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25.5.15

# PETROLEUM BILL, 2015

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## **PETROLEUM BILL, 2015**

### **A BILL FOR AN ACT TO PROVIDE FOR THE EXPLORATION AND PRODUCTION OF PETROLEUM AND FOR MATTERS INCIDENTAL THERE TO**

**Enacted by the Parliament of The Bahamas**

#### **PART I - PRELIMINARY**

**1. Short title and commencement.**

- (1) This Act may be cited as the Petroleum Act, 2015.
- (2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette, appoint.

**2. Interpretation.**

In this Act —

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

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

“**block**” means —

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

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

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

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

**“court”** means the Supreme Court;

**“discovery”** means discovery of petroleum;

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

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

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

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

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

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

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

and includes —

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

but does not include —

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

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

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

**“lease”** means a production lease;

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

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

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

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

**“mile”** means 5280 linear feet;

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

**“operator”** means —

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

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

**“petroleum”** —

- (a) means any naturally occurring hydrocarbon or a mixture of hydrocarbons, other than coal, whether in a gaseous, liquid, or solid state; and
- (b) includes any petroleum which has been or otherwise recovered from its natural condition, but which has been returned to a natural reservoir for storage purposes;

**“petroleum operations”** means the operations related to the various stages of the petroleum industry and includes natural gas processing, exploring for, producing, refining, transporting and

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

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

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

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

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

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

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

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

**“well”** means a borehole made by drilling whether or not for the extraction of petroleum and includes any device on it for containing the pressure and any borehole for re-injection purposes.

## RIGHTS OF GOVERNMENT TO PETROLEUM RESOURCES

### 3. Vesting of petroleum resources in the Government.

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

## POWERS OF MINISTER

### 4. Minister to be a Corporation Sole.

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

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

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

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

**6. General powers of Minister.**

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

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



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

**7. Petroleum agreements.**

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

**8. High water and survey marks.**

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

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

## **PART II – PETROLEUM OPERATIONS**

### **RESTRICTIONS ON GRANT OF PERMITS, LICENCES AND LEASES**

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

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

#### **10. Restriction on grant of licence.**

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

#### **11. Restriction on grant of lease.**

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

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

#### PERMITS, LICENCES AND LEASES

##### **12. Application for permit.**

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

##### **13. Grant of permit.**

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

##### **14. Renewal of permit.**

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

**15. Application for licence or lease.**

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

**16. Considerations for grant of licence.**

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

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

**17. Grant of licence.**

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

**18. Considerations for grant of lease.**

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

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

**48. Grant of ancillary right and compensation.**

- (1) Where a matter is referred to the court under section 46(3), the court in determining whether to grant an ancillary right shall take into account –
  - (a) the effect of a grant of an ancillary right on the amenities of the locality concerned;
  - (b) the public interest;
  - (c) any other matters the court deems fit.
- (2) In accordance with this Act, the court may grant an ancillary right subject to such terms and conditions as and for such period of time as the court deems fit.
- (3) The court may impose as a condition of the grant of an ancillary right and a condition precedent before an ancillary right can be exercised that –
  - (a) any compensation to be paid in respect thereof; and
  - (b) any security shall be paid to such persons as the court may determine to be entitled thereto.
- (4) Where the person to whom any such compensation is payable cannot be found or ascertained such compensation shall be paid into the court.
- (5) Such compensation shall, in every case, be assessed on the basis of what would be fair and reasonable having regard to the conditions subject to which the ancillary right is or is to be granted.

**49. Effect of grant of ancillary rights.**

An ancillary right granted under this Act shall not —

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

**50. Restriction on granting ancillary rights.**

- (1) No ancillary right shall be granted under this Act unless it is shown that it is not reasonably practicable to obtain the ancillary right in question by private arrangement for any of the following reasons —
  - (a) that the person with power to grant the ancillary right are numerous or have conflicting interests;
  - (b) that the person with power to grant the ancillary right, or any of them, cannot be ascertained or cannot be found;

- (c) that the person from whom the ancillary right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect in title, legal disability or otherwise; or
  - (d) that the person with power to grant the ancillary right unreasonably refuses to grant it or demands terms which, having regard to the circumstances are unreasonable.
- (2) For the purposes of this Act, a person whose concurrence is necessary for the exercise of an ancillary right shall be deemed to be a person having power to grant the ancillary right, or a person from whom the ancillary right must be obtained, as the case may be.

## **PART V – MISCELLANEOUS**

### **51. General penalty.**

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

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

### **52. Regulations.**

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

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

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

**53. Savings.**

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

**54. Repeal.**

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

### **OBJECTS AND REASONS**

This Bill seeks to repeal the existing Petroleum Act and provide for modernized legislation with respect to the exploration and production of petroleum and other related matters. While the substance of the proposed Bill remains similar to the repealed legislation, the new provisions, along with the accompanying regulations, provide for modernized provisions in keeping with current industry standards.

Clause 3 of the Bill seeks to continue the vesting of petroleum resources in the Government.

Clause 4 of the Bill seeks to establish the Minister as a Corporation Sole.

Clause 5 of the Bill seeks to give the Minister power to grant permits, licences and leases as he thinks fit and to allow the Minister to employ a procedure of competitive bidding, in certain instances.

Clause 6 of the Bill seeks to provide the Minister with general powers.

Clause 7 of the Bill seeks to allow the Minister to enter into a petroleum agreement for the purpose of exploration and production of petroleum within the land or any submarine area referred to therein or for the purpose of establishing the terms, conditions and financial provisions relating to a permit, lease or licence or lease.

Clause 8 of the Bill seeks to give the Minister the right to fix, after consultation with other named Ministers, the high watermark with respect to land or submarine area and to direct an instrument to erect and maintain survey marks and to illuminate installations in a submarine area.

Part II, specifically clauses 9, 10 and 11 of the Bill seeks to place restrictions on the grant of permits, licences and leases.

Clauses 12-22 seeks to address the application, consideration, grant, renewal, execution and extension of an instrument.

Clause 23 of the Bill seeks to direct the Minister to require the holder of a licence or lease to relinquish an amount of the original area to be determined by the Minister.

Clause 24 of the Bill seeks to inform the holder of a licence or lease of their obligation to notify the Minister of their desire to surrender an area thereunder.

Clause 25 of the Bill seeks to give the Minister the discretion to allow joint operations to occur where a discovery extends beyond the boundaries of an area under a licence.

Clause 26 of the Bill seeks to give the Minister the discretion to allow cross border operations to occur where a discovery extend into the territory of another country.



Clause 27 of the Bill seeks to allow the Minister to vary the conditions of an instrument.

Clause 28 of the Bill seeks to prohibit the holder of an instrument from assigning or transferring rights or obligations without the prior approval of the Minister in writing.

Clause 29 of the Bill seeks to allow the Minister to terminate an instrument where he deems it satisfactory to do so and upon following the procedure outlined for termination.

Clause 30 of the Bill seeks to direct the licensee and lessee to pay the Minister a royalty.

Clause 31 of the Bill seeks to give the Minister the option to accept petroleum in lieu of royalty.

Clause 32 of the Bill seeks to provide for certain cases in which royalty shall not be payable.

Clause 33 of the Bill seeks to establish the currency of the Bahamas as the trading currency.

Clause 34 of the Bill seeks to stipulate how and when fees, rents etc. should be paid.

Clause 35 of the Bill seeks to provide for the exemption of customs duties on the importation of materials necessary for the purposes of an instrument, subject to some stipulations.

Clause 36 of the Bill seeks to impose on the Minister a duty to require from the holder of an instrument security for operations and due performance.

Clauses 37 and 38 of the Bill seek to make the holder of an instrument absolutely liable for environmental damage and requires the holder thereof to take precaution for environmental damage.

Clause 39 of the Bill seeks to require the holder of every instrument to indemnify the Minister against third party actions arising out of unauthorized exercise of rights.

Clause 40 of the Bill seeks to require the holder of every instrument to obtain and maintain insurance or other acceptable financial security against liability arising out of petroleum operations and as a result of a major environmental incident.

Clause 41 of the Bill seeks to allow the Minister to remedy default by the holder of an instrument in respect of failure to carry out operations.

Clauses 42 and 43 of the Bill seeks to require the holder of every instrument to prepare and furnish to the Minister records, information and data concerning their operations.

Clause 44 of the Bill seeks to make provision for the Minister to lay upon the table of each House of Parliament, an annual report with respect to petroleum operations.

Part IV of the Bill (clauses 45 - 50) seeks to make provisions for the application, evaluation, and effect and restrictions on the grant of ancillary rights to an instrument holder.

Part V of the Bill (clauses 51 - 54) seeks to make provision for offences, a general penalty, the making of regulations by the Minister and savings and repeal of the Petroleum Act (Ch. 219).