
 “petroleum retention licence”  
 “petroleum retention licensee”  
 “pipeline”  
 “pipeline licence”  
 “pipeline licensee”  
 “private land”  
 “processed petroleum”  
 “project area landowners”  
 “project assets”  
 “project pipeline”  
 “pumping station”  
 “Register”  
 “registered holder”  
 “royalty benefit”  
 “royalty period”  
 “State equity entitlement”  
 “storage”  
 “strategic petroleum processing facility”  
 “strategic pipeline”  
 “tank station”  
 “temporary operations”  
 “tenement”  
 “tenement holder”  
 “this Act”  
 “transportation”  
 “valve station”  
 “vessel”  
 “Warden”  
 “water line”  
 “well”

4. Declaration of low water line.
5. Application.
6. Petroleum the property of the State.
7. The Director may carry on operations.
8. Exploration for and recovery of petroleum.

**PART II – APPLICATION OF LAWS AND ADMINISTRATION.**

9. Laws of Papua New Guinea to apply.
10. Jurisdiction of courts.
11. Appointment of Director.
12. Delegation.
13. Petroleum Advisory Board.
14. Meetings of the Board.
15. Powers and duties of Board.
16. No personal liability for Board, Minister or Director.

## **PART III – PETROLEUM EXPLORATION AND DEVELOPMENT.**

### ***Division 1 – Preliminary.***

17. Graticulation of Earth's surface and constitution of blocks.
18. Prospecting licences under Torres Strait Treaty.
19. Issue of licences.
20. Reservation of blocks.

### ***Division 2 – Petroleum Prospecting Licences.***

21. Applications for petroleum prospecting licence.
22. Form of application for petroleum prospecting licence.
23. Grant or refusal of petroleum prospecting licence.
24. Variation of petroleum prospecting licence.
25. Rights conferred by petroleum prospecting licence.
26. Term of petroleum prospecting licence.
27. Application for extension of petroleum prospecting licence.
28. Application for extension to be in respect of reduced area.
29. Grant or refusal of extension of petroleum prospecting licence.
30. Extension of petroleum prospecting licence in respect of location.
31. Conditions of grant of petroleum prospecting licence.

### ***Division 3 – Discovery of Petroleum in Licence Area.***

32. Discovery of petroleum to be notified.
33. Directions by Minister on discovery of petroleum.
34. Declaration of location.
35. Investigation, etc., of location.
36. Revocation of declaration of location.

### ***Division 4 – Petroleum Retention Licences.***

37. Application for petroleum retention licence.
38. Form of application for petroleum retention licence.
39. Notification of grant of petroleum retention licence.
40. Grant or refusal of petroleum retention licence.
41. Variation of petroleum retention licence.
42. Rights conferred by petroleum retention licence.
43. Term of petroleum retention licence.
44. Application for extension of petroleum retention licence.
45. Grant or refusal of extension of petroleum retention licence.
46. Conditions of petroleum retention licence.

### ***Division 5 – Social Mapping and Landowner Identification Studies.***

47. Social mapping and landowner identification studies.

### ***Division 6 – Project Consultation.***

48. Development forum.
49. Matters required before development forum.
50. Development agreement.
- 50A. Coordination of benefits for Gas Projects.
51. Power to sign development agreement.
52. Consultation with affected Local-level Governments and affected Provincial Governments.

52A. Coordination of development forum.

***Division 7 – Petroleum Development Licences.***

- 53. Application for petroleum development licence.
- 54. Form of application for petroleum development licence.
- 55. Notice of application to be provided to the Company, etc.
- 56. Notification of grant of petroleum development licence.
- 57. Grant or refusal of petroleum development licence.
- 58. Variation of petroleum development licence.
- 59. Rights conferred by petroleum development licence.
- 60. Term of petroleum development licence.
- 61. Application for extension of petroleum development licence.
- 62. Grant or refusal of extension of petroleum development licence.
- 63. Conditions of petroleum development licence.
- 64. Unit development.
- 65. Co-ordinated petroleum developments.
- 66. Directions as to recovery of petroleum.
- 67. Domestic market obligation.

***Division 8 – Processing and Export of Natural Gas.***

- 68. Processing of natural gas.
- 69. Export of natural gas.

***Division 9 – Pipeline Licences.***

- 70. Pipeline licence required.
- 71. Acts done in an emergency.
- 72. Removal of pipeline.
- 73. Application for pipeline licence.
- 74. Grant or refusal of pipeline licence.
- 75. Strategic pipelines.
- 76. Rights conferred by pipeline licence.
- 77. Term of pipeline licence.
- 78. Application for extension of pipeline licence.
- 79. Grant or refusal of extension of pipeline licence.
- 80. Conditions of pipeline licence.
- 81. Variation of pipeline licence on application by licensee.
- 82. Variation of pipeline licence by Minister.
- 83. Common carrier.
- 84. Ceasing to operate pipeline.

***Division 10 – Petroleum Processing Facility Licences.***

- 85. Petroleum processing facility licence required.
- 86. Application for petroleum processing facility licence.
- 87. Form of application for petroleum processing facility licence.
- 88. Grant or refusal of petroleum processing facility licence.
- 89. Strategic petroleum processing facilities.
- 90. Rights conferred by petroleum processing facility licence.
- 91. Term of petroleum processing facility licence.
- 92. Variation of petroleum processing facility licence on application by licensee.
- 93. Variation of petroleum processing facility licence by Minister.

94. Conditions of petroleum processing facility licence.
95. Regulations for domestic utilisation business.

***Division 11 – Registration of Instruments.***

96. Register to be kept.
97. Approval and registration of transfers.
98. Entries in Register of devolution of title.
99. Interests not to be created, etc., except by instrument.
100. Approval of instruments creating, etc., interests.
101. True consideration to be shown.
102. Minister not concerned with certain matters.
103. Power of Minister to require information as to proposed dealings.
104. Production and inspection of documents.
105. Inspection of Register and documents.
106. Evidentiary provisions.
107. Register may be rectified.
108. Minister or Director not liable for certain actions.
109. Offences.

***Division 12 – Rights in Respect of Land and Property.***

110. Rights of tenement holders in respect of land and property.
111. Rights of pipeline licensees in respect of land and property.
112. Rights of petroleum processing facility licensees in respect of land and property.
113. Rights of landowners.
114. Interference with other rights.
115. Responsibility to repair damage.
116. Additional rights of entry.
117. Land occupied to be surveyed.
118. Compensation.
119. Wardens.
120. Acquisition of land.
121. Determination of customary land.
122. Trespass on land held under a licence.

***Division 13 – General.***

123. Date of effect of licences, etc.
- 123A. Designation of Operator and Operating Agreement.
124. Work practices for tenement holder.
125. Work practices for pipeline licensee.
126. Work practices for petroleum processing facility licensee.
127. Work practices for holders of instruments of consent.
128. Penalty for breach of Section 124, 125, 126 or 127.
129. Local purchase obligation.
130. Measurement and metering.
131. Maintenance, etc., of property.
132. Drilling near boundaries.
133. Directions.
134. Compliance with directions.



- 135. Exemptions, variations, etc.
- 136. Prevention from carrying on prospecting operations.
- 137. Surrender of licences.
- 138. Suspension and cancellation of licences.
- 139. Removal of property, etc., by licensee, etc.
- 140. Removal and sale of property.
- 141. Penalty for late payments.
- 142. Securities.
- 143. Further information to be furnished, etc.
- 144. Failing to furnish information, etc.
- 145. Drilling for and discovery of water.
- 146. Survey of wells, etc.
- 147. Records, etc., to be kept.
- 148. Reporting by licensees.
- 149. Confidentiality, etc., of information.
- 150. Scientific investigations: Instruments of consent.
- 151. Inspectors.
- 152. Powers of inspectors.
- 153. General penalty.
- 154. Continuing offences.
- 155. Orders for forfeiture in respect of certain offences.
- 156. Service.
- 156A. Pre-submission of information.

***Division 14 – Fees and Royalties.***

- 157. Fees.
- 158. Determination of value of petroleum.
- 159. Royalty.
- 160. Development levies.
- 161. Ascertaining quantity of petroleum recovered.
- 162. Payment of royalty and penalty for late payment.
- 163. Registration fees.

**PART IV – STATE EQUITY ENTITLEMENT AND PROJECT BENEFITS.**

- 164. No effect on compensation entitlement.
- 165. State equity entitlement.
- 166. Acquisition of participating interest by the Company.
- 167. Equity benefit.
- 168. Royalty benefit.
- 169. Identification of landowner beneficiaries.
- 169A. Identification of Landowners beneficiaries and sharing of benefits in relation to existing Petroleum Projects.
- 170. Sharing of benefits amongst project area landowners.
- 171. Other project area landowner benefits.
- 172. Sharing of benefits amongst affected Local-level Governments and affected Provincial Governments.
- 173. Project grants.

174. Limitation on project benefits.
175. Additional interests in petroleum projects.
176. Project benefits trusts.
177. Benefits where pipeline or petroleum processing facility not part of petroleum project.
178. Expenditure on behalf of affected Local-level Governments and affected Provincial Governments.
179. National Gas Corporation.

**PART V – MISCELLANEOUS.**

180. Inspectors not to have any interests in licences, etc.
181. Points, etc., to be ascertained by reference to geodetic datum.
182. Regulations.
183. Petroleum agreement.
184. Gas agreement.
185. Agreements by the State.
186. Repeal.

**PART VI – TRANSITIONAL PROVISIONS.**

187. Licences under former Act.
188. Pipeline licences under former Act.
189. Existing or proposed petroleum processing facilities.
190. References to former Act, etc.

**SCHEDULE 1 – Determination of value of petroleum under  
Section 158.**

**PART 1 – PRELIMINARY.**

**PART 2 – NORM VALUES.**

**PART 3 – GUIDELINES.**

**PART 4 – ARBITRATION.**

# INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

## ***Oil and Gas Act 1998,***

Being an Act to enact comprehensive legislation governing the exploration for and production of petroleum (including oil and gas) in Papua New Guinea, including the offshore area, and the grant to traditional landowners and Provincial Governments and Local-level Governments of benefits arising from projects for the production of petroleum (including oil and gas), and the processing and transportation in Papua New Guinea of petroleum and petroleum products, and to repeal various Acts, and for related purposes.

### **PART I. – PRELIMINARY.**

#### **1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS, ETC.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

- (a) Section 44 (*the freedom from arbitrary search and entry*); and
- (b) Section 48 (*the right to freedom of employment*); and
- (c) Section 49 (*the right to privacy*); and
- (d) Section 51 (*the right to freedom of information*),

is a law made for that purpose, taking into account the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled—

- (e) national sovereignty and self reliance; and
- (f) natural resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 53(1) (*protection from unjust deprivation of property*) of the *Constitution* and the *Land Act 1996*, and any other relevant law, the purpose and reason for which this Act permits possession to be compulsorily taken of any property and permits any interest in or rights over property to be compulsorily acquired are set out below and are declared and described to be a public purpose, whether pursued by a licensee, the State or any other person exercising rights under this Act, and to be a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind—

- (a) the conducting of geological surveys, seismic tests, test drilling and other prospecting operations for petroleum in a licence area; and
- (b) the drilling for and the recovery of petroleum in a licence area; and
- (c) the storage of petroleum or petroleum products in connection with the operations of a licensee; and
- (d) the processing of petroleum or petroleum products by a licensee; and
- (e) the conveyance of petroleum or petroleum products by a licensee, whether by pipeline, land transport, sea transport or air transport, including the pumping, loading, unloading and discharging of petroleum or petroleum products; and
- (f) the accommodation of the officers, agents and employees of a licensee or any contractor or sub-contractor of a licensee in connection with the prospecting for, recovery or conveyance or processing of petroleum or petroleum products; and
- (g) the disposal of waste material from operations for, or associated with prospecting for, recovery or conveyance or processing of petroleum or petroleum products; and
- (h) the establishing of a town to service an industry for the recovery, conveyance or processing of petroleum or petroleum products including civic, cultural and social facilities in the town; and
- (ha)<sup>1</sup> the construction, maintenance or operation of facilities (including, without limitation, access roads, docks, ports, airports, marinas and accommodation) to be used by a licensee in connection with the prospecting for, recovery, conveyance or processing of petroleum or petroleum products; and
- (i) the acquisition of land or other property for activities in connection with the above purposes; and
- (j) the acquisition of a participating interest in a petroleum project in accordance with Part IV.

(3) For the purposes of Section 53(2) of the *Constitution*, this Act is expressed to be made and each of the activities described above in Subsection (2) is expressed to be in the national interest.

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<sup>1</sup> Section 1 Subsection (2) amended by No. 57 of 2006, s. 1.

(4) For the purposes of—

- (a) Section 29 of the *Organic Law on Provincial Government*; and
- (b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*,

it is declared that this Act relates to a matter of national interest.

## 2. APPLICATION OF PROVISIONS OF ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.

(1) For the purpose of Section 98 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act—

- (a) establishes the benefits and levies which are payable pursuant to Subsection (2) of that section in respect of petroleum projects; and
- (b) provides for the rates, management, sharing arrangement and application of such development levies; and
- (c) establishes the trust funds referred to in Subsection (3) of that section for the controlling and distribution of development levies.

(2) For the purpose of Section 99 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act establishes the principles by which the National Government and its statutory agencies will share with applicable Provincial Governments and Local-level Governments the revenues of the National Government generated from petroleum projects.

(3) For the purpose of Section 116 of the *Organic Law on Provincial Governments and Local-level Governments* it is hereby declared that this Act establishes—

- (a) the consultation process amongst stakeholders, including the establishment and procedures for development forums, for petroleum projects; and
- (b) the extent to which the parties may participate in petroleum projects.

## 3. INTERPRETATION.

(1)<sup>2</sup> In this Act, unless the contrary intention appears—

“**access arrangements**” means the access arrangements applying to strategic pipelines which are referred to in Section 75, or the access arrangements applying to strategic petroleum processing facilities which are referred to in Section 89, as the case may be;

<sup>2</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1; Section 3 Subsection (1) amended by No. 58 of 2006, s. 1; Section 1 (definition of “gas field”) repealed and replaced by No 53 of 2000 s 1; Section 3 Subsection (1) amended by No. 58 of 2006, s. 1; Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

**“affected Local-level Government”** means, in relation to a petroleum project, a Local-level Government within whose geographic jurisdiction lies a dedicated project facility of that petroleum project or any part of a petroleum development licence the production of petroleum from which is part of that petroleum project;

**“affected Provincial Government”** means, in relation to a petroleum project, a Provincial Government within whose geographic jurisdiction lies a dedicated project facility of that petroleum project or any part of a petroleum development licence the production of petroleum from which is part of that petroleum project;

**“annual fee”** means a fee prescribed by Subsection 157(2);

**“approved”** means approved by the Minister;

**“arbitration”** means arbitration under the *Arbitration Act 1951* or, where the Minister or the State and a licensee have agreed to substitute some other form of arbitration for that Act, that other form of arbitration;

**“authorized officer”** in relation to—

- (a) the doing of any act; or
- (b) the exercise of any power or function; or
- (c) the performance of any duty,

means the officer authorized in writing by the Minister for that purpose;

**“block”** means a block constituted as provided by Section 17;

**“the Board”** means the Petroleum Advisory Board established under Section 13;

<sup>34</sup>**“buffer zone”** means, in relation to a petroleum project, the area around the dedicated project facilities of that petroleum project determined by the Minister to be the buffer zone for that petroleum project, but does not include land within a petroleum development licence pursuant to which the petroleum project is conducted or any land not within five kilometres of a dedicated project facility;

**“the Chief Inspector”** means the Chief Inspector appointed under Section 151(1);

<sup>5</sup>**“the Chief Warden”** means the Chief Warden appointed under Section 119(1)(a);

**“commence to construct”** means any clearing of land, excavation, construction or other action at the site for the purpose of constructing

<sup>3</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1; Section 3 Subsection (1) amended by No. 58 of 2006, s. 1; Section 1 (definition of “gas field”) repealed and replaced by No 53 of 2000 s 1; Section 3 Subsection (1) amended by No. 58 of 2006, s. 1; Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

<sup>4</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

<sup>5</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

any petroleum processing facility, but does not include temporary use of sites for less than 90 days, conducting tests, taking samples or borings, preparing plans and designs, contracting for the fabrication of equipment and improvements, or the legal occupation of land;

**“commencement date”** means the date of coming into operation of this Act;

**“the Company”** means Orogen Minerals Limited;

<sup>6</sup>**“Customary land”** means the land that is owned or possessed by an automatic citizen or community of automatic citizens by virtue of rights of proprietary or possessory kind that belonged to that citizen or community and arise from and are regulated by custom;

<sup>7</sup>**“customary land owner”** means a person who has an interest in customary land.

**“dedicated project facility”** means, in relation to a petroleum project—

- (a) a pipeline; or
- (b) a pipe or system of pipes referred to in Paragraphs (a) to (d) inclusive of the definition of “pipeline”; or
- (c) a petroleum processing facility; or
- (d) any other facility used exclusively by the tenement holder or other person in carrying on that petroleum project,

the operations of which are part of the same “petroleum project” or “designated gas project” as those terms are defined in the *Income Tax Act 1959*, but does not include a facility which is excluded as a dedicated project facility by an instrument signed by the Minister;

<sup>8</sup>**“Department”** means the Department responsible for petroleum matters;

**“development agreement”** means, in relation to a petroleum project, a written agreement between—

- (a) the State; and
- (b) the project area landowners, affected Local-level Governments or affected Provincial Governments of the petroleum project, or any of them, as the case may be;

<sup>9</sup>**“development forum”** means, in relation to a petroleum project or a proposed petroleum project, a meeting or combination of meetings convened in accordance with Section 48;

**“the Director”** means the Director appointed under Section 11;

**“document”** includes any map, book, record, or writing;

<sup>6</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.

<sup>7</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.

<sup>8</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.

<sup>9</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.

**“domestic gas operator”** means a person who connects, installs or repairs equipment and appliances for the purpose of the combustion of gas for domestic utilisation, other than a portable gas appliance that is designed to have within it, or attached to it, its own source of gas;

**“domestic gas supplier”** means a person who supplies in Papua New Guinea by pipeline or in cylinders or other containers natural gas or liquefied petroleum gas for domestic utilisation;

**“domestic utilisation”** means the consumption or distribution of petroleum or petroleum products as a fuel or feedstock within Papua New Guinea;

**“drilling”** means the perforation of the earth’s surface whether the hole is vertical, inclined, or horizontal and includes—

- (a) all operations for preventing the collapse of the sides of the hole or for preventing the hole from becoming filled by extraneous materials (including water); and
- (b) the fitting of wellheads, coring, and logging;

**“equity benefit”** means, in relation to a petroleum project, a 2% participating interest in that petroleum project, free of encumbrances or liabilities as at the commencement of commercial production of petroleum from that petroleum project;

**“Expenditure Implementation Committee”** means a committee established in accordance with Subsection 178(2);

**“flow lines or gathering lines”** means pipes or a system of pipes for one of the uses referred to in Paragraphs (a), (b) and (c) of the definition of “pipeline”;

**“former Act”** means the Acts repealed by Section 186;

**“gas agreement”** means an agreement referred to in Section 184;

<sup>10</sup>**“gas field”** means a petroleum pool consisting, in some part, of petroleum recoverable as natural gas at the surface where oil recovery is not, or is not expected to be, the primary object of petroleum recovery;

<sup>11</sup>**“gas operations”** means petroleum operations relating to the recovery from a gas field;

**“gas project”** means—

- (a) where a gas agreement does not apply to a project—a petroleum project having the purpose of recovering natural gas (other than recovery of natural gas which is incidental to the recovery of other petroleum); and

<sup>10</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

<sup>11</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.



(b)<sup>12</sup> where a gas agreement applies to the project – a petroleum project, as and to the extent defined in such gas agreement, having the purpose of recovering: –

- (i) natural gas; and
- (ii) other petroleum which is incidental to the recovery of natural gas or which is otherwise dealt with in or the subject of that gas agreement;

**“good oilfield practice”** means practice which is generally accepted within the petroleum industry as good and safe–

- (a) in the carrying on of exploration for petroleum; or
  - (b) in operations for the recovery of petroleum,
- as the case may be;

**“graticular section”** means a section referred to in Section 17(1);

**“improvements”** means–

- (a) any building or structure; or
- (b) any yard, fence, wall or other erection, construction or appliance affixed to land–
  - (i) for the working or management of the land or of stock depastured on the land; or
  - (ii) for maintaining or increasing the natural capacity of the land to produce or to give shelter or enjoyment to humans or animals; or
- (c) any planted crop or trees, whether planted for commercial or domestic purposes,

and includes–

- (d) any well, bore, reservoir, spring, dam or other artificial water course or watering place; or
- (e) any road, track, footpath, railway, tramway, culvert, bridge or crossing; or
- (f) the site of any sports ground, recreation area, sing sing ground, village or community meeting place, burial place or sacred ground;

**“incorporated land group”** has the meaning given in the *Land Groups Incorporation Act 1974*;

**“in-plant piping”** means pipes or a system of pipes referred to in Paragraph (d) of the definition of “pipeline”;

<sup>12</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

**“inspector”** means a person appointed under Section 151, and includes the Chief Inspector;

**“land”** includes the offshore area and the bed of any river, stream, estuary, lake or swamp;

**“licence”** means—

- (a) a petroleum prospecting licence issued under Section 23; or
  - (b) a petroleum retention licence issued under Section 40; or
  - (c) a petroleum development licence issued under Section 57; or
  - (d) a pipeline licence issued under Section 74; or
  - (e) a petroleum processing facility licence issued under Section 88,
- or any of them, as the context requires, and includes any extension of those licences;

**“licence area”** means the area constituted by the blocks that are the subject of a tenement;

**“licensee”** means the registered holder of a licence;

**“location”** means the blocks in respect of which a declaration under Section 34 is in force;

**“low water line”** means—

- (a) the low water line on a coast of Papua New Guinea at mean low water springs; or
- (b) any line declared by the Minister to be a low water line under Section 4;

**“major modification”** means, in relation to a petroleum processing facility—

- (a) installation of new processing units or debottlenecking of existing processing units which results in an increase of the rated capacity of the petroleum processing facility to more than one hundred and twenty five percent of its original design capacity; or
- (b) the installation of new facilities or modification of existing facilities costing in excess of 30% of the replacement cost of the petroleum processing facility; or
- (c) any other modification to the petroleum processing facility involving a fundamental change to the process or the petroleum products produced by the petroleum processing facility;

**“month”** means the period from and including a day in one calendar month to and excluding the corresponding day in the next calendar month and including the last day in the next calendar month if there is no corresponding day;

**“MRDC”** means Mineral Resources Development Company Pty Limited;

“**natural gas**” means fluid obtained from a well which is a gas at standard temperature and pressure and which consists primarily of hydrocarbons;

“**NGC**” means a company called or to be called National Gas Corporation Limited to be incorporated in accordance with Section 179;

“**offshore area**” means the area that comprises—

- (a) the seabed underlying the waters (if any) between the low water line and the baseline; and
- (b) the seabed underlying the territorial sea; and
- (c) the seabed adjacent to the coast of Papua New Guinea that underlies the offshore seas to a depth not exceeding 200 m or, beyond that limit, to a depth where the superjacent waters admit of the exploitation of the natural resources in the subsurface or on the seabed of that area;

<sup>13</sup>“**operator**” means, in relation to a license –

- (a) where there is only one registered holder of that license –that registered holder; and
- (b) in all other cases –the person, who shall be a licensee, for the time being designated by the operating agreement, in respect of that license as the operator of operations conducted in relation to that licence;

<sup>14</sup>“**operating agreement**” means, in respect of a license, the agreement executed between the holders of that license and provided to the Director pursuant to Section 123A in relation to that licence.

“**option**” has the meaning given to it in the option agreement;

“**option agreement**” has the meaning given to it in the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996*;

“**Orogen option project**” means a petroleum project which is also a Project as defined in the option agreement;

“**participating interest**” means, in relation to a petroleum project an undivided beneficial interest in all of the project assets of that petroleum project;

“**petroleum**” means—

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid, or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid, or solid state; or

<sup>13</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.

<sup>14</sup> Section 3 Subsection (1) amended by No. 57 of 2006, s. 2.

- (c) any naturally occurring mixture of one or more hydrocarbons, (whether in a gaseous, liquid, or solid state) and any other substance,

and includes any processed petroleum, and any petroleum as defined by Paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale, or any substance that may be extracted from coal, shale, or other rock;

**“petroleum development licence”** means a licence issued under Division III.7;

**“petroleum development licensee”** means the registered holder of a petroleum development licence;

**“petroleum pool”** means a naturally occurring discrete accumulation of petroleum;

**“petroleum processing”** means refining, separating, stabilising, liquefying, storing, reclaiming, treating, fractionation, cracking, polymerisation, reforming or re-refining of petroleum, or the conversion of petroleum to other petroleum derivatives, and all related operations; and “processed”, in relation to petroleum or petroleum products, has the corresponding meaning;

**“petroleum processing facility”** means a facility, whether onshore or offshore, for petroleum processing, and includes tanks for bulk storage of petroleum or petroleum products and in-plant piping;

**“petroleum processing facility licence”** means a licence granted under Division III.10;

**“petroleum processing facility licensee”** means the registered holder of a petroleum processing facility licence;

**“petroleum product”** means a distillate of petroleum or a reformat or derivative of petroleum;

**“petroleum project”** means a project in Papua New Guinea for the production of petroleum, and includes, if they are part of the same project or developed in conjunction with the petroleum production development, the construction and operation pursuant to a licence of facilities for the recovery, processing or transportation of petroleum, and a project which is the subject of a licence and over which the Company has the right to exercise an option under the option agreement;

**“petroleum prospecting licence”** means a licence issued under Division III.2;

**“petroleum prospecting licensee”** means the registered holder of a petroleum prospecting licence;

**“petroleum retention licence”** means a licence issued under Division III.4;

**“petroleum retention licensee”** means the registered holder of a petroleum retention licence;

**“pipeline”** means pipes and other interconnected facilities operated as an integrated system (including pumping stations, metering stations, valve stations, storage tanks and pig launching and receiving stations) for transporting petroleum or petroleum products from receipt points to delivery points either for petroleum processing within the country or for further processing or export, but does not include pipes and facilities for—

- (a) returning petroleum to a reservoir for pressure maintenance or storage or conservation; or
- (b) transporting petroleum that is to be flared or vented, or recovered for test purposes under a tenement (including drill stem or extended production tests) and transported to facilities for testing or measurement or disposal; or
- (c) gathering petroleum for transportation to petroleum processing facilities within a licence area where all such pipes and transportation facilities are within a licence area; or
- (d) transporting petroleum or petroleum products between receipt points and delivery points in a petroleum processing facility;

**“pipeline licence”** means a licence to construct and operate a pipeline issued under Division III.9;

**“pipeline licensee”** means the registered holder of a pipeline licence;

**“private land”** means land other than Government land as defined in Section 2 of the *Mining Act 1992*;

**“processed petroleum”** means stabilised crude oil, condensate, processed natural gas that conforms to a quality specification prescribed in a sales contract or elsewhere, liquefied petroleum gas, or liquefied natural gas, or any other petroleum which has been processed but which is not a petroleum product;

<sup>15</sup>**“project area landowners”** means, in relation to a petroleum project, the persons who are customary land owners or who have registered title to—

- (a) any part of the licence area of a petroleum development licence the operations under which are part of that petroleum project; or
- (b) any land within the buffer zone of that petroleum project;

**“project assets”** means, in relation to a petroleum project—

- (a) the licence or licences pursuant to which the petroleum project or any part of it is conducted; and

<sup>15</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.

- (b) the property, real or personal, present or future, owned or acquired or held for use by or on behalf of the licensee or licensees or other persons affiliated with the licensee or licensees who are carrying out the petroleum project, which is held for the purposes of the petroleum project or any part of it, including all property in dedicated project facilities of the petroleum project; and
- (c) the right to receive in kind and to dispose of all petroleum recovered in the course of the petroleum project,

in each case to the extent that such petroleum project is an entire or more than one entire “petroleum projects” or “designated gas projects” as defined in the *Income Tax Act 1959*;

**“project pipeline”** means a pipeline which is not a strategic pipeline;

**“pumping station”** means equipment for pumping petroleum or petroleum products or water and includes any structure associated with that equipment;

**“Register”** means a Register kept under Division III.11;

**“registered holder”**, in relation to a licence, means the person whose name is for the time being shown in the Register as being the holder of the licence;

**“royalty benefit”** means, in relation to a petroleum project, a sum of money each month equal to the amount of royalty payable in the previous month pursuant to Section 159 by a licensee in respect of that petroleum project, less any tax or withholding payable to the State in respect of such royalty upon payment to third persons;

**“royalty period”**, in relation to a tenement means—

- (a) the period commencing on the date on which the tenement comes into effect to the end of that month; and
- (b) each month afterwards;

**“State equity entitlement”** means the entitlement of the State, pursuant to Section 165, to acquire, directly or through a nominee, a participating interest in a petroleum project;

**“storage”** means the accumulation of petroleum or petroleum products pending transportation to a petroleum processing facility or loading for transportation or sale;

**“strategic petroleum processing facility”** means a petroleum processing facility directly connected to or directly integrated with a strategic pipeline, either upstream or downstream, but does not include a petroleum processing facility which is exempted under Section 89(7);

**“strategic pipeline”** means a pipeline referred to in Section 75(1);

**“tank station”** means a tank or system of tanks for holding or storing petroleum, and includes any structure associated with that tank or system of tanks;

**“temporary operations”** means any of the following operations:–

- (a) geological, geochemical and geophysical surveying;
- (b) taking samples by hand or hand held methods;
- (c) aerial and land surveying;
- (d) transportation of crews and equipment by haul roads, navigable waterways or aircraft;
- (e) any activity prescribed by regulation as a preliminary survey,

and any lawful act incidental to any activity to which Paragraphs (a) to (e) relate to the extent that it does not involve any activity that results in surveys of greater than minimum scale and in no circumstances shall include activities involving–

- (f) exploring for petroleum; or
- (g) the cutting, destroying, removing or injury of any vegetation on greater than a minimum scale; or
- (h) the use of explosives, other than for geophysical survey; or
  - (i) damage to improvements, stock or chattels on any land; or
- (j) any breach of the provisions of this or any other Act, including provisions relating to protected native plants, water, noise and historic sites; or
- (k) the use of more persons for any particular activity than is reasonably necessary; or
- (l) any survey prescribed as a prohibited survey; or
- (m) entry on land prescribed as prohibited land;

**“tenement”** means–

- (a) a petroleum prospecting licence issued under Section 23; or
- (b) a petroleum retention licence issued under Section 40; or
- (c) a petroleum development licence issued under Section 57,

or any of them, as the context requires, and includes any extension of those licences;

**“tenement holder”** means the registered holder of a tenement;

**“this Act”** includes the regulations;

**“transportation”** means the act of delivering petroleum or petroleum products, whether by barge, pipeline, road tanker, ship, drums or other

container or otherwise, from a receipt point to a destination point including back hauls, displacement, exchange and in-transit storage;

“**valve station**” means equipment for regulating the flow of petroleum, and includes any structure associated with that equipment;

“**vessel**” means a vessel used in navigation, other than air navigation, and includes a barge, lighter or other floating vessel;

<sup>16</sup>“**Warden**” means a Warden appointed under Section 119(1)(b);

“**water line**” means a pipe or system of pipes for conveying water to be used in connection with prospecting for, or the recovery of, petroleum;

“**well**” means a hole in land or the subsoil of land, made by drilling, boring or any other means—

(a) in connection with exploration for petroleum; or

(b) in operations for the recovery of petroleum,

but does not include a seismic shot hole.

(2) In this Act, a reference—

(a) to the term of a licence, is a reference to the period during which the licence remains in force and includes the period of any extension of such licence; and

(b) to the date of expiration of a licence, is a reference to the day on which the licence ceases to have effect.

(3) In this Act, a reference to a year of the term of a licence is a reference to a period of one year commencing on the date from and including which the licence has effect or on any anniversary of that date.

(4) In this Act, a reference to a licence is a reference to the licence as varied from time to time under this Act.

(5) For the purposes of this Act, “**Papua New Guinea**” includes the offshore area.

#### 4. **DECLARATION OF LOW WATER LINE.**

In any case where he considers there is doubt as to the location of a low water line, the Minister may, by notice in the National Gazette, declare the location of the line by whatever method appears to him to be appropriate, and the line so declared shall be the low water line.

#### 5. **APPLICATION.**

This Act applies—

(a) to all natural persons, whether resident in the country or not; and

<sup>16</sup> Section 3 Subsection (1) amended by No. 58 of 2006, s. 1.



- (b) to all corporations, whether incorporated or carrying on business in the country or not.

## **6. PETROLEUM THE PROPERTY OF THE STATE.**

(1) Subject to this Act, but notwithstanding anything contained in any other law or in any grant, instrument of title or other document, all petroleum and helium at or below the surface of any land is, and shall be deemed at all times to have been, the property of the State.

(2) Nothing in Subsection (1) shall be construed as an additional acquisition of property in relation to Section 53 of the *Constitution* beyond that which prevailed under the former Act and all previous Acts.

(3) Petroleum and helium shall not be removed from the land from which it has been obtained, or disposed of in any manner, except—

- (a) subject to Subsection (4), by a tenement holder, for the purpose of sampling or analysis; or
- (b) by a tenement holder in accordance with the terms of his tenement or a written agreement with the State; or
- (c) as otherwise permitted by this Act.

(4) A licensee shall not take or send out of the country any samples of petroleum or helium without the written consent of the Director.

## **7. THE DIRECTOR MAY CARRY ON OPERATIONS.**

(1) The Director may, on behalf of the State, carry on prospecting for, and the recovery and conveyance of, petroleum and helium, and activities incidental to those operations.

(2) Where the Director carries on any operations under this section, he has the same rights, benefits, and privileges as a licensee.

(3) Where the Director carries on any operations under this section, he shall to the extent that they can be practicably applied to him, be subject to the same duties and obligations under this Act as apply to a licensee.

## **8. EXPLORATION FOR AND RECOVERY OF PETROLEUM.**

A person who—

- (a) explores for petroleum otherwise than under and in accordance with a tenement or an instrument of consent issued under this Act; or
- (b) carries on operations for the recovery of petroleum otherwise than under and in accordance with a tenement,

is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

s. 8.

*Oil and Gas 1998*

Default penalty: A fine not exceeding K50,000.00.

## PART II. – APPLICATION OF LAWS AND ADMINISTRATION.

### 9. LAWS OF PAPUA NEW GUINEA TO APPLY.

(1) Subject to this Act, the provisions of all laws for the time being in force in Papua New Guinea, and the provisions of any instrument having effect under any of those laws, apply in the offshore area.

(2) The provisions referred to in Subsection (1) apply to and in relation to—

- (a) all acts, omissions, matters, circumstances and things touching, concerning, arising out of, or connected with the exploration for petroleum of the sea, seabed or subsoil of the offshore area; and
- (b) the exploitation of the natural resources, being petroleum, of the sea, seabed or subsoil of the offshore area.

(3) Without limiting the generality of Subsection (2), the provisions that apply in accordance with this section in the offshore area apply—

(a) to and in relation to—

- (i) an act or omission that takes place in, on, above, below, or in the vicinity of the sea, seabed or subsoil of that area; and
- (ii) a matter, circumstance, or thing that exists or arises with respect to or in connection with a vessel, aircraft, structure or installation or equipment or other property that is in that area for any reason touching, concerning, arising out of or connected with—
  - (A) the exploration for petroleum; or
  - (B) the exploitation of the natural resources, being petroleum, of the sea, seabed or subsoil of that area; and

(b) to and in relation to a person who—

- (i) is in that area; or
- (ii) is in, on, above, below, or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property that is in that area,

for any reason of the kind referred to in Paragraph (a); and

(c) to and in relation to a person in respect of his carrying on any operation or doing any work in that area for any reason of the kind referred to in Paragraph (a).

(4) The regulations may provide that such of the provisions that apply in accordance with this section in the offshore area that are specified in the regulations do not apply, or apply with such modifications as are specified in the regulations.

(5) For the purposes of Subsection (4), “**modifications**” includes the omission or addition of a provision or the substitution of a provision for another provision.

**10. JURISDICTION OF COURTS.**

(1) The National Court of Papua New Guinea is vested with jurisdiction in all matters arising under this Act, including all matters arising under the provisions applied by Section 9, and shall have jurisdiction to hear and determine all actions, suits, claims, demands, disputes, prosecutions and questions which may arise under this Act or those provisions.

(2) Subject to this Act, the laws with respect to the arrest and custody of offenders or persons charged with offences, and the procedure for—

- (a) their summary conviction; and
- (b) their examination and committal for trial on indictment; and
- (c) their trial and conviction on indictment; and
- (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected with it,

and for holding accused persons to bail apply, so far as they are applicable, to a person who is charged with an offence against any of the provisions applied by Section 9.

**11. APPOINTMENT OF DIRECTOR.**

The Minister may, by notice in the National Gazette, appoint a person to be the Director for the purposes of this Act.

**12. DELEGATION.**

The Director may, by notice in the National Gazette, delegate to an officer all or any of his powers and functions under this Act (except this power of delegation).

**13. PETROLEUM ADVISORY BOARD.**

(1) There shall be a Petroleum Advisory Board.

(2)<sup>17 18</sup>Subject to Subsection (3), the Board shall consist of —

- (a) the Director, who shall be the Chairman, or his delegate; and
- (b) the Secretary of the Department responsible for national planning matters or his delegate appointment in writing and furnished to the Director; and
- (c) the Secretary of the Department responsible for treasury matters or his delegate appointed in writing and furnished to the Director; and
- (d) the Secretary of the Department responsible for provincial and Local government matters or his delegate appointed in writing and furnished to the Director; and

<sup>17</sup> Section 13 Subsection (2) substituted by No. 58 of 2006, s. 2.

<sup>18</sup> Section 13 Subsection (2) substituted by No. 58 of 2006, s. 2.

- (e) the Director of Petroleum Division of the Department, who shall be the Deputy Chairman, or his delegate appointed in writing; and
- (f) the Chief Inspector appointed pursuant to Section 151 or his delegate appointed in writing and furnished to the Director; and
- (g) the Director of the Investment Promotion Authority or his delegate appointed in writing and furnished to the Director.

(3) If a member of the Board, other than the Chairman or Deputy Chairman is, for any reason, unable to perform his duties as a member, that member may, in writing, appoint a person to act as his substitute for the period of that member's inability, and a person so appointed shall, while so appointed, be a member of the Board.

(3A)<sup>19</sup> <sup>20</sup>In the absence of the Chairman, the Deputy Chairman appointed pursuant to Section 12(2)(e) shall act as Chairman and exercise all powers and responsibilities of the Chairman.

(4)<sup>21</sup> <sup>22</sup>For the purposes of this section, a delegate appointed under this section shall be a senior officer at the Assistant Secretary level or above.

#### 14. MEETINGS OF THE BOARD.

(1) The Board shall meet as often as is necessary to carry out its functions and at such times and places as the Chairman, or in his absence the Deputy Chairman, directs.

(2) At a meeting of the Board—

- (a)<sup>23</sup> the Chairman or in his absence the Deputy Chairman, and three other persons specified in Section 13(2) are a quorum.
- (b) all matters shall be decided by a majority of votes and the Chairman, or in his absence the Deputy Chairman, has a deliberative, and, in the event of an equality of votes, also a casting vote.

#### 15. POWERS AND DUTIES OF BOARD.

(1) The Minister may refer to the Board for advice any question or matter relating to the administration of this Act.

(2) The Board shall inquire into and advise the Minister on any question or matter referred to it under Subsection (1) or as required by this Act.

(3) The referral of a question or matter under Subsection (1) shall be deemed to be a Commission issued under the *Commissions of Inquiry Act 1951*, and the provisions of that Act, including the provisions relating to penalties, apply to and in

<sup>19</sup> Section 13 Subsection (3A) inserted by No. 57 of 2006, s. 3.

<sup>20</sup> Section 13 Subsection (3A) inserted by No. 57 of 2006, s. 3.

<sup>21</sup> Section 13 Subsection (4) inserted by No. 57 of 2006, s. 3.

<sup>22</sup> Section 13 Subsection (4) inserted by No. 57 of 2006, s. 3.

<sup>23</sup> Section 14 Subsection (2) amended by No. 58 of 2006, s. 3.

respect of an inquiry under this section as if the Minister were the Head of State, acting on advice, and the members of the Board were Commissioners within the meaning of that Act.

**16. NO PERSONAL LIABILITY FOR BOARD, MINISTER OR DIRECTOR.**

A member of the Board, the Minister, the Director, or a servant or agent of the State acting under the direction of one of them or an authority delegated to him under this Act, or an inspector, shall not be personally liable to an action, suit or proceeding or claim for damages for or in respect of an act or matter done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.

**PART III. – PETROLEUM EXPLORATION AND DEVELOPMENT.*****Division 1.******Preliminary.*****17. GRATICULATION OF EARTH'S SURFACE AND CONSTITUTION OF BLOCKS.**

(1) For the purposes of this Act, the surface of the Earth shall be deemed to be divided into sections–

- (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five minutes, or a multiple of five minutes, of longitude; and
- (b) by the equator and by parallels of latitude that are at a distance from the equator of five minutes, or a multiple of five minutes, of latitude,

each of which is bounded–

- (c) by portions of two of those meridians that are at a distance from each other of five minutes of longitude; and
- (d) by portions of two of those parallels of latitude that are at a distance from each other of five minutes of latitude.

(2) Subject to Subsection (3), all or so much of a graticular section that is contained in the area of the country and the offshore area constitutes a block.

(3) Where the area in respect of which a tenement is in force includes one or more portions of a block constituted as provided by Subsection (1)–

- (a) the area of that portion or those portions constitutes a block; and
- (b) the area of the remaining portion or portions of the first-mentioned block (but not including any part of that area in respect of which a tenement is in force) constitutes a block.

(4) Where a tenement ceases to be in force in respect of an area referred to in Subsection (3)(a), the Minister may, by instrument determine that the area shall be amalgamated with another block or blocks, being a block or blocks–

- (a) constituted as provided by this section; and
- (b) forming part of the graticular section of which the area forms part; and
- (c) that is or are either–
  - (i) a block or blocks in respect of which a tenement is in force; or
  - (ii) a block or blocks constituted under Subsection (3)(b).

(5) Where a determination is made under Subsection (4)–

- (a) the area and blocks both the subject of the determination, cease to constitute separate blocks and their areas together constitute a single block; and

(b) in respect of the area and a block in respect of which there is a tenement in force—the block constituted by the determination is a block for the remainder of the term of that tenement.

(6) In this Act—

(a) a reference to a block that is constituted by a graticular section includes a reference to a block that is constituted by the area of a part of a graticular section; and

(b) a reference to a graticular section that constitutes a block includes a reference to a graticular section part only of which constitutes a block.

## 18. PROSPECTING LICENCES UNDER TORRES STRAIT TREATY.

(1) This Part, other than this section and Divisions 3, 10, 13 and 14 does not apply to licences issued under this section.

(2) In Divisions 3, 10, 13 and 14 “**licence**” and “**tenement**” shall, where applicable, include a licence granted under this section.

(3) In this section “**the Treaty**” means the Treaty between the Independent State of Papua New Guinea and Australia concerning Sovereignty and Maritime Boundaries in the area between the two countries, including the area known as Torres Strait and related matters signed at Sydney 18 December 1978.

(4) Where, under Article 5 of the Treaty, a person entitled to apply for a petroleum prospecting licence, so applies, the Minister shall grant to him a petroleum prospecting licence.

(5) A licence granted under Subsection (4) shall be granted on terms that are not less favourable than a tenement granted under Division 2.

## 19. ISSUE OF LICENCES.

(1) Subject to this Act, a tenement may be issued to a person in respect of any block except a block that is—

(a) comprised in a tenement; or

(b) reserved by declaration under Section 20.

(2) A licence may be held by—

(a) a natural person; or

(b) a body corporate that is incorporated in Papua New Guinea or registered as an overseas company under the *Companies Act 1997*; or

(c) an unincorporated combination of—

(i) natural persons; or

(ii) corporations to which Paragraph (b) applies; or



- (iii) a natural person or natural persons and a corporation or corporations to which Paragraph (b) applies.

(3) A notification of the issue of a licence shall be published in the National Gazette.

## **20. RESERVATION OF BLOCKS.**

(1) The Minister may, by notice in the National Gazette, declare that a block or blocks specified in the notice (not being a block or blocks in respect of which a tenement is in force) shall not be the subject of a tenement, and may in the same manner revoke or vary such notice.

(2) While a declaration under Subsection (1) remains in force in respect of a block or blocks, a tenement shall not be granted in respect of that block or those blocks.

### *Division 2.*

#### *Petroleum Prospecting Licences.*

## **21. APPLICATIONS FOR PETROLEUM PROSPECTING LICENCE.**

(1) A person may make an application to the Director for the grant of a petroleum prospecting licence in respect of any block or blocks.

(2) The Minister may, by notice in the National Gazette—

- (a) invite applications for the grant of a petroleum prospecting licence in respect of the block or blocks specified in the notice; and
- (b) specify the period during which an application may be made.

## **22. FORM OF APPLICATION FOR PETROLEUM PROSPECTING LICENCE.**

(1) An application made under, or as a result of an invitation under, Section 21—

- (a) shall be in an approved form; and
- (b) shall be made in an approved manner; and
- (c) subject to Subsection (2)—shall be in respect of not more than 60 blocks; and
- (d) shall be accompanied by particulars of—
  - (i) the detailed proposals of the applicant for work and expenditure in respect of the block or blocks specified in the application during the first two years of the term of the licence and an outline of proposals for work and expenditure during the remaining four years of the licence; and

- (ii) the technical qualifications of the applicant and of his employees; and
- (iii) the technical advice available to the applicant; and
- (iv) the financial resources available to the applicant; and
- (e) may set out any other matters that the applicant wishes the Minister to consider; and
- (f) shall be accompanied by the fee prescribed by Section 157.

(2) The Minister may consider an application in respect of more than 60 but not more than 200 blocks where he is satisfied that special circumstances exist for his doing so.

(3) The blocks specified in the application referred to in Subsections (1) and (2) shall be constituted by graticular sections that—

- (a) form a single area; and
- (b) are such that each graticular section in that area has a side in common with at least one other graticular section in that area.

(4) The Director may, at any time, by instrument served on the applicant, require him to furnish, within the time specified in the instrument, such further written information in connection with his application as the Director considers necessary.

(5) Where an application is received under, or as a result of an invitation under, Section 21—

- (a) notice of the application shall be published by the Director in the National Gazette; and
- (b) any person who claims to be affected by the application may file notice of his objection to that application with the Director within one month after the date of publication of the notice of application and all objections shall be considered by the Board before the Board reports on the application.

(6) As soon as practicable after the granting of a licence in respect of any block or blocks specified in an application made under, or as a result of an invitation under, Section 21, the Minister shall cause to be published in the National Gazette, particulars of any licence so granted.

### **23. GRANT OR REFUSAL OF PETROLEUM PROSPECTING LICENCE.**

(1) Where an application has been made under, or as a result of an invitation under, Section 21, the Minister may, after consideration of a report from the Board and after having regard to physical planning considerations—

- (a) by instrument served on the applicant, inform the applicant—
  - (i) that he is prepared to grant to the applicant a petroleum prospecting licence in respect of any or all of the blocks specified

in the instrument, being blocks to which the application relates; and

- (ii) that the applicant will be required to lodge a security for compliance with the conditions to which the licence, if granted, will be subject, and with the provisions of this Act, and to pay the first annual fee; or

(b) refuse to grant a licence to the applicant.

(2) An instrument under Subsection (1)(a) shall contain—

(a) the conditions subject to which the licence is to be granted; and

(b) a statement to the effect that the application will lapse if the applicant does not make a request under Subsection (3) in respect of the grant of the licence and lodge with the Director the security specified in the instrument and the first annual fee.

(3) An applicant who has been served with an instrument under Subsection (1) may, within a period of one month after the date of service of the instrument on him, or within such further period, not exceeding three months, as the Minister may allow—

(a) by instrument served on the Minister request the Minister to grant him the licence; and

(b) lodge with the Director the security referred to in Subsection (1)(a) and the first annual fee referred to in that subsection.

(4) Where an applicant has complied with the requirements of Subsection (3), the Minister shall grant to him a petroleum prospecting licence in respect of the block or blocks specified in the instrument, subject to the conditions specified in the instrument or such other conditions as are agreed on by the Minister and the applicant, but in any other case the application lapses.

## **24. VARIATION OF PETROLEUM PROSPECTING LICENCE.**

(1) The holder of a petroleum prospecting licence may, at any time, make an application to the Minister for a variation of the petroleum prospecting licence.

(2) An application under Subsection (1) shall—

(a) specify the reasons for proposed variation; and

(b) be made in an approved form and contain the information specified in Section 22.

(3) The Director may require the applicant to furnish such further information in connection with his application as the Director considers necessary.

(4) Following receipt of an application under Subsection (1) the Minister may, after considering a report of the Board and any matters submitted to him under this section—

- (a) amend the terms of the petroleum prospecting licence to provide as stipulated in the application or as otherwise agreed with the petroleum prospecting licensee; or
- (b) refuse the application, in which case the existing petroleum prospecting licence shall remain in full force and effect.

**25. RIGHTS CONFERRED BY PETROLEUM PROSPECTING LICENCE.**

A petroleum prospecting licence, while it remains in force, confers on the licensee, subject to this Act, and to the conditions specified in the licence, the exclusive right to explore for petroleum, and to carry out appraisal of a petroleum discovery, and to carry on such operations and execute such works as are necessary for those purposes, in the licence area, including the construction and operation of water lines, and, if authorized by the Director, the completion of wells, the conduct of drill stem or extended production tests for appraisal of a petroleum pool (including the construction in accordance with the authorization and the operation of pipes and facilities to gather and transport petroleum to a point of testing or treatment or disposal), and the recovery and sale or other disposal of all petroleum so produced.

**26. TERM OF PETROLEUM PROSPECTING LICENCE.**

Subject to this Act and to any condition in the licence, a petroleum prospecting licence remains in force—

- (a) for a period of six years commencing on the day the licence takes effect; and
- (b) where the licence is extended under Section 29—for a further period of five years; and
- (c) where the licence is extended under Section 30—for the further period specified by the Minister on the grant of the extension.

**27. APPLICATION FOR EXTENSION OF PETROLEUM PROSPECTING LICENCE.**

(1) Subject to Section 28, the holder of a petroleum prospecting licence may make an application to the Director for the extension of the petroleum prospecting licence in respect of any block or blocks in the licence area.

(2) An application under this section may be made once only in respect of any petroleum prospecting licence.

(3) An application under this section—

- (a) shall be in an approved form; and
- (b) shall be made in an approved manner; and
- (c) shall be made not less than three months before the day on which the licence is due to expire; and

- (d) shall be accompanied by particulars of—
  - (i) the work carried out in, and the amounts expended in respect of, the licence area during the term of the licence up to and including the date of the application; and
  - (ii) the proposals of the applicant for work and expenditure in respect of the blocks specified in the application; and
- (e) may set out any other matters that the applicant requires the Minister to consider; and
- (f) shall be accompanied by the fee prescribed by Section 157.

(4) The Minister may, after considering a report from the Board, accept an application for the extension of a petroleum prospecting licence less than three months before, but not in any case after, the date of expiry of the licence.

## **28. APPLICATION FOR EXTENSION TO BE IN RESPECT OF REDUCED AREA.**

(1) The number of blocks in respect of which an application for the extension of a petroleum prospecting licence may be made shall not exceed the number that is the sum of—

- (a) the number of blocks (if any) the subject of the petroleum prospecting licence that, at the date of expiration of the petroleum prospecting licence, were a location not subject to a petroleum retention licence or an application for a petroleum retention licence; and
- (b) the number of blocks (if any) the subject of the petroleum prospecting licence that, at the date of expiration of the petroleum prospecting licence, are contained within a petroleum retention licence or the subject of an application for a petroleum retention licence; and
- (c) half the number of blocks in respect of which the petroleum prospecting licence was issued.

(2) The blocks specified in an application for the extension of a petroleum prospecting licence shall be blocks that relate to graticular sections that—

- (a) constitute a single area or not more than three discrete areas; and
- (b) are such that each graticular section in each area has a side in common with at least one other graticular section in that area.

## **29. GRANT OR REFUSAL OF EXTENSION OF PETROLEUM PROSPECTING LICENCE.**

(1) Where a licensee has made an application under Section 27 for an extension of a petroleum prospecting licence and has furnished any additional information in connection with the application required by the Director, the Minister—

- (a) shall, if the licensee has complied with the conditions to which the licence is subject and the provisions of this Act; or
- (b) may, if the licensee has not complied with the conditions to which the licence is subject or the provisions of this Act and the Minister after considering a report from the Board is satisfied that although the licensee has not so complied, special circumstances exist that justify the granting of the extension of the licence,

inform the licensee, by instrument served on the licensee—

- (c) that he is prepared to grant to the licensee the extension of the licence; and
- (d) that the licensee will be required to lodge a security, or extend a security already lodged, for compliance with—
  - (i) the conditions to which the licence, if the extension is granted, will from time to time be subject; and
  - (ii) with the provisions of this Act; and
- (e) of the amount of the next annual fee.

(2) If the licensee has not complied with the conditions to which the licence is subject or with the provisions of this Act, and if the Minister is not satisfied that special circumstances exist that justify the granting of the extension of the licence, the Minister shall, subject to Subsection (3), by instrument served on the licensee, refuse to grant the extension of the licence.

(3) The Minister shall not refuse to grant the extension of a petroleum prospecting licence under this section unless—

- (a) he has, by instrument served on the licensee, given not less than one month's notice of his intention to refuse to grant the extension of the licence; and
- (b) he has caused a copy of the instrument to be served on such other persons (if any) as he thinks fit; and
- (c) he has, in the instrument—
  - (i) given particulars of the reasons for the intention; and
  - (ii) specified a date on or before which written submissions may be served on the Minister in connection with the proposed refusal; and
- (d) after—
  - (i) taking into account any matters submitted to him under Paragraph (c)(ii) on or before the specified date; and
  - (ii) considering a report from the Board on those matters,

he is not satisfied that special conditions exist that justify the granting of the extension of the licence.

(4) An instrument under Subsection (1) shall—

- (a) specify the conditions to which the licence, on the grant of the extension, is to be subject; and
- (b) contain a statement to the effect that the application will lapse if the applicant does not—
  - (i) make a request under Subsection (5) in respect of the grant of the extension of the licence; and
  - (ii) lodge with the Director the security specified in the instrument and the annual fee.

(5) A licensee who has been served with an instrument under Subsection (1) may, within a period of one month after the date of service of the instrument on him—

- (a) by instrument served on the Minister request the Minister to grant to him the extension of the licence; and
- (b) lodge with the Director the security specified in the instrument and pay the annual fee.

(6) Where a licensee who has been served with an instrument under Subsection (1) has, within the period specified in Subsection (5)—

- (a) made a request under Subsection (5); and
- (b) lodged with the Director the security specified in the instrument referred to in Subsection (1) and paid the next annual fee,

the Minister shall grant to the licensee the extension of the licence.

(7) Where a licensee who has been served with an instrument under Subsection (1) has not, within the period specified in Subsection (5)—

- (a) made a request under Subsection (5); or
- (b) lodged with the Director the security specified in the instrument and paid the annual fee,

the application lapses at the end of that period.

(8) Where—

- (a) an application for the extension of a licence has been made; and
- (b) the licence expires—
  - (i) before the Minister grants, or refuses to grant, the extension of the licence; or
  - (ii) before the application lapses under Subsection (7),

the licence shall be deemed to continue in force until the Minister grants or refuses to grant the extension of the licence, or the application lapses under Subsection (7), whichever first occurs.

(9) As soon as practicable after the grant or refusal of an extension of a licence under this section, the Minister shall cause to be published in the National Gazette particulars of any extension so granted or, in the case of a refusal, a statement to that effect.

(10) Where a petroleum prospecting licence is not extended on an application under this section, 90% of the fee referred to in Section 27(3)(f) shall be refunded to the applicant.

### **30. EXTENSION OF PETROLEUM PROSPECTING LICENCE IN RESPECT OF LOCATION.**

(1) Where—

- (a) petroleum is discovered in a petroleum prospecting licence area within the period of two years before the date of expiration of a petroleum prospecting licence that has been extended under Section 29; and
- (b) the Minister has made a declaration of a location under Section 34, or the licensee has nominated a block or blocks under that section for the purpose of a declaration of a location,

the Minister may grant a further extension of the licence in respect of the block or blocks to which Paragraph (b) applies.

(2) A further extension granted under Subsection (1)—

- (a) shall be for a period not exceeding three years; and
- (b) shall be subject to any conditions that the Minister, after considering a report of the Board, thinks fit and specifies in the licence.

(3) Where, before the expiration of a petroleum prospecting licence that includes blocks that constitute a location, the licensee—

- (a) makes written application to the Minister for an extension or a further extension of the licence in respect of some or all of those blocks; and
- (b) satisfies the Minister that—
  - (iii) the blocks contain all or part of a petroleum pool or are otherwise properly included in a location; and
  - (iv) the construction, establishment and operation of facilities for the recovery of petroleum is not economically feasible,

the Minister may grant an extension or a further extension of the petroleum prospecting licence in respect of those blocks.

(4) An extension under Subsection (3) shall be for a period not exceeding one year.



### 31. CONDITIONS OF GRANT OF PETROLEUM PROSPECTING LICENCE.

(1) A petroleum prospecting licence may be granted subject to such conditions as the Minister, after considering the advice of the Board, thinks fit and specifies in the licence.

(2) In addition to conditions included in a petroleum prospecting licence under Subsection (1) or on an extension of that licence under Section 29, the licence is subject to the conditions—

- (a) that acceptable proposals for work and expenditure in the third, fourth, fifth, and sixth years, if applicable, of the licence or that extension shall be submitted to the Minister for approval not later than two months before the expiration of the second and fourth years of the licence or that extension, as the case requires; and
- (b) that in, or in relation to, the licence area, the licensee will, during the first two years of the licence, carry out the work and expend the amounts specified in the licence conditions for those years; and
- (c) that at the end of the period of six months after the date of grant of the licence and at the end of every subsequent period of six months of the term of the licence, the licensee shall forward to the Director, in duplicate, a report showing the nature and results of prospecting operations conducted during the immediately preceding period of six months, with a plan of the area prospected, showing all available information together with a programme of his operations for the next succeeding six months; and
- (d) that, at the end of the period of six months after the date of grant, and at the end of every subsequent period of six months, the licensee shall forward to the Director a statement, in duplicate, showing the amounts expended in relation to the licence during the immediately preceding period of six months; and
- (e) that the licensee will provide to the Director reports on the activities of the licensee in respect of the licence containing such information and at such frequency as are specified in and will otherwise comply with any direction given under Section 148; and
- (f) that the licensee will carry out social mapping and landowner identification studies in accordance with Section 47; and
- (g) that, in addition to complying with Paragraph (f), at the end of each year of the licence, the licensee shall present to the Director a report on prospecting operations in the previous year and proposed operations for the following year.

(3) The conditions to which a licence or an extension of that licence under Section 29 is subject, including the conditions specified in Subsection (2), may be varied in the third, fourth, fifth and sixth years, if applicable, insofar as they relate

to the work programme and in accordance with proposals submitted under Subsection (2)(a).

***Division 3.***

***Discovery of Petroleum in Licence Area.***

**32. DISCOVERY OF PETROLEUM TO BE NOTIFIED.**

(1) Where petroleum is discovered in a licence area, the tenement holder—

- (a) shall immediately inform the Director of the discovery; and
- (b) shall, within a period of three days after the date of the discovery, furnish to the Minister written particulars of the discovery.

(2) Where petroleum is discovered in a licence area, the Director may, from time to time, by instrument served on the tenement holder, direct the tenement holder to furnish to him, within the period specified in the instrument, written particulars of—

- (a) the chemical composition and physical properties of the petroleum; and
- (b) the nature of the subsoil in which the petroleum occurs; and
- (c) any other matters relating to the discovery that are specified by the Director in the instrument.

(3) A person to whom a direction is given under Subsection (2) who fails or refuses to comply with the direction is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

**33. DIRECTIONS BY MINISTER ON DISCOVERY OF PETROLEUM.**

(1) Where petroleum is discovered in a licence area, the Minister may, by instrument served on the tenement holder, direct the tenement holder to do, within the period specified in the instrument, such things as the Minister thinks necessary and specifies in the instrument, including the completion of wells, the conduct of drill stem or extended production tests for appraisal of the petroleum pool to which the discovery relates (including the construction in accordance with the direction and the operation of pipes and facilities to gather and transport petroleum to a point of testing or treatment or disposal), and the recovery and sale or other disposal of all petroleum so produced, to determine—

- (a) the chemical composition and physical properties of the petroleum; and
- (b) the quantity of petroleum in the petroleum pool to which the discovery relates, or if part only of that petroleum pool is within the licence area, in the part of the petroleum pool that is within the licence area.

(2) A person to whom a direction is given under Subsection (1) who fails or refuses to comply with the direction is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

**34. DECLARATION OF LOCATION.**

(1) In this section, “**discovery block**” means a block in which petroleum has been discovered.

(2) Where petroleum has been discovered in a block within a tenement (not being a block that is or is included in a location) the Minister—

- (a) shall, on receipt of a request from the licensee; and
- (b) may in any case,

declare by notice in the National Gazette—

- (c) in a case referred to in Paragraph (a)—the discovery block and not more than eight adjoining blocks within the licence area that are nominated by the licensee; or
- (d) in any other case—the discovery block and such adjoining blocks as the Minister thinks proper,

to be a location for the purposes of this Act.

(3) At the request of the tenement holder or of his own volition the Minister may, by notice in the National Gazette—

- (a) include in a location additional adjoining blocks; or
- (b) revoke the declaration of a location in respect of one or more blocks,

but a location may not at any time include more than nine blocks.

(4) For the purposes of this section, a block adjoins a discovery block, if the graticular section that constitutes or includes the first-mentioned block has a side in common with, or touches—

- (a) the discovery block; or
- (b) any block that has a side in common with, or touches, the discovery block.

**35. INVESTIGATION, ETC., OF LOCATION.**

(1) Where a location has been declared under Section 34, the Minister may, by written notice served on the tenement holder, direct that the tenement holder carry out, within a period specified in the notice of not less than two years, such investigations and studies as the Minister thinks proper to assess the feasibility of the construction, establishment and operation of an industry for the recovery of petroleum from the location.

(2) The investigations and studies referred to in Subsection (1) may include—

- (a) technical and economic feasibility studies relating to the recovery and transport of petroleum from the location and processing of the petroleum; and

- (b) studies of proposed sites for facilities that would be required by the industry referred to in Subsection (1); and
- (c) studies of port or berthing facilities, and roads, pipelines or other transportation facilities; and
- (d) investigations into—
  - (i) suitable water facilities and reticulation systems for industrial and town purposes; and
  - (ii) the location and design of a suitable airstrip and associated landing and terminal facilities, if required; and
  - (iii) the generation and transmission of electricity as required; and
- (e) investigations into the development, if required, of a suitable town for the industry referred to in Subsection (1), including the design of housing facilities and associated civic, cultural and social facilities; and
- (f) investigations of any other works, services or facilities that may be required by that industry in relation to the location; and
- (g) studies of future labour requirements for that industry; and
- (h) physical impact studies into the possible effects of that industry on the environment.

(3) The tenement holder shall furnish to the Minister, within the period specified in the notice under Subsection (1), such reports, analyses and data resulting from the investigations and studies carried out under this section as the Minister, by written notice served on the tenement holder, may require.

### **36. REVOCATION OF DECLARATION OF LOCATION.**

(1) Where, in respect of a block included in a location, the licensee does not within—

- (a) a period of two years following the declaration of the location under Section 34(2); or
- (b) any further period that the Minister allows under Section 53(1),

apply—

- (c) in the case of a location declared in a petroleum prospecting licence, for a petroleum retention licence or petroleum development licence in respect of the blocks included in the location; or
- (d) in the case of a location declared in a petroleum retention licence, for a petroleum development licence in respect of the blocks included in the location or a variation of the petroleum retention licence to cover the specific petroleum pool in respect of which the location was declared; or
- (e) in the case of a location declared in a petroleum development licence, for a variation of the petroleum development licence to provide for the

development of the specific petroleum pool in respect of which the location was declared,

the Minister shall, by notice in the National Gazette, revoke the declaration of the location.

(2) Where all applications made under Section 53(1) for a petroleum development licence or Section 37(1) for a petroleum retention licence in respect of a block that is included in a location have lapsed, the petroleum prospecting licence or petroleum retention licence, as the case may be, is revoked in respect of that block.

(3) Where a petroleum prospecting licence is revoked in respect of a block under Subsection (2), the Minister shall, by notice in the National Gazette, revoke the declaration of the location so far as it includes that block.

#### ***Division 4.***

#### ***Petroleum Retention Licences.***

### **37. APPLICATION FOR PETROLEUM RETENTION LICENCE.**

(1) A licensee whose petroleum prospecting licence is in force in respect of the blocks that constitute a location may, within two years after the date on which the blocks were declared to be a location, or such further period as the Minister allows, make application to the Director for the grant of a petroleum retention licence in respect of such of the blocks as the licensee satisfies the Minister contain a gas field or a part of a gas field or, for the better administration of petroleum activities, should be included in a petroleum retention licence.

(2) A licensee may, during the term of a petroleum prospecting licence, make application to the Director for a petroleum retention licence in respect of any block or blocks within the licence area—

- (a) that he satisfies the Minister contains or contain a gas field or part of a gas field, or, for the better administration of petroleum activities, should be included in a petroleum retention licence; and
- (b) that do not at the time of making the application constitute a location.

(3) A person who is not the holder of a tenement in respect of a block or blocks may make application to the Director for a petroleum retention licence in respect of that block or those blocks where—

- (a) he satisfies the Minister that such block or blocks contains or contain a gas field or part of a gas field; and
- (b) that block is not a block or those blocks are not blocks in respect of which a tenement is in force at the time of the application.

### **38. FORM OF APPLICATION FOR PETROLEUM RETENTION LICENCE.**

(1) An application under Section 37—

- (a) shall be in an approved form; and

- (b) shall be made in an approved manner; and
- (c) shall be accompanied by particulars of—
  - (i) the proposals of the applicant for work and expenditure in respect of the area comprised in the block or blocks specified in the application; and
  - (ii) the commercial viability of the recovery of petroleum from the area comprised in the block or blocks specified in the application at the time of the application, and of the possible future commercial viability of the recovery of petroleum from that area; and
- (d) may set out any other matters that the applicant wishes the Minister to consider; and
- (e) shall be accompanied by the fee prescribed by Section 157.

(2) The Director may, by instrument served on the applicant, require him to furnish, within a period specified in the instrument—

- (a) such further written information in connection with his application as the Director specifies in the instrument; and
- (b) such proposals, in addition to or by way of alteration to any proposals that have already been furnished under Subsection (1) as the Director specifies in the instrument, including proposals relating to any of the matters referred to in Section 35(2).

### **39. NOTIFICATION OF GRANT OF PETROLEUM RETENTION LICENCE.**

(1) Where an application for the grant of a petroleum retention licence has been made—

- (a) under Section 37(1) or (2); and
- (b) the applicant has furnished proposals and any further information required by the Director under Section 38; and
- (c) the Minister, after considering a report from the Board, is satisfied as to the matters set out in Section 37(1) or (2) and with the proposals and other information provided under Section 38 and that recovery of petroleum from the area comprised in the blocks specified in the application—
  - (i) is not at the time of application commercially viable; and
  - (ii) could become commercially viable within the period of time ending at the expiration of a petroleum retention licence if extended for the maximum permitted period,

the Minister shall, by instrument served on the applicant, inform the applicant—

- (d) that—

- (i) he is prepared to approve the proposals wholly or in part, and to grant to the applicant, on the basis of the approved proposals, a petroleum retention licence in respect of the blocks specified in the application; and
  - (ii)<sup>24</sup> the applicant will be required to lodge a security for compliance with the conditions to which the licence, if granted, will be subject, and with the provisions of this Act, and to pay the first annual fee; or
- (e) that he will defer consideration of a decision on the licence application until the applicant furnishes such proposals, in addition to or by way of alteration to the proposals furnished under Section 38 as the Minister specifies in the instrument, including proposals relating to any of the matters referred to in Section 35(2); or
- (e) that he is prepared to approve the proposals and to grant to the applicant a petroleum retention licence in respect of the blocks specified in the application, subject to the applicant—
- (i) making such alterations to the proposals; or
  - (ii) complying with such conditions in relation to the proposals, as the Minister thinks reasonable.

(2) Where an application is made under Section 37(3), the Minister may—

- (a) refuse to grant the application and advise the applicant accordingly; or
- (b) treat the application as an application made under Section 37(1) or (2).

(3) Where, under Subsection (2), the Minister elects to treat an application as an application made under Section 37(1) or (2), that application shall, for the purposes of this section and Section 40, be deemed to be an application so made.

(4) In the case of an instrument to which Subsection (1)(f) applies, the Minister shall give to the applicant details of his reasons for requiring the alterations or imposing the conditions referred to in the instrument.

(5) An instrument under Subsection (1)(d), (e) or (f) shall contain a statement to the effect that the application will lapse if—

- (a) the applicant does not furnish any further proposals that the Minister requires within such period as the Minister specifies in the instrument, being a period of not less than two months nor more than one year; or
- (b) the applicant does not make a request under Section 40(1) in respect of the grant of the licence; or

<sup>24</sup> Section 39 Subsection (1) amended by No. 58 of 2006, s. 4.

- (c)<sup>25</sup> the applicant does not lodge with the Director the security referred to in Subsection (1)(d)(ii), and does not pay the first annual fee referred to in that Subsection.

(6) In determining whether recovery of petroleum is commercially viable for the purposes of Subsection (1)(c) and Section 45(1)(b), the Minister shall invite and consider submissions from the applicant and shall take into account all relevant matters including technical assessment of the petroleum situated within the blocks constituting the area at the time and the estimated development costs and likelihood that a development would earn a reasonable rate consistent with international petroleum industry anticipated returns on gas projects.

#### 40. GRANT OR REFUSAL OF PETROLEUM RETENTION LICENCE.

(1) An applicant who has been served with an instrument under Section 39(1) may, before the expiration of—

- (a) the period of three months after the date of service of the instrument on him or such further period, not exceeding three months, as the Minister allows; or
- (b) the period specified by the Minister under Section 39(5)(a),

whichever is the later,

- (c) by instrument served on the Minister—
- (i) request the Minister to grant to him the licence to which the first-mentioned instrument relates; or
- (ii) furnish the Minister with any further particulars required under Section 39(1)(e); and
- (iii) pay the first annual fee to the Director.
- (d)<sup>26</sup> lodged with the Director the security and the first annual fee referred to in Section 39(1)(d)(ii).

(2) Where—

- (a) an applicant has, within the period specified in Subsection (1)—
- (i) made a request under Subsection (1)(c); and
- (ii)<sup>27</sup> lodge with the Director the security and the first annual fee referred to in Section 39(1)(d)(ii); and
- (iii) furnished the Minister with any further proposals required under Section 39(1)(e); and
- (b) the Minister is satisfied that the applicant's proposals and further proposals adequately provide for such market and technical studies as

<sup>25</sup> Section 39 Subsection (5) amended by No. 58 of 2006, s. 4.

<sup>26</sup> Section 40 Subsection (1) amended by No. 57 of 2006, s. 4.

<sup>27</sup> Section 40 Subsection (2) amended by No. 56 of 2006, s. 1.



may reasonably be expected to provide sufficient information to enable the gas field to be brought to timely economic development,

the Minister shall approve the proposals and grant to the applicant a petroleum retention licence in respect of the blocks referred to in Section 39(1)(c), but in any other case the Minister may, by instrument, refuse to grant the licence.

(3) The Minister shall not refuse under Subsection (2) to grant the licence unless—

- (a) he has, by the instrument referred to in Subsection (2) served on the applicant, given not less than one month's notice of his intention to do so; and
- (b) he has, in that instrument—
  - (i) given the reasons for his intention; and
  - (ii) specified a date on or before which the applicant may, by instrument served on the Minister, submit any matter that the applicant requires the Minister to consider including new proposals generally or in respect of some particular matter; and
- (c) he has given to the applicant, and to any persons whom the applicant thinks fit to consult, a full opportunity to consult with the Minister concerning the Minister's intention to refuse the licence; and
- (d) he has taken into account, after considering a report from the Board, any matters raised in the course of such consultations by the applicant or by any other person referred to in Paragraph (c).

(4) Where the holder of a petroleum prospecting licence applies for a petroleum retention licence in respect of all or part of the area of that petroleum prospecting licence, then notwithstanding the provisions of Division 2 as to expiry of the petroleum prospecting licence that petroleum prospecting licence shall not expire in respect of the area for which a petroleum retention licence is sought until the Minister has granted or refused to grant, as the case may be, a petroleum retention licence under Subsection (2).

(5) Where the holder of a petroleum prospecting licence applies for a petroleum retention licence in respect of all or part of the area of that petroleum prospecting licence and the Minister refuses to grant a petroleum retention licence on the ground that he is not satisfied as to the matter referred to in Section 39(1)(c)(i), then notwithstanding the provisions of Division 2 as to expiry of the petroleum prospecting licence that petroleum prospecting licence shall not expire in respect of the area for which a petroleum retention licence was sought until one year after the date of the instrument referred to in Subsection (2).

#### **41. VARIATION OF PETROLEUM RETENTION LICENCE.**

(1) The holder of a petroleum retention licence may make application to the Minister for a variation of the licence by the inclusion of an additional block or group of blocks—

- (a) having a side or sides in common, or touching, a block the subject of the petroleum retention licence; and
- (b) not being the subject of a tenement held by a person other than the applicant or the subject of a petroleum development licence held by the applicant.

(2) Where an application is made under Subsection (1), the Minister may, by instrument served on the licensee, vary the petroleum retention licence to include in the licence area the block or blocks to which the application relates.

(3) From and including the day on which a variation of a licence under this section takes effect—

- (a) the blocks included in the licence area by reason of the variation are, subject to this Act, for the remainder of the term of the licence, blocks in respect of which the petroleum retention licence is in force; and
- (b) any petroleum prospecting licence that is in force in respect of the blocks so included is revoked in respect of those blocks.

(4) The holder of a petroleum retention licence may, at any time, make an application to the Minister for any other variation of the petroleum retention licence.

(5) An application under Subsection (4) shall—

- (a) specify the reasons for proposed variation; and
- (b) be made in an approved form and contain the information specified in Section 38.

(6) The Director may require the applicant to furnish such further information in connection with his application as the Director considers necessary.

(7) Following receipt of an application under Subsection (4) the Minister may, after considering a report of the Board and any matters submitted to him under this section—

- (a) amend the terms of the petroleum retention licence to provide as stipulated in the application or as otherwise agreed with the petroleum retention licensee; or
- (b) refuse the application, in which case the existing petroleum retention licence shall remain in full force and effect.

#### **42. RIGHTS CONFERRED BY PETROLEUM RETENTION LICENCE.**

A petroleum retention licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence, exclusive rights—

- (a) to explore for petroleum in the petroleum retention licence area; and
- (b) to carry on field studies to obtain information to ensure timely economic development of the gas field in the petroleum retention licence area; and

- (c)<sup>28</sup> to carry on such operations and execute such works in the petroleum retention licence area as are necessary for or in connection with the purposes specified in Paragraphs (a) and (b), including the construction and operation of water lines; and.
- (d)<sup>29</sup> if authorized by the Director, to complete wells, carry out drill stem tests or extended production tests for appraisal of a petroleum pool (including the construction and the operation of pipes and facilities to gather and transport petroleum to a point of testing or treatment or disposal), and to recover and sell or otherwise dispose of all petroleum do produced.

#### **43. TERM OF PETROLEUM RETENTION LICENCE.**

Subject to this Act and to any condition in the licence, a petroleum retention licence remains in force—

- (a) for a period of five years commencing on the day on which the licence takes effect; and
- (b) where the licence is extended under Section 45—for a further period of five years at each extension.

#### **44. APPLICATION FOR EXTENSION OF PETROLEUM RETENTION LICENCE.**

(1) The holder of a petroleum retention licence may make application to the Minister for an extension of the licence.

(2) An application under this section may be made twice only in respect of a licence.

(3) An application for an extension of a petroleum retention licence—

- (a) shall be in an approved form; and
- (b) subject to Subsection (4), shall be made in an approved manner not later than six months before the day on which the licence is due to expire; and
- (c) shall be accompanied by particulars of—
  - (i) the blocks in respect of which the extension is sought; and
  - (ii) the work carried out and the amounts expended in respect of the licence area up to and including a date not earlier than one month immediately preceding the date of application; and
  - (iii) the proposals of the licensee for work and expenditure in respect of the area; and

<sup>28</sup> Section 42 Amended by No. 57 of 2006, s. 5.

<sup>29</sup> Section 42 Amended by No. 57 of 2006, s. 5.

(d) shall be accompanied by the applicant's submissions in respect of the matters set out in Paragraphs 45(1)(a), (b) and (c); and

(e) shall be accompanied by the fee prescribed by Section 157.

(4) The Minister may, after considering a report from the Board, accept an application for the extension of a petroleum retention licence later than six months before the licence is due to expire, but in any case not after the licence has expired.

#### **45. GRANT OR REFUSAL OF EXTENSION OF PETROLEUM RETENTION LICENCE.**

(1) Where a petroleum retention licensee who has complied with the conditions specified in the petroleum retention licence and with the provisions of this Act, makes an application under Section 44 for the extension of the licence, the Minister shall, if he is satisfied—

(a) that—

(i) the blocks in respect of which the extension is sought contain a gas field or part thereof; or

(ii) it is appropriate for the proper administration of petroleum activities that the blocks in respect of which the extension is sought are included in the licence; and

(b) that the recovery of petroleum from the area comprised in the blocks specified in the application—

(i) is not at the time of application commercially viable; and

(ii) could become commercially viable within the period of time ending at the expiration of the petroleum retention licence if extended for the maximum permitted time; and

(c) that the applicant's proposals provide adequately for such market and technical studies and other work as may reasonably be expected to provide sufficient information to enable the gas field to be brought to timely economic development,

inform the licensee, by instrument served on the licensee, that he is prepared to grant to the licensee the extension of the licence.

(2) Where a petroleum retention licensee who has not complied with the conditions specified in the licence or with the provisions of this Act, makes an application under Section 44 for the extension of the licence, the Minister may, if, after considering a report from the Board, he is satisfied as to the matters set out in Subsection (1) and further satisfied that, although the licensee has not so complied, special circumstances exists that justify the granting of the extension of the licence, inform the licensee, by instrument served on the licensee, that he is prepared to grant to him an extension of the licence.

(3) Where a petroleum retention licensee has not complied with the conditions specified in the licence or with the provisions of this Act, and the Minister is not

satisfied that special circumstances exist that justify the granting of the extension of the licence, the Minister shall, subject to Subsection (5), by instrument served on the licensee, refuse to grant the extension of the licence.

(4) Where the Minister is not satisfied as to the matters set out in Subsection (1), the Minister shall, subject to Subsection (5), by instrument served on the licensee, refuse to grant the extension of the licence.

(5) The Minister shall not refuse to grant the extension of a petroleum retention licence unless—

- (a) he has, by instrument served on the licensee, given not less than one month's notice of his intention to refuse to grant the extension of the licence; and
- (b) he has served a copy of the instrument on such other persons (if any) as he thinks fit; and
- (c) he has, in the instrument—
  - (i) given the reasons for his intention to refuse; and
  - (ii) specified a date on or before which the licensee or a person on whom a copy of the instrument is served may, by instrument served on the Minister, submit any matters that he requires the Minister to consider; and
- (d) he has taken into account, after considering a report from the Board, any matters so submitted to him, on or before the specified date, by the licensee or a person on whom a copy of the instrument has been served.

(6) An instrument under Subsection (1) or (2) shall contain—

- (a) a summary of the conditions to which the grant of the extension is to be subject; and
- (b) a statement to the effect that the application will lapse if the licensee—
  - (i) does not make a request under Subsection (7); or
  - (ii) does not pay the annual fee.

(7) A licensee who has been served with an instrument under Subsection (1) or (2) may, within a period of one month after the date of service of the instrument on him—

- (a) by instrument served on the Minister, request the Minister to grant to him the extension of the licence; and
- (b) pay the next annual fee.

(8) Where a licensee who has been served with an instrument under Subsection (1) or (2) has, within the period specified in Subsection (7)—

- (a) made a request under Subsection (7); and
- (b) paid the next annual fee,

the Minister shall approve the proposals and grant to the licensee the extension of the licence.

(9) Where a licensee who has been served with an instrument under Subsection (1) or (2) has not, within the period specified in Subsection (7)–

- (a) made a request under Subsection (7); or
- (b) paid the next annual fee,

the application lapses at the end of that period.

(10) Subject to Subsection (11), where–

- (a) an application for the extension of a licence is made under Section 44; and
- (b) the licence expires–
  - (i) before the Minister grants, or refuses to grant, the extension of the licence; or
  - (ii) before the application lapses under Subsection (9),

the licence shall be deemed to continue in force in all respects–

- (c) until the Minister refuses to grant the extension of the licence; or
- (d) until the application lapses under Subsection (9),

whichever first occurs.

(11) Where the Minister refuses to grant an extension under this section on the ground that he is not satisfied as to the matter referred to in Subsection (1)(b)(i), then notwithstanding the provisions of this Division as to expiry of the petroleum retention licence that petroleum retention licence shall not expire until one year after the date of service of the instrument referred to in Subsection (4).

#### **46. CONDITIONS OF PETROLEUM RETENTION LICENCE.**

A petroleum retention licence and any extension of a petroleum retention licence–

- (a) is subject to conditions that–
  - (i) the licensee will carry out the proposals approved under Section 40(2) or 45(8); and
  - (ii) the licensee will provide to the Director reports on the activities of the licensee in respect of the licence containing such information and at such frequency as are specified in and will otherwise comply with any direction given under Section 148; and
  - (iii) the licensee will carry out social mapping and landowner identification studies in accordance with Section 47; and
- (b) may be made subject to such other conditions not inconsistent with this Act–

- (i) as the Minister thinks proper and as are specified in the licence or extension of the licence; or
  - (ii) in respect of any matter or matters arising out of the applicant's proposals referred to in Section 38(1)(c) that are not administered under this Act, as the Minister, after consultation with the Minister responsible for administering that matter or those matters, thinks proper and specifies in the licence or extension of the licence; and
- (c) may require the licensee to enter into a gas agreement.

### ***Division 5.***

#### ***Social Mapping and Landowner Identification Studies.***

#### **47. SOCIAL MAPPING AND LANDOWNER IDENTIFICATION STUDIES.**

(1) It shall be a condition of every petroleum prospecting licence that the licensee undertake social mapping studies and landowner identification studies in accordance with this section.

(2) It shall be a condition of every petroleum retention licence that the licensee undertake social mapping studies and landowner identification studies in accordance with this section, to the extent that such studies have not been undertaken pursuant to a petroleum prospecting licence out of which the petroleum retention licence was granted.

(3) It shall be a condition of every petroleum development licence that the licensee undertake social mapping studies and landowner identification studies in accordance with this section, to the extent that such studies have not been undertaken pursuant to a petroleum prospecting licence or petroleum retention licence out of which the petroleum development licence was granted.

(4)<sup>30 31</sup> Prior to first entry on to the licence area for the purposes of exploration pursuant to a petroleum prospecting licence or a petroleum retention licence, the licensee shall undertake—

- (a) a preliminary social mapping study; and
- (b) a preliminary landowner identification study,

of the customary land owners comprised in the licence area, with particular reference to that part of the licence area where the licensee's exploration activities are to be concentrated.

(5)<sup>32 33</sup> If a licensee or a person makes an application for a petroleum development licence under Section 53, the licensee shall submit with that application

<sup>30</sup> Section 47 Subsection (4) amended by No. 57 of 2006, s. 6; Subsection (4) amended by No. 57 of 2006, s. 6.

<sup>31</sup> Section 47 Subsection (4) amended by No. 57 of 2006, s. 6; Subsection (4) amended by No. 57 of 2006, s. 6.

<sup>32</sup> Section 47 Subsection (5) substituted by No. 58 of 2006, s. 5.

<sup>33</sup> Section 47 Subsection (5) substituted by No. 58 of 2006, s. 5.

a full-scale social mapping study and landowner identification study of customary land owners in –

- (a) the licence area of that petroleum development licence; and
- (b) other licence areas, including pipeline areas, which pertain to that petroleum development licence; and
- (c) the land within five kilometres of any facility which would be a dedicated project facility (other than a facility which would be situated on such a petroleum development licence) of the petroleum project; and
- (d) other areas which would be affected by the petroleum project if developed.

(5A)<sup>34</sup> <sup>35</sup>If a licensee makes an application for a variation of the licence under Section 85(1), to include an additional block or blocks in a petroleum development licence, the licensee shall submit with that application a full-scale social mapping study and landowner identification study of customary land owners in –

- (a) the additional block or blocks that will form part of that petroleum development licence; and
- (b) other licence areas, including pipeline easements, which are associated with the petroleum development licence upon variation of such licence; and
- (c) the land within five kilometres of any facility which would be a dedicated project facility (other than a facility which would be situated on such a petroleum development licence) of the petroleum project; and
- (d) other areas which would be affected by the development of the additional block or blocks.

(6) The Minister may by regulation prescribe the scope and method of a social mapping study or landowner identification study conducted in accordance with this section, and requirements as to reports of such studies.

(7) Copies of any social mapping or landowner identification studies undertaken in accordance with this section (excluding any information which is confidential to the licensee or to the local groups of landowners) shall be provided to the Director.

### ***Division 6.***

#### ***Project Consultation.***

#### **48. DEVELOPMENT FORUM.**

<sup>36</sup>(1) Subject to Section 169(8), prior to the first grant of a licence or licences in respect of a petroleum project, the Minister shall convene a development forum at a

<sup>34</sup> Section 47 Subsection (5A) inserted by No. 57 of 2006, s. 6.

<sup>35</sup> Section 47 Subsection (5A) inserted by No. 57 of 2006, s. 6.

<sup>36</sup> Section 48 Substituted by No. 58 of 2006, s. 6.



place close to the proposed licence area to provide ease of access, being a meeting to which are invited persons who, in the view of the Minister, will be affected by that petroleum project, including –

- (a) the applicant or intending applicant for the licence or licences; and
- (b) the project area landowners determined under Section 169(2) or their duly appointed or elected representatives; and
- (c) the Local-level Government or Governments who would be affected Local-level Governments of the project if the application is granted; and
- (d) the Provincial Government or Governments who would be affected Provincial Governments of the project if the application is granted; and
- (e) the State.

(2) If subsequent to the first grant of a licence or licences in respect of a petroleum project there is an application for a further licence or licences or the variation under Section 58(1) of a petroleum development licence in respect of that petroleum project, the Minister shall convene a further development forum in respect of that petroleum project to which are invited persons who, as a result of social mapping and landowner identification studies, in the view of the Minister, fairly represent those parties defined in Section 48(1)(a) to (e) inclusive.

(3) The purpose of a development forum is to endeavour to reach agreement on matters on which agreement among those present is desirable, including the matters referred to in Part IV.

#### **49. MATTERS REQUIRED BEFORE DEVELOPMENT FORUM.**

A development forum shall not be convened in respect of a proposed petroleum project until–

- (a) the applicant or intending applicant for a licence or licences has completed and presented to the Minister full-scale social mapping and landowner identification studies in accordance with Subsection 47(5); and
- (b) the Minister is satisfied, on the basis of the results of those studies, that the people who would be project area landowners of the petroleum project are truly represented by the persons who are to be invited to the development forum as their representatives; and
- (c) the applicant or intending applicant has submitted to the Minister, and to the Minister responsible for environmental matters, a socio-economic impact study as part of the environmental plan required under the *Environmental Planning Act 1978*; and
- (d) the Director has prepared a proposal, after giving due consideration to the results of the full-scale social mapping and landowner identification studies and the socio-economic impact study and the principle set out in Section 170(3), for the equitable sharing of the equity benefit and the

royalty benefit amongst project area landowners, and has provided that proposal to representatives of those future project area landowners.

## **50. DEVELOPMENT AGREEMENT.**

(1) An agreement between the State and any of the project area landowners, the affected Local-level Governments and the affected Provincial Government of a petroleum project governing the matters subject to agreement which are referred to in Part IV shall be contained in a development agreement.

(2) In addition to the matters referred to in Subsection (1), a development agreement may contain any other matter agreed between the parties.

## **50A. COORDINATION OF BENEFITS FOR GAS PROJECTS.**

<sup>37</sup>(1) Where –

- (a) licensees enter into a unit development under Section 64 or co-ordinated petroleum development under Section 65; or
- (b) a gas agreement defines the extent of a particular gas project to include more than one licence,

the State and the project area landowners, the affected Local level-Governments and affected Provincial Governments may enter into a co-ordinated development agreement which may vary or replace an agreement or agreements in relation to petroleum projects under the former Act or a development agreement or agreements under this Act.

(2) A co-ordinated development agreement shall govern the matters subject to agreement referred to in Part IV of this Act and any other matter agreed to between parties.

## **51. POWER TO SIGN DEVELOPMENT AGREEMENT.**

<sup>38</sup>The Minister, acting with the approval of the National Executive Council, has the power to execute on behalf of the State a development agreement or a co-ordinated development agreement and any amendment of such agreements.

## **52. CONSULTATION WITH AFFECTED LOCAL-LEVEL GOVERNMENTS AND AFFECTED PROVINCIAL GOVERNMENTS.**

(1)<sup>39</sup> <sup>40</sup>The Minister shall, following notification to tenement holder under Section 35(1), notify each Local-level Government and Provincial Government which would likely be an affected Local-level Government or affected Provincial

<sup>37</sup> Section 50A Inserted by No. 57 of 2006, s. 7.

<sup>38</sup> Section 51 Substituted by No. 58 of 2006, s. 7.

<sup>39</sup> Section 52 Subsection (1) substituted by No. 58 of 2006, s. 8.

<sup>40</sup> Section 52 Subsection (1) substituted by No. 58 of 2006, s. 8.

Government of the petroleum project if developed, of the details of the notice served on the tenement holder.

(2) The Minister shall, in relation to any proposed petroleum project, consult with each Local-level Government and Provincial Government which would likely be an affected Local-level Government or affected Provincial Government of the petroleum project if developed, on the terms of—

- (a) any written agreement to be entered into by the State in relation to the proposed petroleum project; and
- (b) any licence to be granted in respect of the proposed petroleum project.

## **52A. COORDINATION OF DEVELOPMENT FORUM.**

<sup>41</sup>(1) Where a licensee makes application under Section 53, or applies to vary a licence by the inclusion of additional blocks under Section 58, or where the State enters into a gas agreement under Section 184 with a licensee which defines the extent of the gas project to include all or part of the licence areas of a petroleum prospecting licence, a petroleum development licence or a petroleum retention licence, the licensee of any licence of any licence affected by such application, variation or gas agreement and the State shall upon a plan to coordinate convening a development forum pursuant to the provisions of Section 48.

(2) An applicant shall pay a prescribed amount, not exceeding K250,000.00, as its contribution towards the cost of the development forum, if a development forum is required under Section 48.

(3) Where a coordinated development pursuant to a gas agreement requires the grant of additional licences or the variation of licences, then that coordinated development will require only a development forum to be held in respect of that gas agreement as part of the coordinated development represented in that gas agreement unless the Minister considers that those factors mentioned in Section 48(2) requires more than one development forum to be held in respect of that coordinated development.

### ***Division 7.***

#### ***Petroleum Development Licences.***

## **53. APPLICATION FOR PETROLEUM DEVELOPMENT LICENCE.**

(1) A licensee whose petroleum prospecting licence or petroleum retention licence is in force in respect of the blocks that constitute a location may, within two years after the date on which the blocks were declared to be a location, or such further period as the Minister allows, make application to the Director for the grant of a petroleum development licence in respect of such of the blocks as the licensee satisfies the Minister contain a petroleum pool or a part of a petroleum pool.

<sup>41</sup> Section 52A Inserted by No. 64 of 2006, s. 1.

(2) A licensee may, during the term of a petroleum prospecting licence or petroleum retention licence, make application to the Director for a petroleum development licence in respect of any block or blocks within the licence area—

- (a) that he satisfies the Minister contains or contain a petroleum pool or part of a petroleum pool; and
- (b) that do not at the time of making the application constitute a location.

(3) A person who is not the holder of a tenement in respect of that block or those blocks may make application to the Director for a petroleum development licence in respect of a block or blocks—

- (a) that he satisfies the Minister contains or contain a petroleum pool or part of a petroleum pool; and
- (b) that is not a block or are not blocks in respect of which a tenement is in force at the time of the application.

**54. FORM OF APPLICATION FOR PETROLEUM DEVELOPMENT LICENCE.**

(1) An application under Section 53—

- (a) shall be in an approved form; and
- (b) shall be made in an approved manner; and
- (c) shall be accompanied by detailed proposals by the applicant for the construction, establishment and operation of all facilities and services for and incidental to the recovery, processing, storage and transportation of petroleum from the licence area; and
- (d) may set out any other matters that the applicant wishes the Minister to consider; and
- (e) shall be accompanied by the fee prescribed by Section 157.

(2) The Director may, by instrument served on the applicant, require him to furnish, within a period specified in the instrument—

- (a) such further written information in connection with his application as the Director specifies in the instrument; and
- (b) such proposals, in addition to or by way of alteration to any proposals that have already been furnished under Subsection (1) as the Director specifies in the instrument, including proposals relating to any of the matters referred to in Section 35(2); and
- (c) such information and proposals, or information and proposals in addition to or by way of alteration to information and proposals already supplied, relating to—
  - (i) the acquisition by the State or its nominee of a participating interest in the petroleum project in respect of which the application is made; and

- (ii) the transfer of some or all of the participating interest in an Orogen option project to the Company in accordance with the option agreement and other matters and transactions contemplated by the option agreement.

## **55. NOTICE OF APPLICATION TO BE PROVIDED TO THE COMPANY, ETC.**

(1)<sup>42</sup> <sup>43</sup>On receipt of an application under Section 53 or 73 or 86 in relation to an Orogen option project, the Director or the Minister, as the case may be, shall give written notice to the Company of the receipt of the application.

(2) At any time after receipt of a notice under Subsection (1), the Company may request the applicant to provide to the Company, or to allow the Company access to, such information concerning the application and the applicant's proposals as the Company may reasonably require for the purpose of determining whether it will exercise its option under the option agreement in respect of the Orogen option project.

(3) On receipt of a request under Subsection (2), the applicant shall provide to the Company or allow the Company access to the information requested within such reasonable period as the Company may specify in its request on the condition that the Company—

- (a) pays the reasonable costs of the applicant incurred in providing or allowing the Company access to the information requested; and
- (b) subject to Subsection (4), keeps the information confidential on such terms and conditions as the applicant may reasonably require.

(4) The Company shall be permitted to disclose the information referred to in Subsection (2) to—

- (a) such of its employees, officers or agents whose duties in connection with the exercise of the option require the disclosure of the information; and
- (b) any adviser or other expert retained in connection with a proposal by the Company to exercise the option,

who undertakes to keep the information confidential on such terms and conditions as the applicant may reasonably require.

(5) A person who discloses the information referred to in Subsection (2) in contravention of the terms and conditions required by the applicant in accordance with Subsections (3)(b) or (4) is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding four years or both.

<sup>42</sup> Section 55 Subsection (1) substituted by No. 58 of 2006, s. 9.

<sup>43</sup> Section 55 Subsection (1) substituted by No. 58 of 2006, s. 9.

**56. NOTIFICATION OF GRANT OF PETROLEUM DEVELOPMENT LICENCE.**

(1) Where an application for the grant of a petroleum development licence has been made under Section 53(1) or (2) and the applicant has furnished proposals and any further information required by the Director under Section 54, the Minister, after having regard to physical planning considerations shall, by instrument served on the applicant, inform the applicant—

- (a) that—
  - (i) he is prepared to approve the proposals wholly or in part, and to grant to the applicant on the basis of the approved proposals, a petroleum development licence in respect of the blocks specified in the application; and
  - (ii) the applicant will be required to lodge a security deposit for compliance with—
    - (A) the conditions relating to the protection and restoration of the environment; and
    - (B) the provisions of this Act; and
    - (C) any requirement in any law relating to the protection and restoration of the environment, or any condition imposed on the licensee under any such law; and
    - (D) any condition relating to the physical planning of the area; and
  - (iii) the applicant will be required to pay the first annual fee as a condition of the grant of the licence; or
- (b) that he will defer consideration of a decision on the proposals until the applicant furnishes such proposals, in addition to or by way of alteration to the proposals furnished under Section 54 as the Minister specifies in the instrument, including proposals relating to any of the matters referred to in Section 35(2) or 54(2)(c); or
- (c) that he is prepared to approve the proposals and to grant to the applicant a petroleum development licence in respect of the blocks specified in the application, subject to the applicant—
  - (i) making such alterations to the proposals; or
  - (ii) complying with such conditions in relation to the proposals, as the Minister thinks reasonable.

(2) Where an application is made under Section 53(3), the Minister may—

- (a) refuse to grant the application and advise the applicant accordingly; or
- (b) treat the application as an application made under Section 53(1) or (2).

(3) Where, under Subsection (2), the Minister elects to treat an application as an application made under Section 53(1) or (2), that application shall, for the purposes of this section and Section 57, be deemed to be an application so made.

(4) In the case of an instrument to which Subsection (1)(c) applies, the Minister shall give to the applicant details of his reasons for requiring the alterations or imposing the conditions referred to in the instrument.

(5) An instrument under Subsection (1)(a), (b) or (c) shall contain a statement to the effect that the application will lapse if—

- (a) the applicant does not furnish any further proposals that the Minister requires within such period as the Minister specifies in the instrument, being a period of not less than two months nor more than one year; or
- (b) the applicant does not make a request under Section 57(1) in respect of the grant of the licence; or
- (c) the applicant does not pay to the Director the first annual fee; or
- (d) the applicant does not lodge with the Director the security specified in the instrument.

#### **57. GRANT OR REFUSAL OF PETROLEUM DEVELOPMENT LICENCE.**

(1) An applicant who has been served with an instrument under Section 56(1) may, before the expiration of—

- (a) the period of three months after the date of service of the instrument on him or such further period or periods as the Minister allows; or
- (b) the period specified by the Minister under Section 56(5)(a),

whichever is the later, by instrument served on the Minister—

- (c) request the Minister to grant to him the licence to which the first-mentioned instrument relates; and
- (d) furnish the Minister with any further proposals required under Section 56(1)(b); and
- (e) pay the first annual fee to the Director; and
- (f) lodge with the Director the security deposit referred to in the instrument issued under Section 56(1)(a).

(2) Where—

- (a) an applicant has, within the period specified in Subsection (1)—
  - (i) made a request under Subsection (1)(c); and
  - (ii) paid the first annual fee to the Director; and
  - (iii) furnished the Minister with any further proposals required under Section 56(1)(b); and

- (iv) lodged with the Director the security deposit referred to in the instrument issued under Section 56(1)(a); and
- (b) the Minister is satisfied, having considered the applicant's proposals and any further submissions of information, and a report from the Board and where it is available the relevant cost-benefit analysis carried out and made available to the National Executive Council by the National Economic and Fiscal Commission under Section 117(8)(a)(v) of the *Organic Law on Provincial Governments and Local-level Governments*, that the proposals for development—
  - (i) will achieve maximum efficient recovery and prevention of resource waste by applying good oilfield practice; and
  - (ii) do not interfere with the rights of licensees of adjacent tenements covering common petroleum pools; and
  - (iii) comply with the State's policy on non-discriminatory access for other persons to any strategic pipelines or strategic petroleum processing facilities involved in the proposals; and
  - (iv) provide adequately for the protection of the environment and the welfare of the people of the area; and
  - (v)<sup>44</sup> demonstrate that the applicant has adequately identified the persons who are customary land owners in areas specified under Section 47(5); and
  - (vi) have duly considered co-ordinated development of any adjacent petroleum discoveries which studies and investigations conducted pursuant to a direction given under Section 65 reveal to be in the interest of the State; and
  - (vii) promote viable domestic utilisation of petroleum and petroleum products to the extent reasonably possible; and
  - (viii) will otherwise be in the best interests of the Independent State of Papua New Guinea,

the Minister shall approve the proposals and grant to the applicant a petroleum development licence in respect of the blocks referred to in Section 56(1)(c), but in any other case the Minister may, by instrument, refuse to grant the licence.

(3) The Minister shall not refuse under Subsection (2) to grant a petroleum development licence unless—

- (a) he has, by the instrument referred to in Subsection (2) served on the applicant, given not less than one month's notice of his intention to do so; and
- (b) he has, in that instrument—
  - (i) given particulars of the reasons for his intention; and

<sup>44</sup> Section 57 Subsection (2) amended by No. 58 of 2006, s. 10.



- (ii) specified a date on or before which the applicant may, by instrument served on the Minister, submit any matters that the applicant requires the Minister to consider, including new proposals generally or in respect of some particular matter; and
- (c) he has given to the applicant, and to any persons whom the applicant thinks fit to consult, a full opportunity to consult with the Minister concerning the Minister's intention to refuse to grant the licence; and
- (d) he has taken into account, after considering a report from the Board, any matters raised in the course of such consultations by the applicant or by any other person referred to in Paragraph (c).

(4) Where the grounds for the Minister's refusal, under this section, of an application is that the applicant's proposals or further proposals do not satisfy the requirements of Subsection (2)(b), the applicant may, by written notice to the Minister before the date referred to in Subsection (3)(b)(ii), require that the question be referred to arbitration.

(5) The method of arbitration for the purpose of Subsection (4) may be the subject of a written agreement between the State and the applicant, and the method so agreed will be binding on the Minister.

(6) Where the method of arbitration is not the subject of an agreement referred to in Subsection (5), the matter stands referred to arbitration in accordance with the *Arbitration Act 1951* on receipt by the Minister of the requirement.

(7) Where a matter is referred to arbitration under this section, the application does not lapse until the arbitrator has made his award and, where the award is made in the applicant's favour, the Minister has granted the petroleum development licence.

(8) Subject to Subsection (7), where an applicant has been served with an instrument under Subsection (2) refusing to grant an application, the application lapses at the end of the period referred to in Subsection (3)(b)(ii) unless the Minister withdraws his refusal.

(9) Where a licensee makes application under Section 53(1) or (2) for a petroleum development licence and the petroleum prospecting licence or petroleum retention licence would but for this subsection expire before the application has been dealt with in accordance with this section, the petroleum prospecting licence or petroleum retention licence, as the case may be, shall, notwithstanding the provisions of Division 2 or 4 as to the expiry thereof, continue in force in respect of the block or blocks until the first-mentioned application has been dealt with.

(10) The Minister shall not grant a petroleum development licence under this section in relation to an Orogen option project unless the Minister has first given to the Company written notice.

**58. VARIATION OF PETROLEUM DEVELOPMENT LICENCE.**

<sup>45</sup>(1) The holder of a petroleum development licence may make application to the Minister for a variation of the licence by the inclusion of an additional block or group of blocks –

- (a) having a side or sides in common, or touching, block the subject of the petroleum development licence; and
- (b) subject to Subsection (2), not being the subject of a tenement held by a person other than the applicant.

(2) The holder of a petroleum development licence may make an application under Subsection (1) for the inclusion of an additional block or group of blocks even they are the subject of a tenement held by a person other than the applicant if –

- (a) the holder of the tenement in respect of the additional block or groups of blocks has entered into an agreement in writing with the holder of the petroleum development licence consenting to the variation; and
- (b) the State or Company pursuant to Section 165 and 166 and the applicable petroleum agreement have an entitlement to acquire a participating interest in the additional blocks or group of blocks, and all of the affected tenement holders including the holder of the petroleum development licence, have entered into an agreement concerning the terms of the State or Company participation in the enlarged petroleum licence; and
- (c) a copy of any such agreement is provided to the Minister with the application for the variation; and
- (d) any such agreement provided to the Minister shall have been lodged and registered in accordance with Section 100.

(3) The Minister shall not approve an application under Subsection (1) unless he is satisfied, after considering a report of the Board, that the additional block or group of blocks proposed to be included in the licence contain a petroleum pool or part of a petroleum pool.

(4) Where an application is made under Subsection (1), the Minister shall, after considering a report of the Board and having used all reasonable efforts, by instrument served on the applicant within one month from having received the application either –

- (a) inform the applicant that the variation of the licence by the inclusion of the additional block or group of blocks as the case may be will be approved; or
- (b) refuse the application in which case the existing licences remain in full force and effect.

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<sup>45</sup> Section 58 Substituted by No. 58 of 2006, s. 11.

(5) An applicant who has been served with an instrument under Subsection (4)(a) may, within one month after the date of service of the instrument on him or such further period as the Minister allows, by instrument served on the Director accept the variation and upon service of such instrument or the Director, the petroleum development licence shall be varied to include in the licence area the block or group of blocks to which the application relates.

(6) From and including the day on which the variation of a licence takes effect under Subsection (5), the blocks included in the licence area by reason of the variation are –

- (a) subject to this Act, for the remainder of the term of the licence, blocks in respect of which an applicant's petroleum development licence is in force; and
- (b) any other licence that is in force in respect of the blocks so included is revoked in respect of those blocks.

(7) The holders of a petroleum development licence may, at any time, make an application to the Minister for any other variation of the petroleum development licence.

(8) An application under Subsection (7) shall –

- (a) specify the reason for the proposed variation; and
- (b) be made in an approved form and contain the information specified in Section 54.

(9) The Director may require the applicant to furnish such information in connection with his application as the Director considers necessary.

(10) Following receipt of an application under Subsection (7) the Minister shall, after considering a report of the Board and any matters submitted to him under this section and having used all reasonable efforts, by instrument served on the applicant within two months from the date of receiving the application –

- (a) inform the applicant that he is prepared to approve the variation of the licence as stipulated in the application or as otherwise agreed with the applicant; or
- (b) refuse the application, in which case the existing petroleum development licence will remain in full force and effect.

(11) An applicant who has been served with an instrument under Subsection (10)(a) may, within one month after the date of service of the instrument on him or such further periods as the Minister allows, by instrument served on the Director accept the variation and upon service of such instrument on the Director the petroleum development licence shall be varied as stipulated in the application or as otherwise agreed with the applicant.

**59. RIGHTS CONFERRED BY PETROLEUM DEVELOPMENT LICENCE.**

A petroleum development licence, while it remains in force confers on the licensee, subject to this Act and to the conditions specified in the licence, exclusive rights—

- (a) to explore for petroleum in the licence area; and
- (b) to carry on operations for the recovery of petroleum in the licence area; and
- (c) to sell or otherwise dispose of the petroleum so recovered; and
- (d) to carry on such operations and execute such works in the licence area as are necessary for or in connection with the purposes specified in Paragraphs (a), (b), and (c) including the construction and operation of flow lines or gathering lines and water lines.

**60. TERM OF PETROLEUM DEVELOPMENT LICENCE.**

<sup>46</sup>Subject to this Act and to any condition in the licence, a petroleum development licence remains in force —

- (a) for a period of 25 years commencing on the day on which the licence takes effect; and
- (b)<sup>47</sup> where the licence has been extended under Section 62—for such further period or periods not exceeding 20 years as the Minister determines is reasonably required to recover from the licence area the maximum amount of petroleum the recovery of which is consistent with good oil field practice.

**61. APPLICATION FOR EXTENSION OF PETROLEUM DEVELOPMENT LICENCE.**

(1) The holder of a petroleum development licence may make an application to the Minister for an extension of the licence.

(2)<sup>48</sup> <sup>49</sup>Unless otherwise provided in a written agreement entered into between the holder of the petroleum development licence and the State, an application under this section may be made once only in respect of a licence.

- (3) An application for an extension of a petroleum development licence—
  - (a) shall be in an approved form; and
  - (b) subject to Subsection (4), shall be made in an approved manner not later than six months before the day on which the licence is due to expire; and

<sup>46</sup> Section 60 Substituted by No. 58 of 2006, s. 12.

<sup>47</sup> Section 60 Amended by No. 57 of 2006, s. 8.

<sup>48</sup> Section 61 Subsection (2) amended by No. 56 of 2006, s. 2; Subsection (2) substituted by No. 58 of 2006, s. 13.

<sup>49</sup> Section 61 Subsection (2) amended by No. 56 of 2006, s. 2; Subsection (2) substituted by No. 58 of 2006, s. 13.

- (c) shall be accompanied by—
- (i) a detailed assessment of the field life and the economically recoverable and economically unrecoverable petroleum within the pool or pools which are the subject of the licence, providing a justification for the assessment of petroleum as economically recoverable or unrecoverable, as the case may be; and
  - (ii) a detailed statement of anticipated future operations under the licence; and
  - (iii) the fee prescribed by Section 157.

(4)<sup>50</sup> <sup>51</sup>The Minister may, after considering a report of the Board, accept an application at any time prior to the last year of the current term of the licence where that application also relates to a variation of a petroleum development licence pursuant to Section 58(7) and the applicant can demonstrate that the remaining period of current term of licence is insufficient to permit the maximum recovery of the petroleum from the licence area.

## **62. GRANT OR REFUSAL OF EXTENSION OF PETROLEUM DEVELOPMENT LICENCE.**

(1) Where a licensee who has complied with the conditions specified in the licence and with the provisions of this Act, makes an application under Section 61 for the extension of a licence, the Minister shall inform the licensee, by instrument served on the licensee, that he is prepared to grant to the licensee the extension of the licence.

(2) Where a licensee who has not complied with the conditions specified in the licence or with the provisions of this Act, makes an application under Section 61 for the extension of a licence, the Minister may, if after considering a report from the Board, he is satisfied that, although the licensee has not so complied, special circumstances exist that justify the granting of the extension of the licence, inform the licensee, by instrument served on the licensee, that he is prepared to grant to him an extension of the licence.

(3) If a licensee has not complied with the conditions specified in the licence or with the provisions of this Act, and the Minister is not satisfied that special circumstances exist that justify the granting of the extension of the licence, the Minister shall, subject to Subsection (4), by instrument served on the licensee, refuse to grant the extension of the licence.

(4) The Minister shall not refuse to grant the extension of a licence under this section unless—

- (a) he has, by instrument served on the licensee, given not less than one month's notice of his intention to refuse to grant the extension of the licence; and

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<sup>50</sup> Section 61 Subsection (4) substituted by No. 64 of 2006, s. 2.

<sup>51</sup> Section 61 Subsection (4) substituted by No. 64 of 2006, s. 2.

- (b) he has served a copy of the instrument on such other persons (if any) as he thinks fit; and
- (c) he has, in the instrument—
  - (i) given particulars of the reasons for his intention to refuse; and
  - (ii) specified a date on or before which the licensee or a person on whom a copy of the instrument is served may, by instrument served on the Minister, submit any matters that he requires the Minister to consider; and
- (d) he has taken into account, after considering a report from the Board, any matters so submitted to him, on or before the specified date, by the licensee or a person on whom a copy of the instrument has been served.

(5) An instrument under Subsection (1) or (2) shall contain—

- (a) a summary of the conditions to which the grant of the extension is to be subject; and
- (b) a statement to the effect that the application will lapse if the licensee—
  - (i) does not make a request under Subsection (6); and
  - (ii) does not pay the annual fee.

(6) A licensee who has been served with an instrument under Subsection (1) or (2) may, within a period of one month after the date of service of the instrument on him—

- (a) by instrument served on the Minister, request the Minister to grant to him the extension of the licence; and
- (b) pay the next annual fee.

(7) Where a licensee who has been served with an instrument under Subsection (1) or (2) has, within the period specified in Subsection (6)—

- (a) made a request under Subsection (6); and
- (b) paid the next annual fee,

the Minister shall grant to him the extension of the licence.

(8) Where a licensee who has been served with an instrument under Subsection (1) or (2) has not, within the period specified in Subsection (6)—

- (a) made a request under Subsection (6); or
- (b) paid the next annual fee,

the application lapses at the end of that period.

(9) Where—

- (a) an application for the extension of a licence is made under Section 61; and
- (b) the licence expires—

- (i) before the Minister grants, or refuses to grant, the extension of the licence; or
- (ii) before the application lapses under Subsection (8),

the licence shall be deemed to continue in force in all respects—

- (c) until the Minister refuses to grant the extension of the licence; or
- (d) until the application lapses under Subsection (8),

whichever first occurs.

### 63. CONDITIONS OF PETROLEUM DEVELOPMENT LICENCE.

<sup>52</sup>A petroleum development licence and any extension or variation of a petroleum development licence—

- (a) is subject to conditions that—
  - (i) the licensee will carry out the proposals approved under Section 57(2); and
  - (i) the licensee will provide to the Director reports on the activities of the licensee in respect of the licence containing such information and at such frequency as are specified in and will otherwise comply with any direction given under Section 148; and
  - (iii)<sup>53</sup> the licensee will carry out social mapping and landowner identification studies as directed by the Minister in accordance with Section 47; and
- (b) may be made subject to such other conditions not inconsistent with this Act—
  - (i) as the Minister thinks proper and specifies in the licence or extension of the licence; or
  - (ii) in respect of any matter or matters arising out of the applicant's proposals referred to in Section 54(1)(c) that are not administered under this Act, as the Minister, after consultation with the Minister responsible for administering that matter or those matters, thinks proper and specifies in the licence or extension of the licence.

### 64. UNIT DEVELOPMENT.

(1) In this section, “**unit development**” means, in relation to a petroleum pool, the co-ordination of operations for the recovery of petroleum being carried on or to be carried on in a licence area in which there is part of the pool, with other

<sup>52</sup> Section 63 Amended by No. 57 of 2006, s. 9.

<sup>53</sup> Section 63 Amended by No. 57 of 2006, s. 9.

operations for the recovery of petroleum being carried on or to be carried on in any other licence area in which there is part of the same pool.

(2) The Minister may of his own motion or on written application made to him by a licensee in whose licence area there is a part of a particular petroleum pool, after receiving the advice of the Board, for the purpose of securing the more effective recovery of petroleum from that petroleum pool, direct any licensee whose licence area includes part of that petroleum pool to enter into a written agreement within the period specified by the Minister for or in relation to the unit development of the petroleum pool, and to lodge the agreement with the Minister immediately for approval and registration in accordance with Section 100.

(3) Where—

- (a) a licensee who is directed under Subsection (2) to enter into an agreement for or in relation to the unit development of a petroleum pool does not enter into such an agreement within the specified period; or
- (b) a licensee enters into such an agreement but the agreement is not lodged with the Minister in accordance with Subsection (2), or if so lodged is not approved under Section 100,

the Minister may, by instrument served on the licensee, direct the licensee to submit to him, within the period specified in the instrument, a scheme for or in relation to the unit development of the petroleum pool.

(4) An agreement under this section is an instrument to which Section 100 applies.

## **65. CO-ORDINATED PETROLEUM DEVELOPMENTS.**

(1) Where the Director considers that, in order to prevent waste, avoid unnecessary competitive drilling, protect the correlative rights of licensees of adjacent tenements, secure the maximum ultimate recovery of petroleum or achieve the optimum economic development of petroleum resources, the interests of the State might best be furthered through two or more licensees developing a co-ordinated petroleum development with each other, the Director may give a licensee a direction under this section.

(2) A licensee given a direction under this section shall, within the period, if any, and in accordance with any other directions specified in the instrument, conduct such studies and investigations into the possibilities and merits of a co-ordinated petroleum development as are specified in the direction.

## **66. DIRECTIONS AS TO RECOVERY OF PETROLEUM.**

(1) Where petroleum is not being recovered in a licence area and the Minister, with the advice of the Board, is satisfied that there is recoverable petroleum in that licence area, he may, by instrument served on the licensee, direct the licensee to take all necessary and practicable steps to recover that petroleum.



(2) Where the Director is not satisfied with the steps taken or being taken by a licensee to whom a direction has been given under Subsection (1), the Director may, by instrument served on the licensee, give to the licensee such directions as the Director thinks necessary for or in relation to the recovery of petroleum in the licence area.

(3) Where petroleum is being recovered in a licence area, the Minister may, with the advice of the Board, by instrument served on the licensee, direct the licensee to take all necessary and practical steps to increase or reduce the rate at which the petroleum is being recovered to such rate, not exceeding the capacity of existing production facilities, as the Minister specifies in the instrument.

(4) Where the Director is not satisfied with the steps taken or being taken by a licensee to whom a direction has been given under Subsection (3), the Director may, by instrument served on the licensee, give to the licensee such directions as the Director thinks necessary for or in relation to the increase or reduction of the rate at which petroleum is being recovered in the licence area.

## 67. DOMESTIC MARKET OBLIGATION.

(1)<sup>54</sup> <sup>55</sup>A person shall, in disposing of processed petroleum produced in Papua New Guinea which is owned by him, comply with this section.

(2) A person referred to in Subsection (1) shall—

- (a) if approached by a *bona fide* prospective purchaser wishing to purchase processed petroleum from that person, negotiate in good faith with that *bona fide* purchaser for the sale and supply of such processed petroleum; and
- (b) if offered by a *bona fide* prospective purchaser equivalent export terms for a quantity of his processed petroleum, sell and supply that quantity of processed petroleum to that *bona fide* prospective purchaser on those equivalent export terms.

(3) In this section, “**equivalent export terms**” means a purchase price and terms which are no less favourable to the seller than the price and terms which he could obtain at that same time as such offer by selling and exporting that processed petroleum, adjusted for such differences as quality, quantity, delivery, transportation, and other terms, but excluding government-to-government sales, barter, swaps, sales between related corporations, and similar non-arms-length transactions.

(4) A person referred to in Subsection (1) shall, if offered equivalent export terms, accommodate the reasonable requirements of the offer or for adjustments from the normal practices of that person in selling and delivering processed petroleum in relation to quantities sold, delivery arrangements and transportation requirements.

(5) The obligations of a person under this section are subject to—

<sup>54</sup> Section 67 Subsection (1) substituted by No. 58 of 2006, s. 14.

<sup>55</sup> Section 67 Subsection (1) substituted by No. 58 of 2006, s. 14.

- (a) the purchaser within a reasonable time offering to enter into an agreement containing commercial sale and purchase terms which are standard in the international petroleum industry, including payment in a currency appropriate for that processed petroleum having regard to normal international industry standards at a place acceptable to the seller within a reasonable time after delivery; and
- (b) prior *bona fide* contractual commitments of the seller in respect of the sale or consumption of such processed petroleum; and
- (c) the reasonable requirements of the seller as to the timing of the disposal of his processed petroleum and the creditworthiness of the purchaser; and
- (d) the seller being at liberty to sell his processed petroleum in Papua New Guinea for a higher price or on terms which objectively are preferable, and for that purpose to retain in Papua New Guinea that quantity of processed petroleum; and
- (e) the seller being at liberty to use any processed petroleum required for his own operations; and
- (f) the provisions of any written agreement between the State and that person; and
- (g) the requirements of all laws for the time being in force in Papua New Guinea.

(6) A *bona fide* prospective purchaser aggrieved at the failure of another person to comply with his obligations under this section shall have standing to seek injunctive relief and damages from a person who has failed to comply with his obligations under this section.

### ***Division 8.***

#### ***Processing and Export of Natural Gas.***

#### **68. PROCESSING OF NATURAL GAS.**

(1) This section applies to all natural gas recovered in a petroleum project, other than natural gas which is—

- (a) reinjected; or
- (b) flared in accordance with this Act; or
- (c) consumed in Papua New Guinea in operations under a licence.

(2) All natural gas produced in a petroleum project shall be processed in a petroleum processing facility in Papua New Guinea.

#### **69. EXPORT OF NATURAL GAS.**

(1) Natural gas shall only be exported from Papua New Guinea if permitted by—

- (a) the terms of a written agreement to which the State is a party; or
- (b) a licence; or
- (c) the Minister, by instrument.

(2) Subject to Subsection (3), any natural gas which is exported from Papua New Guinea shall conform with quality specifications prescribed by the Minister, by instrument.

(3) In the event of an emergency affecting the operation of a petroleum processing facility which processes natural gas which is permitted to be exported in accordance with Subsection (1), natural gas which does not conform with the quality specifications stipulated by Subsection (2) may be exported, but—

- (a) within 24 hours of the emergency occurring, the exporter shall file a report with the Director setting out the details of the emergency, the steps being taken to deal with it and the reason why natural gas conforming with the quality specifications stipulated by Subsection (2) is not being produced; and
- (b) the exporter shall not continue to export natural gas not conforming with the specifications for more than 72 hours after first doing so, without written permission from the Director or the Minister.

(4) An exporter relying upon a written permission granted under Subsection (3) shall, whilst the emergency continues, only export natural gas in accordance with the terms of the written permission.

(5) A written permission granted under Subsection (3) may be varied or revoked by the author.

### ***Division 9.***

#### ***Pipeline Licences.***

#### **70. PIPELINE LICENCE REQUIRED.**

(1) No person shall commence to construct or continue the construction of or operate or alter or reconstruct a pipeline except under and in accordance with a pipeline licence.

(2) A person who commences to construct or continues the construction of or operates or alters or reconstructs a pipeline otherwise than pursuant to a pipeline licence is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 for each day of the offence.

#### **71. ACTS DONE IN AN EMERGENCY.**

It is not an offence against Section 70—

- (a) if, in an emergency, a person does an act to avoid loss or injury or to maintain the pipeline in good order and repair and notifies an inspector as soon as practicable of the act done; or

- (b) if a person does an act in compliance with a direction given under this Act.

## 72. REMOVAL OF PIPELINE.

(1) Where the construction of a pipeline is commenced, continued, completed, altered or reconstructed in contravention of this Act, the Director may, by instrument served on the appropriate person, direct him—

- (a) to make such alterations to the pipeline as are specified in the instrument; or
- (b) to move the pipeline to a specified area or to remove it entirely,

within the period specified in the instrument.

(2) For the purpose of Subsection (1), the appropriate person is—

- (a) where construction of the pipeline has been completed—its owner; or
- (b) where the construction of the pipeline has not been completed—the persons for whom it is being constructed.

(3) Where a person who has been served with an instrument under Subsection (1) does not, within the period specified in the instrument, comply with the direction, the Director may do all or any of the things required by the direction to be done.

(4) Any costs and expenses incurred by the Director under Subsection (3) are a debt due from the person referred to in that subsection to the State.

## 73. APPLICATION FOR PIPELINE LICENCE.

(1)<sup>56</sup> <sup>57</sup>A person may make an application to the Minister for the grant of a pipeline licence and the Minister shall cause a notice for an application for a pipeline licence and the Minister shall cause a notice for an application for a pipeline licence under this section to be published in the National Gazette.

(2) An application for a pipeline licence—

- (a) shall be in an approved form; and
- (b) shall be made in an approved manner; and
- (c) shall be accompanied by particulars of—
  - (i) the proposed design and construction of the pipeline; and
  - (ii) the proposed size and capacity of the pipeline; and
  - (iii) the proposals of the applicant for work and expenditure in respect of the construction of the pipeline; and
  - (iv) the technical qualifications of the applicant and his employees; and

<sup>56</sup> Section 73 Subsection (1) substituted by No. 58 of 2006, s. 15.

<sup>57</sup> Section 73 Subsection (1) substituted by No. 58 of 2006, s. 15.

- (v) the technical advice available to the applicant; and
  - (vi) the financial resources available to the applicant; and
  - (vii) any agreement entered into, or proposed to be entered into, by the applicant for or in relation to the supply or conveyance of petroleum by means of the pipeline; and
- (d) shall be accompanied by a plan, drawn to an approved scale, showing—
- (i) the route to be followed by the pipeline; and
  - (ii) the sites of pumping stations, tank stations, and valve stations to be part of or used in connection with the pipeline; and
- (e) may set out any matter that the applicant wishes the Minister to consider; and
- (f) shall be accompanied by the fee prescribed by Section 157.

(3) Where a proposed pipeline is in any part of a physical planning area under the *Physical Planning Act 1989*, the applicant for the pipeline licence shall—

- (a) notify the National Physical Planning Board; and
- (b) notify any Physical Planning Board under the *Physical Planning Act 1989* within whose jurisdiction the proposed pipeline lies; and
- (c) provide these Physical Planning Boards with a copy of the plan referred to in Subsection (2)(d),

and these Physical Planning Boards may, within 28 days of the receipt of such notification, give their views on the application to the Minister.

(4) Where a notice under Subsection (1) of an application by a person for a pipeline licence in respect of the construction of a project pipeline for the conveyance of petroleum recovered or to be recovered from a petroleum development licence is published in the National Gazette, the registered holder of that petroleum development licence may, within a period of two months after the date of publication, make an application to the Minister for such a pipeline licence and, in the application, request that the application referred to in the notice be rejected.

(5) Where a pipeline licence is granted to a registered holder of a petroleum development licence on an application under Subsection (4), the Minister shall, by instrument served on the original applicant, reject the application referred to in the notice under Subsection (1).

(6) The Director may, at any time, by instrument served on a person who has made an application under this section, require him to furnish such written information in connection with his application as the Minister considers necessary.

(7) An application for a pipeline licence in respect of a strategic pipeline shall, in addition to the matters set out in Subsection (2), be accompanied by—

- (a) draft access arrangements which the applicant proposes should be the access arrangements applying to that strategic pipeline; and

- (b) pro forma accounts for the pipeline and the other petroleum processing facilities referred to in Section 75(7), and an explanation of how the financial records for the pipeline will be maintained separately from other operations of the pipeline licensee.

(8) Prior to submitting an application for a pipeline licence in respect of a strategic pipeline, the applicant shall make all reasonable efforts to consult with existing and potential third party users of the pipeline, and shall furnish to the Minister a report on the possible third party users and their possible requirements in using the pipeline and their views on the contents of the access arrangements to apply to the pipeline.

(9)<sup>58</sup> <sup>59</sup>Where an application for a pipeline licence relates to a strategic pipeline, the notice referred to in Subsection (1) shall invite potential third party users of the pipeline to make submissions to the Minister within the period stipulated in the notice as to their potential requirements in using the pipeline and the contents of the access arrangements to apply to the pipeline.

(10) The draft access arrangements submitted by the applicant shall be a public document, and any person may inspect that document or those documents at the office of the Director.

(11) The Minister shall notify the applicant of any submissions received in response to invitations made in accordance with Subsection (9) and provide the applicant with a copy of all such submissions if requested.

#### 74. GRANT OR REFUSAL OF PIPELINE LICENCE.

(1) Where a person makes an application in accordance with Section 73 for a pipeline licence in respect of the construction of a project pipeline for the conveyance of petroleum recovered or to be recovered from a petroleum development licence, the Minister, after having regard to physical planning considerations—

- (a) shall, if that person—
- (i) is the registered holder of that petroleum development licence; and
  - (ii)<sup>60</sup> has complied with the conditions specified in the licence and with the provisions of this Act; or
- (b) may, if that person is not the registered holder of that petroleum development licence and the application has not been rejected under Section 73(5),

inform that person, by instrument served on him, that the Minister is prepared to grant a pipeline licence to him.

(2) Where—

<sup>58</sup> Section 73 Subsection (9) amended by No. 57 of 2006, s. 10.

<sup>59</sup> Section 73 Subsection (9) amended by No. 57 of 2006, s. 10.

<sup>60</sup> Section 74 Subsection (1) amended by No. 58 of 2006, s. 16.

- (a) an application is made in accordance with Section 73 for a pipeline licence in respect of the construction of a project pipeline for the conveyance of petroleum recovered or to be recovered from a petroleum development licence, by a person who is the registered holder of that petroleum development licence; and
- (b) that person has not complied with the conditions specified in that licence or with the provisions of this Act,

the Minister may inform that person, by instrument served on him, that—

- (c) he is prepared to grant a pipeline licence to that person; or
- (d) he has refused to grant a pipeline licence to that person.

(3) The Minister shall not, under Subsection (2), refuse to grant a pipeline licence unless—

- (a) he has, by instrument served on the person who made the application, given to that person not less than one month's notice of his intention to refuse to grant the pipeline licence; and
- (b) he has served a copy of the instrument on such other persons as he thinks fit; and
- (c) he has, in the instrument—
  - (i) given particulars of the reasons for his intention; or
  - (ii) specified a date on or before which the person who made the application or a person on whom a copy of the instrument is served may, by instrument served on the Director, submit any matters that he wishes the Minister to consider; and
- (d) he has taken into account any matters so submitted to him on or before the specified date by the person who made the application, or by a person on whom a copy of the instrument has been served.

(4) Where an application is made in accordance with Section 73 for a pipeline licence in respect of the construction of a pipeline for the conveyance of petroleum recovered or to be recovered from a petroleum development licence by a person other than the registered holder of that petroleum development licence, the Minister may, by instrument served on the applicant, refuse to grant a pipeline licence.

(5) Where the Minister is required, or proposes, to serve on a person an instrument under Subsection (1) or (2)(c), he shall, by the instrument, inform that person that he will be required to lodge a security for compliance with the conditions to which the pipeline licence, if granted, will from time to time be subject, and with the provisions of this Act.

(6) An instrument under Subsection (1) or (2)(c)—

- (a) shall specify the route to be followed by the pipeline; and
- (b) shall contain a summary of the conditions to be specified in the pipeline licence to be granted; and

- (c) shall contain a statement to the effect that the application will lapse if the applicant does not—
  - (i) make a request under Subsection (8); and
  - (ii) lodge with the Director the security referred to in the instrument.

(7) The route to be specified in an instrument under Subsection (1) or (2)(c) shall be—

- (a) the route shown in the plan accompanying the application; or
- (b) if the Minister is of the opinion that, for any reason, that route is not appropriate—a route that, in the opinion of the Minister, is appropriate.

(8) A person who has been served with an instrument under Subsection (1) or (2)(c) may, within a period of three months after the date of service of the instrument on him or such further period or periods as the Minister allows—

- (a) by instrument served on the Director, request the Minister to grant to him the pipeline licence; and
- (b) lodge with the Director the security referred to in the instrument served on him under that subsection.

(9) Where a person who has been served with an instrument under Subsection (1) or (2)(c) has, within the period specified in Subsection (8)—

- (a) made a request under Subsection (8); and
- (b) lodged with the Director the security referred to in the instrument,

the Minister shall grant to that person a licence to construct and operate a pipeline specified in the instrument.

(10) Where a person who has been served with an instrument under Subsection (1) or (2)(c) has not, within the period specified in Subsection (8)—

- (a) made a request under Subsection (8); or
- (b) lodged with the Director the security referred to in the instrument,

the application lapses at the end of that period.

(11) Where a pipeline licence is not granted on an application, 90% of the fee under Section 157 shall be refunded to the applicant.

(12) Where a person makes application in accordance with Section 73 for a pipeline licence in respect of a strategic pipeline, the Minister, after having regard to physical planning considerations, may inform that person, by instrument served on him, that—

- (a) the Minister is prepared to grant a pipeline licence to that person; or
- (b) the Minister has refused to grant a pipeline licence to that person.

(13) The Minister shall only refuse under Subsection (12) to grant a pipeline licence after considering the advice of the Board.



(14) Where the Minister proposes to serve an instrument under Subsection (12)(a), he shall, by the instrument, inform that person that he will be required to lodge a security for compliance with the conditions to which the pipeline licence, if granted, will from time to time be subject, and with the provisions of this Act.

(15) An instrument under Subsection (12)(a)–

- (a) shall specify the route to be followed by the pipeline; and
- (b) shall contain the conditions to be specified in the pipeline licence to be granted; and
- (c) shall specify the terms of the access arrangements, complying with Section 75, that will be approved by the Minister and apply to the pipeline in accordance with Section 75; and
- (d) shall contain a statement to the effect that the application will lapse if the applicant does not–
  - (i) make a request under Subsection (17); and
  - (ii) lodge with the Director the security referred to in the instrument.

(16) The route to be specified in the instrument under Subsection (12)(a) shall be–

- (a) the route shown in the plan accompanying the application; or
- (b) if the Minister, in accordance with the advice of the Board, considers for any reason that that route is not appropriate—a route that the Minister, in accordance with the advice of the Board, considers appropriate.

(17) A person who has been served with an instrument under Subsection (12)(a) may, within a period of three months after the date of service of the instrument on him, or such longer period as may be specified in the instrument–

- (a) by instrument served on the Director, request the Minister to grant to him the pipeline licence; and
- (b) lodge with the Director the security referred to in the instrument served on him under Subsection (12)(a).

(18) Where a person who has been served with an instrument under Subsection (12)(a) has, within the period specified in Subsection (17) or such longer period or periods as the Minister allows–

- (a) made a request under Subsection (17); and
- (b) lodged with the Director the security referred to in the instrument,

the Minister shall approve the access arrangements specified in the instrument and grant to that person a pipeline licence conforming with the instrument.

(19) Where a person who has been served with an instrument under Subsection (12)(a) has not, within the period specified in Subsection (17)–

- (a) made a request under Subsection (17); and

(b) lodged with the Director the security referred to in the instrument, the application lapses at the end of that period.

(20) A pipeline licence shall not be granted under this section in respect of a strategic pipeline unless the Minister has approved access arrangements complying with Section 75 and the applicant has accepted those access arrangements in accordance with Subsection(17).

## **75. STRATEGIC PIPELINES.**

(1) Pipeline licences in respect of the following pipelines shall contain a licence condition designating the pipeline to be a strategic pipeline:–

- (a) pipelines constructed for the transportation of petroleum from two or more petroleum projects, or for the transportation of petroleum products from two or more petroleum processing facilities; and
- (b) pipelines constructed for the transport of petroleum or petroleum products across an international boundary; and
- (c) pipelines constructed for the transportation of petroleum or petroleum products from a strategic petroleum processing facility; and
- (d) pipelines in respect of which the applicant for a pipeline licence elects that this section will apply; and
- (e) pipelines which become strategic pipelines in accordance with Subsections 81(10) or 82(12).

(2) The pipeline licensee under a pipeline licence applying to a strategic pipeline shall adopt and comply with access arrangements approved by the Minister, whereby third parties may have petroleum or petroleum products transported by the pipeline licensee through that strategic pipeline.

(3) The access arrangements applying to a strategic pipeline shall be registered and the pipeline licensee shall make copies available to all prospective third party users requesting a copy of them.

(4) Subject to any written agreement between the State and the pipeline licensee, access arrangements applying to strategic pipelines–

- (a) shall comply with the requirements of regulations on the operation of strategic pipelines; and
- (b) shall comply with the following principles:–
  - (i) the arrangements should encourage third party use of the pipeline, without requiring reduced tariffs for marginally economic petroleum fields or petroleum processing facilities;
  - (ii) the arrangements should achieve the lowest sustainable tariffs for users which provide a reasonable return on investment for the pipeline licensee, having regard to the circumstances of the investment, including due consideration of risk;

- (iii) the arrangements should provide commercial incentives for investors and foundation shippers in respect of risks assumed, improved efficiency and increased throughputs;
  - (iv) the arrangements should provide certainty of tariff methodology for the term of the transportation contract;
  - (v) the arrangements should constitute an open dissemination of information regarding the pipeline and the service available, so as to enable prospective third party users to evaluate the technical and economic feasibility of transporting petroleum or petroleum products using any spare capacity or developable capacity;
  - (vi) the arrangements should recognise the entitlement of the pipeline licensee to be assured as to the creditworthiness of third party users of the pipeline prior to entering into contracts for service;
  - (vii) the arrangements should recognise the legitimate business interests of the pipeline licensee and existing and potential third party users; and
- (c) shall include—
- (i) the route of the pipeline and the location and ownership of receipt and delivery facilities; and
  - (ii) reasonable definitions of total capacity, excess capacity, and developable capacity of the pipeline; and
  - (iii) a process for identifying the need for, and implementing, expansion to take up the pipeline's developable capacity; and
  - (iv) reasonable processes that may lead to the extension or expansion of the pipeline if demonstrated to be commercially, technically, and operationally viable; and
  - (v) a procedure for requesting service and concluding transportation arrangements within a reasonable period of time; and
  - (vi) the classes of transportation service offered to third parties by the pipeline licensee, separating the charges and tariffs to be charged in respect of each class of service; and
  - (vii) the terms and conditions of the agreement to be offered by the pipeline licensee and third-party users for the transportation of petroleum or petroleum products; and
  - (viii) tariff methodology, with sample calculations; and
  - (ix) billing and payment arrangements; and
  - (x) processes for the inclusion of additional receipt and delivery points on the system; and

- (xi) procedures for nominations for deliveries under a transportation agreement; and
  - (xii) a queuing policy in respect of competing proposals for use of the pipeline; and
  - (xiii) a mechanism for inter-shipper trading of service entitlements under transportation agreements, without derogating from the safety or integrity of pipeline operations; and
  - (xiv) a policy for allocation of pipeline capacity in the event of capacity restrictions from time to time; and
  - (xv) a dispute resolution procedure; and
  - (xvi) reasonable pipeline entry quality specifications which are not unfairly discriminatory to third party users, and where necessary intended procedures for system balancing and adjustments for differences in quality of petroleum or petroleum products entering the pipeline; and
  - (xvii) the expected pipeline operating pressure regime; and
- (d) may include—
- (i) different terms and conditions for foundation users of the pipeline which are commensurate with the different obligations undertaken and risks assumed by those users; and
  - (ii) any other provisions consistent with the normal international practice for open access pipelines which are approved by the Minister.

(5) Access arrangements approved by the Minister under Subsections 74(18), 81(8), 82(8) or 82(11) shall, for as long as the pipeline licence remains in force, be binding on the pipeline licensee and compliance with those access arrangements shall be a condition of the pipeline licence.

(6) The access arrangements referred to in Subsection (5) shall have legal effect and shall be enforceable according to their terms in a court of law by any person having a *bona fide* interest in the terms of the access arrangements.

(7) The pipeline licensee of a strategic pipeline shall maintain separate financial records and accounts for the operation of the pipeline, together with such other petroleum processing facilities as are agreed in writing between the Director and the pipeline licensee, and shall if requested by the Director lodge with the Director by the end of April in each calendar year a set of audited accounts for the strategic pipeline operations which accord with international generally accepted accounting practice setting out the financial results of the strategic pipeline and those other petroleum processing facilities.

(8) Nothing in this section limits the terms and conditions which a pipeline licensee may agree with a third party user as the terms of an access arrangement.

(9)<sup>61</sup> <sup>62</sup>Where a strategic pipeline is constructed as part of a petroleum project or a gas project and is linked to a strategic petroleum processing facility, which is also processing facility licensee may submit to the Minister for approval one access arrangement for such strategic pipeline and strategic petroleum processing facility, which may include a single published tariff for integrated processing and transportation.

## **76. RIGHTS CONFERRED BY PIPELINE LICENCE.**

A pipeline licence, while it remains in force, authorizes the licensee, subject to this Act and in accordance with the conditions specified in the pipeline licence—

- (a) to construct and operate a pipeline (including the pumping stations, tank stations and valve stations specified in the licence) of the design, construction, size and capacity specified in the licence, along the route specified in the licence; and
- (b) to carry on all operations, to execute all works and to do all other things that are necessary for or incidental to the construction and operation of the pipeline.

## **77. TERM OF PIPELINE LICENCE.**

(1) Subject to this Act and to any condition in the licence, a pipeline licence remains in force—

- (a) for a period of 25 years commencing on the day on which the licence takes effect; and
- (b)<sup>63</sup> where the licence is extended under Section 79—for consecutive period or periods, not exceeding 20 years, as the pipeline licensee requires.

(2) Where the Minister is of the opinion that, having regard to the dates of expiration of the petroleum development licences that relate to the licence area from which the petroleum is, or is to be, conveyed by means of the pipeline it is not necessary for the pipeline licence to remain in force for the relevant period referred to in Subsection (1), the Minister may specify in the licence such lesser period as he thinks fit, and the pipeline licence shall remain in force for that lesser period so specified.

## **78. APPLICATION FOR EXTENSION OF PIPELINE LICENCE.**

(1)<sup>64</sup> <sup>65</sup>A pipeline licensee may make an application to the Minister for extension of that licence on the following number of occasions —

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<sup>61</sup> Section 75 Subsection (9) inserted by No. 57 of 2006, s. 11.

<sup>62</sup> Section 75 Subsection (9) inserted by No. 57 of 2006, s. 11.

<sup>63</sup> Section 77 Subsection (1) amended by No. 58 of 2006, s. 17; Subsection (1) amended by No. 64 of 2006, s. 3.

<sup>64</sup> Section 78 Subsection (1) substituted by No. 58 of 2006, s. 18.

<sup>65</sup> Section 78 Subsection (1) substituted by No. 58 of 2006, s. 18.

- (a) in the case of a pipeline licence for a project pipeline where no written agreement has been entered into between the holder of the pipeline licence and the State allowing for multiple extensions – once only; and
  - (b) in the case of a pipeline licence for a project pipeline where a written agreement has been entered into between the holder of the pipeline licence and the State allowing for multiple extensions – that number of times provided for in that agreement; and
  - (c) in the case of a pipeline licence for a strategic pipeline – unlimited number of occasions.
- (2) An application for the extension of a pipeline licence–
- (a) shall be in an approved form; and
  - (b) shall be made in an approved manner not later than six months before the day on which the pipeline licence is due to expire; and
  - (c) shall be accompanied by the fee prescribed by Section 157; and
  - (d) shall specify the period, not exceeding 20 years, for which the extension is sought.

(3)<sup>66</sup> <sup>67</sup>The Minister may, after considering a report of the Board, accept an application at any time prior to the last year of the current term of the licence where that application also relates to a variation of a pipeline licence pursuant to Section 58(7) or an application for a new pipeline licence and the applicant can demonstrate that the remaining period of the current term of the licence is insufficient to permit the transportation of petroleum from the one or more petroleum development licence areas.

## **79. GRANT OR REFUSAL OF EXTENSION OF PIPELINE LICENCE.**

(1) Where a pipeline licensee makes an application for the extension of the pipeline licence under Section 78, the Minister–

- (a) shall, if the pipeline licensee has complied with the conditions specified in the pipeline licence and with the provisions of this Act; or
- (b) may, if the pipeline licensee has not complied with the conditions specified in the licence and with the provisions of this Act, and the Minister is satisfied that, although the pipeline licensee has not so complied, special circumstances exist that justify the granting of the extension of the pipeline licence,

inform the licensee, by instrument served on the licensee–

- (c) that he is prepared to grant to the licensee the extension of the pipeline licence; and

<sup>66</sup> Section 78 Subsection (3) inserted by No. 64 of 2006, s. 4.

<sup>67</sup> Section 78 Subsection (3) inserted by No. 64 of 2006, s. 4.

(d) that the licensee will be required to lodge a security for compliance with the conditions to be specified in the pipeline licence, if the extension is granted, and with the provisions of this Act.

(2) The Minister shall not, under Subsection (1), refuse to grant a pipeline licence to a licensee unless—

(a) he has, by instrument served on the licensee, given not less than one month's notice of his intention to refuse to grant the pipeline licence; and

(b) he has served a copy of the instrument on such other persons as he thinks fit; and

(c) he has, in the instrument—

(i) given particulars of the reasons for his intention to refuse; and

(ii) specified a date on or before which the licensee or a person on whom a copy of the instrument has been served may, by instrument served on the Minister, submit any matters that he wishes the Minister to consider; and

(d) he has taken into account any matters so submitted to him, on or before the specified date, by the licensee, or by a person on whom a copy of the instrument has been served.

(3) Where an application for the extension of a pipeline licence is made under Section 78 and the pipeline licence otherwise expires before the Minister grants or refuses to grant the extension of the pipeline licence, the pipeline licence shall be deemed to continue in force in all respects until the Minister refuses to grant the extension of the pipeline licence.

## **80. CONDITIONS OF PIPELINE LICENCE.**

A pipeline licence may be granted subject to such conditions as the Minister thinks fit and specifies in the licence.

## **81. VARIATION OF PIPELINE LICENCE ON APPLICATION BY LICENSEE.**

(1) The holder of a pipeline licence may at any time make an application to the Minister for a variation of the pipeline licence to—

(a) extend the specified route of the pipeline; or

(b) include additional receipt and delivery points; or

(c) construct additional pipelines using the same route specified in the pipeline licence; or

(d) install pumping stations, compressors, valve stations, measurement stations, storage tanks or other improvements for the safety and operation of the pipeline or to increase its capacity; or

- (e) convert a pipeline to transport a different form of petroleum or petroleum product from the petroleum or petroleum products described in the initial licence application; or
- (f) make any other change which would improve the operating efficiency of the pipeline; or
- (g) in the case of a project pipeline, change its designation to a strategic pipeline; or
- (h) in the case of a strategic pipeline, vary the access arrangements applicable thereto.

(2) An application under this section shall—

- (a) be in an approved form; and
- (b) be made in an approved manner; and
- (c) be accompanied by particulars of the proposed variation; and
- (d) specify the reason for the proposed variation; and
- (e) in the case of an application to convert a project pipeline to a strategic pipeline, be accompanied by—
  - (i) draft access arrangements which the applicant proposes should be the access arrangements applying to that pipeline; and
  - (ii) pro forma accounts for the pipeline and the other petroleum processing facilities referred to in Subsection 75(7), and an explanation of how the financial records for the pipeline will be maintained separately from other operations of the pipeline licensee; and
- (f) in the case of an application to vary the access arrangements applicable to a strategic pipeline, be accompanied by draft modified access arrangements.

(3) The Minister may require the pipeline licensee to furnish such further information in connection with the application as the Minister considers necessary.

(4) In the case of an application to convert a project pipeline to a strategic pipeline or an application to vary the access arrangements applying to a strategic pipeline—

- (a) the applicant shall, prior to submitting its application, consult with existing and potential third party users of the pipeline, and shall furnish to the Minister a report on the possible third party users and their possible requirements in using the pipeline and their views on the contents of the access arrangements to apply to the pipeline; and
- (b) upon receipt of the application the Minister shall cause a notice to be published in the National Gazette advising of the application and particulars of the pipeline, and inviting existing and potential third party users of the pipeline to make submissions to the Minister within



the period specified in the notice as to their potential requirements in using the pipeline and the contents of the access arrangements to apply to the pipeline; and

- (c) the draft access arrangements submitted by the applicant shall be a public document, and any person may inspect that document or those documents at the office of the Director; and
- (d) the Minister shall notify the applicant of any submissions received in accordance with Subsection (4)(b) and provide the applicant with a copy of all such submissions if requested.

(5) In the case of any application under this section other than an application to convert a project pipeline to a strategic pipeline or an application to vary the access arrangements applying to a strategic pipeline, the Minister may, after considering a report from the Board and any matter submitted to him under this section—

- (a) vary the pipeline licence in accordance with the application or otherwise as he may agree with the pipeline licensee; or
- (b) reject the application.

(6) In the case of an application to convert a project pipeline to a strategic pipeline or an application to vary the access arrangements applying to a strategic pipeline, the Minister may, after considering a report from the Board and any matter submitted to him under this section—

- (a) serve on the pipeline licensee an instrument—
  - (i) advising the pipeline licensee that the Minister is prepared to vary the pipeline licence to convert the pipeline to a strategic pipeline or vary the access arrangements, as the case may be; and
  - (ii) specifying the terms of the access arrangements or varied access arrangements, complying with Section 75, to be approved by the Minister and apply to the pipeline in accordance with Section 75; or
- (b) reject the application.

(7) A pipeline licensee who has been served with an instrument under Subsection (6)(a) may, within a period of three months after the date of service of the instrument on him, by instrument served on the Director, request the Minister to vary the pipeline licence in accordance with the instrument referred to in that subsection.

(8) Where a pipeline licensee who has been served with an instrument under Subsection (6)(a) has, within the period specified in Subsection (7), made a request under Subsection (7), the Minister shall approve the access arrangements or varied access arrangements specified in the instrument and vary the pipeline licence in accordance with the instrument.

(9) A pipeline licence shall not be varied under this section to convert the pipeline to a strategic pipeline or to vary the access arrangements applying to a strategic pipeline unless the Minister has approved access arrangements or varied access arrangements complying with Section 75 and the applicant has accepted those access arrangements or varied access arrangements in accordance with Subsection (7).

(10) Where the Minister varies a pipeline licence under this section, he shall cause to be published in the National Gazette a notice of the variation.

(11) A project pipeline which is converted to a strategic pipeline under this section shall be a strategic pipeline with effect from the date the variation of the licence for that purpose takes effect, and thereafter those approved access arrangements shall apply to that pipeline in accordance with Section 75.

(12) Where the access arrangements applying to a strategic pipeline are varied under this section, the varied access arrangements shall apply to that pipeline in accordance with Section 75 with effect from the date the variation of the licence for that purpose takes effect.

(13) Notwithstanding Subsections (11) and (12), the establishment or variation under this section of the access arrangements applying to a strategic pipeline shall not affect the validity of agreements previously entered into by the pipeline licensee for transportation of petroleum.

## **82. VARIATION OF PIPELINE LICENCE BY MINISTER.**

(1) The Minister may, if in his opinion it is necessary—

(a) for the protection of health and safety; or

(b) to avoid obstruction of, or interference with, the rights of other persons,

by instrument served on a pipeline licensee, direct the licensee to make such changes in the design, construction and route or position of the pipeline (including pumping stations, tank stations or valve stations) to which the pipeline licence relates as are specified in the instrument, within the period specified in the instrument.

(2) A person to whom a direction is given under Subsection (1) who fails or refuses to comply with the direction is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

Default penalty: A fine not exceeding K25,000.00.

(3) Where the Minister gives a direction under Subsection (1) and the person to whom the direction is given complies with the direction, the Minister may grant to that person such sum as he considers reasonable in the circumstances.

(4) Where the Minister gives a direction under Subsection (1), any pipeline licence affected by the direction shall be deemed to be varied to the extent reasonably necessary to enable the direction to be complied with.

(5) If, in the opinion of the Minister, acting in accordance with the advice of the Board—

- (a) it is desirable that a project pipeline be used by third parties for transportation of their petroleum or petroleum products, and that such third parties will have petroleum or petroleum products to be transported in that pipeline, he may by instrument served on the pipeline licensee direct that a project pipeline be converted to a strategic pipeline; or
- (b) it is desirable that the terms of access arrangements applying to a strategic pipeline be varied, he may by instrument served on the pipeline licensee direct that the access arrangements applying to that strategic pipeline be varied.

(6) If the Minister gives a direction under Subsection (5), he shall publish in the National Gazette notice advising of that direction and particulars of the pipeline, and inviting existing and potential third party users of the pipeline to make submissions to the Minister as to their potential requirements in using the pipeline and the contents of the access arrangements to apply to the pipeline.

(7) Within three months of receipt of a direction under Subsection (5), a pipeline licensee shall lodge with the Minister—

- (a) draft access arrangements complying with Section 75, which the applicant proposes should be the access arrangements or varied access arrangements applying to that pipeline; and
- (b) in the case of a direction to convert from a project pipeline to a strategic pipeline, pro forma accounts for the pipeline and the other petroleum processing facilities referred to in Subsection 75(7), and an explanation of how the financial records for the pipeline will be maintained separately from other operations of the pipeline licensee.

(8) Prior to submitting draft access arrangements, the applicant shall make all reasonable efforts to consult with existing and potential third party users of the pipeline, and shall furnish to the Minister a report on the possible third party users and their possible requirements in using the pipeline and their views on the contents of the access arrangements to apply to the pipeline.

(9) A notice referred to in Subsection (6) shall invite existing and potential third party users of the pipeline to make submissions to the Minister within the period stipulated in the notice as to their potential requirements in using the pipeline and the contents of the access arrangements to apply to the pipeline.

(10) The draft access arrangements submitted by the pipeline licensee shall be a public document, and any person may inspect that document or those documents at the office of the Director.

(11) The Minister shall notify the applicant of any submissions received in response to invitations made in accordance with Subsection (6) and provide the applicant with a copy of all such submissions if requested.

(12) If the draft access arrangements or varied access arrangements proposed by the pipeline licensee, as they may be amended by agreement between the Minister and the pipeline licensee, are acceptable to the Minister, the Minister shall approve those access arrangements, and vary the pipeline licence to convert the project pipeline to be a strategic pipeline or adopt the new access arrangements, as the case may be.

(13) If the draft access arrangements or varied access arrangements proposed by the pipeline licensee are not acceptable to the Minister and the pipeline licensee and the Minister are not able to reach agreement on amendments to the draft, the Minister may refer the question of the terms of the access arrangements or varied access arrangements to apply to the pipeline for expert determination in accordance with Subsection (14).

(14) If the Minister makes a reference under Subsection (13), then the terms of the access arrangements or varied access arrangements shall be determined by an expert appointed by the Minister for that purpose and paid for by the State, who shall—

- (a) be independent of the State and the pipeline licensee; and
- (b) be qualified by experience in dealing with open access arrangements for pipelines; and
- (c) prior to making his decision, consult with the Minister and the pipeline licensee and any person who has made a submission under Subsection (6); and
- (d) in making his decision have regard to the reasonable requirements of those persons making such submissions; and
- (e) determine terms of access arrangements which comply with Section 75.

(15) When the access arrangements are determined by expert determination under Subsection (14), the Minister may—

- (a) approve the access arrangements or varied access arrangements so determined; and
- (b) vary the pipeline licence to convert the project pipeline to be a strategic pipeline or adopt the varied access arrangements, as the case may be.

(16) Where the Minister varies a pipeline licence under this section, he shall cause to be published in the National Gazette a notice of the variation.

(17) A project pipeline which is converted to a strategic pipeline under this section shall be a strategic pipeline with effect from the date the variation of the licence for that purpose takes effect, and thereafter those approved access arrangements shall apply to that pipeline in accordance with Section 75.

(18) Where the access arrangements applying to a strategic pipeline are varied under this section, the varied access arrangements shall apply to that pipeline in accordance with Section 75 with effect from the date the variation of the licence for that purpose takes effect.

(19) Notwithstanding Subsections (17) and (18), the establishment or variation under this section of the access arrangements applying to a strategic pipeline shall not affect the validity of agreements previously entered into by the pipeline licensee for transportation of petroleum.

### 83. COMMON CARRIER.

(1) Subject to the terms of a written agreement between the State and the pipeline licensee, the Minister, acting in accordance with a report of the Board, may by instrument served on the pipeline licensee of a project pipeline direct the pipeline licensee to be a common carrier in respect of that project pipeline.

(2) Where a pipeline licensee is given a direction under this section, that pipeline licensee shall thereafter be a common carrier in respect of that pipeline, and the provisions of this section and of any regulations prescribed under Subsection (3) shall apply to the pipeline operations conducted under that pipeline licence.

(3) Subject to Subsection (4), regulations may prescribe the manner of the operation of a pipeline in respect of which a direction has been given under this section.

(4) Any regulation made under Subsection (3) shall give priority to—

- (a) *bona fide* prior contractual commitments of the pipeline licensee with unrelated parties; and
- (b) the *bona fide* requirements of the pipeline licensee to transport petroleum or petroleum products produced from a petroleum project in respect of which the pipeline licensee holds a petroleum development licence.

(5) A pipeline licensee which has been given a direction under this section in respect of a pipeline may, notwithstanding that direction, make an application under Subsection 81(1)(g) in respect of that pipeline.

(6) If, on an application under Subsection 81(1)(g) in relation to a pipeline by a pipeline licensee which has been given a direction under this section in respect of that pipeline, the Minister grants a variation to that pipeline licence to convert the pipeline to a strategic pipeline, the provisions of this section and the regulations in relation to common carriage shall cease to apply to that pipeline.

### 84. CEASING TO OPERATE PIPELINE.

(1) Except with the written consent of the Minister, and subject to compliance with such conditions (if any) as are specified in the instrument of consent, a pipeline licensee who ceases to operate the pipeline is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

(2) It is not an offence against Subsection (1) if the failure to operate the pipeline—

- (a) was in the ordinary course of the operation of the pipeline; or

- (b) was for the purpose of repairing or maintaining the pipeline; or
- (c) was in an emergency in which there was a likelihood of loss or injury; or
- (d) was as a result of an industrial strike or picket.

***Division 10.***

***Petroleum Processing Facility Licences.***

**85. PETROLEUM PROCESSING FACILITY LICENCE REQUIRED.**

(1) Subject to this section, no person shall commence to construct or continue the construction of or make major modifications to or operate a petroleum processing facility without a petroleum processing facility licence in respect of that petroleum processing facility.

(2) The provisions of Subsection (1) shall not apply to the holder of a petroleum development licence in respect of a petroleum processing facility which is part of the proposals for development approved for that petroleum development licence by the Minister under Section 57(2) as varied from time to time, but the licensee thereof shall comply with all regulations prescribed for securing, regulating, controlling or restricting petroleum processing facilities and the facilities shall be subject to inspection under Section 152.

(3) The provisions of Subsection (1) shall not apply in relation to—

- (a) storage and transportation facilities for domestic utilisation that are designated by regulation to be exempt; or
- (b) pipelines in respect of which a pipeline licence is in force,

but the operator thereof shall comply with all regulations prescribed for securing, regulating, controlling or restricting petroleum processing facilities and the facilities shall be subject to inspection under Section 152.

**86. APPLICATION FOR PETROLEUM PROCESSING FACILITY LICENCE.**

(1) A person may make an application to the Minister for the grant of a petroleum processing facility licence.

(2) The Minister may, by notice in the National Gazette—

- (a) invite application for the grant of a petroleum processing facility licence; and
- (b) specify the period during which such an application should be made.

**87. FORM OF APPLICATION FOR PETROLEUM PROCESSING FACILITY LICENCE.**

(1) An application made under Section 86 shall—

- (a) be made in an approved form; and

- (b) be made in an approved manner; and
  - (c) be accompanied by particulars of—
    - (i) the names and address of the persons who will construct, operate and own the petroleum processing facility; and
    - (ii) the proposed site for the petroleum processing facility and arrangements for the legal occupation of the site; and
    - (iii) the design of the petroleum processing facility; and
    - (iv) the technical qualifications of the applicant and his contractors; and
    - (v) the financial capacity of the applicant to construct and operate the petroleum processing facility; and
    - (vi) environmental monitoring systems, waste disposal procedures and the results of environmental studies; and
    - (vii) the intended date for commencement of construction and estimated dates for commissioning and full operation; and
    - (viii) the intended output of petroleum or petroleum products; and
  - (d) be accompanied by payment of the application fee prescribed by Section 157.
- (2) Where an application is received under Subsection (1)—
- (a) notice of the application shall be published in the National Gazette; and
  - (b) any person who claims to be affected by the application may file notice of his objection to that application with the Director within one month after the date of publication of the notice of application and all objections shall be considered by the Board before it reports to the Minister on the application.

(3) An application for a petroleum processing facility licence in respect of a strategic petroleum processing facility shall, in addition to the matters set out in Subsection (1), be accompanied by draft access arrangements which the applicant proposes should be access arrangements applying to that strategic petroleum processing facility.

(4) Prior to submitting an application for a petroleum processing facility licence in respect of a strategic petroleum processing facility, the applicant shall make all reasonable efforts to consult with existing and potential third party users of the petroleum processing facility, and shall furnish to the Minister a report on the possible third party users and their possible requirements in using the petroleum processing facility and their views on the contents of the access arrangements to apply to the petroleum processing facility.

(5) Where an application for a petroleum processing facility licence relates to a strategic petroleum processing facility, the notice referred to in Subsection (2) shall invite potential third party users of the petroleum processing facility to make

submissions to the Minister as to their potential requirements in using the petroleum processing facility and the contents of the access arrangements to apply to the petroleum processing facility.

(6) The draft access arrangements submitted by the applicant shall be a public document, and any person may inspect that document or those documents at the office of the Director.

(7) The Minister shall notify the applicant of any submissions received in accordance with Subsection (5), and provide the applicant with a copy of all such submissions if requested.

## **88. GRANT OR REFUSAL OF PETROLEUM PROCESSING FACILITY LICENCE.**

(1) Where an application has been made under Section 86 in respect of a petroleum processing facility which is not a strategic petroleum processing facility, the Minister may, after considering a report of the Board—

- (a) by instrument served on the applicant, inform the applicant—
  - (i) that he is prepared to grant to the applicant a petroleum processing facility licence in respect of the site and for construction of the petroleum processing facility specified in the application; and
  - (ii) that the applicant will be required to lodge a security for compliance with the conditions to which the petroleum processing facility licence, if granted, will be subject and the provisions of this Act, and to pay the annual fee; or
- (b) refuse to grant a petroleum processing facility licence to the applicant.

(2) An instrument under Subsection (1)(a) shall contain—

- (a) the conditions subject to which the petroleum processing facility licence is to be granted; and
- (b) a statement to the effect that the application will lapse if the applicant does not make a request under Subsection (3) in respect of the grant of the petroleum processing facility licence and lodge with the Director the security specified in the instrument and the first annual fee as prescribed by Section 157.

(3) An applicant who has been served with an instrument under Subsection (1) may, within a period of one month after the date of service of the instrument, or within such further period or periods as the Minister may allow—

- (a) by instrument served on the Minister request the Minister to grant him the petroleum processing facility licence; and
- (b) lodge with the Director the security referred to in Subsection (1)(a) and the first annual fee referred to in that subsection.



(4) Where an applicant has complied with the requirements of Subsection (3), the Minister shall grant a petroleum processing facility licence for the site and the petroleum processing facility specified in the instrument, subject to the conditions specified in the instrument or such other conditions as are agreed by the Minister and the applicant, but in any other case the application lapses.

(5) Where an application has been made under Section 86 in respect of a strategic petroleum processing facility, the Minister may, after considering a report of the Board—

- (a) by instrument served on the applicant, inform the applicant—
  - (i) that he is prepared to grant to the applicant a petroleum processing facility licence in respect of the site and for construction and operation of the petroleum processing facility specified in the application; and
  - (ii) that the applicant will be required to lodge a security for compliance with the conditions to which the petroleum processing facility licence, if granted, will be subject and the provisions of this Act, and to pay the annual fee; or
- (b) refuse to grant a petroleum processing facility licence to the applicant.

(6) The Minister shall not refuse under Subsections (1) or (5) to grant a petroleum processing facility licence unless—

- (a) he has, by the instrument referred to in those subsections served on the applicant, given not less than one month's notice of his intention to do so; and
- (b) he has, in that instrument—
  - (i) given particulars of the reason for his intention; and
  - (ii) specified a date on or before which the applicant may, by instrument served on the Minister, submit any matters that the applicant requires the Minister to consider, including new proposals generally or in respect of some particular matter; and
- (c) he has given to the applicant, and to any persons whom the applicant thinks fit to consult, a full opportunity to consult with the Minister concerning the Minister's intention to refuse to grant a petroleum processing facility licence; and
- (d) he has taken into account, after considering a report from the Board, any matters raised in the course of such consultations by the applicant or by any other person referred to in Paragraph (c).

(7) An instrument under Subsection (5)(a) shall contain—

- (a) the conditions subject to which the petroleum processing facility licence is to be granted; and

- (b) the terms of the access arrangements, complying with Section 89, to be approved by the Minister and apply to the petroleum processing facility in accordance with Section 89; and
- (c) a statement to the effect that the application will lapse if the applicant does not make a request under Subsection (8) in respect of the grant of the petroleum processing facility licence and lodge with the Director the security specified in the instrument and the first annual fee as prescribed by Section 157.

(8) An applicant who has been served with an instrument under Subsection (5)(a) may, within a period of one month after the date of service of the instrument, or within such further period or periods as the Minister may allow—

- (a) by instrument served on the Minister request the Minister to grant him the petroleum processing facility licence; and
- (b) lodge with the Director the security referred to in Subsection (5)(a) and the first annual fee as prescribed by Section 157.

(9) Where an applicant has complied with the requirements of Subsection (8), the Minister shall approve the access arrangements specified in the instrument and grant a petroleum processing facility licence for the site and the petroleum processing facility specified in the instrument, subject to the conditions specified in the instrument or such other conditions as are agreed by the Minister and the applicant, but in any other case the application lapses.

(10) A petroleum processing facility licence shall not be granted under this section in respect of a strategic petroleum processing facility unless the Minister has approved access arrangements complying with Section 89 and the applicant has accepted those access arrangements in accordance with Subsection (8).

## **89. STRATEGIC PETROLEUM PROCESSING FACILITIES.**

(1) A petroleum processing facility licence in respect of a strategic petroleum processing facility shall contain a licence condition designating the petroleum processing facility to be a strategic petroleum processing facility.

(2) A petroleum processing facility licensee in respect of a strategic petroleum processing facility shall adopt and comply with access arrangements approved by the Minister, whereby third parties may have petroleum or petroleum products processed by the petroleum processing facility licensee through that strategic petroleum processing facility.

(3) The access arrangements applying to a strategic petroleum processing facility shall be registered and the petroleum processing facility licensee shall make copies available to all prospective third party users requesting a copy of them.

(4) Subject to any written agreement between the State and the petroleum processing facility licensee, access arrangements applying to strategic petroleum processing facilities—

- (a) shall comply with the requirements of regulations on the operation of strategic petroleum processing facilities; and
- (b) shall comply with the following principles:–
  - (i) the arrangements should encourage third party use of the facility, without requiring reduced tariffs for otherwise marginally economic use of the petroleum processing facilities;
  - (ii) the arrangements should achieve the lowest sustainable tariffs for users which provide a reasonable return on investment for the petroleum processing facility licensee, having regard to the circumstances of the investment, including due consideration of risk;
  - (iii) the arrangements should provide commercial incentives for investors in respect of risks assumed, improved efficiency and increased throughputs;
  - (iv) the arrangements should provide certainty of tariff methodology for the term of the processing contract;
  - (v) the arrangements should constitute an open dissemination of information regarding the facility and the service available, so as to enable prospective third party users to evaluate the technical and economic feasibility of processing petroleum or petroleum products using any spare capacity or developable capacity;
  - (vi) the arrangements should recognise the entitlement of the petroleum processing facility licensee to be assured as to the creditworthiness of third party users of the petroleum processing facility prior to entering into contracts for processing;
  - (vii) the arrangements should recognise the legitimate business interests of the petroleum processing facility licensee and existing and potential third party users; and
- (c) shall include–
  - (i) the location and ownership of receipt and delivery facilities; and
  - (ii) reasonable definitions of total capacity, excess capacity, and developable capacity of the petroleum processing facility for specified conditions; and
  - (iii) a process for identifying the need for, and implementing, expansion to take up the petroleum processing facility's capacity or other modification of the petroleum processing facility; and
  - (iv) reasonable processes that may lead to the extension or expansion or modification of the petroleum processing facility if demonstrated to be commercially, technically, and operationally viable; and

- (v) a procedure for requesting service and concluding processing arrangements within a reasonable period of time; and
  - (vi) the classes of processing service offered to third parties by the petroleum processing facility licensee, separating the charges and tariffs to be charged in respect of each class of service; and
  - (vii) the terms and conditions of the agreement to be offered by the petroleum processing facility licensee to third-party users for the processing of petroleum or petroleum products; and
  - (viii) tariff methodology, with sample calculations; and
  - (ix) billing and payment arrangements; and
  - (x) a queuing policy in respect of competing proposals for processing; and
  - (xi) a policy for allocation of petroleum processing facility capacity in the event of capacity restrictions from time to time; and
  - (xii) a dispute resolution procedure; and
  - (xiii) acceptable quality specifications for petroleum or petroleum products which are not unfairly discriminatory to third party users, measurement requirements, and balancing and adjustments for differences in quality of petroleum or petroleum products entering the petroleum processing facility; and
- (d) may include—
- (i) different terms and conditions for foundation users of the petroleum processing facility which are commensurate with the different obligations undertaken and risks assumed by those users; and
  - (ii) any other provisions consistent with the normal international practice for open access petroleum processing facilities which are approved by the Minister.

(5) Access arrangements approved by the Minister under Sections 88(9), 92(8), 93(9) or 93(12) shall, for as long as the petroleum processing facility licence remains in force, be binding on the petroleum processing facility licensee and compliance with those access arrangements shall be a condition of the petroleum processing facility licence.

(6) The access arrangements referred to in Subsection (5) shall have legal effect and shall be enforceable according to their terms in a court of law by any person having a *bona fide* interest in the terms of the access arrangements.

(7) A petroleum processing facility shall not be a strategic petroleum processing facility if it is exempted by a written agreement between the State and the holder of the petroleum processing facility licence or by a condition of the petroleum processing facility licence or by an instrument signed by the Minister.

(8) Where by an instrument the Minister exempts a petroleum processing facility under Subsection (7), that exemption may be revoked by the Minister by instrument.

(9) Nothing in this section limits the terms and conditions which a petroleum processing facility licensee may agree with a third party user as the terms of an access arrangement.

(10)<sup>68</sup> <sup>69</sup>Where a strategic petroleum processing facility is constructed as part of a petroleum project or a gas project and is linked to a strategic pipeline, which is also part of such a petroleum project or gas project, the petroleum processing facility licensee and the pipeline licensee may submit to the Minister for approval one access arrangement for such strategic petroleum processing facility and strategic pipeline, which may include a single published tariff for integrated processing and transportation.

## **90. RIGHTS CONFERRED BY PETROLEUM PROCESSING FACILITY LICENCE.**

(1) Subject to Subsection (2), a petroleum processing facility licence, while it remains in force, confers on the petroleum processing facility licensee, subject to this Act and to the conditions specified in the petroleum processing facility licence, exclusive rights to—

- (a) construct the petroleum processing facility at the site for which the petroleum processing facility licence was granted; and
- (b) conduct operations for petroleum processing through the petroleum processing facility; and
- (c) carry on such operations and execute such works at the site of the petroleum processing facility, other than a major modification, as are necessary and reasonable for or in connection with the purposes specified in Paragraphs (a) and (b).

(2) A petroleum processing facility licensee shall not make a major modification to his petroleum processing facility except pursuant to a variation of the petroleum processing facility licence under Section 92 or 93.

(3) Nothing in this section shall affect the rights conferred on the holder of a petroleum development licence under Section 59 or on a pipeline licensee under Section 76.

## **91. TERM OF PETROLEUM PROCESSING FACILITY LICENCE.**

Subject to this Division, and to any condition in the petroleum processing facility licence, a petroleum processing facility licence remains in force until cancelled by the Minister under Section 138 or surrendered by the petroleum processing facility licensee under Section 137.

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<sup>68</sup> Section 89 Subsection (10) inserted by No. 57 of 2006, s. 12.

<sup>69</sup> Section 89 Subsection (10) inserted by No. 57 of 2006, s. 12.

**92. VARIATION OF PETROLEUM PROCESSING FACILITY LICENCE ON APPLICATION BY LICENSEE.**

(1) The holder of a petroleum processing facility licence may, at any time, make an application to the Minister for a variation of the petroleum processing facility licence.

(2) An application under this section shall—

- (a) specify the reasons for proposed variation; and
- (b) be made in an approved form and contain the information specified in Section 87; and
- (c) in the case of an application to vary a petroleum processing facility licence to vary the access arrangements applying to a strategic petroleum processing facility, be accompanied by draft access arrangements which the applicant proposes should be the access arrangements applying to the strategic petroleum processing facility.

(3) The Minister may require the applicant to furnish such further information in connection with his application as the Minister considers necessary.

(4) In the case of an application to vary a petroleum processing facility licence other than to vary the access arrangements applying to a strategic petroleum processing facility, the Minister may, after considering a report of the Board and any matters submitted to him under this section—

- (a) amend the terms of the petroleum processing facility licence to provide as stipulated in the application or as otherwise agreed with the petroleum processing facility licensee; or
- (b) refuse the application, in which case the existing petroleum processing facility licence shall remain in full force and effect.

(5) In the case of an application to vary a petroleum processing facility licence to vary the access arrangements applying to a strategic petroleum processing facility—

- (a) the applicant shall, prior to submitting his application, make all reasonable efforts to consult with existing and potential third party users of the petroleum processing facility, and shall furnish to the Minister a report on the possible third party users and their possible requirements in using the petroleum processing facility and their views on the contents of the access arrangements to apply to the petroleum processing facility; and
- (b) upon receipt of the application the Minister shall cause a notice to be published in the National Gazette advising of the application and particulars of the petroleum processing facility, and inviting existing and potential third party users of the petroleum processing facility to make submissions to the Minister as to their potential requirements in

using the petroleum processing facility and the contents of the access arrangements to apply to the petroleum processing facility; and

- (c) the draft access arrangements submitted by the applicant shall be a public document, and any person may inspect that document or those documents at the office of the Director; and
- (d) the Minister shall notify the applicant of any submissions received in accordance with Subsection (5)(b) and provide the applicant with a copy of all such submissions if requested.

(6) In the case of an application to vary a petroleum processing facility licence to vary the access arrangements applying to a strategic petroleum processing facility, the Minister may, after considering a report from the Board and any matter submitted to him under this section—

- (a) serve on the petroleum processing facility licensee an instrument—
  - (i) advising the petroleum processing facility licensee that the Minister is prepared to vary the petroleum processing facility licence to vary the access arrangements; and
  - (ii) specifying the terms of the varied access arrangements, complying with Section 89, to be approved by the Minister and apply to the petroleum processing facility in accordance with Section 89; or
- (b) reject the application.

(7) A petroleum processing facility licensee who has been served with an instrument under Subsection (6)(a) may, within a period of three months after the date of service of the instrument on him, by instrument served on the Director, request the Minister to vary the petroleum processing facility licence in accordance with the instrument referred to in that Subsection.

(8) Where a petroleum processing facility licensee who has been served with an instrument under Subsection (6)(a) has, within the period specified in Subsection (7), made a request under Subsection (7), the Minister shall approve the varied access arrangements specified in the instrument and vary the petroleum processing facility licence in accordance with the instrument.

(9) A petroleum processing facility licence shall not be varied under this section to vary the access arrangements unless the Minister has approved varied access arrangements complying with Section 89 and the applicant has accepted those varied access arrangements in accordance with Subsection (7).

(10) Where the Minister varies a petroleum processing facility licence under this section, he shall cause to be published in the National Gazette a notice of the variation.

(11) Where access arrangements are established or varied under this section, the varied access arrangements shall apply to that petroleum processing facility in

accordance with Section 89 with effect from the date the variation of the licence for that purpose takes effect.

(13) Notwithstanding Subsection (11), the establishment or variation under this section of the access arrangements applying to a strategic petroleum processing facility shall not affect the validity of agreements previously entered into by the petroleum processing facility licensee for processing of petroleum.

### **93. VARIATION OF PETROLEUM PROCESSING FACILITY LICENCE BY MINISTER.**

(1) If the Minister gives to a pipeline licensee a direction under Section 82(5)(a) and as a consequence of the pipeline to which that direction relates becoming a strategic pipeline a petroleum processing facility would become a strategic petroleum processing facility, the Minister shall give to the petroleum processing facility licensee in respect of that petroleum processing facility a direction under this Section.

(2) If the Minister, acting in accordance with the advice of the Board, considers that it is desirable that the terms of access arrangements applying to a strategic petroleum processing facility be varied, the Minister may by instrument served on the petroleum processing facility licensee direct that the access arrangements applying to that strategic petroleum processing facility be varied.

(3) If the Minister gives a direction under Subsections (1) or (2) he shall publish in the National Gazette a notice advising of that direction and particulars of the petroleum processing facility, and inviting existing and potential third party users of the petroleum processing facility to make submissions to the Minister as to their potential requirements in using the petroleum processing facility and the contents of the access arrangements to apply to the petroleum processing facility.

(4) Within three months of receipt of a direction under Subsections (1) or (2), a petroleum processing facility licensee shall lodge with the Minister draft access arrangements complying with Section 89, which the applicant proposes should be the access arrangements or varied access arrangements applying to that petroleum processing facility.

(5) Prior to submitting draft access arrangements, the petroleum processing facility licensee shall make all reasonable efforts to consult with existing and potential third party users of the petroleum processing facility, and shall furnish to the Minister a report on the possible third party users and their possible requirements in using the petroleum processing facility and their views on the contents of the access arrangements to apply to the petroleum processing facility.

(6) A notice referred to in Subsection (3) shall invite existing and potential third party users of the petroleum processing facility to make submissions to the Minister within the period stipulated in the notice as to their potential requirements in using the petroleum processing facility and the contents of the access arrangements to apply to the petroleum processing facility.



(7) The draft access arrangements submitted by the petroleum processing facility licensee shall be a public document, and any person may inspect that document or those documents at the office of the Director.

(8) The Minister shall notify the petroleum processing facility licensee of any submissions received in response to invitations made in accordance with Subsection (3) and provide the petroleum processing facility licensee with a copy of all such submissions if requested.

(9) If the draft access arrangements or varied access arrangements proposed by the petroleum processing facility licensee, as they may be amended by agreement between the Minister and the petroleum processing facility licensee, are acceptable to the Minister, the Minister shall approve those access arrangements, and vary the petroleum processing facility licence to convert the petroleum processing facility to be a strategic petroleum processing facility or adopt the new access arrangements, as the case may be.

(10) If the draft access arrangements or varied access arrangements proposed by the petroleum processing facility licensee is not acceptable to the Minister and the petroleum processing facility licensee and the Minister are not able to reach agreement on amendments to the draft, the Minister may refer the question of the terms of the access arrangements or varied access arrangements to apply to the petroleum processing facility for expert determination in accordance with Subsection (11).

(11) If the Minister makes a reference under Subsection (10), then the terms of the access arrangements or varied access arrangements shall be determined by an expert appointed by the Minister for that purpose and paid for by the State, who shall—

- (a) be independent of the State and the petroleum processing facility licensee; and
- (b) be qualified by experience in dealing with open access arrangements for petroleum processing facilities; and
- (c) prior to making his decision, consult with the Minister and the petroleum processing facility licensee and any person who has made a submission under Subsection (3); and
- (d) in making his decision have regard to the reasonable requirements of those persons making such submissions; and
- (e) determine terms of access arrangements which comply with Section 89.

(12) When the access arrangements are determined by expert determination under Subsection (11), the Minister may—

- (a) approve the access arrangements or varied access arrangements so determined; and

- (b) vary the petroleum processing facility licence to convert the petroleum processing facility to be a strategic petroleum processing facility or adopt the varied access arrangements, as the case may be.

(13) Where the Minister varies a petroleum processing facility licence under this section, he shall cause to be published in the National Gazette a notice of the variation.

(14) A petroleum processing facility which is converted to a strategic petroleum processing facility under this section shall be a strategic petroleum processing facility with effect from the date upon which the variation of the licence for that purpose takes effect, and thereafter those approved access arrangements shall apply to that petroleum processing facility in accordance with Section 89.

(15)<sup>70</sup> <sup>71</sup>Where the access arrangements applying to a strategic petroleum processing facility are varied under this section, the varied access arrangements shall apply to that petroleum processing facility in accordance with Section 89 with effect from the date the variation of the licence for that purpose takes effect.

(16) Notwithstanding Subsection (15), the establishment or variation under this section of the access arrangements applying to a strategic petroleum processing facility shall not affect the validity of agreements previously entered into by the petroleum processing facility licensee for processing of petroleum or petroleum products.

#### **94. CONDITIONS OF PETROLEUM PROCESSING FACILITY LICENCE.**

A petroleum processing facility licence may be granted, or an application for a variation approved, subject to such conditions as the Minister, after considering a report of the Board, thinks fit and specifies in his grant or approval and which may include, but are not limited to, conditions for—

- (a) the construction, conduct, control, management and operation of the petroleum processing facility; and
- (b) furnishing reports and information to the Director concerning in-put, out-put and sales volumes; and
- (c) the removal of the petroleum processing facility and restoration of the site upon termination of the petroleum processing facility licence.

#### **95. REGULATIONS FOR DOMESTIC UTILISATION BUSINESS.**

(1) The Head of State, acting on advice, may make regulations prescribing the activities of—

- (a) a domestic gas supplier; or
- (b) a domestic gas operator; or

<sup>70</sup> Section 93 Subsection (15) amended by No. 58 of 2006, s. 19.

<sup>71</sup> Section 93 Subsection (15) amended by No. 58 of 2006, s. 19.

- (c) the owner of a facility for the storage or transportation of cylinders containing compressed natural gas or liquefied petroleum gas.

(2) Nothing contained in regulations under Subsection (1) applies in respect of petroleum processing facilities licensed under this Act, or the activities of a petroleum development licensee, pipeline licensee or petroleum processing facility licensee in respect of the subject matter of his licence.

### *Division 11.*

#### *Registration of Instruments.*

#### **96. REGISTER TO BE KEPT.**

(1) The Minister shall cause to be kept a Register of applications, grants, extensions, transfers and dealings in licences.

(2) The Register shall contain such details as are prescribed or as the Minister directs.

(3) A copy of any entry in the Register may be obtained on payment of the prescribed fee.

#### **97. APPROVAL AND REGISTRATION OF TRANSFERS.**

(1) Subject to this section, the Minister may approve the transfer of a licence from one person to another and such approval may be subject to such conditions (if any) as the Minister thinks fit.

(2) In addition to any other condition that the Minister may impose under Subsection (1), the Minister may require the transferee to lodge with him such security as the Minister thinks fit for the transferee's compliance with the conditions to which the licence is from time to time subject.

(3) The transfer of a licence shall have no effect until it is approved and registered in accordance with this section.

(4) Where the Minister approves the transfer of a licence from a company to a company that is a related corporation within the meaning of the *Companies Act 1997*, he shall impose no new conditions on the licence as a condition of that approval.

(5) A licensee who desires to transfer his licence to another person, or to himself and another person jointly, may lodge with the Director an application for approval of the transfer of the licence.

(6) The application shall be accompanied by an instrument of transfer of the licence duly executed by the transferor and transferee, together with a copy of that instrument of transfer.

(7) If the Minister approves the application, the Director shall—

- (a) immediately endorse on the instrument of transfer and on the copy a memorandum of approval; and

- (b) on payment of the prescribed fee enter in the Register a memorandum of the transfer and the name of the transferee.

(8) The transfer shall be deemed to be registered as soon as a memorandum of the transfer and the name of the transferee has been entered in the Register and, on that memorandum being so entered, the transferee becomes the registered holder of the licence to which the instrument of transfer relates.

(9) The copy of the instrument of transfer endorsed with the memorandum of approval shall be retained by the Director and is subject to inspection in accordance with this Division.

(10) The instrument of transfer endorsed with the memorandum of approval shall be returned to the person who lodged the application.

(11) The Minister shall not approve a transfer of a licence unless it is an absolute transfer of the whole of the transferor's interest in the licence.

#### **98. ENTRIES IN REGISTER OF DEVOLUTION OF TITLE.**

(1) A person on whom the rights of a licensee have devolved by operation of law may apply in writing to the Director to have his name entered in the Register as the registered holder of the licence.

(2) The Director shall, if he is satisfied that the rights of the holder have devolved on the applicant by operation of law, and on payment of the prescribed fee, enter the name of the applicant in the Register as the holder of the licence and, on that entry being so made, the applicant becomes the registered holder of the licence.

#### **99. INTERESTS NOT TO BE CREATED, ETC., EXCEPT BY INSTRUMENT.**

A legal or equitable interest in or affecting an existing or future licence is not capable of being created, assigned, affected or dealt with, whether directly or indirectly, except by an instrument.

#### **100. APPROVAL OF INSTRUMENTS CREATING, ETC., INTERESTS.**

(1) This section applies to an instrument by which a legal or equitable interest in, or affecting, an existing or future licence is or may be created, assigned, affected or dealt with, whether directly or indirectly, not being an instrument of transfer to which Section 97 applies.

(2) An instrument to which this section applies is of no force or effect until—

- (a) the instrument has been approved by the Minister either unconditionally or subject to such conditions as he thinks fit; and
- (b) an entry has been made in the Register by the Director in accordance with Subsection (5).

(3) A party to an instrument to which this section applies, or a person having an interest in or in relation to a licence by reason of such an instrument, may lodge with the Director an application for approval of the instrument.

(4) An application under Subsection (3) shall be accompanied by the instrument and by a copy of the instrument.

(5) If the Minister approves the instrument, the Director shall, on payment of the prescribed fee, immediately endorse on the original instrument and the copy of the instrument a memorandum of approval.

(6) The copy of the instrument endorsed with the memorandum of approval shall be retained in the Register by the Director and is subject to inspection in accordance with this Division.

(7) The original instrument endorsed with the memorandum of approval shall be returned to the person who lodged the application for approval.

(8) If the Minister refuses the application, the Director shall cause a notation of the refusal to be made in the Register.

#### **101. TRUE CONSIDERATION TO BE SHOWN.**

A party to a transfer referred to in Section 97 or to an instrument to which Section 100 applies who, with intent to defraud, executes the transfer or instrument if the transfer or instrument does not fully and truly set forth the true consideration for the transfer or instrument is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

#### **102. MINISTER NOT CONCERNED WITH CERTAIN MATTERS.**

The Minister or a person acting under his direction or authority shall not be concerned with the effect in law of any instrument lodged in accordance with this Division, nor does the approval of such an instrument give to it any force, effect or validity that it would not have had if this Division had not been enacted.

#### **103. POWER OF MINISTER TO REQUIRE INFORMATION AS TO PROPOSED DEALINGS.**

(1) The Minister or Director may require the person lodging an instrument for approval under this Division to furnish to him such written information concerning the instrument, or the transaction to which the instrument relates, as the Minister or Director thinks fit.

(2) A person who, when required under Subsection (1) to furnish information, furnishes information that is false or misleading in a material particular is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

#### **104. PRODUCTION AND INSPECTION OF DOCUMENTS.**

(1) The Minister or Director may require any person to produce to him, or to make available for inspection by him, any document in the possession or under the control of that person and relating—

(a) to an instrument lodged for approval under this Division; or

(b) to the transaction to which such an instrument relates.

(2) A person who refuses or fails within a reasonable time to comply with a requirement under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

#### **105. INSPECTION OF REGISTER AND DOCUMENTS.**

(1) The Register shall, at all reasonable times, be open for inspection by any person on payment of the prescribed fee.

(2) Any person may take copies of any licence or entry in the Register on payment of the prescribed fee.

#### **106. EVIDENTIARY PROVISIONS.**

(1) The Register shall be received by all courts as evidence of all matters required or authorized by this Division to be entered in the Register.

(2) The Director may, on payment of the prescribed fee, supply copies of or extracts from the Register certified by writing under his hand, and a document purporting to be a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

(3) The Director may, on payment of the prescribed fee, by instrument under his hand, certify that an entry, matter or thing required or permitted by or under this Division to be made or done or not to be made or done has or has not, as the case may be, been made or done and a document purporting to be such a certificate is evidence in all courts and proceedings of the statements contained in the certificate.

#### **107. REGISTER MAY BE RECTIFIED.**

Where the Minister is satisfied that there has been a mistake made in, or that some matter has been incorrectly entered in, the Register, he shall rectify the Register by correcting that mistake or incorrect entry.

#### **108. MINISTER OR DIRECTOR NOT LIABLE FOR CERTAIN ACTIONS.**

The Minister, the Director, or a person acting under the direction or authority of the Minister or the Director shall not be liable to an action, suit or proceeding for or in respect of an act or matter done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Division.

#### **109. OFFENCES.**

A person who wilfully—

(a) makes, causes to be made or concurs in making, a false entry in the Register; or

- (b) produces or tenders in evidence a document falsely purporting to be a copy of or extract from an entry in the Register of or from an instrument lodged with the Minister under this Division,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two years.

***Division 12.***

***Rights in Respect of Land and Property.***

**110. RIGHTS OF TENEMENT HOLDERS IN RESPECT OF LAND AND PROPERTY.**

(1) Subject to this Division, the rights conferred on a tenement holder by Section 25, 42 or 59 are, by virtue of this Act, exercisable on any land within the licence area and, for the purpose of exercising those rights, a tenement holder, by himself or his agents or workmen, may to the extent reasonably necessary for the tenement holder's operations or proposed operations in the licence area—

- (a) enter on any land in the licence area; and
- (b) subject to Sections 117 and 118, occupy any land in the licence area that is from time to time required for—
  - (i) effectively carrying on the operations he is entitled under the tenement to carry on; and
  - (ii) adequately protecting those operations and the improvements and equipment on or under the land; and
- (c) erect buildings on land occupied under Paragraph (b) and at any time remove any building so erected and, subject to Section 118, remove any other building from land so occupied; and
- (d) bring any machinery or other equipment into the licence area and erect or install it on land occupied under Paragraph (b) or in any building erected under Paragraph (c), and at any time remove any such machinery or equipment; and
- (e) request the Minister to acquire any land required by the tenement holder for a purpose specified in Section 120; and
- (f) subject to the *Water Resources Act 1982*, take and divert water from any lake, stream or watercourse in the licence area; and
- (g) construct in the licence area roads, airstrips or helicopter pads; and
- (h) cut and use the timber in the licence area (other than timber forming part of any improvements) for building or construction work within the licence area; and
- (i) remove any stone, clay or gravel in the licence area (other than that forming part of any improvements) for or in connection with building or construction work within the licence area.

(2) For the purposes of Section 20 of the *Water Resources Act 1982*, the rights conferred under this Act on a tenement holder shall be deemed to be rights in land to which that section applies.

#### **111. RIGHTS OF PIPELINE LICENSEES IN RESPECT OF LAND AND PROPERTY.**

Subject to this Division, the rights conferred on a pipeline licensee by Section 76 are, by virtue of this Act, exercisable on any land—

- (a) that is occupied or to be occupied by the pipeline and other improvements required for safety of operations; or
- (b) that is at a distance not exceeding 10m on either side of the pipeline, and within that area of land and for the purpose of exercising those rights, the pipeline licensee, by himself or his agents or workmen, may to the extent reasonably necessary for the pipeline licensee's operations or proposed operations in that area—
  - (c) enter on any land; and
  - (d) subject to Sections 117 and 118, occupy with his pipeline land substantially along the route and on the sites specified in the pipeline licence; and
  - (e) erect buildings on land occupied under Paragraph (d) and at any time remove any building so erected and, subject to Section 118 remove any other building from any land so occupied; and
  - (f) bring any machinery or equipment on land occupied under Paragraph (d) and erect or install it on such land or in any building erected under Paragraph (e), and at any time remove any such machinery or equipment; and
  - (g) request the Minister to acquire any land required by the pipeline licensee for a purpose specified in Section 120; and
  - (h) construct roads to give adequate access to the pipeline; and
  - (i) cut and use the timber (other than timber forming part of any improvements) for building or construction work related to the pipeline; and
  - (j) remove any stone, clay or gravel (other than that forming part of any improvements) for or in connection with building or construction work related to the pipeline.

#### **112. RIGHTS OF PETROLEUM PROCESSING FACILITY LICENSEES IN RESPECT OF LAND AND PROPERTY.**

Subject to this Division, the rights conferred on a petroleum processing facility licensee by Section 90 are, by virtue of this Act, exercisable on any land—



- (a) that is occupied or to be occupied by the petroleum processing facility and other improvements required for safety of operations; or
- (b) that is at a distance not exceeding 100m of such petroleum processing facility and other improvements,

and within that area of land and for the purpose of exercising those rights, the petroleum processing facility licensee, by himself or his agents or workmen, may to the extent reasonably necessary for the petroleum processing facility licensee's operations or proposed operations in that area—

- (c) enter on any land; and
- (d) subject to Sections 117 and 118, occupy with his petroleum processing facility land at the sites specified in the petroleum processing facility licence; and
- (e) erect buildings on land occupied under Paragraph (d) and at any time remove any building so erected and, subject to Section 118 remove any other building from any land so occupied; and
- (f) bring any machinery or equipment on land occupied under Paragraph (d) and erect or install it on such land or in any building erected under Paragraph (e), and at any time remove any such machinery or equipment; and
- (g) request the Minister to acquire any land required by the petroleum processing facility licensee for a purpose specified in Section 120; and
- (h) construct roads to give adequate access to the petroleum processing facility; and
- (i) cut and use the timber (other than timber forming part of any improvements) for building or construction work related to the petroleum processing facility; and
- (j) remove any stone, clay or gravel (other than that forming part of any improvements) for or in connection with building or construction work related to the petroleum processing facility.

### **113. RIGHTS OF LANDOWNERS.**

(1) The owner, occupier or other person having an interest in any private land in a licence area or occupied or to be occupied by a pipeline or petroleum processing facility or any part thereof may continue to use, occupy and enjoy the land, with the exception of any part of that land reasonably required from time to time by the licensee for the exercise of his rights under his licence.

(2) Where a dispute arises as to interests in customary land or the position of boundaries of customary land, such dispute shall not affect—

- (a) the right of a person to make application for and be granted a licence under this Act; or

(b) the validity of a licence granted under this Act.

(3) A dispute referred to in Subsection (2) shall be settled as provided for in the *Land Disputes Settlement Act 1975*.

#### **114. INTERFERENCE WITH OTHER RIGHTS.**

(1) A person carrying on operations under a licence or instrument of consent under Section 150 shall carry on those operations in a manner that does not interfere with the existing use of the land to any greater extent than is reasonably necessary for the exercise of the rights, and performance of the duties, of that person.

(2) Without limiting the generality of Subsection (1), a person carrying on operations under a licence or instrument of consent under Section 150 shall not take any action that in any way interferes with—

(a) fishing; or

(b) navigation; or

(c) any other operation being lawfully carried on by way of—

(i) prospecting for, recovery of or conveyance or processing of petroleum, petroleum products, helium, minerals or gold; or

(ii) construction of a pipeline or petroleum processing facility,

unless he gives prior written notice to the Director of the expected nature and duration of such interference.

(3) A person who fails to comply with the provisions of this section is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

#### **115. RESPONSIBILITY TO REPAIR DAMAGE.**

(1) Subject to Sections 110 and 111, a licensee shall, as soon as and to the extent practicable having regard to his operations, repair any damage—

(a) to any improvements; or

(b) to any land capable of being used for any agricultural purposes; or

(c) to the water supply to such improvements or land,

resulting from his operations or from the flow of petroleum, petroleum products, water or waste from any of those operations.

(2) Where a licensee fails to comply with Subsection (1), the Minister may repair the damage, and any costs or expenses incurred are a debt due from the licensee to the State.

**116. ADDITIONAL RIGHTS OF ENTRY.**

(1) Where, in the opinion of the Minister, it is necessary for an applicant or intending applicant for a licence—

- (a) to enter on to land to survey the proposed route of a pipeline or the proposed site of an exploration or appraisal or development activity or facility or a pipeline or petroleum processing facility; or
- (b) to conduct tests or to obtain information in relation to any such route or site; or
- (c) to conduct temporary operations,

the Minister may, on the application of that person and subject to Section 118, by instrument authorize that person to enter on the land for that purpose.

(1A)<sup>72</sup> <sup>73</sup>Where, in the opinion of the Minister, it is necessary or expedient for an applicant or an intending applicant for a licence to conduct activities in relation to or in preparation for construction works which are or will be proposed in the licence application of the applicant or intending applicant, the Minister may, on the application of that person and subject to Section 118, by instrument, authorize that person to enter on any land for that purpose for such period as may be reasonably required for the conduct of those activities as are specified in the instrument.

(2) Where, in the opinion of the Minister, it is necessary for the effective exercise of a licensee's rights or the performance of his duties under this Act for the licensee to enter on any land not held by him under a tenement in order to obtain geological information for use in relation to his licence area, the Minister may, on application by the licensee and subject to Section 118, authorize that licensee to enter on that land and there carry out such acts as are necessary to obtain that information.

(3) An authorization under Subsection (2) shall not entitle a licensee to prospect for petroleum by the drilling of wells on the land.

(4) Where, in the opinion of the Minister, it is necessary for the effective exercise of the rights or the performance of obligations under a licence or under this Act, or to enable the licensee to carry out other activities in the course of a project including business development activities, the provision of community services and incurring expenditure in accordance with Section 219C of the *Income Tax Act 1959*, for a licensee to enter on any land not held by him under a tenement, the Minister may by instrument authorize the licensee to enter on such other lands—

- (a) in order to obtain access to any part of his tenement or to the site or proposed site of the pipeline or petroleum processing facility or any part thereof; or
- (b) for the transport of personnel, equipment or materials for operational and construction activities approved under the licence; or

<sup>72</sup> Section 116 Subsection (1A) inserted by No. 64 of 2006, s. 5.

<sup>73</sup> Section 116 Subsection (1A) inserted by No. 64 of 2006, s. 5.

- (c) in order to carry out specified activities or expenditure on such other lands.

(5) Where an applicant for a licence, a person intending to apply for a licence or a licensee is granted rights of entry under this section, he shall before entering the land serve a copy of the authorization on the licensee of any licence covering or pertaining to any land to which entry is so granted.

(6) If in the *bona fide* opinion of a licensee an emergency exists in his operations which threatens—

- (a) the safety, health or welfare of persons engaged in those operations or in the licence area or the vicinity of the pipeline or petroleum processing facility; or
- (b) the environment; or
- (c) the State's petroleum resource in the licence area,

the licensee may, without first obtaining an authorization under this section, enter onto lands not held by him under a licence in order to obtain access to any part of the licence area or the site or proposed site of the pipeline or petroleum processing facility or to transport personnel, equipment or materials to deal with the emergency, but—

- (d) within 24 hours of first entering onto that land, the licensee shall file a report with the Director setting out the details of the emergency, the steps being taken to deal with it and the reason why such access was needed; and
- (e) the licensee shall not without obtaining a further authorization under this section continue to enter onto or occupy such land for more than 72 hours after first entering that land.

#### **117. LAND OCCUPIED TO BE SURVEYED.**

The licensee shall cause to be surveyed and, if so required by the Director, securely fenced, any part of the land in a licence area which the licensee requires in order effectively to carry on drilling operations.

#### **118. COMPENSATION.**

(1)<sup>74</sup> <sup>75</sup>A licensee shall be liable to pay compensation in accordance with this section to the lawful owners and rightful occupiers of, and any persons interested in, any private land in relation to their several interests, in respect of the entry on or occupation of the land by the licensee under this Division.

- (2) Subject to this section, compensation shall be paid for—

<sup>74</sup> Section 118 Subsection (1) amended by No. 57 of 2006, s. 13; Subsection (1) amended by No. 57 of 2006, s. 13.

<sup>75</sup> Section 118 Subsection (1) amended by No. 57 of 2006, s. 13; Subsection (1) amended by No. 57 of 2006, s. 13.

- (a) the deprivation of the use and enjoyment of the surface of the land or any part of it or of any rights customarily associated with it, except where there has been a reservation in favour of the State of the right to such use and enjoyment; and
- (b) damage—
  - (i) to the surface of the land or any part of it, or any improvements on it; or
  - (ii) to any trees, fish or animals,

caused by the carrying on of operations by the licensee; and

- (c) severance of the land from other land of any owner, occupier or person interested in the land; and
- (b) rights of way and easements; and
- (c) any other damage consequential on the licensee's use or occupation of the land.

(3) If any private land adjoining or in the vicinity of land comprised in any licence area or occupied under any pipeline licence or petroleum processing facility licence or any improvements on the land is or are damaged or depreciated in value—

- (a) by any operations carried on by or on behalf of a licensee; or
- (b) by reason of any right of way acquired by the licensee,

the owners and occupiers of, and any persons interested in, that private land or those improvements shall be entitled in respect of their several interests to compensation for all loss and damage sustained under Paragraph (a) or (b) and the amount of compensation shall be ascertained in accordance with this section.

(4) A licensee may agree with any person entitled to compensation under this section as to the amount of compensation.

(5) An agreement under Subsection (4) shall not be valid unless it is in writing and signed by the parties to it, or their agents, and is lodged with the Director.

(6) Where applicable, compensation payable under this section shall be determined with reference to the values for economic trees published by the Valuer-General, and any other values published by the Valuer-General.

(7) No compensation shall be payable and no claim for compensation shall lie, whether under this Act or otherwise, and compensation under this Section shall not be determined, by reference to any petroleum, helium or minerals known or supposed to be in, on or under the land.

(8) If the licensee and a person claiming compensation under this section are unable to agree on the compensation payable, either may, by notice to the Chief Warden, request that the Chief Warden or a Warden determine the amount payable.

(9) On receipt of a notice under Subsection (8), the Chief Warden shall—

- (a) fix a place and date for conducting a determination of the amount of compensation to be paid; and
- (b) notify the licensee and the person claiming compensation of the place and date so fixed; and
- (c) at that place and on that date conduct a determination of the amount of compensation to be paid.

(10) In conducting a determination under this section the Warden shall allow the parties to present their evidence and arguments to him in such manner as he thinks fit, but shall at all times have regard to the principles of natural justice.

(11) The Warden shall—

- (a) make a determination on the basis of the evidence presented to him and arguments submitted to him and in accordance with the principles of compensation contained in this section; and
- (b) record his decision in writing; and
- (c) give a copy of his decision to each of the parties.

(12) Where the Warden considers it impractical or inexpedient to assess the full amount of compensation to be paid in satisfaction of the loss or damage, he may make a determination of the amount of compensation payable in respect of a particular period or item of loss or damage and defer his determination of the remainder of the claim until a later time.

(13) The Warden may, at any stage of the determination process, make an order against the person from whom compensation is sought, restricting that person from commencing or continuing any operations under this Act until he has given such security as the Warden thinks fit for payment of any compensation for which he is or may become liable.

(14) If, after a Warden has determined any amount of compensation under this section, it is proved that further loss or damage, not being loss or damage in respect of which compensation has already been determined, has been sustained, the Warden may determine compensation for the further loss or damage and order that further compensation be paid by the licensee to the person entitled to that further compensation.

(15) Where a Warden has made an order for compensation or further compensation under this section, the amount of compensation stated in that order is an amount payable by the licensee for the purposes of Section 138(1)(d).

(16) In determining the amount of compensation payable under this section the Warden shall—

- (a) take into consideration the amount of any compensation which the owners or occupiers of, or the persons interested in, the land or any of them or their predecessors in title have or has already received for the damage or loss for which compensation is being determined; and

- (b) deduct that amount from the amount to which they or any of them respectively would otherwise be entitled.

(17) A party to a determination of a Warden under this section who is aggrieved as to the amount of compensation to which he is entitled or which he is obliged to pay, may appeal to the National Court.

(18) Where a dispute, as defined in the *Land Disputes Settlement Act 1975*, concerning the land the subject of a licence or petroleum processing facility licence or crossed by a pipeline licence makes agreement on compensation impracticable, the amount of compensation to be paid shall be determined by a Warden under this section, and the amount of such compensation shall be payable into a trust account established for that purpose by the Director to be held therein until the dispute has been finally resolved.

(19) Following final resolution of a dispute as provided in Subsection (18), compensation shall be paid out of the trust account in accordance with a compensation agreement or a further determination by a Warden under this section, and in making such a further determination the Warden shall be empowered, if he considers on the basis of the evidence and arguments then presented to him that the amount of compensation payable should be greater than the amount in the trust account, to order payment of amounts in addition to the amount in the trust account.

## 119. WARDENS.

<sup>76</sup>(1) The Director shall appoint –

- (a) a senior officer of the Department or the public service to be Chief Warden; and
- (b) such other number of officers as considered necessary to be appointed as Warden,

for the purposes of the Act.

(2) The functions, powers and duties of a Warden are as specified in this Act or regulations.

(3) The Chief Warden shall undertake –

- (a) the duties of a Warden; and
- (b) such additional functions as are specifically allocated under this Act or regulations or as the Director may confer.

(4) The Chief Warden may, by instrument in writing, delegate all or any powers (except this power of delegation) to a Warden.

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<sup>76</sup> Section 119 Substituted by No. 58 of 2006, s. 20.

**120. ACQUISITION OF LAND.**

(1)<sup>77 78</sup>Notwithstanding any provision of the *Land Act 1996* in determining the compensation payable for land compulsorily acquired for a purpose specified in Section 1(2)–

- (a) no allowance shall be made for any petroleum, helium, minerals or gold known or supposed to be in, on or under the land acquired; and
- (b) no compensation shall be payable in respect of improvements made to the land by a licensee.

(2) Whenever it is proved, to the satisfaction of a court of competent jurisdiction, under the *Land Act 1996* that damage has been sustained by a claimant by reason of the severance of the land acquired from other adjoining land of the claimant, or land in which he is interested, the court may order that such adjoining land or some portion of it shall also be acquired.

(3)<sup>79 80</sup>Where land has been acquired for a purpose specified in Section 1(2) and has been made available to a licensee for the purposes of his operations under his licence, the amount of any compensation that the State has paid in respect of that land is a debt due and payable by the licensee to the State.

(4) An amount payable under Subsection (3), on written demand being served on the licensee, is an amount payable by him under this Act for the purposes of Section 138(1)(d).

**121. DETERMINATION OF CUSTOMARY LAND.**

(1) Where for the purposes of this Act it is necessary to determine the rightful owners or occupiers of, or persons having an interest in, any customary land, or any improvements on it other than in circumstances where Section 9 of the *Land Act 1996* applies, the determination may be made under the provisions of the *Land Disputes Settlement Act 1975* and for the purposes, and within the meaning, of that Act, there shall be deemed to be a dispute between such persons or groups as the court, within the meaning of that Act, may direct.

(2) Where the Director considers that a dispute of the type referred to in Subsection (1) exists, he may–

- (a) refer that dispute to the Provincial Land Disputes Committee for the Province in question as a dispute under the *Land Disputes Settlement Act 1975*; or
- (b) make an application in respect of the dispute to the applicable Local Land Court under Section 27 of that Act.

(3) Where the Director makes a referral or application under Subsection (2)–

<sup>77</sup> Section 120 Subsection (1) amended by No. 58 of 2006, s. 21.

<sup>78</sup> Section 120 Subsection (1) amended by No. 58 of 2006, s. 21.

<sup>79</sup> Section 120 Subsection (3) amended by No. 58 of 2006, s. 21.

<sup>80</sup> Section 120 Subsection (3) amended by No. 58 of 2006, s. 21.



- (a) the dispute shall be deemed for the purpose of the *Land Disputes Settlement Act 1975* to be a dispute relating to land; and
- (b) the Director shall be deemed to be a party to the dispute for all procedural matters under that Act, and he or his representative shall be entitled to participate in any mediation or court hearing in relation to the dispute.

(4) Where the Director makes a referral under Subsection (2)(a)–

- (a) the reference to the Provincial Land Disputes Committee shall be deemed to be a request by a Local-level Government under Section 9(1) of the *Land Disputes Settlement Act 1975*; and
- (b) the Committee shall declare the area which is the subject of the dispute to be a Land Mediation Area and a single Land Mediation Division, and forthwith appoint a Land Mediator for that Land Mediation Division.

(5) Where the Director makes an application under Subsection (2)(b), the dispute shall be deemed to have been the subject of a certificate given by a Land Mediator under Section 27(1) of the *Land Disputes Settlement Act 1975* and a certificate given by a Magistrate under Subsection 27(2) of that Act.

## **122. TRESPASS ON LAND HELD UNDER A LICENCE.**

(1) A person (including the owner or occupier of, or any person interested in, private land) shall not enter on, occupy or interfere with–

- (a) any land in a licence area which is being used by the licensee for or in connection with prospecting operations or operations for the recovery of petroleum, including land required to be kept vacant for the purpose of compliance with the licensee's obligations under this Act or any other law; or
- (b) any pipeline or any land permanently occupied by a pipeline licensee under his pipeline licence or being lawfully used by the pipeline licensee for or in connection with pipeline operations or the construction of the pipeline or required to be kept vacant for the purpose of compliance with the licensee's obligations under this Act or any other law; or
- (c) any petroleum processing facility or any land permanently occupied by the petroleum processing facility licensee under his petroleum processing facility licence or being lawfully used by the petroleum processing facility licensee for or in connection with petroleum processing facility operations or the construction of the petroleum processing facility, or required to be kept vacant for the purpose of compliance with the licensee's obligations under this Act or any other law,

unless authorized or permitted by or under this Act or any other law of the State, or by the licensee.

(2) Every entry, occupation or interference in contravention of Subsection (1) shall, in addition to constituting an offence under this Act, be deemed to be a trespass.

(3) A licensee may proceed in the National Court for trespass under this section and for damages in respect of the trespass.

(4) This section shall not be construed as depriving a licensee of any other right he might have under a law in force in the country in respect of his occupation and use of the land.

### ***Division 13.***

#### ***General.***

#### **123. DATE OF EFFECT OF LICENCES, ETC.**

(1) A licence takes effect from and including the day specified for the purpose in the licence.

(2) A variation of a licence takes effect from and including the day on which notice of the variation is published in the National Gazette.

#### **123A. DESIGNATION OF OPERATOR AND OPERATING AGREEMENT.**

<sup>81</sup>(1) Subject to Subsection (3), where there is more than one holder of a licence, the holders shall, as soon as reasonably practicable after the date of grant of the licence, provide to the Director a copy of an agreement between holders, relating to designation of operator and the conduct of operations in relation to that licence.

(2) Where an agreement has been provided to the Director under Subsection (1), the holders shall, within one month after any amendment, variation or replacement of that agreement, provide to the Director a copy of the agreement (if any) effecting the amendment, variation or replacement.

(3) The holders shall, upon providing a copy of an agreement to the Director under Subsections (1) or (2), and upon any change to the identity of the operator under the provisions of the agreement, give notice in writing to the Director of the name and address of the new operator appointed under the agreement.

(4) An agreement lodged for registration under Division 11 or previously registered under that Division in respect of a licence shall be deemed to have been provided under Subsection (1).

#### **124. WORK PRACTICES FOR TENEMENT HOLDER.**

(1) A tenement holder must—

- (a) carry out all petroleum exploration operations and operations for the recovery of petroleum in the licence area in a proper and workman like manner and in accordance with good oilfield practice; and

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<sup>81</sup> Section 123A Inserted by No. 57 of 2006, s. 14.

- (b) secure the safety, health and welfare of persons engaged in those operations in or about the licence area; and
- (c) act in accordance with—
  - (i) this Act, including the regulations, and any direction given under this Act; and
  - (ii) any restriction imposed or requirement made by an inspector under this Act.

(2) In particular, and without limiting the generality of Subsection (1), a tenement holder must—

- (a) control the flow and prevent the escape in the licence area of petroleum or water, except in accordance with a permit or licence issued under a law regulating the discharge or release of petroleum, petroleum products or water; and
- (b) prevent the escape in the licence area of any mixture of water or drilling fluid and petroleum or any other matter; and
- (c) prevent damage to petroleum-bearing strata in an area in respect of which the tenement is not in force; and
- (d) keep separate—
  - (i) each petroleum pool discovered in the licence area; and
  - (ii) such of the sources of water (if any) discovered in that area,

as the Minister, by instrument served on the licensee, directs; and

- (e) prevent water or any other matter entering any petroleum pool through wells in the licence area except when required by, and in accordance with, good oilfield practice; and
- (f) prevent the pollution of any water-well, spring, stream, river, lake, reservoir, estuary, harbour or area of sea by the escape of petroleum, salt water, drilling fluid, chemical additive or any other waste product or effluent; and
- (g) furnish to the Director, prior to the drilling of any well, a detailed report on the technique to be employed, the material to be used and the safety measures to be employed, in the drilling of the well.

(3) This section shall not prevent a tenement holder from flaring natural gas—

- (a) where the written consent of the Director has been obtained; or
- (b) where, in an emergency, flaring is required—
  - (i) to safeguard the health and safety of persons in the licence area; or
  - (ii) to prevent damage to the property of any person in the licence area.

**125. WORK PRACTICES FOR PIPELINE LICENSEE.**

(1) A pipeline licensee must operate the pipeline in a proper and workmanlike manner and must secure the safety, health and welfare of persons engaged in operations in connection with the pipeline.

(2) In particular and without limiting the generality of Subsection (1), a pipeline licensee must prevent the escape of petroleum or petroleum products or water from the pipeline, except in accordance with a permit or licence issued under a law regulating the discharge or release of petroleum, petroleum products or water.

**126. WORK PRACTICES FOR PETROLEUM PROCESSING FACILITY LICENSEE.**

(1) A petroleum processing facility licensee shall operate the petroleum processing facility in a proper and workmanlike manner and shall secure the safety, health and welfare of persons engaged in operations in connection with the petroleum processing facility.

(2) In particular and without limiting the generality of Subsection (1), a petroleum processing facility licensee shall prevent the escape of petroleum or petroleum products or water from the petroleum processing facility, except in accordance with a permit or licence issued under a law regulating the discharge or release of petroleum, petroleum products or water.

(3) The Head of State, acting on advice, may make regulations prescribing the conduct of petroleum processing facility operations, including the qualifications of persons in charge of those operations.

**127. WORK PRACTICES FOR HOLDERS OF INSTRUMENTS OF CONSENT.**

A person who is the holder of an instrument of consent under Section 150 must—

- (a) carry out all petroleum exploration operations in the area in respect of which the instrument of consent is in force in a proper and workmanlike manner and in accordance with good oilfield practice; and
- (b) secure the safety, health and welfare of persons engaged in those operations in or about that area.

**128. PENALTY FOR BREACH OF SECTION 124, 125, 126 OR 127.**

(1) A licensee or holder of an instrument of consent who contravenes or fails to comply with a requirement of Section 124, 125, 126 or 127, as the case may be, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

(2) It is a defence to a charge for an offence under this section, if the person charged proves that he took all reasonable steps to comply with the requirements of the relevant section applicable to him.

## **129. LOCAL PURCHASE OBLIGATION.**

(1) Subject to the provisions of this section, a licensee shall, in its operations in Papua New Guinea and in the construction and development of a project—

- (a) use and purchase goods and services supplied, produced or manufactured in Papua New Guinea whenever the same can be obtained at equivalent terms, including prices, conditions and delivery or performance dates and are in all respects of a quality comparable with those available from outside Papua New Guinea; and
- (b) encourage and assist citizens of Papua New Guinea who are desirous of establishing businesses providing goods and services for the operations or the project and for any town constructed primarily for the purposes of the project and the residents thereof; and
- (c) make maximum use of Papua New Guinea contractors and subcontractors where services of a standard comparable with those which the licensee would obtain but for the operation of this section are available from such Papua New Guinea contractors or subcontractors at equivalent prices, and on equivalent terms, conditions and delivery or performance dates.

(2) A licensee which, for the purpose of its operations in Papua New Guinea or the construction and development of its project, requires imported vehicles, machinery, plant or equipment, and does not purchase such items direct from the manufacturer, shall effect the purchase of such items through traders based in Papua New Guinea or the Papua New Guinea operations of traders based elsewhere but having operations in Papua New Guinea.

(3) Subsection (2) does not apply to a licensee in respect of a particular purchase if—

- (a) such items are not available through such traders or trading operations at an equivalent price, and on equivalent terms, conditions and delivery dates; or
- (b) compliance would adversely affect the financing of the licensee's operations or the development of the licensee's project.

(4) Nothing contained in this section obliges a licensee to grant or lend money to any person or any local enterprise.

(5) Where a licensee seeks to grant to persons who are landowners in the area of the licensee's operations a contract for the supply of labour or services and a dispute which delays the grant of such a contract arises amongst persons claiming to be such landowners, the licensee may refer the dispute to the Director who may determine the dispute.

**130. MEASUREMENT AND METERING.**

(1) At such intervals as the Director determines, licensees shall measure and report to the Director the following, as applicable:—

- (a) the continuous volume of petroleum produced (including separate recording of associated natural gas which is either flared or injected) where—
  - (i) the volume of oil shall be calculated on the basis of acceptable meter readings or tank measurements with such accuracy as is required by the Director; and
  - (ii) the volume of natural gas shall be measured by a meter approved for the purposes of Section 161; and
  - (iii) unless otherwise authorized by the Director, with all volumes produced, sold, injected or flared adjusted to a standard temperature and pressure base as determined by the Director;
- (b) the continuous volume of petroleum or petroleum products transported by pipeline as measured at the meters for sale or transfer of custody;
- (c) the continuous volume of the output of petroleum or petroleum products at a petroleum processing facility in units and in a manner acceptable to the Director,

in each case in accordance with internationally accepted measurement standards.

(2) Except as prescribed by regulation, a person shall not install in any facility or use any measuring device to measure the volume of petroleum or petroleum products unless such measuring device is approved by the Minister.

**131. MAINTENANCE, ETC., OF PROPERTY.**

(1) A tenement holder shall—

- (a) maintain in good condition and keep in good repair all structures, equipment and other property in the licence area which are used by him in connection with the operations in which he is engaged; and
- (b) remove from the licence area all structures, equipment and other property owned by him which is not being, or intended to be, so used.

(2) A pipeline licensee or petroleum processing facility licensee shall—

- (a) maintain in good condition and repair all structures, equipment and other property in the area in which the pipeline or petroleum processing facility is constructed and which are used by him in connection with the operations in which he is engaged; and
- (b) subject to Section 139, remove from the area all structures, equipment and other property owned by him which is not being, or intended to be, so used.

**132. DRILLING NEAR BOUNDARIES.**

(1) A tenement holder shall not make a well any part of which is less than 300 m from a boundary of a licence area, except with the written consent of the Director and in accordance with such conditions (if any) as are specified in the instrument of consent.

(2) Where a tenement holder fails to comply with Subsection (1), the Director may, by instrument served on the tenement holder, direct him—

- (a) to plug the well; or
- (b) to close off the well; or
- (c) to comply with the directions relating to the making or maintenance of the well specified in the instrument,

within the period specified in the instrument and the tenement holder shall comply with the direction within that period.

**133. DIRECTIONS.**

(1) The Minister, the Director or an inspector may, by instrument served on a person, give to that person such directions as are prescribed.

(2) A direction under Subsection (1) has effect and shall be complied with notwithstanding anything in the regulations and, to the extent to which the regulations are inconsistent with the directions, the person to whom the direction is given is not obliged to comply with the regulations.

(3) A person who refuses or fails to comply with a direction given under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

**134. COMPLIANCE WITH DIRECTIONS.**

(1) Where a person fails to comply with a direction given to him under this Act or under the regulations, the Minister may do all or any of the things required by the directions to be done.

(2) Any costs or expenses incurred by the Minister under Subsection (1) in relation to a direction are a debt due by the person to whom the direction was given to the State.

(3) It is a defence to a charge of failing to comply with a direction given under this Act or under the regulations if the person charged proves that he took all reasonable steps to comply with the direction.

**135. EXEMPTIONS, VARIATIONS, ETC.**

(1) Where—

- (a) under this Part, a licence is deemed to continue in force; or

- (b) a licence is varied under Section 24 or 41 or 58 or 81 or 82 or 92 or 93; or
- (c) a licensee enters into an agreement under Section 66 or a direction is given to the licensee under that section; or
- (d) a tenement is partly cancelled, partly determined or surrendered as to one or more, but not all of the blocks in respect of which it is in force; or
- (e) the term of a petroleum prospecting licence is extended under Section 29 or 30; or
- (f) the term of a petroleum retention licence is extended under Section 45; or
- (g) a licensee, by instrument served on the Director, applies—
  - (i) for a variation or suspension of the licence; or
  - (ii) for exemption from compliance with any of the conditions specified in the licence; or
- (h) under this Act or the regulations the Minister gives a direction or consent to a licensee; or
- (i) a direction is given to the pipeline licensee under Section 83,

the Minister may, at any time, by instrument served on the licensee—

- (j) vary or suspend; or
- (k) exempt the licensee from compliance with,

any of the conditions specified in the licence, on such conditions (if any) as the Minister determines and specifies in the instrument.

(2) Subsection (1) does not authorize the making of an instrument to the extent—

- (a) that it would affect the term of a licence; or
- (b) that it would be inconsistent with the terms of a petroleum agreement or gas agreement applying to the licence in question; or
- (c) in the case of an instrument relating to an application referred to in Subsection (1)(f)—that it would not be in accordance with the application, or the application as varied by agreement, before the making of the instrument.

### **136. PREVENTION FROM CARRYING ON PROSPECTING OPERATIONS.**

(1) A petroleum prospecting licensee or petroleum retention licensee who has been, or is being, prevented from carrying on in the licence area any operations authorized by the licence, may make an application to the Minister for a direction under this section.

(2) An application under Subsection (1)—



- (a) shall be made not more than one month after the date of commencement of the circumstances causing the prevention, or such longer period as the Minister may allow, but in any event before the licence concerned ceases to have effect; and
- (b) shall specify the operations that the licensee has been or is being prevented from carrying on; and
- (c) shall set out the circumstances by reason of which the licensee has been or is being prevented from carrying on those operations; and
- (d) may set out any other matters that the licensee wishes the Minister to consider.

(3) Where a licensee has made an application under Subsection (1), the Minister shall, after considering a report from the Board, by instrument served on the licensee—

- (a) if he is satisfied that the licensee has been by reason of circumstances beyond the control of the licensee, prevented from carrying on in the licence area, during any period during which the licence was in force, any of the operations specified in the application—direct that the term of the licence be extended for the period specified in the instrument being a period not greater than the period for which the licensee was prevented from carrying on operations, subject to such conditions (if any) as the Minister determines and specifies in the instrument; or
- (b) in any other case—refuse the application.

(4) Where the Minister makes a direction under Subsection (3)(a), the licence continues in force for the period directed.

(5) Where a licensee has made an application under Subsection (1) and an instrument under Subsection (3) has not been served on the licensee before the licence would, but for this subsection, cease to have effect—

- (a) any application under Section 27, 30 or 44 for the extension of the licence lapses; and
- (b) the licensee may, notwithstanding anything contained in that section, make an application or further application under that section for the extension of the licence—
  - (i) if the Minister, by instrument under Subsection (3) directs that the term of the licence be extended for a specified period—within a period of one month after the expiration of the specified period; or
  - (ii) if the Minister, by instrument under Subsection (3), refuses the application under Subsection (1)—within a period of one month after the day on which the instrument is served on the licensee; and
- (c) the licence continues in force by reason of this subsection until the expiration of that period of one month, or until an application is made

under Section 27, 30 or 44 for the extension of the licence, whichever first occurs.

### 137. SURRENDER OF LICENCES.

(1) In this section, “**the area to which the surrender relates**” means—

- (a) in relation to a surrender of a tenement—the area constituted by the blocks in relation to which the tenement is proposed to be surrendered; and
- (b) in relation to a surrender of a pipeline licence or petroleum processing facility licence—the area in which the pipeline or petroleum processing facility or part thereof, in relation to which the licence is proposed to be surrendered, is constructed.

(2) A licensee may, at any time, by written notice served on the Director, apply to the Minister for consent to surrender the licence—

- (a) in the case of a tenement—as to all or any of the blocks in respect of which it is in force; and
- (b) in the case of a pipeline licence or petroleum processing facility licence—as to the whole or part of the pipeline or petroleum processing facility in respect of which it is in force.

(2A)<sup>82</sup> <sup>83</sup>A licensee may state in its application under Subsection (2) that the surrender is, if consented to by the Minister, to take effect on a date or upon the occurrence of a particular event specified in the application in which case the surrender shall, if so consented to and if implemented by the applicant in accordance with Subsection (6), take effect on that date or upon the occurrence of that event, as the case maybe.

(3) Subject to Subsection (5), the Minister shall not give his consent to a surrender of a licence under Subsection (2) unless the licensee—

- (a) has paid all fees and amounts payable by him under this Act or has made arrangements that are satisfactory to the Minister for the payment of those fees and amounts; and
- (b) has, subject to Subsection (4), complied with the conditions specified in the licence and with the provisions of this Act; and
- (c) has, to the satisfaction of the Minister, plugged or closed off all wells made in that area by any person engaged or concerned in the operations authorized by the licence or made arrangements with respect to the termination of operations of the pipeline or petroleum processing facility to which the surrender relates; and
- (d) has to the satisfaction of the Minister—

<sup>82</sup> Section 137 Subsection (2A) inserted by No. 57 of 2006, s. 15.

<sup>83</sup> Section 137 Subsection (2A) inserted by No. 57 of 2006, s. 15.

- (i) removed or caused to be removed from the area to which the surrender relates all property brought into that area by any person and any wastes deposited in that area by the licensee or any person on his behalf; or
  - (ii) made arrangements with respect to that property or waste; and
- (e) has made provision, to the satisfaction of the Minister, for the reclamation of the site of the pipeline or petroleum processing facility in the area to which the surrender relates and the conservation and protection of the natural resources in that area.

(4) For the purpose of Subsection (3)(b), the holder of a petroleum prospecting licence or a petroleum retention licence who has otherwise complied with the conditions referred to in Section 31(2) or 46, as the case may be, shall not be taken to have failed to comply with the conditions specified in the licence for the reason only that he has failed to complete any work or expend any amount referred to, or specified, in the licence so far as it relates to any period subsequent to the date on which an application under this section, to which the Minister subsequently consents, is made.

(5) Where a licensee has not complied with the conditions specified in the licence, or with the provisions of this Act, the Minister may give his consent to a surrender of the licence under Subsection (2) if he is satisfied that, although the licensee has not so complied, special circumstances exist that justify the giving of consent to the surrender.

(6) Where the Minister consents to an application under Subsection (2), the applicant may, by instrument served on the Director, surrender the licence.

(7) The surrender of a licence under this section shall not release the licensee from any liability in respect of—

- (a) the licence up to the date of surrender; or
- (b) any act or omission under the licence up to the date of surrender giving rise to cause of action; or
- (c) compliance with other obligations under the laws of Papua New Guinea.

(8) A licensee who permanently ceases operations under his licence shall—

- (a) do all of the things specified in Subsection (3), unless the Minister, after considering a report of the Board, approves otherwise; and
- (b) apply to the Minister under Subsection (2) to surrender the licence.

### **138. SUSPENSION AND CANCELLATION OF LICENCES.**

(1) Where a licensee has not—

- (a) in the opinion of the Minister, complied with a condition specified in the licence; or

- (b) in the opinion of the Minister, complied with a direction given to him under this Act by the Minister, the Director or an inspector; or
- (c) complied with a provision of this Act; or
- (d) paid any amount payable by him under this Act within a period of three months after the date on which the amount became payable,

the Minister may, by instrument served on the licensee—

- (e) in the case of a tenement—suspend for such period as the Minister thinks fit or cancel the licence as to all or any of the blocks in respect of which it is in force; or
- (f) in the case of a pipeline licence or petroleum processing facility licence—suspend for such period as the Minister thinks fit or cancel the licence as to the whole or a part of the pipeline or petroleum processing facility in respect of which it is in force.

(2) The Minister shall not, under Subsection (1), suspend or cancel a licence as to all or any of the blocks, or as to the whole or part of the pipeline or petroleum processing facility, unless—

- (a) he has, by instrument served on the licensee, given not less than one month's notice of his intention to suspend or cancel the licence, specifying the grounds upon which the suspension or cancellation is based; and
- (b) he has caused a copy of the instrument to be served on such other persons (if any) as he thinks fit; and
- (c) he has, in the instrument, specified a date, being not less than 14 days prior to the end of the period specified in the instrument referred to in Paragraph (a), on or before which written submissions may be served on the Minister in connection with the proposed suspension or cancellation; and
- (d) after taking into account—
  - (i) any action taken by the licensee to remove that ground or to prevent the recurrence of similar grounds; and
  - (ii) any matters so submitted to him on or before the specified date; and
  - (iii) a report on those matters from the Board,

he considers that special circumstances exist that justify a decision to suspend or cancel the licence.

(3) The suspension or cancellation of a licence by the Minister pursuant to this section shall not release the licensee from any liability in respect of the licence incurred before the date of cancellation or before or during the period of suspension.

**139. REMOVAL OF PROPERTY, ETC., BY LICENSEE, ETC.**

(1) Prior to abandonment of a well a tenement holder shall—

- (a) furnish the Director with notice of his intention to abandon the well together with a request for the Director to approve a program for abandonment which includes removal of equipment, plugging the well bore, and reclaiming the well site; and
- (b) complete logging and testing and submission of such information and relevant evaluations which have not previously been submitted to the Director with the tenement holder's notice under Paragraph (a); and
- (c) conduct abandonment operations according to the manner prescribed by regulations.

(2) Where any licence has been wholly determined, partly determined, wholly cancelled or partly cancelled or has expired, the Minister may by instrument served on the person who was, or is, the licensee, direct that person to—

- (a) make arrangements, to the satisfaction of the Minister, with respect to the complete or partial abandonment of any pipeline or petroleum processing facility or other plant and equipment which is or was the subject of the licence; and
- (b) remove or cause to be removed from the area in respect of which the tenement has been determined or cancelled or has expired or the area in which the pipeline or petroleum processing facility or part thereof, in relation to which the licence is determined or cancelled or has expired, is constructed, all property brought into that area by any person engaged or concerned in the operations authorized by the licence, or to make arrangements that are satisfactory to the Minister with respect to that property; and
- (c) plug or close off, to the satisfaction of the Minister, all wells made in that area by any person engaged or concerned in those operations; and
- (d) make provision, to the satisfaction of the Minister, for the conservation and protection of the natural resources in that area.

(3) Notwithstanding Subsection (2), if agreed by the Minister by instrument or as a condition of a licence or by the State in a written agreement, buried pipelines, or pipes or facilities referred to in Paragraphs (a) to (d) inclusive of the definition of "pipeline", may be abandoned in place, subject to the terms of the licence condition or instrument or written agreement.

(4) The holder of any licence shall—

- (a) at the time of surrender of the licence or cancellation by the Minister; and
- (b) five years prior to the expiration of the term of the licence or in the case of a petroleum processing facility licence five years prior to the expected date of abandonment of the petroleum processing facility,

demonstrate to the satisfaction of the Minister that it is able to meet has or will have sufficient financial resources to meet its obligations under this section upon surrender, cancellation or expiry of the licence.

(5) The licensee shall demonstrate such financial resources—

- (a) by establishing a reserve account for abandonment costs in accordance with the report of a certified independent auditor; or
- (b) by providing, in a form acceptable to the Minister, a financial undertaking (or in the case of a licensee which is a joint venture, several undertakings) in the form of a bond, letter of credit or guarantee or other instrument acceptable to the Minister; or
- (c) by granting the Minister a charge or similar security over its assets and income.

(6) A person to whom a direction under Subsection (2) is given who refuses, or fails, to comply with the direction within the period specified in the instrument by which the direction was given is guilty of an offence.

Penalty: A fine not exceeding K25,000.00.

#### **140. REMOVAL AND SALE OF PROPERTY.**

(1) Where a direction under Section 139 has not been complied with, the Minister may—

- (a) do or cause to be done all or any of the things required by the direction to be done; and
- (b) remove or cause to be removed, in such manner as he thinks fit, all or any of the property from the relinquished area concerned; and
- (c) dispose of, in such manner as he thinks fit, all or any of the property referred to in Paragraph (b); and
- (d) if he has served a copy of the instrument by which the direction was given on a person who he believed to be an owner of the property or part of the property—sell or cause to be sold by public auction or otherwise as he thinks fit, all or any of the property referred to in Paragraph (b) that belongs, or that he believes to belong, to that person.

(2) The Minister may deduct from the proceeds of a sale of property under Subsection (1) that belongs, or that he believes to belong, to a particular person—

- (a) all or any part of any costs and expenses incurred by him under that subsection in relation to that property; and
- (b) all or any part of any costs and expenses incurred by him in relation to the doing of anything required by a direction under Section 139 to be done by the person; and
- (c) all or any part of any fees or amounts due and payable under this Act by the person.

- (3) The costs and expenses incurred by the Minister under Subsection (1)–
- (a) if incurred in relation to the removal, disposal or sale of property—are a debt due by the owner of the property to the State; or
  - (b) if incurred in relation to the doing of anything required by a direction under Section 139 to be done by a person who is or was a licensee—are a debt due by that person to the State,

and to the extent to which they are not recovered under Subsection (2) are recoverable by the State as a debt.

(4) Subject to Subsection (3), no action lies in respect of the removal, disposal or sale of property under this section.

#### **141. PENALTY FOR LATE PAYMENTS.**

(1) Where the liability of a person under this Act to pay an amount is not discharged on or before the time when the amount is payable, there is payable by that person an additional amount calculated at the rate of % per day on so much of that amount as from time to time remains unpaid, to be computed from the time that the amount became payable until it is paid.

(2) The Minister may, in a particular case, for reasons that in his opinion are sufficient, remit the whole or part of an amount payable under this section.

#### **142. SECURITIES.**

(1)<sup>84</sup> <sup>85</sup>A security referred to in Division 2, 4, 7, 9 or 10–

- (a) shall be in such amount not exceeding K1,000,000.00 as the Minister thinks reasonable; and
- (b) shall be by way of a bond to pay the amount, executed by the licensee, in an approved form, and be supported by–
  - (i) a cash deposit from the licensee; or
  - (ii) a guarantee of a bank acceptable to the Minister and in an approved form; or
  - (ii) some other approved form of security,

or any combination of the alternatives specified in sub-paragraph (i), (ii) or (iii).

(2) A bond, guarantee or other security document given in an approved form, although it is not sealed, shall bind the person subscribing to it as if it were sealed.

(3) Whenever a security under this Act is the subject of legal proceedings, the production of the security, without further proof, entitles the Minister to judgement against the person appearing to have executed the security, for the amount of his stated liability or for such lesser amount as is claimed, unless that person proves–

<sup>84</sup> Section 142 Subsection (1) amended by No. 58 of 2006, s. 22.

<sup>85</sup> Section 142 Subsection (1) amended by No. 58 of 2006, s. 22.

- (a) compliance with the conditions of the security; or
- (b) that the security was not executed by him; or
- (c) release or satisfaction.

(4) For the purposes of Subsection (3)(a), the holder of a petroleum prospecting licence who has complied with a condition referred to in Section 31(2) shall not be taken to have failed to comply with the conditions of the security for the reason only that he has failed to complete any work referred to, or expend any amount specified, in the licence so far as it relates to any period subsequent to the date on which an application under Section 137(2), to which the Minister subsequently consents, is made.

(5) If it appears to the court that a condition of a security under this Act has not been complied with, the security shall not be deemed to have been discharged or invalidated, and the subscriber shall not be deemed to have been released or discharged from liability by reason of—

- (a) any extension of time or other concession; or
- (b) any consent to, or acquiescence in, a previous non-compliance with a condition; or
- (c) any failure to bring legal proceedings against the subscriber on the occurrence of a previous non-compliance with the condition.

(6) If there is more than one subscriber to the security, each is bound, unless the security otherwise provides, jointly and severally and for the full amount.

#### **143. FURTHER INFORMATION TO BE FURNISHED, ETC.**

(1) Where the Minister, the Director or an inspector has reason to believe that a person is capable of giving information or producing documents relating to petroleum exploration operations, or operations for the recovery of petroleum, he may, by instrument served on that person, require that person—

- (a) to furnish that information to him in writing within the period and in the manner specified in the instrument; or
- (b) to attend before him or a person specified in the instrument, at such time and place as is so specified, and there to answer questions relating to those operations and to produce such documents relating to those operations as are specified in the instrument.

(2) A person is not excused from furnishing information, answering a question or producing a document when required to do so under this section, on the grounds that the information so furnished, the answer to the question or the production of the document might tend to incriminate him or make him liable to a penalty, but the information so furnished or his answer to the question is not admissible in evidence against him in proceedings other than proceedings for an offence against Section 144.



**144. FAILING TO FURNISH INFORMATION, ETC.**

A person who—

- (a) refuses or fails to comply with a requirement in an instrument under Section 143 to the extent to which he is capable of complying with it; or
- (b) in purported compliance with a requirement referred to in Paragraph (a)—knowingly furnishes information that is false or misleading in a material particular; or
- (c) when attending before the Minister, the Director or an inspector under a requirement referred to in Paragraph (a)—knowingly makes a statement or produces a document that is false or misleading in a material particular,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

**145. DRILLING FOR AND DISCOVERY OF WATER.**

A person shall not, except in accordance with such conditions as are determined by the Minister, or in accordance with the provisions of the *Water Resources Act 1982*, drill for water in any licence area.

**146. SURVEY OF WELLS, ETC.**

(1) The Minister or the Director may, at any time, by instrument served on a tenement holder, direct the tenement holder—

- (a) to carry out a survey of the position of the well, structure or equipment specified in the instrument; and
- (b) to furnish to the Minister or Director, as the case may be, a written report of the survey.

(2) Where the Minister or the Director is not satisfied with a report of a survey furnished to him under Subsection (1) by a tenement holder, he may, by instrument served on the tenement holder, direct the tenement holder to furnish further written information in connection with the survey.

(3) A person to whom a direction is given under Subsection (1) or (2) who fails to comply with the direction is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

**147. RECORDS, ETC., TO BE KEPT.**

The Minister or the Director may, by instrument served on a person carrying on operations under a licence or an instrument of consent under Section 150, direct that person—

- (a) to keep such accounts, records and other documents in connection with those operations as are specified in the instrument; and
- (b) to collect and retain such cores, cuttings and samples in connection with those operations as are specified in the instrument; and
- (c) to furnish to the Minister in the manner specified in the instrument such reports, returns, other documents, cores, cuttings and samples in connection with those operations,

as are specified in the instrument.

#### **148. REPORTING BY LICENSEES.**

(1) The Minister or the Director may give directions to a licensee as to reports to be provided to the Director by the licensee on the activities of the licensee in respect of the licence, and as to the frequency of and information to be contained in such reports, and such other matters by way of reports in respect of the licence, including the production, sale, processing or transportation of petroleum or petroleum products, as the Minister or Director sees fit.

(2) A licensee to whom a direction is given under Subsection (1) shall provide such reports containing such information and at such frequency as is specified in the direction, and shall otherwise comply with the direction given.

(3) A person to whom a direction is given under Subsection (2) who fails or refuses to comply with the direction is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

#### **149. CONFIDENTIALITY, ETC., OF INFORMATION.**

(1) All information supplied to the Minister, the Director or an inspector under this Act shall, if the Minister so directs, be verified by statutory declaration in a prescribed form.

(2) The following information furnished to the Board, the Minister, the Director or an inspector under this or the former Acts, or to any other representative of the State, shall be treated as confidential:—

- (a) all geological and geophysical information (including information concerning cores or cuttings from, or samples of, the land surface, sea bed or subsoil in a block);
- (b) all intellectual property including, without limitation, industrial processes;
- (c) all information related to the business of the licensee to which the information relates including sales forecasts, market projections or marketing information;
- (d) all applications for licences, commercial and economic evaluations, marketing information, and other information which the person

furnishing the information may designate as being commercially sensitive,

except where the licensee or person furnishing the information has given his consent for disclosure or the information is otherwise available in the public domain or is disclosed in accordance with Subsection (3).

(3) Information referred to in Subsection (2)(a) may be disclosed, and cores, cuttings or samples made available—

- (a) to an officer or other representative of the State expressly authorized by the Minister or Director to receive that information or to examine those cores, cuttings or samples; and
- (b) in respect of a block or part of a block that was previously the subject of a licence under this Act or a licence under the former Act and is not the subject of a current licence under this Act—to the public; and
- (c) in respect of a block the subject of a current petroleum prospecting licence or petroleum retention licence that is not, or is not included in, a location—to the public not earlier than two years after that information was, or those cores, cuttings or samples were, required to be supplied to the Minister, the Director, or an inspector, as the case may be; and
- (d) in respect of a block the subject of a current petroleum development licence—to the public not earlier than one year after that information was, or those cores, cuttings or samples were, required to be supplied to the Minister, the Director, or an inspector, as the case may be.

(4) Information referred to in Subsection (2)(a) to (d) inclusive may be disclosed to an officer or other representative of the State expressly authorized by the Minister or Director to receive that information.

(5) The Minister may at any time make use of any information or matter supplied by a licensee for the purpose of preparing and publishing aggregate returns and general reports with respect to operations under this Act.

(6) A person who acts in the execution of any duty under this Act shall not, except in the performance of that duty, divulge any information supplied to the Minister or to the Director in pursuance of this Act.

(7) A person who has been an officer or who has performed a duty under this Act shall not communicate any information acquired by him in the performance of that duty to any person other than a person authorized by law or by the Minister or the Director to receive that information.

## **150. SCIENTIFIC INVESTIGATIONS: INSTRUMENTS OF CONSENT.**

(1) The Minister may, by instrument, consent to the carrying on by any person of petroleum exploration operations in the course of a scientific investigation.

(2) An instrument of consent shall be subject to such conditions (if any) as are specified in the instrument.

(3) An instrument of consent under this section authorizes the person to whom it is issued to carry out the petroleum exploration operation specified in the instrument—

- (a) in the area; and
- (b) subject to the conditions (if any),

specified in the instrument, in the course of scientific investigation.

#### **151. INSPECTORS.**

(1) The Minister may, by notice in the National Gazette, appoint—

- (a) a person to be the Chief Inspector; and
- (b) such other persons to be inspectors as he thinks necessary,

for the purposes of this Act.

(2) The Minister shall issue to the Chief Inspector and to each inspector a certificate stating that he is an inspector.

(3) Where the appointment of a person under this section expires or is revoked, that person shall immediately surrender to the Minister the certificate issued to him under this section.

#### **152. POWERS OF INSPECTORS.**

(1) For the purposes of this Act, an inspector, at all reasonable times may—

- (a) enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be, used in connection with—
  - (i) petroleum exploration operations; or
  - (ii) operations for the recovery of petroleum; or
  - (iii) operations connected with the construction or operation of a pipeline or a petroleum processing facility; and
- (b) inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be, used in connection with any of the operations referred to in Paragraph (a); and
- (c) take or remove for the purpose of analysis or testing, or for use in evidence in connection with an offence against this Act, samples of petroleum, water or other substances from a well or samples of petroleum or petroleum products or other substances from a pipeline or a petroleum processing facility; and
- (d) inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in Paragraph (a); and
- (e) with respect to the health and safety of persons employed by a licensee in or in connection with any of the operations referred to in Paragraph

- (a)–by instrument, issue directions to and impose restrictions on the licensee, or any person so employed; and
- (f) order, by instrument–
- (i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connection with any of the operations referred to in Paragraph (a); or
  - (ii) the discontinuance of the use of any machinery or equipment,
    - which he considers unsafe after taking into account the following matters:–
  - (iii) good oilfield practice or generally accepted petroleum processing operations practice, as the case may be;
  - (iv) consultation with the person referred to in Subsection (2);
  - (v) consultation with the Chief Inspector or the Director,
    - unless and until such action as is necessary for safety and specified in the instrument is taken and completed; and
- (g) make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, restrictions imposed or orders made under this Act, are being complied with; and
- (h) obtain and record statements from witnesses, and appear at or conduct inquiries held regarding accidents occurring in the course of any of the operations referred to in Paragraph (a), and appear at inquests, and call and examine witnesses, and cross-examine witnesses, and conduct or assist in conducting a prosecution for any offence against this Act.

(2) Before exercising any of his powers under Subsection (1), if there is any person present who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the inspector shall produce his certificate referred to in Section 151(2) to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of an inspector made under this section may appeal in writing to the Chief Inspector who shall, as soon as practicable, hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction or order appealed from pending disposition of the appeal.

- (4) On appeal under Subsection (3), the Chief Inspector may–
- (a) rescind or affirm the decision, direction or order appealed from; or
  - (b) substitute a new decision, direction or order.

(5) In exercising his powers under Subsection (1), an inspector may be accompanied by any person who the inspector believes has special or expert knowledge of any matter being inspected, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in Subsection (1), must provide an inspector with all reasonable facilities and assistance for the effective exercise of the inspector's powers under this section.

Penalty: A fine not exceeding K5,000.00.

(7) A person who—

- (a) without reasonable excuse, obstructs, molests or hinders an inspector in the exercise of his powers under this section; or
- (b) knowingly makes a statement or produces a document that is false or misleading in a material particular to an inspector engaged in carrying out his duties and functions under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

### **153. GENERAL PENALTY.**

A person who contravenes or fails to comply with—

- (a) a provision of this Act applicable to him and for which no other penalty is provided; or
- (b) a requirement, direction, order or instruction lawfully given or made under this Act, other than a direction under Section 133,

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

### **154. CONTINUING OFFENCES.**

(1) Where an offence is committed by a person by reason of his failure to comply, within the period specified in a direction given to him under this Act, with the requirements specified in the direction, the offence, for the purposes of Subsection (3), shall be deemed to continue so long as any requirement specified in the direction remains undone, notwithstanding that the period has elapsed.

(2) Where an offence is committed by a person by reason of his failure to comply with a requirement made by this Act, the offence, for the purposes of Subsection (3), shall be deemed to continue so long as that failure continues, notwithstanding that any period within which the requirement was to be complied with has elapsed.

(3) Where, under Subsection (1) or (2), an offence is deemed to continue, the person who committed the offence commits an additional offence against this Act on

each day during which the offence is deemed to continue and is liable, on conviction for such an additional offence, to a fine not exceeding K5,000.00.

**155. ORDERS FOR FORFEITURE IN RESPECT OF CERTAIN OFFENCES.**

(1) Where a person is convicted of an offence against this Act a court may, in addition to imposing a fine, make—

- (a) an order for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence; and
- (b) an order—
  - (i) for the forfeiture of petroleum recovered, or conveyed through a pipeline, as the case may be, in the course of the commission of the offence; or
  - (ii) for the payment by that person to the State of an amount equal to the proceeds of the sale of petroleum so recovered or conveyed; or
  - (iii) for the payment by that person to the State of the value at the wellhead, assessed by the court in respect of the quantity so assessed, of petroleum so recovered or conveyed or for the payment of such a part of that amount as the court, having regard to all the circumstances, thinks fit.

(2) Where the court is satisfied that an order made under Subsection (1)(b)(i) cannot for any reason be enforced, the court may, on the application of the person by whom the proceedings were brought, set aside the order and make an order referred to in Subsection (1)(b)(ii) or (iii).

(3) The court may, before making an order under this section require notice to be given to, and hear, such persons as the court thinks fit.

**156. SERVICE.**

(1) A document required or permitted by this Act to be served on a person, other than the Minister or the Director, shall be deemed to be duly served if sent by registered post addressed to the usual postal address last known to the Director of that person.

(2) A document required or permitted by this Act to be served on the Minister or the Director may be served by registered post addressed to the Director.

(3) Where a document to be served is served by post in accordance with this section, service shall be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

**156A. PRE-SUBMISSION OF INFORMATION.**

<sup>86</sup>In this Act, where a section provides for information, particulars, proposals, studies, investigations, reports, accounts, documents or other like material to be furnished or provided to an inspector, the Director or the Minister for consideration in connection with that section, such information, particulars, proposals, studies, investigations, reports, accounts, documents or other like material may be submitted in a complete draft form for discussion purposes without prejudice to the rights of the submitting party or the State arising under the relevant section, to assist in the preparation and submission of a complete formal submission of that information, particulars, proposals, studies, investigations, reports, accounts, documents or other like material in due course and in accordance with the Act.

***Division 14.******Fees and Royalties.*****157. FEES.**

(1) An applicant shall pay a fee of—

- (a) K10,000.00 at the time of making application for a petroleum prospecting licence or an extension thereof; and
- (b) K10,000.00 at the time of making application for a petroleum retention licence or an extension thereof; and
- (c) K50,000.00 at the time of making application for a petroleum development licence or an extension thereof; and
- (d) K50,000.00 at the time of making application for a pipeline licence or an extension thereof; and
- (e) K50,000.00 at the time of making application for a petroleum processing facility licence.

(2) A licensee shall pay an annual fee on the anniversary of the licence at the rate of—

- (a) in the case of a petroleum prospecting licence granted otherwise than by way of extension, K500.00 for each block in the licence area; and
- (b) in the case of a petroleum prospecting licence granted by way of extension—for each block in the licence area—
  - (i) K1,000.00 in the first year of the term of extension; and
  - (ii) K1,500.00 in the second year of the term of the extension; and
  - (iii) K2,000.00 in the third year of the term of the extension; and
  - (iv) K3,000.00 in the fourth year of the term of the extension; and
  - (v) K4,000.00 in the fifth year of the term of the extension; and

<sup>86</sup> Section 156A Inserted by No. 64 of 2006, s. 6.



- (c) K30,000.00 in the case of a petroleum retention licence; and
  - (d) K100,000.00 in the case of a petroleum development licence; and
  - (e) in the case of a pipeline licence, the greater of—
    - (i) K10,000; and
    - (ii) the lesser of—
      - (A) K100,000; and
      - (B) K1,000 multiplied by the number of entire kilometres in the length of the pipeline; and
  - (f) K100,000.00 in the case of a petroleum processing facility licence.
- (3) Subject to this Act, an annual fee referred to in Subsection (2) is payable—
- (a) in the case of the first year of the term of a licence—before the licence is granted; and
  - (b) in the case of each subsequent year of the term of a licence—on the anniversary date of the day the licence took effect.

(4) Where a licence is surrendered or cancelled during a year of its term, no refund shall be made of any part of the annual fee paid for that year.

(5) A person who fails to pay the fees referred to in this section by the date they are payable is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

## **158. DETERMINATION OF VALUE OF PETROLEUM.**

<sup>87</sup>Except as otherwise provided in the Schedule, the Minister shall, from time to time, after considering any information furnished by the tenement holder and any other information that the Minister thinks relevant, determine in accordance with Schedule 1 the value, for the purposes of this Act, of petroleum produced from a licence area—

- (a) in the case of petroleum intended for export—as at the point of export; or
- (b) in the case of petroleum not intended for export—as at the point of delivery to a refinery or processing facility in Papua New Guinea; or
- (c) where a gas agreement applies, at the point specified in the gas agreement.

## **159. ROYALTY.**

(1) Subject to Subsection (2), a tenement holder shall pay to the State royalty at a rate of 2.00% of the wellhead value of all petroleum produced from the licence area.

<sup>87</sup> Section 158 Amended by No. 58 of 2006, s. 23.

(2)<sup>88</sup> <sup>89</sup>For the purposes of Subsection (1), the wellhead value of any petroleum is the value of the petroleum determined in accordance with Section 158 less any deductions prescribed in the regulations to the extent and in the manner prescribed.

(3)<sup>90</sup> [*Repealed.*]

(4)<sup>91</sup> <sup>92</sup>Notwithstanding the provisions of the *Income Tax Act 1959*, where, in a financial year, in relation to the same licence area, a person has paid—

- (a) royalty under this section; and
- (b) development levy under Section 160,

the royalty paid by that person under this section shall be deemed to be income tax paid by that person in respect of its liability to income tax under the *Income Tax Act 1959* on its assessable income from petroleum operations derived from the petroleum project to which the royalty relates.

## 160. DEVELOPMENT LEVIES.

(1)<sup>93</sup> <sup>94</sup>Subject to this section, a petroleum development licensee shall pay in accordance with Section 98 of the *Organic Law on Provincial Governments and Local-level Governments* to the affected Provincial or Local-level Governments of a petroleum project development levies at a rate of 2.00% of the wellhead value of all petroleum product from the licence area, calculated in the same manner as provided for in Section 159.

(2) Subject to Subsection (3), this section shall not apply to production of petroleum from a petroleum development licence where the petroleum development licence was granted prior to the commencement date.

(3) Subsection (2) does not apply to production of petroleum from a petroleum project where a petroleum development licence granted prior to the commencement date is varied after the commencement date to permit the construction and operation of that petroleum project.

(4)<sup>95</sup> <sup>96</sup>Development levies payable under this section shall be payable directly by a petroleum development licensee to a trust fund in accordance with the *Public Finances (Management) Act 1995*, annually in arrears on or before 31 January in the year following the year of production to which the development levy relates.

(5) No other development levies pursuant to Section 98 of the *Organic Law on Provincial Governments and Local-level Governments* shall be applied to petroleum projects.

<sup>88</sup> Section 159(2) repealed and replaced by No 53 of 2000 s 2.

<sup>89</sup> Section 159(2) repealed and replaced by No 53 of 2000 s 2.

<sup>90</sup> Section 159(3) repealed by No 53 of 2000 s 2.

<sup>91</sup> Section 159(4) amended by *Oil and Gas (Budget Provisions 2000) Act 1999* (No 21 of 1999).

<sup>92</sup> Section 159(4) amended by *Oil and Gas (Budget Provisions 2000) Act 1999* (No 21 of 1999).

<sup>93</sup> Section 160 Subsection (1) substituted by No. 58 of 2006, s. 24.

<sup>94</sup> Section 160 Subsection (1) substituted by No. 58 of 2006, s. 24.

<sup>95</sup> Section 160 Subsection (4) substituted by No. 58 of 2006, s. 24.

<sup>96</sup> Section 160 Subsection (4) substituted by No. 58 of 2006, s. 24.

(6)<sup>97</sup> <sup>98</sup>Development levies which has been paid in accordance with this section shall be disbursed from the trust account only in accordance with an appropriation approved by Parliament.

### **161. ASCERTAINING QUANTITY OF PETROLEUM RECOVERED.**

For the purposes of this Act, the quantity of petroleum recovered by a licensee during a period is—

- (a) the quantity measured during that period by an approved measuring device installed at the wellhead or some other approved place; or
- (b) where no such measuring device is installed, or the Minister is not satisfied that the quantity of petroleum recovered by the licensee has been properly or accurately measured by such a device—the quantity determined by the Minister as being the quantity so recovered during that period.

### **162. PAYMENT OF ROYALTY AND PENALTY FOR LATE PAYMENT.**

(1)<sup>99</sup> <sup>100</sup>Royalty under this Act in respect of petroleum recovered during a royalty period is payable not later than the last day of the next succeeding royalty period except where a gas agreement applies, royalty is payable no later than one month after the last day of the next succeeding royalty period.

(2) Where the amount of royalty under this Act is not paid as provided by Subsection (1), there is payable to the Director by the licensee an additional amount calculated at the rate of % per day on the amount of royalty from time to time remaining unpaid, to be computed from the time when the royalty became payable until it is paid.

(3) An additional amount is not payable under Subsection (2) in respect of any period before the expiration of seven days after the value of the petroleum was determined under Section 158.

### **163. REGISTRATION FEES.**

There is payable to the Director in respect of all instruments required to be registered under this Act such fees as are prescribed.

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<sup>97</sup> Section 160 Subsection (6) inserted by No. 57 of 2006, s. 16.

<sup>98</sup> Section 160 Subsection (6) inserted by No. 57 of 2006, s. 16.

<sup>99</sup> Section 162 Subsection (1) amended by No. 57 of 2006, s. 17.

<sup>100</sup> Section 162 Subsection (1) amended by No. 57 of 2006, s. 17.

**PART IV. – STATE EQUITY ENTITLEMENT AND PROJECT BENEFITS.****164. NO EFFECT ON COMPENSATION ENTITLEMENT.**

Nothing contained in this Part affects the entitlement of a person to be compensated pursuant to Section 118.

**165. STATE EQUITY ENTITLEMENT.**

(1) The State has the right (but not the obligation) to acquire, directly or through a nominee, all or any part of a participating interest not exceeding 22.5% in each petroleum project.

(2)<sup>101</sup> <sup>102</sup>The right referred to in Subsection (1) may be exercised by the State—

(a) in the case of a petroleum project which is an Orogen option project—

(i) at the time of the grant of the licence or licences pursuant to which the petroleum project is conducted; or

(ii) if the Company has exercised its option under the option agreement in respect of that Orogen option project, at any time prior to the date upon which MRDC is required under the terms of the option agreement to complete the transfer to the Company of a participating interest in the Orogen option project; and

(b) in the case of any other petroleum project, at the time of the grant of the licence or licences pursuant to which the petroleum project is conducted.

(3) Subject to Subsection (4), the consideration payable by the State for an acquisition under Subsection (1) shall be a percentage of the unrecouped sunk costs of the vendor attributable to the vendor's interest in the petroleum project, equal to the percentage participating interest in the petroleum project being acquired by the State.

(4)<sup>103</sup> <sup>104</sup>Any interest acquired under Subsection (1) shall be acquired on and any consideration payable under Subsection (3) shall be calculated in accordance with specific terms and conditions contained in an agreement entered into in accordance with Section 183 or 184.

(5) The State shall exercise its right under Subsection (1) in respect of a petroleum project—

(a) if the Company has an option under the option agreement in respect of that petroleum project and has exercised that option, to the extent necessary to ensure that MRDC can complete the transfer of a participating interest in the petroleum project to the Company under the option agreement; and

<sup>101</sup> Section 165 Subsection (2) amended by No. 58 of 2006, s. 25.

<sup>102</sup> Section 165 Subsection (2) amended by No. 58 of 2006, s. 25.

<sup>103</sup> Section 165 Subsection (4) amended by No. 58 of 2006, s. 25.

<sup>104</sup> Section 165 Subsection (4) amended by No. 58 of 2006, s. 25.

- (b) to the extent necessary to ensure that any equity benefit required to be granted under Section 167 can be granted in accordance with that section.

(6) Subject to—

- (a) Section 167; and
- (b) the terms of the option agreement; and
- (c) the terms of any written agreement between the State and the vendor of the participating interest in a petroleum project acquired by the State pursuant to the State equity entitlement,

the State or the nominee of the State which acquires a participating interest in a petroleum project in accordance with this section shall be free to deal with that participating interest as it sees fit.

#### **166. ACQUISITION OF PARTICIPATING INTEREST BY THE COMPANY.**

(1)<sup>105</sup> <sup>106</sup>Notwithstanding any other provision of this Act or the terms of any agreement made by the State,—

- (a) the Company shall have the right to acquire, and the State or MRDC, as the case may be, shall have the right to transfer to the Company, out of the State equity entitlement, a participating interest in an Orogen option project in accordance with the option agreement; and
- (b) without limitation—
  - (i) any petroleum prospecting licence or petroleum retention licence; and
  - (ii) the terms of any agreement made by the State in relation to a petroleum prospecting licence or petroleum retention licence; and
  - (iii) any petroleum development licence or pipeline licence or petroleum processing facility licence granted in relation to an Orogen option project or any part thereof,

granted or made after the coming into operation of Parts II and III of the *Mineral Resources Development Company Pty Limited (Privatisation) Act 1996* shall be subject to the exercise of those rights.

(2)<sup>107</sup> <sup>108</sup>The State shall, subject to and in accordance with the option agreement, nominate MRDC or the Company to acquire a participating interest referred to in Subsection (1).

<sup>105</sup> Section 166 Subsection (1) amended by No. 57 of 2006, s. 18.

<sup>106</sup> Section 166 Subsection (1) amended by No. 57 of 2006, s. 18.

<sup>107</sup> Section 166 Subsection (2) amended by No. 58 of 2006, s. 26.

<sup>108</sup> Section 166 Subsection (2) amended by No. 58 of 2006, s. 26.

**167. EQUITY BENEFIT.**

(1) Out of the State equity entitlement referred to in Section 165, there is reserved an equity benefit to be dealt with in accordance with this section.

(2) The cost of—

- (a) acquiring the participating interest in the petroleum project for the purposes of the equity benefit; and
- (b) development attributable to that participating interest up until the commencement of commercial production of petroleum from that petroleum project,

shall be borne by the State.

(3) Subject to this section and Section 169, the State grants to the project area landowners and the affected Local-level Governments of a petroleum project, if any, an equity benefit in that petroleum project.

(4) The equity benefit granted under this section shall be shared between the project area landowners and affected Local-level Governments of the project in proportions agreed by them in a development agreement, but in default of such agreement in the proportions determined by the Minister, by instrument.

(5) The equity benefit granted under this section shall be held on trust for the grantees in accordance with Section 176.

(6) The participating interest in a petroleum project which comprises the equity benefit granted under this section shall be subject to the obligations applying thereto by law or by agreements to which the licensee is party, save that the State and not the grantee of the benefit shall be responsible for liabilities attributable to that participating interest until the commencement of commercial production of petroleum from that petroleum project.

(7) If in respect of a petroleum project there are no project area landowners or affected Local-level Governments, the State shall not be required to exercise its State equity entitlement to provide an equity benefit, but if it does so it shall be at liberty to grant that equity benefit to such organisations for such public purposes as it sees fit.

(8) This section shall only apply in respect of petroleum projects which commence development subsequent to the commencement date, and shall not affect arrangements in existence on the commencement date in relation to petroleum projects which on the commencement date are in production or have commenced development.

**168. ROYALTY BENEFIT.**

(1) Subject to this section and Section 169, the State grants to the project area landowners, the affected Local-level Governments and the affected Provincial Governments of a petroleum project, if any, a royalty benefit in respect of that petroleum project.

(2) The royalty benefit granted under this section shall be shared between the project area landowners the affected Local-level Governments and the affected Provincial Governments of the project in proportions agreed by them in a development agreement, but in default of such agreement in the proportions determined by the Minister, by instrument.

(3) The royalty benefit granted under this section shall be payable monthly, by the Minister, out of royalties payable to the Minister pursuant to Section 159.

(4) The royalty benefit granted under this section shall be paid to the trustee and held on trust for the grantees in accordance with Section 176.

(5) If in respect of a petroleum project there are no project area landowners or affected Local-level Governments or affected Provincial Governments, no royalty benefit shall be payable, and all royalties received pursuant to Section 159 shall be paid over to consolidated revenue.

(6) This section shall only apply in respect of petroleum projects which commence development pursuant to licences granted subsequent to the commencement date, and shall not affect arrangements in existence on the commencement date in relation to petroleum projects which on the commencement date are in production or have commenced development.

## **169. IDENTIFICATION OF LANDOWNER BENEFICIARIES.**

(1) Notwithstanding any other provision of this Act, the persons (other than affected Local-level Governments or affected Provincial Governments) who shall receive the benefits granted by Sections 167 and 168 shall be identified in accordance with this section.

(2)<sup>109</sup> <sup>110</sup>Prior to convening or during a development forum under Section 48, the Minister shall determine, by instrument—

- (a) the persons (other than affected Local-level Governments or affected Provincial Governments) who shall receive the benefits granted by Sections 167 and 168; and
- (b) the incorporated land groups or, if permitted in accordance with Section 176(3)(f), any other persons or entities who shall represent and receive the benefit on behalf of the grantees of the benefit.

(3) An instrument under Subsection (2) shall only be valid if also signed by the Director and the Secretary of the Department of Treasury or other National Government Department responsible for financial matters.

(4)<sup>111</sup> <sup>112</sup>In making a determination under Subsection (2), the Minister shall consider any agreements by persons who are or claim to be project area landowners, the decisions of courts of Papua New Guinea as to ownership of land or rights in

<sup>109</sup> Section 169 Subsection (2) substituted by No. 56 of 2006, s. 4.

<sup>110</sup> Section 169 Subsection (2) substituted by No. 56 of 2006, s. 4.

<sup>111</sup> Section 169 Subsection (4) amended by No. 58 of 2006, s. 27.

<sup>112</sup> Section 169 Subsection (4) amended by No. 58 of 2006, s. 27.

relation to land in the vicinity of the petroleum project in question, the results of social mapping and landowner identification studies carried out in accordance with this Act, and submissions from affected Local-level Governments or affected Provincial Governments of the petroleum project in question or from any other person claiming an interest or to be affected by the decision of the Minister.

(5) A petroleum development licensee or applicant for a petroleum development licence may, at any time after an application for the grant or variation of a petroleum development licence in respect of a petroleum project, apply to the Minister for a determination under Subsection (2).

(6) Where a licensee or an applicant for a licence applies to the Minister for a determination under Subsection (5), the Minister shall allow a period of 30 days, or such longer period as the Minister may allow, for persons referred to in Subsection (4) to make submissions or in the case of persons claiming to be project area landowners to advise him of agreements reached by them on the determination.

(7) Where a dispute exists as to which persons or incorporated land groups or other entities should be identified to receive benefits in accordance with this section, the Minister may make a determination under Subsection (2) or may direct that monies or other benefits which are the subject of the dispute shall be held in abeyance pending a resolution of that dispute by other means, and where such a direction is given by the Minister the trustee referred to in Section 176 shall hold such monies or other benefits in accordance with that direction.

(8)<sup>113 114</sup>Where the minister directs that monies or other benefits are to be held in abeyance under Subsection (7) or where the Minister's determination under Subsection (2) is subject to judicial review, the Minister may grant the licence or licences in respect of the petroleum project.

(9)<sup>115 116</sup>Where the Minister has granted the licence or licences under Subsection (8) and the dispute is resolved the Minister shall make a determination under Subsection (2) and convene a development forum under Section 48.

(10)<sup>117 118</sup>A ministerial determination made pursuant to the section shall not be reviewable before any court unless an application for review is made within 28 days of the Ministerial determination.

## **169A. IDENTIFICATION OF LANDOWNERS BENEFICIARIES AND SHARING OF BENEFITS IN RELATION TO EXISTING PETROLEUM PROJECTS.**

<sup>119</sup>(1) If in respect of petroleum projects which on the commencement date are in production or have commenced development, persons, or incorporated land groups

<sup>113</sup> Section 169 Subsection (8) inserted by No. 57 of 2006, s. 19.

<sup>114</sup> Section 169 Subsection (8) inserted by No. 57 of 2006, s. 19.

<sup>115</sup> Section 169 Subsection (9) inserted by No. 57 of 2006, s. 19.

<sup>116</sup> Section 169 Subsection (9) inserted by No. 57 of 2006, s. 19.

<sup>117</sup> Section 169 Subsection (10) inserted by No. 57 of 2006, s. 19.

<sup>118</sup> Section 169 Subsection (10) inserted by No. 57 of 2006, s. 19.

<sup>119</sup> Section 169A Inserted by No. 57 of 2006, s. 20.



or other entities, who should be receiving benefits from such petroleum projects, have not been identified or where a dispute exists as to which persons or incorporated land groups or other entities should be identified to receive such benefits, the Minister may make a determination as to the persons or incorporated land groups or other entities who should receive the benefits arising from such petroleum project.

(2) In making a determination under Subsection (1), the Minister shall consider any agreements by persons who are or claim to be project area landowners, the decisions of courts of Papua New Guinea as to ownership of land or rights in relation to land in the vicinity of the petroleum project in question, the results of social mapping and landowner identification studies that have been carried out in accordance with this Act, and submissions from affected Local-level Governments or affected Provincial Governments of the petroleum project in question or from any other person claiming an interest or to be affected by the decision of the Minister.

(3) Where, in the opinion of the Minister, having considered any agreements by persons who are or claim to be project area landowners, the decisions of the courts of Papua New Guinea as to ownership of land or rights in relation to land in the vicinity of the petroleum project in question, the results of any social mapping and landowner identification studies that have been carried out in accordance with Section 47, some project area landowners have a greater or more substantial occupation or right of occupation of the land referred to in the definition of “project area landowners” or are more adversely impacted by the petroleum project than other project area landowners, the Minister may, by instrument, determine that the sharing amongst project area landowners of equity benefits or royalty benefits in accordance with this section shall favour, on a per capita basis, those project area landowners who have that greater or more substantial occupation or right of occupation or are more adversely impacted by the petroleum project.

#### **170. SHARING OF BENEFITS AMONGST PROJECT AREA LANDOWNERS.**

(1) Any equity benefit or royalty benefit granted to project area landowners shall be shared amongst project area landowners in accordance with this section.

(2) Equity benefits and royalty benefits granted to project area landowners under this Act shall be shared among project area landowners or groups of project area landowners in proportions to be agreed by them in a development agreement, but in default of such agreement in the proportions determined by the Minister, by instrument.

(3) Where, in the opinion of the Minister, having considered the results of social mapping and landowner identification studies conducted in accordance with Section 47, some project area landowners have a greater or more substantial occupation or right of occupation of the land referred to in the definition of “project area landowners” or are more adversely impacted by the petroleum project than other project area landowners, the Minister may, by instrument, determine that the sharing amongst project area landowners of equity benefits or royalty benefits in accordance with this section shall favour, on a per capita basis, those project area

landowners who have that greater or more substantial occupation or right of occupation or are more adversely impacted by the petroleum project.

(4) A trust deed implemented in accordance with Subsections 176(3) shall provide for the distribution of equity benefits and royalty benefits in accordance with this section.

#### **171. OTHER PROJECT AREA LANDOWNER BENEFITS.**

(1) Subject to Section 174 the State may, in a development agreement, reach agreement with project area landowners to provide and may provide to or for the benefit of project area landowners or the people of the project area or the people of the region, by way of grants out of consolidated revenue or otherwise, such other benefits in addition to those specified in this Part as the State sees fit.

(2) Nothing contained in this Part affects any agreement which might be reached between project area landowners and the developers of a petroleum project as to benefits to be provided or other commitments made to those project area landowners by those developers.

#### **172. SHARING OF BENEFITS AMONGST AFFECTED LOCAL-LEVEL GOVERNMENTS AND AFFECTED PROVINCIAL GOVERNMENTS.**

(1) If in respect of a petroleum project there is more than one affected Local-level Government, the equity benefit and royalty benefit granted to affected Local-level Governments by this Part shall, unless otherwise agreed in writing by the affected Local-level Governments and the State, be shared between those affected Local-level Governments in proportion to the number of project area landowners who receive those benefits in respect of that project who reside within the jurisdiction of each affected Local-level Government.

(2) If in respect of a petroleum project there is more than one affected Provincial Government, the royalty benefit granted to affected Local-level Governments by this Part shall, unless otherwise agreed in writing by the affected Local-level Governments and the State, be shared between those affected Provincial Governments in proportion to the number of project area landowners who receive a royalty benefit in respect of that project who reside within the jurisdiction of each affected Provincial Government.

#### **173. PROJECT GRANTS.**

(1) In addition to the other benefits granted to affected Local-level Governments and affected Provincial Governments under this Part, the State shall make grants to affected Local-level Governments and affected Provincial Governments of a petroleum project in accordance with this section.

(2) The State shall in a development agreement and may in any other agreement agree with the affected Local-level Governments and affected Provincial Governments of a petroleum project upon the amount and nature and timing of

grants to be made by the State to those affected Local-level Governments and affected Provincial Governments in relation to the petroleum project.

(3) Grants made in accordance with this section may be in the form of monetary payments or in the form of provision of infrastructure or services or other benefits.

(4) The provision to an affected Local-level Government or an affected Provincial Government of a benefit in the form of infrastructure (or any other benefit) which is funded by the licensee in respect of the petroleum project pursuant to Section 219C of the *Income Tax Act 1959* shall be taken to be a grant made in accordance with this section.

(5) The State may, in addition to grants made to affected Local-level Governments or affected Provincial Governments under this section, make grants to project area landowners or customary owners of land in a petroleum project area.

#### **174. LIMITATION ON PROJECT BENEFITS.**

(1) The total benefits granted in accordance with this Act to project area landowners and affected Local-level Governments and affected Provincial Governments and any other persons or organisations shall not, when added to other costs incurred by the State in the course of the development or operation of a petroleum project, exceed 20% of the total net benefit to the State from that petroleum project as determined in a cost-benefit analysis under Section 116 of the *Organic Law on Provincial Governments and Local-level Governments*.

(2) No commitment shall be made by the State pursuant to Section 171 or 173 unless the Minister is satisfied that, following the provision of any benefits or grants which might be agreed under those sections, Subsection (1) is complied with.

#### **175. ADDITIONAL INTERESTS IN PETROLEUM PROJECTS.**

(1) Affected Provincial Governments, affected Local-level Governments and project area landowners of a petroleum project are at liberty to negotiate with a licensee to acquire from the licensee, on freely negotiated commercial terms, a participating interest in a petroleum project, in addition to the participating interest in that project granted under Section 167.

(2) Where an affected Provincial Government or an affected Local-level Government or project area landowners seeks or seek to acquire an additional participating interest in accordance with Subsection (1), the State, through MRDC, shall assist that process by providing, to the extent permitted by law, information and technical advice to the affected Provincial Government, affected Local-level Government or project area landowners, as the case may be.

(3) Nothing contained in this section obliges—

(a) a licensee to sell a participating interest in a petroleum project, or an interest in any other asset; or

- (b) the State to provide or procure finance for an acquisition in accordance with this section or to procure any agreement with a licensee.

### **176. PROJECT BENEFITS TRUSTS.**

(1)<sup>120</sup> <sup>121</sup>The equity benefit granted by the State in accordance with Section 167 and royalty benefit granted by the State in accordance with Section 168 to project area landowners, and any additional participating interest in a petroleum project acquired by project area landowners in accordance with Section 175, shall be received and held upon trust for those project area landowners by a corporate trustee which is wholly owned by MRDC.

(2)<sup>122</sup> <sup>123</sup>Where by an act or agreement the State grants to project area landowners or other customary land owners any other benefit in relation to the petroleum project, whether by way of a beneficial interest in a licence or assets attributable to a licence, or payments based on production or profits of the petroleum project, or otherwise, that benefit shall be received and held upon trust for those persons by a corporate trustee which is wholly owned by MRDC.

(3) Where a benefit referred to in Subsection (1) or (2) is held by a trustee upon trust pursuant to Subsection (1) or (2)–

- (a) the terms of the trust shall be set out in a deed approved by the Minister; and
- (b) the board of directors of the trustee shall be comprised in the majority by representatives of the State (including the managing director of MRDC) and in the minority by representatives of the grantees of the benefit; and
- (c) any equity interest or equivalent in a petroleum project held by the trustee shall not without the consent of the State be sold or transferred or charged, mortgaged or otherwise encumbered other than for the purpose of financing the activities of the trustee in that petroleum project or securing its joint venture obligations in that petroleum project; and
- (d) the trustee and the trust funds and any assets held by the trustee shall be managed by MRDC; and
- (e) the trustee and MRDC shall enter into a management agreement on terms approved by the Minister which agreement shall govern the management of the trustee and its assets and the amounts charged to the trustee for those management services; and

<sup>120</sup> Section 176 Subsection (1) amended by No. 57 of 2006, s. 21.

<sup>121</sup> Section 176 Subsection (1) amended by No. 57 of 2006, s. 21.

<sup>122</sup> Section 176 Subsection (2) amended by No. 58 of 2006, s. 28.

<sup>123</sup> Section 176 Subsection (2) amended by No. 58 of 2006, s. 28.

- (f) unless otherwise agreed between the State and the grantees of the benefit or prescribed by law, the beneficiaries of the trust shall be incorporated land groups on behalf of the grantees; and
- (g) where project area landowners entitled to an equity benefit in accordance with this section and who are equally entitled amongst themselves to share in that benefit are represented by more than one incorporated land group (or other representative if permitted in accordance with Paragraph (f)) the incorporated land groups or other representatives shall be allocated the benefit in proportion to the number of project area landowners each represents; and
- (h) the terms of the trust shall prescribe:
  - (i) that 30%, or such greater proportion as may be agreed between the State and the project area landowners, of the net income of the trust fund after payment of all costs and expenses shall be held upon trust for future generations of project area landowners; and
  - (ii) subject to the terms of any agreement between the State and project area landowners in force at the commencement of this section, that 30%, or such greater proportion as may be agreed between the State and the project area landowners, of the net income of the trust fund after payment of all costs and expenses shall be accumulated in investments in accordance with the terms of the trust and, together with the income from those investments, applied by the trustee for the benefit of project area landowners existing during the term of the trust for any one or more of the following purposes:–
    - (A) the general health, welfare, education and well being of the project area landowners;
    - (B) the provision or maintenance of community projects in the area of the petroleum project;
    - (C) such other purpose for the benefit of the project area landowners as is approved by the Minister; and
- (i)<sup>124</sup> the grantees of the benefit shall be at liberty to share or distribute income received by them from the trust in accordance with any customary arrangements or agreements they have entered into with the customary land owners outside of the area of the petroleum project, but such other customary land owners shall have no entitlement to or claim upon any part of the trust funds.

(4) The equity benefit granted by the State in accordance with Section 167 of this Act to affected Local-level Governments or affected Provincial Governments, and any additional participating interest in a petroleum project acquired by an affected

<sup>124</sup> Section 176 Subsection (3) amended by No. 58 of 2006, s. 28.

Local-level Government or an affected Provincial Government in accordance with Section 175, shall be received and held upon trust for those grantees by a corporate trustee which is wholly owned by MRDC.

(5) Subject to Subsection (6), where by an act or by agreement the State grants to a Local-level Government or Provincial Government any other benefit in relation to the petroleum project, whether by way of a beneficial interest in a licence or assets attributable to a licence, or payments based on production or profits of the petroleum project, or otherwise, that benefit shall be received and held upon trust for that government by a corporate trustee which is wholly owned by MRDC.

(6) Subsection (5) shall not apply to—

- (a) monetary grants made by the State to a Local-level Government or Provincial Government; or
- (b) any interest in buildings or other infrastructure provided to a Local-level Government or Provincial Government where the buildings or infrastructure are not dedicated project facilities of the petroleum project.

(7) Where a benefit referred to in Subsection (4) or (5) is held by a trustee upon trust pursuant to Subsection (4) or (5)—

- (a) the terms of the trust shall be set out in a deed approved by the Minister; and
- (b) the board of directors of the trustee shall be comprised in the majority by representatives of the State (including the managing director of MRDC) and in the minority by representatives of that government; and
- (c) any equity interest or equivalent in a petroleum project held by the trustee shall not without the consent of the State be sold or transferred or charged, mortgaged or otherwise encumbered other than for the purpose of financing the activities of the trustee in that petroleum project or securing its joint venture obligations in that petroleum project; and
- (d) the trustee and the trust funds and any assets held by the trustee shall be managed by MRDC; and
- (e) the trustee and MRDC shall enter into a management agreement on terms approved by the Minister which agreement shall govern the management of the trustee and its assets and the amounts charged to the trustee for those management services.

(8)<sup>125</sup> <sup>126</sup>Notwithstanding any other provision of this Act, the royalty and equity benefits granted by the State to project area land owners who have been identified as grantees of such benefits in petroleum projects which were at the commencement date of this Act are in production or have commenced development,

<sup>125</sup> Section 176 Subsection (8) inserted by No. 57 of 2006, s. 21.

<sup>126</sup> Section 176 Subsection (8) inserted by No. 57 of 2006, s. 21.

shall be received and held upon trust for those project area landowners by a corporate trustee which is wholly owned by MRDC in accordance with this section.

**177. BENEFITS WHERE PIPELINE OR PETROLEUM PROCESSING FACILITY NOT PART OF PETROLEUM PROJECT.**

<sup>127</sup>Where a pipeline or petroleum processing facility is constructed otherwise than as part of a petroleum project, customary land owners in the area in which the pipeline or petroleum processing facility is constructed shall be entitled only to such benefits as may be agreed between the licensee of the pipeline or petroleum processing facility and those customary land owners or between that licensee and the State.

**178. EXPENDITURE ON BEHALF OF AFFECTED LOCAL-LEVEL GOVERNMENTS AND AFFECTED PROVINCIAL GOVERNMENTS.**

(1) All grants made in accordance with Section 173, and all monies held on behalf of an affected Local-level Government or affected Provincial Government in accordance with Section 176 and available to be spent by the affected Local-level Government or affected Provincial Government, shall be administered in accordance with this section.

(2)<sup>128</sup> <sup>129</sup>The Minister shall establish, in respect of each petroleum project, an Expenditure Implementation Committee comprising –

- (a) the Secretary of the Department of National Planning or the department responsible for national planning matters, who shall be the Chairman; and
- (b) the Director; and
- (c) the Secretary of the Department of Treasury or the department responsible for national government finances; and
- (d) the Secretary of the Department of Works and Transport; and
- (e) the Secretary of the Department of Provincial and Local level Government Affairs; and
- (f) the Administrator responsible of each affected Provincial Government or District Administrator responsible for an affected Local level Government; and
- (g) the chief executive of the Operator who shall respect the licensees of the petroleum project,

or their representatives.

<sup>127</sup> Section 177 Amended by No. 58 of 2006, s. 29.

<sup>128</sup> Section 178 Subsection (2) substituted by No. 58 of 2006, s. 30.

<sup>129</sup> Section 178 Subsection (2) substituted by No. 58 of 2006, s. 30.

(3) Expenditure of monies referred to in Subsection (1) by or on behalf of an affected Local-level Government or affected Provincial Government and the implementation of grants referred to in that subsection shall be made only—

- (a) in accordance with development plans submitted by the relevant Local-level Government or Provincial Government; and
- (b) in accordance with the approval of the Expenditure Implementation Committee for the petroleum project in question.

(4) The Expenditure Implementation Committee shall be responsible for—

- (a) monitoring budgets and timetables for construction and implementation of grant and benefit expenditure on behalf of affected Local-level Governments and affected Provincial Governments, and approving such expenditure; and
- (b) monitoring expenditure made pursuant to Section 219C of the *Income Tax Act 1959* to ensure that project funded pursuant to that section comply with the development plans submitted by the relevant Local-level Government or Provincial Government; and
- (c) monitoring the program of ongoing projects for expenditure of monies in accordance with this section.

(5) Notwithstanding the provisions of Section 219C of the *Income Tax Act 1959*, no expenditure by a licensee in respect of a petroleum project shall fulfil the requirements of that section unless approved by the Expenditure Implementation Committee of the petroleum project in question.

#### **179. NATIONAL GAS CORPORATION.**

(1) The Provincial Governments of Papua New Guinea, acting jointly, shall be at liberty to incorporate under the *Companies Act 1997* a company to be called National Gas Corporation Limited.

(2) If National Gas Corporation is formed in accordance with Subsection (1)—

- (a) each of the Provincial Governments shall be entitled to a shareholding in NGC in accordance with a shareholders' agreement, which they may enter into; and
- (b) NGC shall act as a corporate trustee for the Provincial Governments or any of them and any project area landowners on whose behalf it holds assets, and it shall hold its assets upon the trusts for which they were acquired and it and its office holders shall be subject to the fiduciary obligations of a trustee in favour of those beneficiaries; and
- (c) NGC shall have the purpose of managing participating interests of Provincial Governments and project area landowners in gas projects (including downstream processing of natural gas) in Papua New Guinea conducted pursuant to licences granted after the commencement date,



whether such participating interests are granted under this Act or acquired on commercial terms; and

- (d)<sup>130</sup> NGC shall have the legal capacity—
- (i) to do all things necessary to implement the purpose referred to in Paragraph (a); and
  - (ii) to obtain petroleum processing facility licences for processing of natural gas and any permits required for NGC to be a domestic gas operator or a domestic gas supplier or an owner or operator of facilities for the storage or transportation of cylinders containing compressed natural gas or liquefied petroleum gas; and
  - (iii)<sup>131</sup> to hold and enter into agreements with licensees to acquire by agreement on commercial terms participating interests in gas projects; and
  - (iv)<sup>132</sup> to acquire by agreement on commercial terms, a participating interest in the Hides petroleum project conducted pursuant to Petroleum Development Licence 1, irrespective of whether the State exercises its rights under Section 165 or any other law; and
  - (v)<sup>133</sup> to acquire by agreement or commercial terms processed petroleum including all liquefied petroleum gas; and
  - (vi)<sup>134</sup> to acquire by agreement by agreement on commercial terms an interest in a gas project at such time as any participant in a gas project wishes to sell such an interest; and
  - (vii) to borrow money for the purpose of acquiring or developing assets held by it in accordance with this section, and for that purpose to charge its assets; and
- (e) NGC shall for the purposes of this Part be deemed to be a corporate trustee referred to in Section 176, and the provisions of this Part applying to corporate trustees referred to in Section 176 shall apply to NGC; and
- (f) NGC shall obtain competent and professional management and shall provide to the Minister fully detailed quarterly reports on all of its activities and half yearly audited financial statements; and
- (g) NGC shall not engage in any activities other than those referred to in this subsection or activities incidental thereto.

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<sup>130</sup> Section 179 Subsection (2) amended by No. 58 of 2006, s. 31.

<sup>131</sup> Section 179 Subsection (2) amended by No. 58 of 2006, s. 31.

<sup>132</sup> Section 179 Subsection (2) amended by No. 58 of 2006, s. 31.

<sup>133</sup> Section 179 Subsection (2) amended by No. 58 of 2006, s. 31.

<sup>134</sup> Section 179 Subsection (2) amended by No. 58 of 2006, s. 31.

(3) Provincial Governments and project area landowners shall not be liable for the debts of NGC, notwithstanding that they may be a beneficiary of a trust referred to in Subsection (2).

(4) Nothing contained in this section obliges—

- (a) a licensee to sell a participating interest in a gas project, or an interest in any other property; or
- (b) the State to provide or procure finance for an acquisition in accordance with this section or to procure any agreement with a licensee.

(5)<sup>135</sup> <sup>136</sup>Notwithstanding in this Section 179 affects, restricts or limits, or will be taken to affect, restrict or limit, in any way, any right or entitlement of any person (regardless of that source of that right or entitlement), including, without limitation, the rights and entitlements of the State under Section 165 and the rights and entitlements of the Company under this Act or the option agreement,

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<sup>135</sup> Section 179 Subsection (5) inserted by No. 57 of 2006, s. 22.

<sup>136</sup> Section 179 Subsection (5) inserted by No. 57 of 2006, s. 22.

**PART V. – MISCELLANEOUS.****180. INSPECTORS NOT TO HAVE ANY INTERESTS IN LICENCES, ETC.**

The Minister, the Director, an inspector or an authorized officer appointed under this Act must not hold, or have any interest in, any licence, or hold shares in any company holding, or having any interest in, any licence under this Act.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding two years or both.

**181. POINTS, ETC., TO BE ASCERTAINED BY REFERENCE TO GEODETIC DATUM.**

(1) Where for the purposes of this Act, or for the purpose of an instrument under this Act, it is necessary to determine the position on the surface of the Earth at a point, line or area, that position shall be determined by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 m and a flattening of 100/29825 and by reference to the position of the Bevan Rapids (AA 070) Geodetic Station in the Gulf Province of Papua New Guinea.

(2) The Bevan Rapids Geodetic Station shall be taken to be situated at 7 degrees 21 minutes 34.7974 seconds of south latitude and at 145 degrees 15 minutes 52.9878 seconds of east longitude and to have a ground level of 406.30 m above mean sea level.

**182. REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act or for securing, regulating, controlling or restricting—

- (a) the exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose; and
- (b) the recovery of petroleum and the carrying on of operations, and the execution of works, for that purpose; and
- (c) the construction and operation of pipelines and any of the pipes or facilities referred to in Paragraphs (a) to (d) inclusive of the definition of “pipeline”; and
- (d)<sup>137</sup> the construction and operation of petroleum processing facilities; and
- (e)<sup>138</sup> limitation of project benefits granted in accordance with this Act.

(2) Without limiting the generality of Subsection (1), the regulations may—

- (a) prescribe work practices and safety measures to—

<sup>137</sup> Section 182 Subsection (1) amended by No. 56 of 2006, s. 5.

<sup>138</sup> Section 182 Subsection (1) amended by No. 57 of 2006, s. 23.

- (i) control the flow and prevent the escape of petroleum or water; and
  - (ii) prevent the escape of water or drilling fluid or the mixture of water or drilling fluid with petroleum or any other matter; and
  - (iii) prevent damage to petroleum-bearing strata in an area in respect of which a licence is not in force; and
  - (iv) keep separate each petroleum pool and each source of water discovered in a licence area; and
  - (v) prevent water or other matter entering a petroleum pool through wells; and
  - (vi) prevent the pollution of any water-well, spring, stream, river, lake, reservoir, estuary, harbour or area of sea by the escape of petroleum, salt water, drilling fluid, chemical additive or any other waste product or effluent; and
- (b) prescribe areas where drilling for petroleum is prohibited; and
  - (c) regulate the location and spacing of wells, and for this purpose provide for the establishment and designation of spacing units; and
  - (d) prescribe the methods, equipment and materials to be used in boring, drilling completing, plugging or operating wells; and
  - (e) regulate the construction, erection, maintenance, operation or use of installations or equipment; and
  - (f) prescribe measures to prevent the escape of petroleum or petroleum products or water from a pipeline, water line, flow lines or gathering lines, pumping station, tank station or valve station; and
  - (g) require a licensee to maintain in good condition and repair all structures, equipment and other property used or intended to be used for or in connection with exploration for, or the recovery or conveyance or processing of, petroleum or petroleum products; and
  - (h) provide for the removal of structures, equipment and other property, brought into the country in connection with exploration for, or the recovery or conveyance or processing of, petroleum or petroleum products, that are not used or intended to be used in connection with that exploration, recovery or conveyance or processing; and
  - (i) regulate the pressure maintenance in, or the repressuring of, a petroleum pool and the recycling of petroleum; and
  - (j) regulate the secondary or tertiary recovery of petroleum from a petroleum pool and provide for the methods to be used in such recovery; and

- (k) regulate the use of wells and the use of the subsurface for the disposal of petroleum, water and other substances produced in association with the exploration for or the recovery of petroleum; and
- (l) prescribe the rates, or the method of setting the rates, at which petroleum and water may be recovered from any well or petroleum pool; and
- (m) prescribe the methods to be used for the measurement of petroleum, water and other substances from a well; and
- (n)<sup>139</sup> regulate or control the tariffs charged by pipeline licensees or petroleum processing licensees and the conditions of use of pipelines or petroleum processing facilities; and
- (o) prescribe safety standards and provide for the health and safety of persons employed in or in connection with the exploration for or the recovery or conveyance of petroleum; and
- (p) require licensees to take, preserve and furnish to the Director cores, cuttings and samples from wells and samples of petroleum and water; and
- (q) require licensees to give to the Director reports, returns and other information; and
- (r) require a tenement holder to take logs or directional surveys or make other down-hole investigations; and
- (s) prescribe forms and other documents to be used in the administration of this Act, other than approved forms; and
- (t) prescribe penalties of fines not exceeding K5,000.00 and default penalties of fines not exceeding K500.00 for offences against the regulations; and
- (u) prescribe fees; and
- (v) prescribe work practices and safety measures, including qualifications for persons in control of petroleum processing facilities; and
- (w) regulate the siting of petroleum processing facilities; and
- (x) prescribe the methods, equipment and materials to be used in the operation of petroleum processing facilities; and
- (y) prescribe the methods, equipment and materials to be used in the operation of domestic utilisation facilities; and
- (z) regulate the construction, erection, maintenance, operation or use of installations or equipment; and
- (aa) require a petroleum processing facility licensee to maintain in good condition and repair all structures, equipment and other property used

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<sup>139</sup> Section 182 Subsection (2) amended by No. 58 of 2006, s. 32.

- or intended to be used for or in connection with the processing of petroleum; and
- (bb) provide for the removal of structures, equipment and other property, brought into the country in connection with the processing of petroleum that are not used or intended to be used in connection with that processing; and
  - (cc) prescribe standards for construction, maintenance, calibration and listing of metering and measurement devices; and
  - (dd) prescribe standards for pressure, purity and uniformity of calorific value of petroleum or petroleum products that is, or is intended to be, supplied for domestic utilisation or export; and
  - (ee) prescribe other standards with respect to the properties, condition and composition of petroleum or petroleum products that is, or is intended to be, supplied for domestic utilisation or export; and
  - (ff) prescribe safety standards and provide for the health and safety of persons employed in or in connection with the processing or supply of petroleum or petroleum products for domestic utilisation; and
  - (gg) require petroleum processing facility licensees and domestic gas suppliers who are not petroleum processing facility licensees to give to the Director reports, returns and other information; and
  - (hh) prescribe requirements for access arrangements for third-party use of strategic pipelines or strategic petroleum processing facilities; and
  - (ii) prescribe the manner in which the State acquires interests in petroleum development licences, pipeline licences, and petroleum processing facility licences and the assets that are related to those licences.
  - (jj)<sup>140</sup> prescribe the powers, functions and duties of the Chief Warden and the Wardens; and
  - (kk)<sup>141</sup> prescribe the manner and scope of agreement between a licensee and the State in relation to the co-ordination of a development forum, and the amount of money that a licensee can contribute for purposes of co-ordinating a development forum, and how payment of such monies will be made.

### 183. PETROLEUM AGREEMENT.

<sup>142</sup>The Minister may, on behalf of the State, execute an agreement with a licensee, providing for—

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<sup>140</sup> Section 182 Subsection (2) amended by No. 57 of 2006, s. 23.

<sup>141</sup> Section 182 Subsection (2) amended by No. 57 of 2006, s. 23.

<sup>142</sup> Section 183 Substituted by No. 58 of 2006, s. 33.

- (a) the definition of the extent of a particular petroleum project and operations for that petroleum project, for the purposes of this Act and any other law; and
- (b) the transfer and assignment of State equity interest in that petroleum project to MRDC; and
- (c) any other matters relating to that petroleum project or those operations, which are agreed to by the parties to such agreement, which, without limiting the generality of the foregoing, may include –
  - (i) the application of particular provisions of this Act to that petroleum project and those operations; and
  - (ii) where permitted by other Acts, the application of particular provisions of those other Acts to that petroleum project and those operations,

and such agreement will, once so executed, have effect in accordance with its terms and notwithstanding any other provision of this Act.

#### **184. GAS AGREEMENT.**

<sup>143</sup>The Minister may, on behalf of the State, execute an agreement with a licensee, providing for–

- (a) the definition of the extent of a particular gas project and gas operation for the gas project, for the purposes of this Act and any other law; and
- (b) the transfer and assignment of a State equity interest in that gas project to MRDC; and
- (c) any other matters relating to that gas project or those operations, which are agreed to by the parties to such agreement, which, without limiting the generality of the foregoing, may include:
  - (i) the application of particular provisions of this Act to that gas project and those operations; and
  - (ii) where permitted by other Acts, the application of particular provision of those other Acts to that gas project and those operations,

and such agreement will, once so executed, have effect in accordance with its terms and notwithstanding any other provision of this Act.

#### **185. AGREEMENTS BY THE STATE.**

<sup>144</sup>Notwithstanding any other provision of this Act, or any other Act (but without limiting Sections 183 or 184) where in a written agreement with a licensee, whether entered into before or after the commencement of this Act, the State agrees

<sup>143</sup> Section 184 Substituted by No. 58 of 2006, s. 33.

<sup>144</sup> Section 185 Substituted by No. 58 of 2006, s. 33.

that a discretion under this Act or any other Act or any regulations under this Act or any other Act will be exercised in a certain way, or that certain rights or consents or authorisations or licences under this Act or any other Act or any regulation under this Act or any other Act will be granted to the licensee, then that discretion shall be exercised and those rights or consents or authorisations or licences shall be granted in accordance with that written agreement.

**186. REPEAL.**

The following Acts are repealed:—

- (a) *Petroleum Act* (Chapter 198); and
- (b) *Petroleum (Amendment) Act 1987*; and
- (c) *Petroleum (Amendment No. 2) Act 1987*.



**PART VI. – TRANSITIONAL PROVISIONS.****187. LICENCES UNDER FORMER ACT.**

(1) Where, on the commencement date–

- (a) a petroleum prospecting licence issued under Division III.2 of the former Act; or
- (b) a petroleum retention licence issued under Division III.3B of the former Act; or
- (c) a petroleum development licence issued under Division III.4 of the former Act,

was in force, that licence shall continue in force and shall be deemed for all purposes under this Act to be a tenement issued under Division III.2, III.4 or III.7 of this Act, as applicable, commencing on the date on which such licence was issued under the former Act.

(2)<sup>145</sup> <sup>146</sup>A licence referred to in Subsection (1) shall be subject–

- (a) in the case of a petroleum prospecting licence issued under Division III.2 of the former Act, to the conditions referred to in Section 31(2); or
- (b) in the case of a petroleum retention licence issued under Division III.3B of the former Act, to the conditions referred to in Section 46(a)(ii) and (iii) and to the condition that the licensee will, if he has not already done so, carry out the proposals approved in respect of that licence under Sections 31E(2) or 31J(8) of the former Act; or
- (c) in the case of a petroleum development licence issued under Division III.4 of the former Act, to the conditions referred to in Section 63(a)(ii) and (iii) and to the condition that the licensee will, if he has not already done so, carry out the proposals approved in respect of that licence under Subsection 35(2) of the former Act,

and, to the extent consistent with this Act, to the conditions to which it was subject immediately prior to the commencement date.

**188. PIPELINE LICENCES UNDER FORMER ACT.**

(1) Where, on the commencement date a pipeline licence issued under Division III.5 of the former Act was in force, that pipeline licence shall continue in force and shall be deemed for all purposes under this Act to be a pipeline licence issued under Division III.9 of this Act, commencing on the date on which such licence was issued under the former Act.

<sup>145</sup> Section 187 Subsection (2) amended by No. 58 of 2006, s. 34; Subsection (2) substituted by No. 56 of 2006, s. 6.

<sup>146</sup> Section 187 Subsection (2) amended by No. 58 of 2006, s. 34; Subsection (2) substituted by No. 56 of 2006, s. 6.

(2) A licence referred to in Subsection (1) shall be subject, to the extent consistent with this Act, to the conditions to which it was subject immediately prior to the commencement date.

(3) Where construction or operation of a pipeline has commenced under a pipeline licence issued under the former Act and in force on the commencement date, the pipeline in question shall for the purposes of this Act be a project pipeline, unless converted to a strategic pipeline under Section 81 or 82.

#### **189. EXISTING OR PROPOSED PETROLEUM PROCESSING FACILITIES.**

(1) Where prior to the commencement date a person has commenced construction of a petroleum processing facility which was not previously required to be licensed under the former Act, or the State has entered into an agreement with a person which provides for the construction of a petroleum processing facility or has granted to a person a licence or pipeline licence under the former Act which provides for the construction of a petroleum processing facility in circumstances where a separate petroleum processing facility licence is required under this Act, the Minister shall, upon request by that person and without the requirement for a formal application or an application fee, grant to that person a petroleum processing facility licence under this Act on terms consistent with any applicable existing agreement with or licence or pipeline licence granted under the former Act which is held by that person.

(2) Where a person referred to in Subsection (1) requests the Minister to grant a petroleum processing facility licence within six months of the commencement date, until that person is granted a petroleum processing facility licence as required by Subsection (1) the petroleum processing facility in question shall be deemed to be licensed under this Act and the person shall not be in breach of this Act only by reason of the fact that he is continuing to construct or is operating a petroleum processing facility without a petroleum processing facility licence in respect thereof.

#### **190. REFERENCES TO FORMER ACT, ETC.**

A reference in any law or in any instrument made under or in relation to the former Act or a provision of the former Act shall, on and after the commencement date, unless the context otherwise requires, be read and construed as a reference to this Act or to the corresponding provision of this Act.

**SCHEDULE 1 – DETERMINATION OF VALUE OF PETROLEUM UNDER  
SECTION 158.**

Sec. 158.

**PART 1. – PRELIMINARY.**

**1. INTERPRETATION OF SCHEDULE.**

In this Schedule—

“**adjusted price**” means net realisable price with any appropriate adjustment for sales margins or commissions;

“**appropriate adjustment**”, in relation to any provision of this Schedule, means such adjustment for the purposes of the provision as is agreed on between the Minister and the licensee, or in default of agreement, as is reasonably determined by the Minister;

“**domestic value**” means a value to be determined under Section 158 for petroleum not intended for export;

“**export value**” means a value to be determined under Section 158 for petroleum intended for export;

“**the guidelines**” means the guidelines adopted under Part 3 of this Schedule;

“**the licensee**” means the holder of the licence from which the petroleum which is to be given a value under Section 158 is produced;

“**relevant contract**” means an agreement for the sale at an arms’ length price of petroleum for delivery—

- (a) by more than one shipment; and
- (b) over a period of more than three months,  
that was in force during the relevant period;

“**the relevant period**”, in relation to the determination of a value for any petroleum, means the period of three months, or such longer period as in special circumstances is agreed on between the Minister and the licensee, before the date as at which the value is to be determined.

**2. “SALE AT ARMS’ LENGTH”.**

For the purposes of this Schedule, a sale is at arms’ length where—

- (a) the consideration expressed in the agreement for the sale is the sole consideration for the sale; and
- (b) the terms of the sale are not affected by any commercial relationship (other than the relationship created by the agreement or sale) between the seller and the buyer or any person connected with the buyer; and

- (c) neither the seller nor any person connected with him has any direct or indirect interest in the subsequent re-sale or disposal of the petroleum or of any product of it,

and no other sale shall be taken to be at arms' length.

### 3. "ARMS' LENGTH PRICE".

(1) In this Schedule, "arms' length price", in relation to a sale or an agreement for the sale of any petroleum, means—

- (a) where the sale was, or was to be, at arms' length—the sale price; and  
 (b) where the sale was not, or was not to be, at arms' length—the price that, in the opinion of the Minister, the petroleum would have brought had the sale been at arms' length.

(2) Subject to Subsection (3), where in the opinion of the Minister it is not practicable in the circumstances of a particular sale that was not at arms' length, or of a particular agreement for such a sale, to determine what would have been the price referred to in Subsection (1)(b), the sale shall be disregarded for the purposes of any provision of this Schedule that relates to arms' length prices.

(3) For the purposes of any provision of this Schedule that refers to an average price based on sales at arms' length or arms' length prices, a sale that is not a sale at arms' length, or a price that is not an arms' length price, may be taken into account where the Minister is satisfied that a series of sales, or a number of related sales, of which the sale concerned was one, was or were such that the total of the prices paid amounted to, or was the equivalent of, an arms' length price for all the petroleum sold.

### 4. COMPARISON OF PETROLEUM.

Where it is necessary for the purposes of this Schedule to compare—

- (a) petroleum of different qualities or grades; or  
 (b) prices of—  
 (i) petroleum of different qualities or grades; or  
 (ii) petroleum sold, or agreed to be sold, in significantly different quantities,

appropriate adjustments shall be made to reconcile or compensate for the difference.

### 5. COMPARISON OF PRICES.

Where it is necessary for the purposes of this Schedule to compare prices, appropriate adjustments shall be made for differences in any relevant costs, including the terms of any credit allowed and transport costs, in addition to any adjustments to be made in accordance with Schedule Section 4 to enable the prices to be related to comparable qualities, grades or quantities of petroleum.

**PART 2. – NORM VALUES.**

**6. DETERMINATION OF VALUE BY REFERENCE TO RELEVANT CONTRACTS.**

If the Minister is satisfied that there has been a sufficient number of relevant contracts for the sale—

- (a) where the value to be determined is an export value—of locally produced petroleum for export; or
- (b) where the value to be determined is a domestic value—of locally produced petroleum for refining or processing in Papua New Guinea,

to allow a norm price to be satisfactorily determined, the export value or the domestic value, as the case may be, shall be determined having regard to the weighted average of the comparable adjusted prices per barrel under the contracts to which Paragraph (a) or (b), as the case may be, relates.

**7. DETERMINATION OF VALUE IN OTHER CASES.**

In a case to which Schedule Section 6 does not apply, the Minister shall determine an export value or a domestic value, as the case requires, that in his opinion represents a fair arms' length price for the petroleum concerned, and in so doing he shall have regard to any appropriate marker price adopted under Schedule Section 9.

**PART 3. – GUIDELINES.**

**8. REGULATIONS AS TO GUIDELINES.**

Subject to Section 158 and to this Schedule, the regulations may make provision in respect of the adoption of guidelines to be followed in, and in relation to, the determination of the value of petroleum under that section.

**9. MARKER PRICES.**

(1) The guidelines may adopt or provide for the adoption of marker prices for the purposes of the guidelines and of this Schedule.

(2) In arriving at any decision or opinion, and in making any calculation or estimation, for the purposes of this Schedule the Minister shall, to the extent and in the manner provided in this Schedule and the guidelines, have regard to any appropriate marker price adopted under Subsection (1).

**PART 4. – ARBITRATION.****10. REFERENCES TO ARBITRATION.**

(1) Subject to Subsection (3), where there is a dispute between the Minister and the licensee as to the value that should, in accordance with this Schedule, be determined for any petroleum, the licensee may, by written notice to the Minister, require that any matter relating to the determination of the value, being a matter of a kind specified in Schedule Section 11, be referred to arbitration.

(2) Where a licensee makes a requirement under Subsection (1), the matter stands referred to arbitration in accordance with the *Arbitration Act*, and pending a decision on the reference, the determination by the Minister stands.

(3) This section does not apply unless the difference between the value determined by the Minister and the value claimed by the licensee exceeds 0.5% of the former.

**11. MATTERS REFERABLE TO ARBITRATION.**

The matters that may be referred to arbitration under Schedule Section 10 are—

- (a) any question, whether the Minister has had proper regard to the matters to which, under this Schedule or the guidelines, regard is to be had; and
- (b) any question, whether the Minister has properly followed the guidelines; and
- (c) any question as to the comparability of petroleum or of sales or prices, or as to the appropriate adjustments to be made in any case; and
- (d) any question as to the sufficiency, for any purpose of this Schedule or of the guidelines, of a number of sales or contracts; and
- (e) any question, whether a sale was an arms' length sale, or a price was an arms' length price; and
- (f) any question, whether an export value or a domestic value determined under Schedule Section 7 represents a fair arms' length price; and
- (g) any relevant scientific or technical matter, or any relevant factual matter; and
- (h) any other matter that is prescribed, or that is agreed on by the Minister and the licensee, for the purpose.