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PETROLEUM (EXPLORATION AND PRODUCTION) ACT, 1991

EXPLANATORY NOTE:

_____ Words underlined with solid line indicate insertions proposed.

[] Words in bold type in square brackets indicate omissions proposed.

ACT

To provide for the reconnaissance, exploration, production and disposal of, and the exercise of control over, petroleum; and to provide for matters incidental hereto.

(Signed by the President on 19 March 1991)

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PETROLEUM (EXPLORATION AND PRODUCTION) Act, 1991

BE IT ENACTED by the National Assembly of the Republic of Namibia,
as follows:-

Definitions.

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

"block" means any area on land or over the sea situated wholly or partly in Namibia and indicated as a block on a map of Namibia prepared by the Minister in terms of subsection (2), and shall include a part of any such block;

"Chief Inspector" means the Chief Inspector of Petroleum Affairs appointed under section 3(1)(b);

"Commission" means the Ancillary Rights Commission established by section 55;

"Commissioner" means the Commissioner for Petroleum Affairs appointed under section 3(1)(a);

"Corporation" means the National Petroleum Corporation of Namibia (proprietary) Limited incorporated and registered as a company in terms of the provisions of the Companies Act, 1973 (act 61 of 1973);

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

"discovery block" means a block in respect of which a discovery has been made;

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

"exploration area" means the area consisting of the block or blocks which an exploration licence relates;

"exploration licence" means a licence issued under section 34 and includes any renewal of such licence;

"exploration operations" means any operations carried out for or in connection with the exploration for petroleum, and includes -

- (a) geological, geophysical, geochemical, palaeontological, aerial, magnetic, gravity or seismic surveys and the appraisal of such surveys and drilling for appraisal purposes;
- (b) the study of the feasibility of any production operations or development operations to be carried out in such licence area or of the environmental impact of such operations;

"good oilfield practices" means any practices which are generally applied by persons involved in the exploration or production of petroleum in other countries of the world as good, safe, efficient and necessary in the carrying out of exploration operations or production operations;

"land" includes the seabed within the territorial sea referred to in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), the exclusive economic zone referred to in section 4 of that Act and the continental shelf referred to in section 6 of that Act, and land beneath any other water, and the subsoil of land;

"licence" means a reconnaissance licence, an exploration licence or a production licence;

"Minister" means the Minister of Mines and Energy;

"Namibia" includes the territorial sea referred to in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), the exclusive economic zone referred to in section 4 of that Act and the continental shelf referred to in section 6 of that Act;

"officer" means an officer or employee as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980);

"petroleum" means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust and includes any liquid or solid hydrocarbon or combustible gas which has in any manner been returned to such natural condition, but shall not include coal, bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits;

"petroleum field" means a block or blocks in respect of which a declaration under section 42 is in force;

"petroleum reservoir" means a place in the earth's crust where petroleum accumulated naturally;

"production area" means the area consisting of the block or blocks to which a production licence relates;

"production licence" means a licence issued under section 50 and includes any renewal of such licence;

"production operations" means any operations carried out for or in connection with the production of petroleum;

"reconnaissance licence" means a licence issued under section 26 and includes any renewal of such licence;

"reconnaissance operations" means any operations carried out for or in connection with the search for petroleum by geological, geophysical and photogeological surveys and includes any remote sensing techniques;

"well" means a borehole, made by drilling for purposes of exploration operations or production operations, but shall not include a seismic shot hole.

(2) The Minister shall as soon as practicable after the commencement of this Act cause a map of Namibia to be prepared showing such blocks which would be situated in Namibia if the earth is divided into blocks -

- (a) by the meridian of Greenwich and by meridians which are at a distance from that meridian of 15 minutes of longitude or a multiple of 15 minutes of longitude; and
- (b) by the equator and by parallels of latitude which are at a distance from the equator of 15 minutes of latitude or a multiple of 15 minutes of latitude,

each of which shall contain an identification number or letter and which is bounded by portions of two of -

- (i) such meridians which are a distance from each other of 15 minutes of longitude; and
- (ii) such parallels of latitude which are at a distance from each other of 15 minutes of latitude.

(3) The map prepared in terms of subsection (2) shall at all times be available during ordinary office hours at the offices of the Commissioner.

(4) The production of a copy of the map referred to in subsection (2) and under the hand of the Commissioner purporting to be a true copy of that map shall, for purposes of any proceedings in any court of law, board or body established by or under any law, be conclusive proof of the boundaries of any block indicated on that map.

PART I

Rights in relation to petroleum

Rights in relation to petroleum.

2. Subject to any right conferred under any provision of this Act, all rights in relation to the reconnaissance or exploration for, production and disposal of, and the exercise of control over, petroleum vests, notwithstanding any right of ownership of any person in relation to any land under which petroleum is found, in the State.

PART II

Administration of Act

3. (1) The Minister shall, subject to the laws governing the public service, appoint -

- (a) a person to be known as the Commissioner for Petroleum Affairs;
- (b) a person to be known as the Chief Inspector of Petroleum Affairs;

who shall respectively exercise or perform, subject to the direction and control of the Minister, the powers, duties and functions conferred or imposed upon any of them by or under the provisions of this Act and such other functions as may be imposed upon them by the Minister.

(2) The Commissioner and Chief Inspector shall be assisted by such other officers as may be designated by the permanent secretary: mines and energy for such purpose.

(3) The powers conferred and the duties and functions imposed upon the Commissioner or the Chief Inspector by or under the provisions of this Act may be exercised or performed by the Commissioner or Chief Inspector, as the case may be, personally or, except in so far as the Commissioner or Chief Inspector, as the case may be, otherwise determines, by any officer referred to in subsection (2) engaged in carrying out the said provisions under the direction and control of the Commissioner or Chief Inspector, as the case may be.

General powers of Commissioner and Chief Inspector.

4. (1) subject to the provisions of subsection (2), the Commissioner, the Chief Inspector or any officer who is engaged in carrying out the provisions of this Act and who has been authorized thereto by the Commissioner may, for the purposes of the administration of this Act -

- (a) at all reasonable times enter any area, structure, vehicle, vessel, aircraft or building which has been, is or is to be used in connection with reconnaissance operations, exploration operations or production operations;
- (b) inspect and test any machinery or equipment which has been, is or is to be used in connection with any of the operations referred to in paragraph (a);
- (c) take or remove, for purposes of analyzing or testing, samples of petroleum or other substances from any land where any operation referred to in paragraph (a) are being carried out;
- (d) seize samples or substances referred to in paragraph (c) or any book, record or document which may in his or her opinion be used in evidence in connection with any offence in terms of this Act;
- (e) inspect, make extracts from, and make copies of, any book, record or document in relation to any operations referred to in paragraph (a);

(f) in relation to the health and safety of persons employed by the holder of a licence, in writing issue directions to, and impose restrictions on, such holder or any person employed by such holder in connection with any operations referred to in paragraph (a);

(g) in writing direct –

(i) the cessation of operations on or in, and the withdrawal of all persons from, any area, structure or building used in connection with any of the operations referred to in paragraph (a);

(ii) the discontinuance of the use of any machinery or equipment,

which the Commissioner, Chief Inspector or officer in question, as the case may be, considers dangerous for the safety of any person, unless such steps as the Commissioner, Chief Inspector or officer in question, as the case may be, may deem necessary to be taken for such safety specified in such notice has been taken;

(h) make such investigations and inquiries as may be necessary to ensure that the provisions of this Act and any conditions, directions or orders determined, issued or made by or under this Act are being complied with;

(i) conduct an inquiry into the cause of any accident resulting in the death of, or injury to, any person engaged in operations referred to in paragraph (a), and for such purpose require *mutatis mutandis* in accordance with the provisions of sections 10 and 11 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), any person in writing -

(i) to furnish to him or her in writing and within such period and in such manner as may be specified in such notice with such information as may be necessary for purposes of such inquiry;

(ii) to appear before him or her at such time and place as may be so specified and to answer questions put to him or her in relation to such inquiry.

(2) The Commissioner, the Chief Inspector or officer referred to in subsection (1) shall, before exercising any powers under subsection (1), identify himself or herself to any person who is in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or petroleum or substance or any other person to whom he or she intends to issue a direction or order or in respect of whom he or she intends to impose a restriction.

(3) (a) any person who feels himself or herself aggrieved by a direction, order or restriction issued to or imposed upon him or her under subsection (1) may appeal in writing, in the case of a direction, order or restriction issued or imposed by the Commissioner or the Chief Inspector, to the Minister or, in the case of any other direction, order or restriction, to the

Commissioner against such direction, order or restriction, who shall, as soon as practicable hear and dispose of the appeal and whose decision shall be final.

(b) pending the final determination of an appeal referred to in paragraph (a) such appeal shall not affect the operation of the direction, order or restriction in question.

(4) In an appeal in terms of subsection (3) the Minister or the Commissioner, as the case may be, may set aside, vary or confirm the direction, order or restriction in question or may issue or impose any other direction, order or restriction.

(5) The Commissioner, the Chief Inspector or officer referred to in subsection (1) may, in the exercise of his or her powers under that subsection, be accompanied by any person who in the opinion of the Commissioner, the Chief Inspector or such officer, as the case may be, has special or expert knowledge of any matter in relation to such powers.

(6) The occupier or person in charge of any area, building, structure, vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1) shall provide the Commissioner, the Chief Inspector or officer so referred to, on payment, if any, of such just compensation as may be determined by such occupier or person, with such facilities and assistance as may be necessary for the exercise of his or her powers under that subsection.

Preservation of secrecy.

5. (1) the Commissioner, the Chief Inspector and any other officer employed in the ministry of mines and energy, whether or not involved in carrying out the provisions of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of his or her powers or the performance of his or her duties and functions in connection with those provisions, and shall not communicate any such matter to any other person or permit any person to have access to any documents in his or her possession or custody, except in so far as any such communication is required by or may be made in terms of this Act or any other law or by order of a competent court.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Prohibition of certain officers on holding certain interests in any licence or in company holding licence.

6. (1) The Commissioner, the Chief Inspector and any other officer employed in the ministry of mines and energy, whether or not involved in carrying out the provisions of this Act, shall not -

(a) acquire, whether directly or indirectly, any right or interest in any licence;

(b) acquire or hold any share, as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973), in a company which is the holder of a licence.

(2) For the purposes of paragraph (b) of subsection (1), the acquisition or holding of a share, as defined in section 1 of the Companies Act, 1973, in a company by the husband or wife of the Commissioner, the Chief Inspector or an officer referred to in subsection (1), shall be deemed to be an acquisition or holding, as the case may be, by the Commissioner, the Chief Inspector or such officer, as the case may be.

(3) Any document or transaction purporting to grant any right or interest referred to in paragraph (a) of subsection (1) upon, or any share certificate purporting to vest any shares referred to in paragraph (b) of subsection (1) in, the Commissioner, the Chief Inspector or any such officer shall be null and void.

(4) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(5) In any prosecution for a contravention of paragraph (b) of subsection (1) it shall be sufficient defence if the accused person proves -

- (a) that the share in question was acquired by operation of law and that all reasonable steps necessary have been taken, and are being taken, to dispose of such share; or
- (b) that such share was acquired before he or she became the Commissioner, the Chief Inspector or an officer referred to in subsection (1) or before the company became the holder of a licence and that as from the date on which he or she became the Commissioner, the Chief Inspector or such officer or as from the date on which such company became the holder of a licence, as the case may be, all reasonable steps necessary have been taken, and are being taken, to dispose of such share.

Limitation of liability.

7. No compensation shall be payable by the State or by the Commissioner, the Chief Inspector and any other officer employed in carrying out the provisions of this Act in respect of any Act done in good faith under this Act.

PART III

National Petroleum Corporation of Namibia

Functions of corporation.

8. (1) The functions of the Corporation shall be -

(a) when required by the Minister –

- (i) to carry out reconnaissance operations, exploration operations and production operations, whether on its own or together with any other person;

- (ii) to carry out any process of refining, or disposing of, or dealing in, petroleum or any by-products of such petroleum, or to take part in any such process carried out by any other person;
 - (iii) to advise or otherwise assist the Minister in relation to, or in any negotiations in relation to any agreement referred to in section 13, or in relation to the discovery of, petroleum or the development of petroleum resources;
- (b) to carry out, whether on its own or together with any other person, reconnaissance operations or, in terms of a licence, exploration operations or production operations;
 - (c) to carry out on behalf of the State any reconnaissance operations, exploration operations or production operations together with any other person;
 - (d) to assist the Commissioner on his or her request in the exercise by him or her of his or her powers, duties and functions under this Act.

(2) The Corporation shall be competent to perform in Namibia or elsewhere such actions as may be necessary or expedient to be performed for or in connection with the exercise of its powers and the performance of its duties and functions under this Act.

(3) The Corporation shall, for purposes of the application of subsection (1)(a)(i), be deemed to be the holder of a licence.

(4) The Minister shall not require the Corporation under subsection (1) to carry out any operations or process referred to paragraph (a)(i) or (ii) of that subsection, unless he or she –

- (a) has by notice in writing informed the Corporation of his or her intention to so require the Corporation setting out particulars of such operations or process;
- (b) has afforded the Corporation an opportunity to make representations in relation to such intention;
- (c) is satisfied, after having considered any such representations so made, that it is in the public interest that such operations or process should be carried out by the Corporation and that the Corporation has the financial and technical ability and capacity to carry out such operation and process.

PART IV

General provisions relating to licences

Prohibition on carrying out certain operations without licence.

9. (1) subject to the provisions of this Act, no person shall -

- (a) carry out any reconnaissance operations, exploration operations or production operations for petroleum in or upon any land in Namibia, except under and in accordance with a licence;
- (b) transfer a licence or grant, cede or assign any interest in a licence to any other person, or be joined as a joint holder of a licence otherwise than in writing and with the approval in writing of the Minister.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) or any term or condition of a licence or approval so referred to shall be guilty of an offence and on conviction liable to a fine not exceeding R100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Restrictions on grant of licences.

10. A licence other than a reconnaissance licence shall not be issued or transferred to any person other than a company, and no interest in any such licence shall be granted, ceded or assigned to any person other than a company.

Applications for, or renewal or transfer of, licences or for approval for granting, cession or assignation of interest in licence, or to be joined as joint holder of licence.

11. (1) An application -

- (a) for, or renewal of, a licence;
- (b) for the transfer of a licence, or for the approval of the Minister for the granting, ceding or assigning of an interest in any licence, or to be joined as a joint holder of a licence,

shall be made to the Commissioner in such form as may be determined by the Minister and shall be accompanied by a fee specified in column 2 of Schedule 1 in respect of the application specified in column 1 of that Schedule.

(2) Subject to the provisions of this Act, the Minister may grant on such terms and conditions as may be determined by him or her, or refuse to grant, an application referred to in subsection (1).

(3) The transfer of a licence shall not affect any legal proceedings instituted against the holder of such licence, and such legal proceedings shall be continued as if such transfer had not taken place.

(4) The granting, ceding or assigning of any interest in a licence shall not affect any obligation or liability of the holder of the licence imposed in terms of such licence or any provisions of this Act.

Powers of Minister in respect applications for, or renewal or transfer of, licences or for approval for granting, cession or assignation of interest in licence, or to be joined as joint holder of licence.

12. (1) The Minister may at any time after the receipt of any application referred to in section 11 require the person concerned by notice in writing -

- (a) to furnish him or her within such period as may be specified in such notice with –
 - (i) such information as may be specified in such notice as the Minister may in his or her discretion deem necessary to enable him or her to determine who has, in the case of a company, the controlling interest in the affairs of such company;
 - (ii) such other information as may be specified in such notice as the Minister may in his or her discretion deem necessary for purposes of considering such application;
- (b) to publish such particulars of the application in such manner as may be specified in such notice;
- (c) to give such particulars of the application in such manner and to such person or persons as may be specified in such notice.

(2) In order to enable the Minister to consider any application referred to in section 11 the Minister may -

- (a) cause such investigations or negotiations to be made or undertaken as the Minister may in his or her discretion deem necessary;
- (b) require the person concerned by notice in writing -
 - (i) to carry out or cause to be carried out such environmental impact studies as may be specified in such notice;
 - (ii) to furnish the Minister within such period as may be specified in such notice with such proposals, by way of alteration to or in addition to proposals set out in the application, as may be so specified.

(3) In considering any application referred to in section 11 and the conditions subject to which such application shall be granted, the Minister shall take into account the need to conserve and protect the natural resources in or on the block or blocks to which the application relates and in or on adjoining and neighbouring land.

(4) (a) If the Minister is, after having considered an application referred to in section 11, prepared to grant such application subject to certain terms and conditions, he or she shall direct that notice be given to the person concerned in which the terms and conditions, in addition to the terms and conditions referred to in section 14, are set out on which he or she is prepared to grant such application.

(b) the person referred to in paragraph (a) may, within 60 days as from the date of that notice or such further period as the Minister may on good cause shown allow in writing, agree in writing to accept such terms and conditions or such other terms and conditions as may be agreed upon.

(5) If the person making an application referred to in section 11 fails to comply with the requirements of any notice referred to in this section within the period specified in such notice or such further period as may on good cause shown be determined by Minister in writing, the application in question shall lapse on the expiration of such period.

Petroleum agreements.

13. (1) The Minister shall, before an exploration licence or, in the case of a person who is not the holder of an exploration licence in respect of a block or blocks in the petroleum field for which a production licence is required, a production licence is issued by virtue of an application referred to in section 11, enter into an agreement, not inconsistent with the provisions of this Act, with the person concerned containing the terms and conditions agreed upon as provided in section 12(a) on which such licence is issued.

(2) An agreement referred to in subsection (1) shall include terms and conditions relating to the basis on which the market value of petroleum may from time to time be determined, and may include terms and conditions relating to –

- (a) the name of the company concerned, particulars of its incorporation and registration as a company, the registered address of the company, the names and nationality of the directors of the company, the share capital of the company and the name of any person who is the beneficial owner of more than five per cent of the shares issued by such company;
- (b) minimum exploration operations or production operations to be carried out and the timetable determined for purposes of such operations;
- (c) the minimum expenditure in respect of exploration operations or production operations;
- (d) the formation of joint ventures or the operation of production sharing or other joint arrangements, including profit-sharing by the State;
- (e) the participation, including the acquisition of equity share capital, by the State, the Corporation or any other person in any ventures or arrangements referred to in paragraph (d) and, in the case of profit-sharing by the State, a basis upon which the holder of a production licence may be exempted, wholly or partly, from any provision of the Petroleum (Taxation) Act, 1991, or any other law governing taxes on income;
- (f) the manner in which reconnaissance operations, exploration operations or production operations, as the case may be, shall be carried out;

- (g) guarantees to ensure the due and proper performance by the company of its obligations;
- (h) financial and insurance arrangements;
- (i) arbitration in the event of any dispute which may arise in the application of any term or condition contained in such agreement, whether in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965), or by way of any international arbitration tribunal specified in such agreement;
- (j) co-ordination of operations for the recovery of petroleum carried out or to be carried out in any neighbouring production area in which part of the petroleum reservoir to which the production licence relates is situated.

(3) The Minister may, if he or she deems it necessary for purposes of the co-ordination of operations contemplated in paragraph (j) of subsection (2), direct a holder of a production licence from time to time by notice in writing addressed and delivered to such holder, to carry out such operations in such manner as may be specified in such notice.

(4) Any term or condition contained in an agreement referred to in subsection (1) which is inconsistent with any provision of this Act shall to the extent in which it is so inconsistent be of no force and effect.

(5) Nothing contained in an agreement referred to in subsection (1) shall be construed as absolving any party thereto from any requirement laid down by law or from applying for, and obtaining, any permit, licence, approval, permission or other document required by law.

Conditions of licences.

14. It shall be a condition of any licence that the person to whom such licence has been issued shall -

Note : Section 14 has been amended by Act 2 of 1993, attached hereto.

- (a) in the employment of employees, give preference to Namibian citizens who possess appropriate qualifications for purposes of the operations to be carried out in terms of such licence;
- (b) carry out training programmes in order to encourage and promote the development of such citizens in such person's employment;
- (c) after due regard being had to the need to ensure technical and economic efficiency, make use of products, equipment and services which are available in Namibia;
- (d) co-operate with other persons involved in the petroleum industry in order to enable such citizens to develop skills and technology to render services in the interest of such industry in Namibia;

- (e) if any mineral, as defined in section 1 of the mines, Works And Minerals Ordinance, 1968 (Ordinance 20 of 1969), is discovered by such person, forthwith report such discovery to the Minister.

Register of licences.

15. (1) The Commissioner shall keep and maintain a register in such form as may be determined by the Commissioner in which shall be recorded -

- (a) the name of every holder and joint holder of a licence;
- (b) the nature of the licence issued to him or her and the block or blocks in respect of which such licence has been issued;
- (c) the terms and conditions relating to the licence;
- (d) the liabilities and obligations of every holder in relation to the payment of royalty and other fees in terms of this Act;
- (e) the names of the persons, if any, to whom any interest in any licence has been granted, ceded or assigned and the nature of such interest;
- (f) such other particulars as may from time to time be determined by the Minister.

(2) The register referred to in subsection (1) shall during ordinary office hours be open for inspection by any person on payment of the fee specified in column 2 of schedule 1, and any person may on payment of the fee so specified make or obtain copies of any entry in such register.

(3) A person who fraudulently -

- (a) makes or causes to be any entry in the register referred to in subsection (1) which is false;
- (b) prepares or submit any copy of an entry in such register which is false or causes such copy to be prepared or submitted,

shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Exercise of rights in terms of Act or licence.

16. (1) The holder of a licence shall not exercise any rights conferred upon him or her by Act or under any terms and conditions of such licence -

- (a) in, or under any -
 - (i) town or village;

- (ii) land comprising a public road, aerodrome, harbour, railway or cemetery;
- (iii) land used or reserved for any governmental or public purpose,
except with the approval of the Commissioner granted by notice in writing and
subject to such conditions as may be specified in such notice;

(b) in, or under any land –

- (i) used as a garden, orchard, vineyard, nursery, plantation or which is otherwise under cultivation;
- (ii) within a horizontal distance of 100 metres of any spring, well, borehole, reservoir, dam, dipping-tank, waterworks, perennial stream, artificially constructed watercourse, kraal, building or any structure of whatever nature;
- (iii) within a horizontal distance of 300 meters from any point on the nearest boundary of any erf, as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963), if such erf has been surveyed for the purpose of inclusion in a township as defined in that section;
- (iv) on which accessory works, as defined in section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), were erected under that Ordinance and which existed at the time of the issue of the licence in question, except with the permission in writing, previously obtained in every particular case, of the owner of the land or works on which it is proposed to exercise such right;

(c) in, on or under any claim, grant area or mining area, as defined in section 1 of the Mines, Works and Minerals Ordinance, 1968 (Ordinance 20 of 1968), which existed at the time of the issue of the licence in question, without the approval in writing, previously obtained in every particular case, of the Minister given after consultation with the owner, as defined in paragraph (a) of the definition of "owner" in section 1 of the said Ordinance;

(d) which in any way will interfere with fishing or marine navigation, without the approval in writing, previously obtained in every particular case, of the Minister;

(e) in, on or under such land or area as may be determined by the Minister by notice in the *Gazette*, without the permission in writing, previously obtained in every particular case, of any person specified in such notice.

(2)(a) when, in the course of any exploration operations or production operations in any exploration area or production area, as the case may be, any damage is caused or done to the

surface of any private land or to any cultivation or building thereon as a result of those operations, the holder of the licence concerned shall be liable to pay compensation to the owner of the land on which such area is situated.

(b) When a dispute arises between the holder of a licence and the owner of land referred to in paragraph (a) in relation to the liability for, or the amount of, compensation payable under that paragraph such holder or owner or such holder and such owner may make application in writing to the commission to have the matter determined.

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

(3) (a) When the owner of land or any authority administering land on which exploration operations or production operations are being carried out in an application to the Minister –

- (i) states that such operations prevent the proper use of the land wholly or partly for farming purposes; and
- (ii) requests that the holder of the licence concerned carrying out such operations be required to purchase so much of the land as cannot be so used,

the Minister may, if he or she is satisfied that the operations prevent the land from being so used, by notice in writing addressed and delivered to such holder, direct such holder to purchase so much of the land as cannot be so used on such conditions as may be specified in such notice.

(b) When the holder of a licence and the owner of land or an authority administering land are unable to agree on the price to be paid for land to which a direction under paragraph (a) relates, the price and mode of payment shall be fixed by arbitration.

(4) Any person who contravenes or fails to comply with the provisions of subsection (1) or any direction referred to in subsection (3) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Drilling of wells.

17. (1) A holder of a licence shall not drill in connection with any reconnaissance operations, exploration operations or production operations any well of which any part is less than 1 000 meters from any boundary of the area to which such holder's licence relates, except with the approval in writing, previously obtained in every particular case, of the Minister and in accordance with such conditions, if any, as may be determined by the Minister.

(2) If the holder of a licence contravenes or fails to comply with the provisions of subsection (1) or fails to comply with any conditions so referred to, the Minister may by notice in writing addressed and delivered to such holder, order such holder -

- (a) to plug or close off such well;
- (b) to take such other steps in relation to the drilling or maintenance of such well as may be specified in such notice.

(3) Any holder of a licence who contravenes or fails to comply with the provisions of subsection (1) or an order made under subsection (2) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Records, reports and accounts.

18. (1) The holder of a licence shall -

- (a) keep at such holder's registered address proper record in such form as may be determined by the Commissioner and made known by notice in the *Gazette* or by notice in writing to such holder of such particulars as may be so specified in relation to –
 - (i) the drilling, operation, deepening, plugging or abandonment of wells for purposes of or in connection with reconnaissance operations, exploration operations or productions;
 - (ii) the nature of substances, including petroleum, water and minerals, found in wells drilled for purposes of or in connection with such operations, and the depths at which it has been found;
 - (iii) the casing of well;
 - (iv) the areas in which any geological or geophysical work has been carried out;
 - (v) geological and geophysical surveys carried out in such areas;
- (b) prepare or cause to be prepared and maintain at all times geological maps and plans in respect of the area to which such holder's licence relates;
- (c) submit, within 30 days after 30 June and 31 December, respectively in each year, to the Commissioner, in such form as may be determined by the Commissioner and made known by notice in the *Gazette* or by notice in writing to such holder –
 - (i) a summary of geological and geophysical work carried out, and drilling Activities performed, including the results of the analysis of any substances extracted from any well, in the area to which the licence of such holder relates during the period preceding 30 June or 31 December in every year, as the case may be;

- (ii) a list of maps and geological and geophysical reports prepared by or on behalf of such holder in connection with operations carried out in terms of the licence issued to such holder.
- (d) submit, within 60 days after the end of each year of the currency of the licence in question, to the Commissioner, in such form as may be determined by the Commissioner and made known by notice in the *Gazette* or by notice in writing to such holder, a return in which is recorded particulars in relation to –
 - (i) the results of exploration operations or production operations, if any, carried out by such holder during the preceding year;
 - (ii) the estimates of petroleum recoverable in the area to which the licence in question relates for the period ending on the last day of the succeeding year;
- (e) submit, on each day on which drilling operations are carried out, to the Commissioner, in such manner as may be determined by the Commissioner and made known by notice in the *gazette* or by notice in writing to such holder, a report on such drilling operations carried out on the previous day.

(2) In the event of the cancellation of a licence under section 19 or the expiration of a licence the person who was the holder of such licence immediately before such cancellation or expiration shall on a date not later than three months after the date such cancellation or expiration deliver to the Commissioner -

- (a) all records kept in terms of the provisions of subsection (1)(a);
- (b) all maps and plans referred to in subsection (1)(b);
- (c) all tapes, diagrams, profiles and charts prepared by or on behalf of such person in relation to the licence held by such person;
- (d) such other books, documents, records and reports as the Commissioner may require by notice in writing addressed and delivered to such person.

(3) Any holder of a licence or person referred to in subsection (1) or (2) who contravenes or fails to comply with the provisions of subsection (1) or (2), as the case may be, shall be guilty of an offence and on conviction be liable to a fine not exceeding R100 000 or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Cancellation of licences.

19. (1) subject to the provisions of section 20 and subsection (2) of this section, the Minister may by notice in writing addressed and delivered to the holder of a licence, cancel the licence of such holder or, in the case of two or more persons who are the holders of such licence, cancel the licence in respect of any one or more of such holders, if -

- (a) any such holder fails to comply with the terms and conditions of such licence or of the provisions of this Act;
 - (b) in the case of a company, such company is wound up in terms of the provisions of the Companies Act, 1973 (act 61 of 1973), unless such company has been wound up for purposes of an amalgamation or reconstruction, as contemplated in that Act, and has previously obtained the approval of the Minister for such amalgamation or reconstruction.
- (2) The Minister shall not under subsection (1)(a) cancel a licence so referred to, unless -
- (a) the Minister has by notice in writing informed the holder of such licence of his or her intention to cancel such licence –
 - (i) setting out particulars of the alleged failure;
 - (ii) calling upon such holder to make such representations to the Minister as he or she may deem necessary or expedient within such period, but not less than 60 days as from the date of such notice, as may be specified in such notice;
 - (b) the Minister has taken into account –
 - (i) any steps taken by such holder to remedy the failure in question or to prevent any such failure from being repeated during the currency of the licence;
 - (ii) any other matters submitted to the Minister by way of the representations made under paragraph (a);
 - (c) in the case of a holder of a licence who has failed to pay any amount payable by him or her in terms of this Act or by virtue of the terms and conditions of the licence in question, such holder has, before the date specified in the notice referred to in subsection (2), paid any such amount, together with any interest payable in respect of such amount.

(3) The Minister may, on application in writing made to him or her by the holder of a licence in such form as may be determined by the Minister, cancel by notice in writing any licence or amend, on such conditions as may be determined by the Minister, any such licence by the deletion of any block or blocks in relation to which the licence in question has been issued.

(4) The cancellation of a licence in terms of the provisions of this section shall not affect any obligation or liability incurred in relation to anything done under or by virtue of the terms and conditions of such licence.

Vis major.

20. (1) Any failure by the holder of a licence to comply with any term or condition of such holder's licence or any provision of this Act shall not be regarded as being a failure to comply with

such term, condition or provision in so far as such holder was prevented from complying with such term, condition or provision due to an act of war, hostility or insurrection or an act of God.

(2) The holder of a licence who is prevented from complying with a term, condition or provision as provided in subsection (1) shall forthwith inform the Minister by notice in writing setting out particulars of the nature, extent and causes of his or her failure to comply with such term, condition or provision specified in such notice.

(3) (a) The Minister may, on application made to him or her by the holder of a licence referred to in subsection (2) who has been prevented from exercising any rights under his or her licence for any period in the circumstances contemplated in subsection (1) extend by notice in writing on such conditions as may be determined by the Minister the period for which the licence in question has been issued, by such period as may be determined by the Minister due regard being had to the provisions of this Act relating to the period after which licences of the nature of the licence in question expire.

(b) The Minister may refuse any application referred to in paragraph (a) if the holder of the licence concerned could, by taking reasonable steps which were available to such holder, have exercised such rights during that period.

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

Directions in order to ensure good oilfield practices

21. (1) The Minister may, due regard being had to good oilfield practices, by notice in writing addressed and delivered to the holder of a licence, give directions to such holder in relation to -

- (a) the carrying out of reconnaissance operations, exploration operations and production operations, including any works connected therewith;
- (b) the conservation of any natural resources, including petroleum resources, and the prevention of the waste of such resources;
- (c) the construction, erection, maintenance, operation or use of installations or equipment, including pipelines for the conveyance of petroleum or any by-products of such petroleum;
- (d) the prevention of the spilling of water or drilling fluid or water and drilling fluid or any other substance extracted from a well drilled for purposes or in connection with reconnaissance operations, exploration operations or production operations, or used in relation to the drilling of such a well;

- (e) the removal of structures, equipment and other goods used in connection with the exploration for, or the production or conveyance of, petroleum which are not used or intended to be used in connection with such exploration, production or conveyance;
- (f) the maintenance of pressure in, or the repressuring of, a petroleum reservoir;
- (g) the recycling of petroleum;
- (h) the discovery of petroleum;
- (i) the use of wells drilled for purposes or in connection with reconnaissance operations, exploration operations or production operations, and of the subsurface of the earth for the disposal of petroleum, water and other substances produced in connection with exploration operations;
- (j) the rates or the determination of rates at which petroleum and water may be recovered from any well drilled for purposes or in connection with reconnaissance operations, exploration operations or production operations, or from any petroleum reservoir;
- (k) the methods to be used for the measurement of petroleum, water and other substances recovered from such a well;
- (l) the safety, welfare and health of persons employed in or in connection with reconnaissance operations, exploration operations and production operations and the conveyance of petroleum;
- (m) the taking, preservation and furnishing to the Minister, the Commissioner or the Chief Inspector of cores, cuttings, samples of petroleum and water from such a well;
- (n) the submission to the Minister, the Commissioner or the Chief Inspector of reports, returns and other information;
- (o) the taking of logs or directional surveys or making other down-hole investigations;
- (p) the submission to the Minister of measures proposed to be taken in connection with the relinquishment, in accordance with the provisions of section 37, of an area to which a licence relates and the carrying out of such measures;
- (q) the creation of safety zones in relation to structures erected on land to which a licence relates,

and the Minister may, if such holder fails to comply, within such period as may be specified in such notice or such further period as the Minister may on good cause shown allow in writing, with such direction to the satisfaction of the Minister, cause such steps to be taken as may be necessary to comply with such directions, and may recover from such holder in a competent court the costs incurred in connection with such steps.

(2) Any holder of a licence who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART V

Provisions relating to reconnaissance licences

Rights of holders of reconnaissance licences.

22. (1) Subject to the provisions of this Act, a reconnaissance licence shall authorize the holder of such licence to carry on reconnaissance operations subject to such terms and conditions and in such block or blocks as may be specified in such licence.

(2) An application for a reconnaissance licence shall not be granted in relation to any block or blocks in respect of which, at the time such application is made, any licence has been issued to any other person.

Duration of reconnaissance licences.

23. (1) Subject to the provisions of this Act, a reconnaissance licence shall be valid -

- (a) for such period, not exceeding two years, as may be determined by the Minister at the time of the granting of such licence;
- (b) for such further period, not exceeding two years, as may be determined by the Minister at the time of the renewal of such licence as from the date on which such licence would have expired if an application for its renewal had not been made or on the date on which the application for such renewal is granted, whichever date is the later date.

(2) A reconnaissance licence shall not be renewed on more than two occasions.

(3) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act, a reconnaissance licence shall not expire during a period during which an application for the renewal of such licence is being considered until such application is refused or the application is withdrawn or has lapsed, which occurs first.

Applications for reconnaissance licences.

24. An application for a reconnaissance licence -

- (a) shall, in the case of a company, contain the name of such company and particulars of its incorporation and registration, the names and nationality of its directors, the share

capital of such company and the name of any person who is the beneficial owner of more than five per cent of the shares issued by such company;

- (b) shall indicate, by way of the identification number or letter contained on the map referred to in section 1(2), the block or blocks to which the application relates;
- (c) shall contain particulars of –
 - (i) the minimum reconnaissance operations and expenditure proposed to be carried out or expended in respect of the block or blocks to which the application relates;
 - (ii) the programme of such reconnaissance operations, the expenditure in respect thereof, the period within which such operations will be carried out and such expenditure will be made;
 - (iii) an estimate of the effect which the proposed reconnaissance operations may have on the environment;
- (d) shall state the period for which the licence is required;
- (e) may contain any other matter which in the opinion of the person concerned is relevant to the application.

Applications for renewal of reconnaissance licences.

25. An application for the renewal of a reconnaissance licence -

- (a) shall be made not later than 90 days before the expiry date of the licence or such or such later date, but not later than such expiry date, as the Minister may on good cause shown allow;
- (b) shall be accompanied by particulars of the reconnaissance operations carried out in, and the amount expended in respect of, the block or blocks in question during the period as from the date on which the reconnaissance licence was issued to a date not later than 14 days prior to such application;
- (c) shall contain particulars of –
 - (i) the minimum reconnaissance operations and expenditure proposed to be carried out or expended during each year of the renewal period in respect of the block or blocks to which the application relates;
 - (ii) the programme of such reconnaissance operations, the expenditure in respect thereof, the period within which such operations will be carried out and such expenditure will be made;

- (iii) an estimate of the effect which the proposed reconnaissance operations may have on the environment;
- (d) may contain any other matter which in the opinion of the person concerned is relevant to the application.

Issue and renewal of reconnaissance licences.

26. (1) The Minister shall, subject to the provisions of section 12(4), direct the Commissioner to issue to the person concerned a reconnaissance licence or, as the case may be, renew by notice in writing any such licence in such form as may be determined by the Minister on such terms and conditions as may be agreed upon as provided in the said section 12(4).

- (2) Subject to the provisions of subsection (1), a reconnaissance licence shall -
 - (a) state the date on which it is issued;
 - (b) contain particulars of the block or blocks to which the licence relates;
 - (c) state the terms and conditions other than the terms and conditions referred to in section 14 subject to which such licence is issued.

Transfer of reconnaissance licences.

27. The Minister shall, on application made to him or her in terms of section 11, give his or her approval to the transfer of a reconnaissance licence where such licence is to be transferred from the holder of such licence to any other person or, in the case of a company, a company which is controlling, controlled by or under common control with the holder of such licence if the Minister is satisfied that such holder is not failing to comply with the terms and conditions of such or any other licence held by it or any provision of this Act.

Work programmes of reconnaissance operations.

28. (1) When the holder of a reconnaissance licence is, by virtue of the terms and conditions of such licence, required to carry out or to make within a particular period, in accordance with a work programme, certain minimum reconnaissance operations and certain minimum expenditure, such holder shall furnish the Commissioner, on such date or dates as may be determined by the Commissioner and made known by notice in writing addressed and delivered to such holder, with particulars of the manner in which such holder proposes to comply with any part of such work programme within such particular period as from the date so determined, but not exceeding one year or such shorter period as the Commissioner may on good cause shown allow.

(2) The Minister may, on application made to him or her by the holder of a reconnaissance licence, by notice in writing addressed and delivered to such holder, amend any work programme referred to in subsection (1) in accordance with proposals contained in such application or to such extent as the Minister may deem expedient.

(3) The holder of a reconnaissance licence who fails to comply with the requirements of a work programme referred to in subsection (1) shall, subject to the provisions of section 20, be liable to pay for the benefit of the State Revenue Fund such penalty as may be provided for in the terms and conditions of the reconnaissance licence in question, in the event of such failure.

PART VI

Provisions relating to exploration licences

Rights of holders of exploration licences.

29. (1) Subject to the provisions of this Act, an exploration licence shall authorize the holder of such licence to carry on exclusively exploration operations in the block or blocks to which it relates subject to such terms and conditions and in such block or blocks as may be specified in such licence.

(2) An application for an exploration licence shall not be granted in relation to any block or blocks in respect of which, at the time when such application is made, any licence other than a reconnaissance licence has been issued to any other person.

Duration of exploration licences.

30. (1) Subject to the provisions of this Act, an exploration licence shall be valid -

- (a) for such period, not exceeding four years, as may be determined by the Minister at the time of the granting of such licence;
- (b) for such further period, not exceeding two years, as may be determined by the Minister at the time of the renewal of such licence as from the date on which such licence would have expired if an application for its renewal had not been made or on the date on which the application for such renewal is granted, whichever date is the later date.

(2) (a) An exploration licence shall not be renewed on more than two occasions.

(b) Notwithstanding the provisions of paragraph (a), the Minister may, if he or she deems it in the interest of the development of the petroleum resources of Namibia, determine that any exploration licence in any particular case may be renewed on a third occasion for such period, not exceeding two years, as may be determined by him or her.

(3) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act, an exploration licence shall not expire during -

- (a) a period during which an application for the renewal of such licence is being considered until such application is refused or the application is withdrawn or has lapsed, whichever occurs first;

- (b) a period during which the holder of such licence is required to comply with the provisions of subsection (1) or (2) of section 39;
- (c) in the case of a holder of such licence who has made an application referred to in subsection (1) of section 42, the period of 90 days referred to in that subsection until such time as the application referred to in that subsection is finally disposed of or such application is withdrawn or has lapsed, whichever occurs first;
- (d) in the case of a holder of such licence to which the provisions of subsection (1) of section 43 apply, the period referred to in that subsection until such time as the application referred to in that subsection is finally disposed of or such application is withdrawn or has lapsed, whichever occurs first.

Invitation of applications for exploration licences.

31. Subject to the provisions of this Act, the Minister may, if he or she deems it necessary or expedient in the public interest or the petroleum industry, by notice in the *Gazette* invite applications for the grant of an exploration licence in respect of any block or blocks, and may specify in such notice a period within which any application may be made and the terms and conditions subject to which any such application may be made.

Application for exploration licences.

32. (1) An application for an exploration licence -

- (a) shall contain the name of the company in question and particulars of its incorporation and registration, the names and nationality of its directors, the share capital of such company and the name of any person who is the beneficial owner of more than five per cent of the shares issued by such company;
- (b) shall indicate, by way of the identification number or letter contained in the map referred to in section 1(2), the block or blocks to which the application relates;
- (c) shall contain particulars of –
 - (i) the minimum exploration operations and expenditure proposed to be carried out or expended in respect of the block or blocks to which the application relates;
 - (ii) the programme of such exploration operations, the expenditure in respect thereof, the period within which such operations will be made; and
 - (iii) an estimate of the effect which the proposed exploration operations may have on the have on the environment;
- (d) shall state the period for which the licence is required;

(e) may contain any other matter which in the opinion of the person concerned is relevant to the application.

(2) Subject to the provisions of subsection (3), an application for an exploration licence shall not be made in respect of more than such number of blocks as may from time to time be determined by the Minister by notice in the *Gazette*, unless he or she deems it desirable in the interest of the development of the petroleum resources of Namibia to consider at a particular area applications for exploration licences made for more blocks than such number.

(3) If an application for an exploration licence relates to more than one block, the blocks indicated in the application shall be -

- (a) situated in such a position that they form a continuous area;
- (b) situated in such a way that each block in the area referred to in paragraph (a) has a side common with at least one other block in the area.

Applications for renewal of exploration licences.

33. (1) An application for the renewal of an exploration licence-

- (a) shall be made not later than 90 days before the expiry date of the licence or such later date, but not later than such expiry date, as the Minister may on good cause shown allow;
- (b) shall be accompanied by particulars of the exploration operations carried out in, and the amount expended in respect of, the block or blocks in question during the period as from the date on which the exploration licence was issued to a date not later than 14 days prior to such application;
- (c) shall contain particulars of –
 - (i) minimum exploration operations and expenditure proposed to be carried out or expended during each year of the renewal period in respect of the block or blocks to which the application relates; and
 - (ii) an estimate of the effect which the proposed exploration operations may have on the environment;
- (d) may contain any other matter which in the opinion of the person concerned is relevant to the application.

(2) The provisions of subsection (1)(c)(i) shall be deemed to have been complied with if an agreement referred to in section 13 has been entered into in respect of the exploration licence in question which contains terms and conditions in relation to particulars referred to in that subsection and such terms and conditions comply with such provisions.

(3) (a) Subject to the provisions of paragraph (b), the Minister shall not grant an application for the renewal of an exploration licence if the holder of such licence is, at the time of the application, failing to comply with any term or condition subject to which the exploration licence in question has been issued or with any provision of this Act.

(b) The Minister shall not refuse under paragraph (a) to grant the application in question, unless the Minister has by notice in writing informed the holder of such licence of his or her intention to refuse such application -

- (i) setting out particulars of the alleged failure;
- (ii) requiring such holder to make representations to the Minister in relation to the alleged failure or to remedy such failure on or before a date specified in such notice,

and such holder has failed to so remedy such failure or make such representations.

Issue and renewal of exploration licences.

34. (1) The Minister shall, subject to provisions of section 12 (4) and 13, direct the Commissioner to issue to the person concerned an exploration licence in such form as may be determined by the Minister or, as the case may be, renew by notice in writing any such licence in such form as may be determined by the Minister on such terms and conditions as may be agreed upon as provided in section 12 (4).

(2) The provisions of section 26 (2) shall apply *mutatis mutandis* in relation to the particulars to be contained in an exploration licence.

Transfer of exploration licences.

35. The Minister shall, on application made to him or her in terms of section 11, give his or her approval to the transfer of an exploration licence where such licence is to be transferred from the holder of such licence to a company which is controlling, controlled by or under common control with the holder of such licence if the Minister is satisfied that such holder is not failing to comply with the terms and conditions of such or any other licence held by it or any provision of this Act.

Work programmes of exploration operations.

36. The provisions of section 28 shall apply *mutatis mutandis* in relation to the holder of an exploration licence.

Relinquishment of land by holder of exploration licence.

37. (1) Subject to the provisions of this section, the holder of an exploration licence shall by notice in writing addressed and delivered to the Commissioner relinquish -

- (a) not later than 30 days before the end of the fourth year of the currency of such licence, at least 50 per cent of the exploration area to which such licence relates and which is identified in such notice;
- (b) not later than 30 days before the end of the sixth year of such currency, at least a further 25 per cent of such exploration area and which is so identified,

whereupon any part of the exploration area so identified shall cease to be part of such exploration area as from a date 90 days after the date of such notice.

(2) The holder of an exploration licence shall relinquish land in such a manner so as to ensure that the exploration area is, after such relinquishment, a single area consisting, in so far as it is possible, of rectangular blocks bounded by lines running either due North and South or due East and West and having sides, each of at least 30 seconds of longitude or latitude, as the case may be.

(3) If an exploration licence is cancelled in terms of section 19 (3) in relation to any area of land in any year of the currency of an exploration licence, such area of land shall be deemed to have been relinquished for the purposes of the determination of the relinquishment next required to be made by the holder of such licence under paragraph (a) or (b) of subsection (1).

(4) An agreement referred to in section 13 may provide for a relinquishment on any other basis as the basis provided for in subsection (1).

(5) The Minister may, on application made to him or her by a holder of an exploration licence concerned, by notice in writing exempt such holder from the provisions of subsection (1) if he or she deems it desirable in the public interest and in the interest of the development of the petroleum resources of Namibia.

(6) Any holder of an exploration licence who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000.

(7) This section shall not be construed as requiring the holder of an exploration licence to relinquish any land in the exploration area which is -

- (a) subject to an application for a production licence; or
- (b) situated within a petroleum field or subject to an application for the declaration of a petroleum field.

Obligations of holder of exploration licence.

38. (1) It shall be a term and condition of an exploration licence that the holder of an exploration licence shall -

- (a) carry out exploration operation in the exploration area in accordance with good oilfield practices;

- (b) take all reasonable steps necessary to secure the safety, welfare and health of persons employed for purposes of such operations in the exploration area;
- (c) maintain in good condition and repair all structures, equipment and other goods in the exploration area and used in connection with the exploration operations;
- (d) remove from such exploration area all structures, equipment and other goods not used or intended to be used in connection with such exploration operations;
- (e) take reasonable steps to warn persons who may from time to time be in the vicinity of any such structures, equipment or other goods of the possible hazards resulting therefrom.

(2) Without derogating from the generality of subsection (1), the holder of an exploration licence shall -

- (a) control the flow and prevent the waste, escape or spilling in the exploration area of petroleum, water or any gas;
- (b) prevent the waste or spilling in the exploration area of water or drilling fluid or water and drilling fluid or any other substance extracted from a well drilled for purposes of or in connection with exploration operations or used in relation to the drilling of such a well;
- (c) prevent damage to petroleum-bearing strata in any area outside the exploration area;
- (d) prevent petroleum reservoirs in the exploration area or such water sources as may be determined by notice in writing by the Commissioner and addressed and delivered to such holder, from being connected with each other;
- (e) prevent water or any other substance entering any petroleum reservoir through the wells in the exploration area, except if required by, and in accordance with, good oilfield practices;
- (f) prevent the pollution of any aquifer, estuary, harbour, lake, reservoir, river, spring, stream, borehole and all other area of water by the spilling of petroleum, drilling fluid, chemical additive, any gas or any waste product or effluent;
- (g) furnish to Commissioner prior to the drilling of any well a report containing particulars of the technique to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed in the drilling of such well;
- (h) not flare any combustible gas, except –
 - (i) for purposes of testing such gas, or for operational reasons; or

(ii) with the approval in writing, previously obtained in every particular case, of the Minister and in accordance with such terms and conditions as may be determined by the Minister;

(i) not abandon, close or plug a well without the approval in writing, previously obtained in every particular case, of the Minister and in accordance with such terms and conditions as may be determined by the Minister.

(3) Any holder of a licence who contravenes or fails to comply with the provisions of this section shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000.

PART VII

Provisions relating to discoveries

Discovery of petroleum.

39. (1) When a discovery is made in an exploration area, the holder of the exploration licence concerned shall –

(a) forthwith inform the Commissioner by notice in writing of the fact that such discovery has been made, and, within a period of 60 days after such notice, furnish the Commissioner in writing with particulars relating to the block or blocks where such discovery has been made, the nature of such discovery and such other particulars as the Commissioner may require;

(b) forthwith cause tests to be made in connection with such discovery in order to determine the commercial interest of such discovery, and, within a period of 60 days after having completed such tests, furnish the Commissioner with a report containing an evaluated result of such tests and an evaluation of the potential commercial interest of such discovery.

(2) If it appears from a report referred to in paragraph (b) of subsection (1) that a discovery may be of a commercial interest, the holder of the licence in question shall, subject to the provisions of subsection (3) –

(a) forthwith take all such steps as may be reasonable in the circumstances in order to appraise the discovery and determine the quantity of petroleum to which the discovery relates in so far as it occurs within the exploration area;

(b) after such appraisal has been completed, forthwith furnish the Commissioner with a report containing particulars of such appraisal and determination.

(3) The Minister may, upon an application made to him or her by the holder of the licence concerned, in his or her discretion exempt such holder from the provisions of subsection (2) subject to such conditions, if any, as may be determined by the Minister.

Information to be furnished by holder of licence in whose exploration area a discovery was made.

40. (1) The Commissioner may at any time during any period referred to in section 39 require the holder of the exploration licence concerned by notice in writing addressed and delivered to such holder to furnish the Commissioner, within such period as may be specified in such notice in writing, with such particulars on any matter so specified concerning the discovery or any appraisal of such discovery.

(2) Any holder of an exploration licence who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000.

Discovery which is not of commercial interest.

41. (1) If it appears from a report referred to in paragraph (b) of subsection (1) of section 39 that a discovery is not of potential commercial interest, the Minister may, subject to the provisions of subsection (2), within 180 days as from the date on which such report was furnished, by notice in writing addressed and delivered to the holder of the licence concerned, direct that with effect from a date specified in such notice the licence in question shall cease to be of any force and effect in relation to the discovery block in question and any adjoining land required for purposes of obtaining access to that block.

(2) The Minister shall not exercise his or powers under subsection (1), unless he or she -

- (a) has by notice in writing informed the holder of such licence of his or her intention to exercise such powers requiring such holder to make representations to the Minister in relation to the matter on or before a date specified in such notice;
- (b) is, having regard to information available to him or her and after having considered any representations made to him or her by virtue of the notice referred to in paragraph (a), satisfied that the discovery is not of any potential commercial interest.

Declaration of petroleum field.

42. (1) If it appears from a report referred to in subsection (1) of section 39 that a discovery is of a commercial interest, the Minister shall, upon an application made to the Minister by the holder of the licence concerned, within a period of 90 days as from the date of such application declare by notice in the *Gazette* the discovery block and not more than eight other blocks specified in the application to be a petroleum field.

(2) Subject to the provisions of subsections (1) and (3), the Minister may, upon an application made to him or her by the holder of the licence concerned declare by notice in the *Gazette*

that the block specified in such application shall form part of or cease to form part of a petroleum field.

(3) The holder of a licence concerned shall not make any application referred to in subsections (1) and (2) in respect of any block, unless such block adjoins the discovery block and is situated within the exploration area of such holder.

(4) The Minister shall not under subsection (1) or (2) declare any block to be a petroleum field or to form part of a petroleum field or to form part of a petroleum field, unless such block contains a petroleum reservoir or part of a petroleum reservoir or adjoins any such block.

(5) For the purposes of this section a block shall be regarded to adjoin a discovery block or a block containing a petroleum reservoir or part of such reservoir, if any part of such first-mentioned block has a side in common or touches such discovery block or such other block.

Right to apply for production licence.

43. (1) When a petroleum field has been declared under section 42, the holder of the exploration licence issued in respect of the discovery block in question may, subject to the provisions of Part VIII, apply within a period of two years as from the date on which the petroleum field has been so declared or such further period as the Minister may on good cause shown allow in writing during the currency of his or her licence, for a production licence in respect of such petroleum field.

(2) If the holder of a licence referred to in subsection (1) -

(a) fails to apply for a production licence within the period so referred to; or

(b) informs the Minister by notice in writing within such period that he or she does not intend to apply for a production licence,

the Minister may by notice in the *Gazette* withdraw the notice in terms of which such petroleum field is declared to be a petroleum field.

PART VIII

Provisions relating to production licences

Rights of holders of production licences.

44. (1) Subject to provisions of this Act, a production licence shall authorize the holder of such a licence exclusively -

(a) to carry on production operations on the block or blocks to which that licence relates;

(b) to sell or otherwise dispose of petroleum recovered within such block or blocks;

- (c) to carry on such other operations and works in or in connection with such block or blocks as may be necessary for or in connection with the operations and selling or disposal referred to in paragraph (a) or (b).

(2) Any exploration operations carried on in terms of a production licence shall be carried on in accordance with such exploration work programme as may from time to time be approved by the Commissioner.

Duration of production licences.

45. (1) Subject to the provisions of this Act, a production licence shall be valid -

- (a) for such period, not exceeding 25 years, as may be determined by the Minister at the time of the granting of such licence;
- (b) for such further period, not exceeding 10 years, as may be determined by the Minister at the time of the renewal of the licence as from the date on which such licence would have expired if an application for renewal had not been made or on the date on which the application for such renewal is granted, whichever date is the later date.

(2) A production licence shall not be renewed on more than one occasion.

(3) Notwithstanding the provisions of subsection (1), but subject to the other provisions of this Act, a production licence shall not expire during a period during which an application for the renewal of such licence is being considered until such application is refused or the application is withdrawn or has lapsed, whichever occurs first.

Application for production licences.

46. (1) A person other than a holder of a licence referred to in section 43 may apply for a production licence in relation to any block or blocks whether or not such person holds an exploration licence in relation to such block or blocks.

(2) Any application for a production licence -

- (a) shall contain the name of the company in question and particulars of its incorporation and registration, the names and nationality of its directors, the share capital of such company and the name of any person who is the beneficial owner of more than five per cent of the issued shares of such company;
- (b) shall contain such particulars as may be necessary to determine the company's technical and financial ability, including its experience in the petroleum industry, to carry out production operations under a production licence;
- (c) shall contain particulars of the company's exploration licence, if any;

- (d) shall state the period for which the licence is required;
- (e) shall indicate the nature and quantity of petroleum it proposes to produce;
- (f) shall include a report containing a description of the petroleum reservoir and the nature of the petroleum and an estimate of the petroleum in such reservoir;
- (g) shall contain a description, including aerial photographs and an illustrating map, of the area to which the application relates;
- (h) shall include a report containing technological particulars in connection with the production and processing of the petroleum in question and the company's intentions in relation to the production and processing of such petroleum;
- (i) shall contain a proposed programme of production operations and of the processing of petroleum in question which shall include –
 - (i) the date on which it is estimated to commence with the production of the petroleum in question;
 - (ii) an estimate of the capacity of such production and the extent of the operations to be carried out in connection therewith;
 - (iii) an estimate of the overall recovery of such petroleum and of any by-products recovered in processing such petroleum;
 - (iv) the nature of such petroleum and by-products;
 - (v) the arrangements made for the sale of such petroleum and by-products;
 - (vi) the manner in which it is intended to prevent pollution, to deal with waste, to safeguard the natural resources, to reclaim and rehabilitate land disturbed by way of the production operations and to minimize the effect of such operations on land adjoining the production area;
 - (vii) a statement setting out any significant effect which the carrying out of such production operation are likely to have on the environment and the manner in which it is intended to control or eliminate such effect;
- (j) shall contain a detailed forecast of capital investment, operating costs and income from sales and the manner in which the production operations are to be financed and the nature of such financing;
- (k) shall contain particulars of its expected infrastructure requirements;

- (l) may contain any other matter which in the opinion of the company is relevant to the application.

(3) The Minister may by notice in writing exempt any company from complying with any provision in subsection (2) if in his or her opinion the company in question complies with any such provision or such provision relates to information which is otherwise available to the Minister.

Powers of Minister to grant or refuse applications for production licences.

47. (1) Subject to the provisions of this section, the Minister -

- (a) shall, in the case of an application for a production licence by the holder of an exploration licence referred to in section 43, grant such application on such conditions as may in his or her opinion be reasonably necessary to achieve the objects of this Act;
- (b) may, in the case of an application for a production licence by a person referred to in section 46, grant on such conditions as may, subject to the provisions of section 12(a) and 13, be determined by the Minister or refuse to grant such application.

(2) Notwithstanding the provisions of paragraph (a) of subsection (1), but subject to the provisions of subsection (3), an application for a production licence shall not be granted -

- (a) unless –
 - (i) the proposed programme of the production operations and of the processing of the petroleum in question of the company in question will ensure the efficient, beneficial and timely use of the petroleum resources in question;
 - (ii) the company in question has the technical and financial ability and experience in the petroleum industry to carry out production operations;
- (b) if the company in question is, at the time of the application, failing to comply with any term or condition subject to which its exploration licence has been issued or any provision of this Act which relates to such licence, unless the Minister is of the opinion that special circumstances exist which justify the grant of such application notwithstanding such failure;
- (c) in the case of an application made by a person referred to in section 46 -
 - (i) unless the block or blocks to which the application relates contain a petroleum reservoir or part of a petroleum reservoir;
 - (ii) in relation to any block or blocks in respect of which, at the time such application is made, any licence other than a reconnaissance licence has been issued to any other person.

(3) The Minister shall not, in the case of an application for a production licence by the holder of an exploration licence referred to in section 43, refuse any such application -

- (a) in terms of subsection (2)(a), unless the Minister has by notice in writing informed the company concerned of his or her intention to so refuse such application and has –
 - (i) informed such company of the reasons of his or her intention;
 - (ii) afforded the company to make, within such period as may be specified in such notice, representations in relation to all matters relating to his or her intention and, if it so desires, to make proposals in relation to such matters; and
 - (iii) taken into consideration any such representations and proposals;
- (b) in terms of subsection (2)(a)(i), if the proposed programme is in accordance with the terms and conditions subject to which its exploration licence has been issued;
- (c) in terms of subsection (2)(b), unless the Minister has by notice in writing informed the company concerned of his or her intention to so refuse such application -
 - (i) setting out particulars of the failure in question;
 - (ii) requiring such company to make representation to the Minister in relation to such failure or to remedy such failure on or before a date specified in such notice,

and such company has failed to so remedy such failure or make such representations.

(4) Only one production licence may be issued in respect of a block or blocks falling in a petroleum field, unless the holder of an exploration licence referred to in section 43, satisfies the Minister that such petroleum field contains more than one petroleum reservoir and that each block or two or more blocks should on account of technical or economic considerations be regarded, for purposes of the granting of petroleum licences, as separate petroleum fields.

Effect of granting of production licence on exploration area.

48. Any part of an exploration area in respect of which a production licence is issued shall cease to be part of such exploration area.

Applications for renewal of production licences.

49. (1) An application for the renewal of a production licence -

- (a) shall be made not later than 12 months before the expiry date of such licence or such later date, but not later than such expiry date, as the Minister may on good cause shown allow;

(b) shall be accompanied by –

- (i) particulars of the production operations carried out, the petroleum recovered and the amounts expended and received in respect of the production area as from the date on which the production licence was issued to a date not earlier than one month immediately prior to the date of the application;
- (ii) particulars of minimum production operations and expenditure proposed to be carried out or expended during each year of the renewal period in respect of the production area to which the application relates;

(c) may contain any other matters which in the opinion of the company in question is relevant to the application.

(2) Subject to the provisions of subsection (3), the Minister may by notice in writing grant an application for the renewal of a production licence on such condition as may be determined by him or her or in his or her discretion refuse to grant any such application.

(3) (a) Subject to the provisions of paragraph (b), the Minister shall not grant an application for the renewal of a production licence if the holder of such licence is, at the time of the application, failing to comply with any term or condition subject to which the exploration licence in question has been issued or any provision of this Act which relates to such licence.

(b) The Minister shall not refuse under paragraph (a) to grant the application in question, unless the Minister has by notice in writing informed the holder of such licence of his or her intention to refuse such application -

- (i) setting out particulars of the failure in question;
- (ii) requiring such holder to make representations to the Minister in relation to such failure or to remedy such failure on or before a date specified in such notice,

and such holder has failed to so remedy such failure or make such representations.

Issue and renewal of production licences.

50. (1) The Minister shall, subject to the provisions of section 12(a) and (13), direct the Commissioner to issue to the person concerned a production licence in such form as may be determined by the Minister or, as the case may be, renew by notice in writing any such licence in such form as may be determined by the Minister on such terms and conditions as may be agreed upon as provided in section 12(a).

(2) Notwithstanding the provisions of section 62, the terms and conditions of a production licence may provide for -

(a) the payment in advance by the holder of production licence of a royalty referred to in that section;

(b) exemptions in respect of the payment of such royalty.

(3) The provisions of section 26(2) shall apply *mutatis mutandis* in relation to the particulars to be contained in a production licence.

Transfer of production licences.

51. The Minister shall, on application made to him or her in terms of section 11, give his or her approval to the transfer of a production licence where such licence is to be transferred from the holder of such licence to a company which is controlling, controlled by or under common control with the holder of such licence if the Minister is satisfied that such holder is not failing to comply with the terms and conditions of such or any other licence held by it or any provision of this Act.

Directions by Minister as to recovery of petroleum.

52. (1) If petroleum is not recovered in a production area and the Minister is satisfied that petroleum is recoverable in such area or, if petroleum is recovered at a rate which is, having regard to the capacity of the petroleum reservoir in such area, in the opinion of the Minister not in the public interest, he or she may from time to time by notice in writing addressed and delivered to the holder of the production licence concerned, direct such holder -

(a) to make, due regard being had to good oilfield practices, such steps as may be necessary and practicable to recover petroleum in such area;

(b) to increase or reduce the rate at which the petroleum is recovered in such area to such rate, not exceeding, in the case of an increase, the capacity of the production facilities of the holder of the licence, as the Minister may specify in such notice.

(2) Any holder of a production licence who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R100 000.

Obligations of holder of production licence.

53. (1) The provisions of section 38 shall apply *mutatis mutandis* in relation to the holder of a production licence.

(2) (a) The holder of a production licence -

(i) shall measure and weigh in accordance with a method approved, due regard being had to good oilfield practices, by the Commissioner, petroleum production and saved from the area to which such holder's licence relates;

(ii) shall cause all appliances used for purposes of weighing and measuring to be tested and examined in accordance with any directions in writing issued by the Commissioner.

(b) If, upon any test or examination referred to in subparagraph (ii) of paragraph (a), it is proved that any such appliance is defective it shall, for purposes of the provisions of section 62, be deemed to have been so defective during a period equal to a period of half the period as from the date on which petroleum was last measured or weighed with such appliance to the date on which the test or examination was completed, unless the Commissioner determines otherwise after having considered any representations in writing made by the holder of the licence concerned.

(c) For the purposes of measuring any petroleum consisting of combustible gas produced and saved from the area to which the licence in question relates the volume of such gas shall be calculated at an absolute pressure of one atmosphere and at a temperature of 15,5° Celsius.

PART IX **Ancillary rights**

Limitation of fundamental rights contemplated in Article 16 of Constitution.

54. The provisions of this Part, in so far as they provide for a limitation on the fundamental rights contemplated in subarticle (1) of Article 16 of the Namibian Constitution in order to authorize, subject to an obligation to pay just compensation, the holder of a licence to enter upon any land of any person for purposes of carrying on operations authorized by such licence, are enacted upon the authority conferred by subarticle (2) of that Article.

Establishment of Ancillary Rights Commission.

55. (1) There is hereby established a commission to be known as the Ancillary Rights Commission which shall consist of a chairperson and two other members appointed from time to time by the President.

(2) A member of the Commission shall hold office at the President's pleasure.

(3) A member of the Commission who is not in the full-time service of the State may be paid such remuneration and allowances as may be determined by the Minister in concurrence with the Minister of Finance.

(4) (a) The administrative and clerical work involved in the performance of the Commission's functions, shall be performed by officers in the public service made available by the Permanent Secretary: Mines and Energy for that purpose.

(b) The Commission may designate an officer referred to in paragraph (a) to be the secretary of the Commission.

(5) Any meeting of the Commission shall be held at a time and place determined by the chairperson of the Commission.

(6) Two members of the Commission shall form a quorum for a meeting of the Commission.

(7) The decision of a majority of the members of the Commission shall be a decision of the Commission: Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(8) The provisions of the Commissions Act, 1947 (Act 8 of 1947), shall apply *mutatis mutandis* in relation to the Commission as if it were a commission referred to in section 1 of that Act.

Obtaining of rights by holder of licence.

56. (1) When it is reasonably necessary for the holder of a licence to obtain a right -

- (a) to enter upon land in order to carry on operations authorized by such licence on such land;
- (b) to erect buildings and tanks, to lay and maintain pipes and to construct other works on such land for purposes of such operations;
- (c) to obtain a supply of water or other substances in connection with such operations;
- (d) to dispose of water or any other substances obtained during such operations;
- (e) to do anything else necessary in order to exercise any right conferred upon him or her by such licence,

and who is prevented from carrying on such operations by reason thereof -

- (i) that the owner of the land in question or any person competent to grant such right in relation to such land refuses to grant such right or demands, in return for such right, terms and conditions which are in the circumstances unreasonable;
- (ii) that, due to the number of owners or persons competent to grant such right involved or such owners or persons having conflicting interests, it is not possible to obtain any such right;
- (iii) that any such owner or person is absent from Namibia or such owner or person's whereabouts is unknown or is a minor or of unsound mind or otherwise under any disability to grant any such right,

such holder may apply in writing to the Commission to grant any such right to him or her.

(2) An application in terms of subsection (1) shall set out by way of a statement under oath or affirmation or in such other form, if any, as may be determined by the Commission, particulars of the right required, the circumstances under which the holder of the licence is prevented from obtaining or exercising such right.

(3) The Commission shall as soon as possible after the receipt of an application referred to in subsection (2), cause -

- (a) a notice to be published in the *Gazette* and in one newspaper circulating in the area in which the land in question is situated setting out the name of the holder of the licence concerned, the nature of the right required and a description of the land in respect of which it is so required;
- (b) copies of such notice and application to be addressed and delivered to the owner or person competent to grant any such right, if known,

calling upon such owner, person or other interested person to make representations, if he or she so wishes, in opposition to such application in such manner and within such period as may be specified in such notice.

Consideration of application by Commission.

57. (1) The Commission shall inquire into any application made in terms of section 56.

(2) Any person whose interests are or may be prejudicially affected by the grant of an application referred to in subsection (1) shall be entitled to be heard either personally or by way of a legal representative, and to examine and cross-examine any person giving evidence before the Commission.

(3) The Commission, in considering whether any right to which an application relates should be granted and the terms and conditions, if any, to be imposed if such a right is granted, shall have regard to the effect of the exercise of such right on the facilities on such land.

(4) If the Commission is satisfied that it is in the public interest and reasonably necessary for the holder of the licence to obtain such a right in order to carry out operation authorized by such licence the Commission shall by order in writing grant the application subject to such terms and conditions and for such period as the Commission may think fit, whereupon such right shall, subject to the provisions of subsection (5), vest in the holder of the licence concerned.

(5) No right granted under this section shall confer any power or impose any obligation or liability upon the holder of a licence concerned other than such power, obligation or liability which would otherwise have been conferred or imposed upon him or her had such right been granted to such holder by the owner or other person concerned.

Costs incurred in respect of application to Commission.

58. (1) The Commission shall be empowered to order any party to the proceedings to pay the costs or any part of such costs incurred by such party or any other party or such party and such other party in relation to the application and proceedings held in consequence of such application as if such order were an order made by the High Court of Namibia.

(2) Any order made in terms of subsection (1) shall be executable as if such order were a judgment of the High Court of Namibia.

Compensation payable in respect of right granted.

59. (1) If any right is granted in terms of section 56 the Commission shall, if no amount of compensation is agreed upon between the holder of the licence concerned and the owner or other person concerned, determine an amount which represents just compensation for the right so granted which shall be paid by the holder concerned in respect of such right.

(2) If compensation is in terms of an order of the Commission to be paid in respect of any right granted by such order, it shall, unless the Commission determines otherwise, be a condition of such order that the compensation so payable shall be paid or that security for the payment thereof shall be given before the right is exercised.

Exercise of rights granted by Commission or otherwise obtained.

60. (1) The holder of a licence exercising any right granted to him or her in terms of the provisions of this Act shall be exercised reasonably and in such manner that the rights and interests of the owner or occupier of the land to which it relates are affected as little as possible.

(2) The holder of a licence shall before commencing to carry on any operations on any private land give to the owner or occupier of such land notice in writing of his or her intention to commence such operations.

Right of appeal.

61. (1) Any person who feels aggrieved by a decision of the commission shall have the right to appeal to the High Court of Namibia.

(2) For purposes of an appeal referred to in subsection (1) and the procedure to be followed in connection with such appeal the decision of the Commission shall be deemed to be a judgment of a magistrate's court.

PART X

Financial matters

Royalty payable on petroleum.

62. Subject to the provisions of this Act, the holder of a production licence shall pay, quarterly on or before the last day of each month following each quarter, for the benefit of the State Revenue Fund a royalty of 12 1/2 per cent on the market value, determined as provided in the terms and conditions of such licence, of petroleum produced and saved in the production area during each quarter.

Remission and deferment of royalty.

63. (1) Notwithstanding the provision of the State Finance Act, 1982 (act 1 of 1982), the Minister may, in concurrence with the Minister of Finance, on application made to him or her by the holder of a production licence -

(a) by notice in writing –

(i) remit wholly or partly any royalty payable in terms of section 62;

(ii) defer payment of any such royalty;

(b) refund wholly or partly any royalty paid in terms of section 62,

on such conditions as may be determined by the Minister and specified in such notice, or may refuse to so remit or refund such royalty or defer such payment.

(2) The Minister shall on or before 30 June in each year lay upon the table of the National Assembly a report consisting of the names of holders of licence in respect of whom royalty was remitted or refunded or of whom payment of royalty was deferred during the financial year which ended in that year and the amounts involved and the reasons for such remission, refund or deferment.

Powers of Minister in case of failure by holder of licence to pay royalty.

64. (1) If the holder of a production licence fails to pay any royalty payable in terms of section 62 by it on or before the date referred to in that section or such date to which the payment of such royalty has been deferred in terms of section 63 the Minister may by notice in writing addressed and delivered to such holder prohibit -

(a) the removal of petroleum from the production area concerned or from any other production area in respect of which such holder is the sole holder of a production licence or from both such areas;

(b) any dealings in connection with petroleum produced and saved in such production area,

until such time as such royalty has been paid or payment of such royalty has been deferred in terms of section 63.

(2) Any holder of a production licence who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R100 000.

Security for payment of royalty.

65. (1) The Minister may, when he or she deems it necessary to secure the payment of a royalty, by notice in writing to the holder of a production licence require such holder to provide the Minister with a guarantee given by a person approved by the Minister.

(2) Any holder of a production licence who contravenes or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R100 000.

Proof of royalty payable.

66. In any proceedings to recover in a competent court any royalty referred to in section 62, a certificate purporting to be a certificate under the hand of the Minister certifying that an amount of money specified in such certificate is payable in respect of royalty by the holder of a production licence named in such certificate shall be *prima facie* evidence of the facts stated in such certificate.

Annual charges payable by holders of exploration and production licences.

67. (1) Subject to the provisions of this Act, the holder of an exploration licence and a production licence shall pay, on the date of the issue of the licence concerned and thereafter annually on or before the last day of the month in which every period of 12 months of the currency of such licence expires, for the benefit of the State Revenue Fund an annual charge equal to the figure expressed in Rand, calculated by multiplying the number of square kilometres included in the block or blocks to which the licence relates and -

(a) in the case of an exploration licence –

- (i) 60 during the first years of the licence;
- (ii) 90 during the next two years of such licence;
- (iii) 120 during the subsequent two years of the licence;

(b) in the case of a production licence, 1 500.

(2) Any holder of an exploration licence or a production licence who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R100 000.

Penalty for late payments.

68. (1) When any person has failed to pay an amount on or before the date determined by or under this Act or the terms and conditions of a licence, an additional amount, calculated at the rate of one-third of one per cent per day, shall be payable on such amount or any part thereof as from the date on which such amount was payable until such time as such amount is paid.

(2) The provisions of paragraph (a) of section 63 (1) shall apply *mutatis mutandis* in relation to an amount payable in terms of subsection (1).

PART XI

General provisions

Removal of property from area in respect of which licence related before expiration, cancellation or relinquishment.

69. (1) If a licence has been cancelled under section 19 or has expired, or if any area to which such licence relates has, in terms of section 37, been relinquished, the Minister may by notice in writing addressed and delivered to the holder of such licence order such holder -

- (a) to remove or cause to be removed within such period as may be specified in such notice from the area to which any such licence related before such cancellation, expiration or relinquishment, all goods brought onto such area by such holder or any person involved in the operations under such licence;
- (b) to plug or close off or cause to be plugged or closed off, all wells made in such area by or on behalf of such holder;
- (c) to perform such actions as may be specified in such notice in order to provide for the conservation and protection of any natural resources in such area;
- (d) to take such other steps as may be specified in such notice as the Minister may deem necessary or expedient to give effect to any order referred to in paragraph (a), (b) or (c).

(2) If the holder of a licence contravenes or fails to comply with an order made under subsection (1) the Minister may -

- (a) cause such goods to be removed, such wells to be plugged or closed off, such actions to be performed or such steps to be taken and recover the cost thereof from such holder;
- (b) subject to the provisions of paragraph (c), dispose of, in such manner as he or she may deem fit, all or any of the goods referred to in paragraph (a);
- (c) after having published a notice in the *Gazette* and in two newspapers circulating in the district in which the area from which the goods in question was removed setting out the Minister's intention to sell such goods and inviting any person who is the lawful owner of such goods to claim such goods to claim such goods -

- (i) sell or cause to be sold by public auction or otherwise all or any of such goods and recover the cost thereof from such holder;
- (ii) deduct from the proceeds of such sale -
 - (aa) the costs incurred by him or her in respect of the removal, actions or steps referred to in subsection (1) and the sale referred to in subparagraph (i) of this paragraph;
 - (bb) any amounts due and payable under the provisions of this Act.

(3) Any holder of a licence who contravenes or fails to comply with an order made under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000.

Further information to be furnished in relation to petroleum recovered.

70. (1) Where the Minister has reason to believe that a person is capable of furnishing books, documents or any particulars of whatever nature in relation to exploration operations or production operations or to petroleum recovered, he or she may, by notice in writing addressed and delivered to such person, order such person -

- (a) to furnish him or her in writing with such books, documents or particulars within such period and in such manner as may be specified in such notice;
- (b) to appear before the Commissioner or such other person as may be authorized by the Minister and identified in such notice at such time and place as may be specified in such notice to answer questions relating to such books, documents or particulars;
- (c) to furnish the Commissioner or such other person as may be authorized by the Minister and identified in such notice at such time and place as may be specified in such notice with such books, documents or particulars as may be in his or her possession or under his or her control, as the case may be.

(2) Any person who refuses or fails to comply with a notice issued under subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Liability of holders of production licences for pollution of environment or other damages or losses caused.

71. (1) When in the course of production operations carried out under a production licence any petroleum or other substances are spilled in the sea or on land or in any water on or under the surface of any of the sea or such land or water is otherwise polluted or any plant or animal life, whether in the sea, other water or on, in or under land, is endangered or destroyed or any damage or loss is caused to any person, including the State, by such spilling or pollution, the holder of such production licence shall forthwith -

- (a) report such spilling, pollution, loss or damage to the Minister;
- (b) take at its own costs all such steps as may be necessary in accordance with good oilfield practices or otherwise as may be necessary to remedy such spilling, pollution, loss or damage.

(2) If the holder of a licence referred to in subsection (1) fails to comply with the provisions of paragraph (b) of that subsection within such period as the Minister may deem in the circumstances to be reasonable the Minister may order by notice in writing addressed and delivered to such holder to take within such period as may be specified in such notice such steps as may be so specified in order to remedy the spilling, pollution or damage or loss, and the Minister may, if such holder fails to comply with such directions to the satisfaction of the Minister within the period specified in such notice or such further period as the Minister may on good cause shown allow in writing, cause such steps to be taken as may be necessary to remedy such spilling, pollution or damage or loss and recover in a competent court the costs incurred thereby from such holder.

Service of documents.

72. (1) Any document, notice or other communication required or authorized under the provisions of this Act to be given or delivered to any person by the Minister, the Commissioner, the Chief Inspector or any officer authorized thereto shall be deemed to have been given or delivered -

- (a) if delivered to such person personally;
- (b) if despatched by registered or any other kind of post addressed to such person at his or her last known address which may be any such place or office as is referred to in paragraph (c) or his or her last known post office box number or private bag number or that of his or her employer;
- (c) if left with some adult person apparently residing at or occupying or employed at his or her last known abode or office or place of business;
- (d) in the case of a company -
 - (i) if delivered to the public officer of the company;
 - (ii) if left with some adult person apparently residing at or occupying or employed at its registered address;
 - (iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his or her last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his or her last known post office box number or private bag number or that of his or her employer;
 - (iv) if transmitted by means of a facsimile transmission to the person concerned at the registered office of the company.

(2) Any document, notice or other communication referred to in subsection (1) which has been given or delivered in the manner contemplated in paragraph (b) or (d)(iii) of that subsection shall, unless the contrary is proved, be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post have arrived at the place to which it was addressed.

Miscellaneous offences and penalties.

73. Any person who -

- (a) without reasonable excuse, obstructs, hinders or prevents the holder of any licence, including the corporation, the Minister, the Commissioner, the Chief Inspector or any officer referred to in section 3(2) from exercising or performing any right, power, duty or function conferred or imposed upon it, him or her by or under any provision of this Act;
- (b) makes or causes to be made in connection with any application made in terms of any provision of this Act any statement which is false or misleading knowing it to be false or misleading; or
- (c) submits or causes to be submitted in connection with such application or any notice, report, return or statement issued or given under any provision of this Act or the terms and conditions of any licence any document, information or particulars which is false or misleading knowing it to be false or misleading;
- (d) fraudulently and with the intent to mislead any other person to believe that a petroleum reservoir exists at any place, places or deposits or causes to be so placed or deposited any petroleum or substance in any such place,

shall be guilty of an offence and on conviction liable to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five year or to both such fine and such imprisonment.

Jurisdiction of court in relation to offences under this Act committed at sea.

74. Notwithstanding the provisions of any law to the contrary, the High Court of Namibia or a magistrate's court which would otherwise have jurisdiction shall have jurisdiction to try any offence under this Act which is committed or alleged to have been committed within the territorial sea referred to in section 2 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), the exclusive economic zone referred to in section 4 of that Act and the continental shelf referred to in section 6 of that Act.

Evidence.

75. The production in any criminal or civil proceeding in any court of law of any certificate purporting to have been signed by the Commissioner certifying whether or not on a date specified in such certificate -

- (a) a licence was issued, renewed or transferred to a person so specified;
- (b) any interest in such licence has been granted, ceded or assigned to a person so specified;
- (c) any person has been joined holder of a licence so specified;
- (d) any term or condition so specified is or was a term or condition of a licence;
- (e) a person mentioned in such certificate is or was a holder of a licence;
- (f) a licence has been issued in respect of any block or blocks so specified;
- (g) any block or blocks so specified were situated within a particular petroleum field,

shall, unless the contrary is proved, be conclusive evidence of the facts mentioned therein.

Forfeiture orders.

76. If a person is convicted of an offence under this Act the court which has convicted such person may, in addition to any other penalty imposed or any forfeiture ordered under any other law, order any petroleum recovered in course of the commission of such offence be forfeited to the State, or, in the event of any such petroleum having been sold or otherwise disposed of, order such person to pay an amount equal to the proceeds of the sale or the market value of such petroleum, as determined by the court, for the benefit of the State Revenue Fund.

Amendment of Schedule 1.

77. The Minister may from time to time by notice in the *Gazette* amend Schedule 1 by increasing the fees specified in column 2 of that Schedule.

Amendment of laws.

78. (1) The laws specified in schedule 2 are hereby amended to the extent set out in the third column of that Schedule.

(2) Notwithstanding the amendment of the Mines, Works And Minerals Ordinance, 1968, under subsection (1), but subject to the provisions of subsection (3) and (4), any right granted to any person under that Ordinance in relation to natural oil, as defined in section 1 of that Act, which existed on the date immediately before the commencement of this Act shall in respect of such person continue to exist subject to the provisions of that Ordinance as if this Act had not been enacted until the date on which a licence is issued in terms of the provisions of this Act to that person.

(3) A person referred to in subsection (2) -

- (a) shall, if he or she wishes to continue after a period of three years as from the commencement of this Act to exercise any or some of the rights referred to in subsection (2), within such period of three years, or such further period as the Minister may on good cause shown allow in writing, after such commencement apply for a licence in terms of the provisions of this Act in terms of which any or some of such rights are granted to such person;
 - (b) shall, during any period referred to in paragraph (a) before a licence is, by virtue of an application contemplated in that paragraph, issued to him or her, comply, except in so far as it would obviously be inappropriate, with the provisions of section 18, 19, 20 and 21 of this Act as if -
 - (i) he or she were the holder of a licence issued in terms of the provisions of this Act;
 - (ii) any term and condition of such right were a term and condition determined under the provisions of this Act;
 - (iii) any grant area, or defined portion thereof, to which such right relates were a block.
- (4) A right referred to in subsection (2) shall lapse -
- (a) on the date on which a licence is, by virtue of an application contemplated in paragraph (a) of subsection (3), issued to him or her; or
 - (b) in the case of a person who fails to apply for a licence in accordance with the provisions of subsection (2)(a), on the date on which the right granted to such person in terms of said Mines, Works And Minerals Ordinance, 1968, lapses by virtue of the provisions of that Ordinance.

Short title and commencement.

79. This Act shall be called the Petroleum (Exploration and Production) Act, 1991, and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

SCHEDULE 1
Fees payable in respect of application for, and renewal of,
licences, and for inspection of, or obtaining of copies
of entries in, the register
(Sections 11, 15 and 77)

Column 1	Column 2
Nature of application	Amount of fee
Application for reconnaissance licence	R 15 000
Application for renewal of reconnaissance licence	R 3 000
Application for exploration licence	R 30 000
Application for renewal of exploration licence	R 15 000
Application for production licence	R 30 000
Application for renewal of production licence	R 15 000
Application for transfer of reconnaissance licence	R 30 000
Application for transfer of exploration licence	R 30 000
Application for transfer of production licence	R 30 000
Inspection of register	R 300
Obtaining copy of entry in register, per copy	R 150

SCHEDULE 2
Amendment of Laws
(Section 78)

Column 1	Column 2	Column 3
No. and year of law	Title of law	Extent of amendment
Ordinance 20 of 1968	Mines, Works and Minerals Ordinance, 1968	<p>(a) The amendment of section 1 –</p> <p>(i) by the substitution for the definition of "continental shelf" of the following definition: "continental shelf" means the continental shelf [as defined in the Convention on the Continental Shelf signed at Geneva on the twenty-ninth day of April, 1958, or as it may from time to time be defined by international convention accepted by the Republic of South Africa] <u>referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);</u>";</p> <p>(ii) by the insertion after the definition of "diagram" on the following definition: <u>"exclusive economic zone" means the exclusive economic zone of Namibia referred to in section 4 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);</u>";</p> <p>(iii) by the substitution in the definition of "mineral" for the words preceding the proviso of the following words: "mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or bed of the sea and having been formed by or subjected to a geological process, but does not include <u>petroleum as defined in section 1 of the Petroleum (Exploration and Production) Act, 1991, and water, not being water taken from the earth or sea for the extraction therefrom of a mineral;</u>"; and</p> <p>(iv) by the deletion of the definition of "natural oil";</p> <p>(b) the amendment of section 2 by the substitution for subsection (1) of the following subsection:</p> <p>" (1) The right of prospecting and mining for and disposing of precious and base minerals in [the territory] <u>Namibia</u>, including [its territorial waters] <u>the exclusive economic zone</u> and <u>the</u> continental shelf, is vested in the [Administrator-General] <u>State.</u>"</p>

