

Government of the Bahamas

1978

CHAPTER 219 PETROLEUM

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

SECTION

Short title.

[1.](#)

Interpretation.

[2.](#)

Property in petroleum to continue vested in the Government.

[3.](#)

Minister subject to directions of the Governor-General.

[4.](#)

PART II

PERMITS, LICENCES AND LEASES

Permits, licences and leases.

[5.](#)

Applications for licences and leases.

[6.](#)

Grants of licences and leases.

[7.](#)

Competitive bidding.

[8.](#)

Assignment of licences and leases.

[9.](#)

Applications for and grants of permits.

[10.](#)

Cancellation of licences and leases.

[11.](#)

Minister's right to appoint a director.

[12.](#)

Licencees and lessees to have resident managers.

[13.](#)

Permits, licences and leases only granted to companies incorporated in The Bahamas or to foreign companies registered in The Bahamas.

[14.](#)

Licencees and lessees to keep records, books and accounts at registered offices.

[15.](#)

Areas to be held under licences.

[16.](#)

Areas to be held under leases.

[17.](#)

Royalties.

[18.](#)

PART III

ANCILLARY RIGHTS

Ancillary rights.

[19.](#)

Limitation of power of granting rights.

[20.](#)

Applications for ancillary rights.

[21.](#)

Minister to consider applications.

[22.](#)

Parties may be heard.

[23.](#)

Grant of ancillary right.

[24.](#)

Compensation.

[25.](#)

Effect of rights.

[26.](#)

PART IV

MISCELLANEOUS AND GENERAL

High-water mark line.

[27.](#)

Erection of survey marks, etc.

[28.](#)

Illumination of installations.

[29.](#)

Pollution.

[30.](#)

Licensees and lessees to keep Minister indemnified.

[31.](#)

Bonding provisions.

[32.](#)

Exemption from customs duties, etc.

[33.](#)

Regulations.

[34.](#)

Repeal and saving.

[35.](#)

CHAPTER 219

PETROLEUM

An Act to make better provision for the exploration for, the boring for and the getting of petroleum and for matters incidental thereto.

11 of 1971

2 of 1978

6 of 1978

6 of 1982

[Assent 10th June, 1971]

[Commencement 7th September, 1978]

PART I

PRELIMINARY

1. This Act may be cited as the Petroleum Act.

Short title.

2. (1) In this Act, unless the context otherwise requires-

Interpretation.

"alienated land" means land the petroleum rights in which are vested in the Government under this Act but the surface of which has been alienated by the Crown at any time, whether such surface has revested in the Crown or not;

"block" means an area of one hundred square miles, in the shape of a square with each side ten miles in length, individually identifiable on a base map of The Bahamas approved by the Minister;

"commercial discovery" in relation to petroleum mining means a discovery of petroleum which, after taking into consideration the quality and estimated quantity of petroleum reserves; the site and depth at which it is located; the development/production investment and costs required; the expected petroleum production rates and the prevailing fair market price of petroleum, would result in a satisfactory and profitable exploitation. A commercial discovery may consist of one reservoir or a group of reservoirs;

"Court" means the Supreme Court;

"functions" include powers and duties;

"Government" means the Government of The Bahamas;

"land" means land other than a submarine area includes all marshes and lands underlying lakes and also all coastal marine swamp land and lands underlying all bodies of water connected with the sea and extending inland;

"lease" means a lease to mine petroleum granted: accordance with the provisions of this Act and the regulations;

"lessee" means a company to which a lease under this Act is granted and its assignees;

"licence" means a licence to explore and prospect for petroleum granted in accordance with the provisions of this Act and the regulations;

"licensee", means a company to which a licence under this Act is granted and its assignees;

"mile" means a nautical mile of six thousand and eighty linear feet;

"Minister" means the Minister responsible for Petroleum;

"permit" means a non-exclusive right to carry out anywhere within the land, territorial waters and the continental shelf of The Bahamas (continental shelf here having the same meaning as in the Continental Shelf Act) surface and geological studies and airborne geophysical surveys of a regional nature, including seismic, gravity or other types of surface geophysical surveys that are not in the opinion of the Minister harmful to aquatic life;

"petroleum" includes any mineral oil or related hydrocarbon and natural gas existing in its natural condition in strata and bitumen and asphalt and non-hydrocarbon substances but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

"prescribed" means prescribed by regulations made under this Act;

"regulations" mean regulations made under section 34 for the time being in force;

"submarine area" means land underlying the sea waters surrounding the coast of The Bahamas below the high water mark of the sea at ordinary spring tides, including the seabed and subsoil situated beneath the territorial waters and the continental shelf of The Bahamas (continental shelf here having the same meaning as in the Continental Shelf Act);

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

(2) Unless the contrary intention appears, references in this Act to a section are references to a section of this Act, and references in a section to a subsection are references to a subsection of that section.

3. The property in all petroleum, which was vested in the Government by section 3 of the Petroleum Act (now repealed), shall continue so vested, and accordingly all fees, rents, royalties and other payments payable by any person under this Act or the regulations shall be paid to the Treasurer. Property in petroleum to continue vested in the Government.

4. The Governor-General may give to the Minister such directions, whether of a general or specific character, as to the performance of his functions under this Act as appear to the Governor-General to be requisite in the public interest, and the Minister shall give effect to any such directions. Minister subject to directions of the Governor-General.

PART II

PERMITS, LICENCES AND LEASES

5. (1) Subject to the provisions of this Act, no person shall carry out any of the activities mentioned in the definition of permit in this Act or explore or prospect for petroleum or commence petroleum mining, unless he first obtains a permit, licence or lease, as the case may be, as provided for in this Act or the regulations. Permits, licences and leases.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment and, in the case of a continuing offence, to a further fine of one thousand dollars for every day during which the offence continues.

6. (1) Subject to section 8, an application for a licence or lease shall be made in such form as may be prescribed to the Minister for submission to the Governor-General, and notice thereof shall be published in the *Gazette* and in at least one daily newspaper printed and circulating in The Bahamas and in such other manner as the Governor-General thinks fit. Applications for licences and leases.

(2) An application for a licence or lease may be made by two or more persons jointly, if the agreement between the parties thereto as to the proposed joint operation is submitted with such application.

7. (1) Subject to section 8, where the Governor-General decides to grant a licence or lease, he shall grant the licence or lease in accordance with the provisions of this Act and the regulations and upon such terms and conditions as he considers appropriate. Grants of licences and leases.

(2) Where there is a commercial discovery within the licensed area the licensee shall be entitled on application to the grant of a lease in accordance with the provisions of this Act and the regulations and such lease shall contain the terms and conditions agreed between the Governor-General and the licensee at the time of the grant of the licence.

(3) The grant of any licence or lease shall be subject to the rights of the owners of the surface of the

land or submarine area in respect of which such licence or lease is granted.

8. The Governor-General may determine that the grant of any licence or lease shall be subject to such procedure of competitive bidding as may be prescribed by regulations, and where the Governor-General so determines the provisions of this Act and of any other regulations shall be construed accordingly. **Competitive bidding.**

9. (1) Unless the licence or lease otherwise provides, an assignment or transfer to another person of the rights or the obligations thereunder shall be null and void unless the previous consent in writing of the Governor-General has been obtained: **Assignment of licences and leases.**

Provided that where the holder of a licence or lease executes an instrument of assignment or transfer of such licence or lease or any rights or obligations thereunder without having obtained such consent, the Governor-General shall be entitled to cancel the licence or lease but without prejudice to the continuing validity of any obligations outstanding thereunder.

(2) An application by the holder of a licence or lease for consent to the assignment or transfer of such licence or lease or any rights or obligations thereunder shall be made in such form as may be prescribed, to the Minister for submission to the Governor-General.

10. (1) An application for a permit shall be made in such form as may be prescribed to the Minister who may refuse a permit or may grant the permit in accordance with the provisions of this Act and the regulations and upon such terms and conditions as he considers appropriate. **Applications for and grants of permits.**

(2) An application for a permit may be made by two or more persons jointly, if the agreement between the parties thereto as to the proposed joint operation is submitted with such application.

(3) A permit granted under this Act shall not be assigned without the previous consent in writing of the Minister.

(4) The grant of any permit shall be subject to the rights of the owners of the surface of the land and the submarine area in respect of which such permit is granted.

11. (1) The Governor-General may in writing at any time, subject to subsections (2) and (5), cancel any licence or lease in any case where- **Cancellation of licences and leases.**

(i) he is satisfied that the licence or lease was obtained as a result of wilful misrepresentation by the licensee or lessee in any material particular in the process of applying for the licence or lease; or

(ii) there is a failure on the part of the licensee or lessee to keep accurate and complete records, books and accounts in accordance with section 14; or

(iii) there is a breach of any of the terms and conditions contained in the licence or lease.

(2) Prior to the cancellation of a licence or lease under subsection (1) the Governor-General shall in writing inform the licensee or lessee of the grounds on which he considers that the licence or lease ought to be cancelled and require the licensee or lessee to show cause within the time specified why the licence or lease should not be cancelled.

(3) The Governor-General may, after he has given notice under subsection (2), cancel the licence or lease forthwith-

(i) in any case where the licensee or lessee fails to comply with the requirements of the notice within the time specified;

(ii) in a case referred to in paragraph (i) of subsection (1) where the licensee or lessee complies with the requirement of the notice within the time specified but the cause shown is inadequate in the opinion of the Governor-General.

(4) Every decision of the Governor-General under subsection (3) shall be final.

(5) Where a notice is given by the Governor-General under subsection (2) in a case referred to in paragraph (ii) or (iii) of subsection (1) and the licensee or lessee disputes the grounds specified by the Governor-General in such notice, the licensee or lessee shall, within the time specified in the notice, notify the Governor-General in writing of the dispute and the matter shall in accordance with the terms of the licence or lease be referred to arbitration.

(6) Where a matter is referred to arbitration under subsection (5) and an award is stated in accordance with such reference, the Governor-General shall, subject to the Arbitration Act, act in accordance with the award of the arbitration.

(7) The cancellation of a licence or lease under this section shall not prejudice the continuing validity of any obligations outstanding thereunder and in such case the Governor-General shall cause notice of the fact, in addition to being published in the *Gazette*, to be sent to the licensee or lessee by registered post to its registered office.

12. Where a company which holds a lease mines petroleum, the Governor-General shall have the right to appoint a public officer as a member of the board of directors of such company for so long as petroleum continues to be mined by the company. **Minister's right to appoint a director.**

- 13.** Every licensee or lessee shall have a manager who is resident in The Bahamas. Licensees and lessees to have resident managers.
- 14.** (1) A permit, licence or lease shall only be granted to a company which has been incorporated and registered in The Bahamas under the provisions of the Companies Act or to a company which has been incorporated outside The Bahamas which has been duly registered in The Bahamas under the provisions of the Companies Act: Permits, licences and leases only granted to companies incorporated in The Bahamas or to foreign companies registered in The Bahamas.
 Provided that the provisions of this subsection in relation to the grant of a permit, shall not apply to a scientific research organisation approved by the Minister.
- (2) A company may be granted a licence or lease severally or jointly with another company: Provided that a licence or lease shall not be granted to a company which is a member of, or is directly or indirectly owned or controlled by, another company to which a licence or lease has already been granted under this Act or which is itself applying for such a licence or lease.
- 15.** (1) Every licensee or lessee shall keep at its registered office in The Bahamas accurate and complete records, books and accounts in such form as may be prescribed of- Licensees and lessees to keep records, books and accounts at registered offices.
- (a) the progress and results of its operations under the licence or lease;
- (b) the quantities of petroleum won and saved from the licensed or leased area;
- (c) its annual income and expenditure in relation to its petroleum operations in The Bahamas; and
- (d) such other particulars as the Minister may from time to time require.
- (2) Every licensee or lessee shall permit the Minister or any person authorised in that behalf by the Minister at all reasonable times to inspect such records, books and accounts.
- 16.** (1) A licence shall only be granted for an area not exceeding ten blocks. Areas to be held under licences.
- (2) A company shall not be granted licences in excess of fifty blocks (including in such aggregate the proportionate interest in any block held by such company under a licence jointly with another company):
 Provided that the Governor-General may, after a procedure of competitive bidding in accordance with then regulations, grant to any company such larger maximum number of licences in excess of fifty blocks as the Governor-General may think fit.
- 17.** (1) A lease shall only be granted in respect of areas divided into units. Areas to be held under leases.
- (2) A company shall not be granted leases in respect of an area-
- (a) of less than one unit;
- (b) in excess of twenty-five units under one lease;
- (c) in excess of six hundred and twenty-five units under all the leases held by such company (including in such aggregate the proportionate interest in any area held by such company under a lease jointly with another company):
 Provided that the Governor-General may, after a procedure of competitive bidding in accordance with the regulations, grant to any company such larger maximum area than that specified in paragraphs (b) and (c) but such area shall not exceed seven hundred and fifty units.
- 18.** (1) Subject to the provisions of this section, every licensee and lessee shall pay a royalty at a rate of not less than twelve and one-half per centum of the selling value at the well-head of the petroleum won and saved from the licensed or leased area. Royalties.
- (2) Royalties payable under subsection (1) shall be paid at such intervals as the Minister may determine.
- (3) All petroleum that is proved to the satisfaction of the Minister to have been used by the licensee or lessee within the licensed or leased area for the purpose of carrying on drilling or production operations or of pumping or transporting to field storage or refineries shall be free of royalty.
- (4) From the amount of royalties payable in respect of any one year of the term of a licence or lease there shall be deducted the amount of the certain yearly rental prescribed and actually paid in respect of that year for the area under the respective licence or lease.
- (5) For the purposes of subsection (1) the selling value of any petroleum shall be such value as may be determined by mutual agreement between the Minister and the licensee or lessee, as the case may be, and, in the absence of such agreement, such value shall be the average selling price of petroleum prevailing in the market.

PART III
ANCILLARY RIGHTS

- 19.** (1) Where proper and efficient work under a licence or lease is, in the opinion of the licensee or lessee, unduly hampered by the inability or failure of the licensee or lessee to obtain an ancillary right, Ancillary rights.

such a right may, in the manner set forth in, and subject to the provisions of, this Part, be conferred on such licensee or lessee.

(2) In this Act "ancillary right" means any facility, right or privilege required by a licensee or lessee in order that petroleum may be searched for, bored for, gotten, stored, treated, converted or carried away, and includes-

- (a) the right to enter upon land or submarine areas and to explore or geophysically examine the same for petroleum and to sink boreholes therein for the purpose of searching for and getting petroleum and the right to use and occupy land for the erection of such buildings and tanks, the laying and maintenance of such pipes and the construction of such other works as may be required for the purpose of searching and boring for and getting, carrying away, storing, treating and converting petroleum;
- (b) the right to obtain a supply of water or other substance in connection with the working of petroleum;
- (c) the right to dispose of water or other liquid matter obtained from or on any land.

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

Limitation of power of granting rights.

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

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

21. (1) Any licensee or lessee who is desirous of obtaining an ancillary right may make application in writing to the Minister for the grant of such a right.

Applications for ancillary rights.

(2) Any application under this section shall set forth the circumstances alleged to justify the grant of the right and shall be in such form and be accompanied by such information verified in such manner as the Minister may direct.

22. The Minister shall consider the application and, if satisfied that the requirements of this Act are complied with in the case of the applicant, and that it is expedient in the public interest that the right applied for should be granted, he shall refer the matter to the Court:

Minister to consider applications.

Provided that where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition or having unreasonably refused to grant it or having demanded terms that are unreasonable, the Minister shall not refer the application to the Court without first having communicated with that person.

23. (1) Any person whose interests are or may be prejudicially affected by the grant of an ancillary right shall be entitled to be heard by himself or by an attorney before the Court.

Parties may be heard.

(2) The Rules Committee constituted under section 75 of the Supreme Court Act shall make rules of court prescribing the procedure to be followed, the forms to be used and the fees to be paid in relation to references to the Court under section 22.

24. (1) Where a reference is made to the Court under section 22, the Court, if satisfied that it is expedient in the public interest that the ancillary right applied for should be granted, shall grant the right upon such terms and subject to such conditions and for such period as the Court thinks fit, so, however, that before granting any such right the Court shall have regard to the effect on the amenities of the locality concerned of the exercise of the right.

Grant of ancillary right.

(2) The Court may impose as a condition of the grant of an ancillary right that any compensation to be paid in respect thereof shall be paid, or that security therefor to the satisfaction of the Court shall be furnished, before the right is exercised.

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

25. (1) Where the Court decides to grant an ancillary right in accordance with the provisions of this Act, such compensation as, in default of agreement, may be determined by the Court shall be paid by the applicant in respect of the acquisition of the right to such persons as the Court may determine to be entitled thereto.

Compensation.

(2) Such compensation shall, in every case, be assessed on the basis of what would be fair and reasonable between a willing grantor and a willing grantee having regard to the conditions subject to

which the right is or is to be granted.

26. An ancillary right granted under this Act shall not confer on the person to whom it is granted any greater or other power than if the right had been granted by a person legally entitled to grant such right, nor relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person. Effect of rights.

PART IV

MISCELLANEOUS AND GENERAL

27. The Minister may, by a chart maintained in his office and authenticated by the Minister, with respect to any land and submarine area fix a line which shall be deemed to be the high-water mark for the purposes of this Act. High-water mark line.

28. A licensee or lessee shall, if called upon in writing so to do by the Minister, erect and maintain at its own expense such survey-marks or monuments, of a form and type approved by the Minister responsible for Maritime Shipping and Navigation, as the Minister first mentioned may consider necessary for the delimitation of any submarine area included in the licence or lease. Erection of survey-marks, etc.

29. A licensee or lessee shall, if called upon in writing so to do by the Minister, illuminate between the hours of sunset and sunrise- Illumination of installations.

(a)

with respect to a submarine area, in a manner satisfactory to the Minister responsible for Maritime Shipping and Navigation; and

(b)

with respect to land, in a manner satisfactory to the Minister responsible for Public Works, all derricks, piers, survey-marks or any other installations erected in any submarine area or land included in a licence or lease.

30. (1) A licensee or lessee shall adopt all practicable precautions to avoid pollution of the land or waters by petroleum, mud or any other fluid or substance which might contaminate such land or waters or which might cause harm or destruction to marine life, and shall at its own expense remove any petroleum, mud or other fluid or substance causing any such pollution as aforesaid. Pollution.

(2) A licensee or lessee shall be absolutely liable for any loss, damage or injury which may be caused by the licensee or lessee or by the agents or servants of the licensee or lessee resulting from any such pollution.

(3) Full details of any spill or leakage of petroleum, mud or any other fluid or substance shall be recorded in writing by the licensee or lessee and shall forthwith be reported to the Minister.

(4) Where a licensee or lessee fails to take any step or do any thing which it is required to take or do by subsection (1) or (3), the Minister shall have the right to take that step or do that thing and to recover from the licensee or lessee any costs or expenses reasonably and necessarily incurred by him on that account.

(5) Any person who contravenes or fails to comply with the provisions of subsection (1) or (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding one hundred and twenty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, and in the case of a continuing offence, to a further fine of five thousand dollars for every day during which the offence continues.

31. The Minister shall ensure that a licensee or lessee shall keep the Minister indemnified at all times against any action, claim or demand of whatever nature which may be brought against the Minister by any third party in relation to any matter arising out of the exercise of the rights granted by the licence or the lease. Licensees and lessees to keep Minister indemnified.

32. The Minister shall require every licensee or lessee to take out and maintain with an insurance company acceptable to the Minister a policy of insurance against liability for personal injury or damage to property to such amount as the Minister may determine or that such holder shall enter into a bond with one or more sufficient sureties for the discharge of any such liability to a like amount. Bonding provisions.

33. Notwithstanding the provisions of any other Act, no customs duties, excise taxes or levies or other taxes or charges of whatever nature shall be payable by the holder of a permit, licence, or lease or any contractor employed by any such holder, in respect of the importation into The Bahamas or the taking out of bond within The Bahamas, of any plant, machinery, tools or equipment (hereafter in this section referred to as exempted materials) which are peculiar to and necessary for the purposes of the permit, licence or lease: Exemption from customs duties, etc.

Provided that it shall be a condition precedent to such exemption that-

(a)

any exempted materials so imported or taken out of bond shall be used for the aforesaid purposes and for no other purpose; and

(b)

the holder of the permit, licence or lease or the contractor concerned shall at all times have and retain the beneficial ownership of such exempted materials; and

(c)

the holder of the permit, licence or lease or the contractor shall enter into a bond binding himself, in

the event of any such exempted materials being used otherwise than for the aforesaid purposes, to pay to the Treasurer the amount of the customs duties, taxes, levies and charges payable on the value of such materials at the time such materials ceased to be used for the said purposes.

34. (1) The Minister may make regulations for-

Regulations.

(a)

the manner in which applications for permits, licences or leases shall be made and the procedure for issuing permits, licences or leases including the procedure for inviting, receiving, evaluating and accepting competitive bids in pursuance of a determination under section 8;

(b)

laying down the conditions upon which permits, licences or leases may be granted or renewed;

(c)

fixing the fees, royalties and the rent chargeable in respect of permits, licences, leases or renewals thereof and the deposits to be made or the bonds to be provided by the holders of permits, licences or leases as a guarantee of due performance;

(d)

the form in which the grants of permits, licences or leases or renewals thereof shall be made;

(e)

the periods for which permits, licences or leases may be granted or renewed;

(f)

regulating the assignment or transfer of permits, licences or leases;

(g)

specifying the financial, technical, working and general obligations of the holders of permits, licences and leases and the manner in which such obligations are to be carried out and the supervision and control thereof by the Minister;

(h)

the description, shape and the extent of the areas to be granted under licences or leases;

(i)

specifying the conditions relating to the relinquishment of areas held under licences or leases;

(j)

the prevention and control of pollution of land, water or air and compensation therefor;

(k)

establishing a base map of The Bahamas in which each unit or block will be identified in order to impose a uniform system of geographical identification of areas in each licence or lease;

(l)

requiring, after consultation with the lessee, the processing in The Bahamas of petroleum won and saved from any leased areas;

(m)

prescribing any matter or thing required or authorised by this Act to be prescribed.

(2) Regulations made under subsection (1) may notwithstanding the provisions of section 25 of the Interpretation and General Clauses Act, provide for the imposition of a fine not exceeding five thousand dollars for any contravention of, or failure to comply with, the provisions of the regulations.

35. (1) The Petroleum Act is hereby repealed.

Repeal and saving.

(2) Notwithstanding subsection (1), any oil exploration licence or any oil prospecting licence which was in force under section 7 of the Petroleum Act, 1945 immediately before the date of commencement of this Act and any provision of the said Act or of any regulations made thereunder and in force immediately before that date regulating the interpretation, enforcement or control of any such licence shall continue in full force and effect until the expiry of such licence according to its tenor, as if this Act had not been passed.