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PETROLEUM LAWS AMENDMENT ACT, 1998

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Petroleum (Exploration and Production) Act, 1991, so as to make provision for the extension of the duration of exploration licences; to further regulate the obligation of holders of exploration licences in terms of the terms and conditions of any such licences; to rectify the provisions of section 41 in relation to discoveries which are of commercial interest; to provide for the submission of decommissioning plans together with applications for production licences; to make different provision for the royalty payable on petroleum in respect of licences issued after the commencement of this Act; to further regulate the annual charges payable by holders of exploration and production licences; and to provide for the decommissioning of facilities on the cessation of production operations; to amend the Petroleum Taxation Act, 1991, so as to reduce the rate of petroleum income tax; to provide for the allowance of deductions in respect of annual contributions to trust funds established for purposes of decommissioning of facilities in certain areas; to levy tax on surplus amounts in such trust funds; to provide for the allowance of deductions in respect of exploration expenditure incurred in any one or more other licence areas where no gross income was received; to make other provision for additional profits tax payable by the holders of production licences issued after a certain date; and to make further provision for the modification of Part III by virtue of terms and conditions contained in a petroleum agreement in relation to participation by the National Petroleum Corporation of Namibia in exploration or production operations; and to provide for incidental matters.

(Signed by the President on 4 September 1998)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

Amendment of section 30 of Act 2 of 1991

1. Section 30 of the Petroleum (Exploration and Production) Act, 1991, is hereby amended by the insertion of the following subsection after subsection (2):

"(2A) Notwithstanding the provisions of subsection (1), the Minister may, upon an application made by the holder of an exploration licence not later than 90 days before the expiry of the period or further period, as the case may be, determined in terms of paragraph "a) or (b) of that subsection or subsection (2), extend, on good grounds shown in that application, the period so determined to a period which would, together with the period so determined, not exceed –

(a) in the case of a period determined in terms of paragraph (a) of subsection (1), a period of five years; or

(b) in the case of any further period determined in terms of paragraph (b) of subsection (1) or the further period determined in terms of subsection (2), a period of three years,

which period shall for purposes of any provision of this Act be deemed to be the period determined at the time of the granting or renewal, as the case may be, of the exploration licence."

Amendment of section 38 of Act 2 of 1991

2. Section 38 of the Petroleum (Exploration and Production) Act, 1991, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) remove from such exploration area, or otherwise deal with, as directed by the Minister in consultation with the Minister or Ministers responsible for environment, fisheries and finance, all [structures, equipment and other goods] installations, equipment, pipelines and other facilities, whether on-shore or offshore, not used or intended to be used in connection with such exploration operations;"

Amendment of section 41 of Act 2 of 1991

3. Section 41 of the Petroleum (Exploration and Production) Act, 1991, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(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."

Amendment of section 46 of Act 2 of 1991

4. Section 46 of the Petroleum (Exploration and Production) Act, 1991, is hereby amended –

- (a) by the substitution for subparagraph (vi) of paragraph (i) of subsection (2) of the following subparagraph:

"(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;" and

- (b) by the insertion after subparagraph (vi) of paragraph (i) of subsection (2) of the following subparagraph:

"(viA) separate decommissioning plans in respect of the production area and any area outside such production area where activities in connection with the production operations in such production area are being carried out, setting out to the satisfaction of the Minister (acting in consultation with the Minister or Ministers responsible for environment, fisheries and finance), the measures proposed to be taken after cessation of such production operations to remove or otherwise deal with all installations, equipment, pipelines and other facilities, whether on-shore or off-shore, erected or used for purposes of such operations and to rehabilitate land disturbed by way of such operations, which plans shall include –

(aa) the estimated time at which such decommissioning would occur;

(bb) the extent of such decommissioning;

(cc) the manner in which such decommissioning would take place;

(dd) the estimated cost of such decommissioning; and

(ee) such other measures or information as the Minister may determine;"

Substitution of section 62 of Act 2 of 1991

5. The following section is hereby substituted for section 62 of the Petroleum (Exploration and Production) Act, 1991:

"Royalty payable on petroleum

62.(1) 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 –

- (a) 12 ¹/₂ per cent; or

- (b) where such production licence is one issued to a person who is granted an exploration licence after the commencement of section 5 of the Petroleum Laws Amendment Act, 1998, in relation to an area which includes the production area to which the production licence relates, five 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.

(2) For purposes of the application of the provisions of paragraph (b) of subsection (1), an exploration licence which has been issued after the commencement referred to in that paragraph in substitution of an exploration licence issued before such commencement, shall be deemed to have been issued before such commencement."

Amendment of section 67 of Act 2 of 1991

6. Section 67 of the Petroleum (Exploration and Production) Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) in the case of an exploration licence –

(i) 60 during the [first four years] period as determined or extended in terms of paragraph (a) of subsection (1) or paragraph (a) of subsection (2A) of section 30 of the licence;

(ii) 90 during the [next two years] period or periods as determined or extended in terms of paragraph (b) of subsection (1) or paragraph (b) of subsection (2A) of section 30 in respect of the first renewal of such licence;

(iii) 120 during the subsequent [two years] period or periods as determined or extended in terms of paragraph (b) of subsection (1) or paragraph (b) of subsection (2A) of section 30 in respect of the second renewal of the licence;

(iv) 150 during the subsequent period or periods as determined or extended in terms of paragraph (b) of subsection (1), read with paragraph (b) of subsection (2), or paragraph (b) of subsection (2A) of section 30 in respect of the third renewal of the licence:".

Insertion of Part XA in Act 2 of 1991

7. The following Part is hereby inserted after Part X of the Petroleum (Exploration and Production) Act, 1991:

"PART XA

DECOMMISSIONING OF FACILITIES ON CESSATION OF PRODUCTION OPERATIONS

Review, revision or amendment of decommissioning plans

68A.(1) The holder of a production licence shall -

(a) review and, if necessary, revise the decommissioning plans referred to in section 46(2)(i)(viA) on a date one year before the estimated date on which 50 per cent of the

estimated recoverable reserves of petroleum in the production area would have been produced; and

(b) submit such reviewed or revised decommissioning plan forthwith to the Minister for his or her approval.

(2) The Minister may, in consultation with the Minister or Ministers responsible for environment, fisheries and finance, approve a decommissioning plan submitted to him or her in terms of subsection (1) or refer such reviewed or revised decommissioning plan back to the holder of the production licence concerned to make such amendments as the Minister may deem necessary.

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

(a) fails to comply with the provisions of subsection (1) or (2), the Minister may by notice in writing addressed and delivered to such holder order such holder to review, revise or amend the decommissioning plan in question, within a period specified in such notice or such further period as the Minister may from time to time determine;

(b) fails to comply with an order made under paragraph (a), the Minister may cause such decommissioning plan to be reviewed, revised or amended and recover the costs incurred in connection with such review, revision or amendment from such holder.

(4) A decommissioning plan reviewed, revised or amended in terms of subsection (3)(b) shall for purposes of the provisions of this Act be deemed to be the decommissioning plan of the holder of the production licence concerned.

(5) (a) If any holder of a production licence is not satisfied with any decision taken by the Minister in terms of subsection (2) or (3)(b), the Minister shall, at the request of such holder, refer the decommissioning plan, as reviewed, revised or amended, to a person designated, after consultation with such holder, by the Minister by virtue of such person's special knowledge and experience in the field of petroleum production to advise him or her, at the expense of such holder, on such review, revision or amendment, whereupon, the Minister may reconsider any such decision in accordance with such advice.

(b) The holder of a production licence shall not be entitled to repeat a request for reconsideration in terms of paragraph (a) after the Minister has given his or her decision under that subsection.

Establishment of trust funds by holders of production licences for purposes of decommissioning facilities on cessation of production operations

68B. (1) The holder of a production licence shall, on a date determined by the Minister by notice in writing to such holder, which shall be a date not earlier than the date on which 50 per cent of the estimated recoverable reserves of petroleum in the production area would have been produced, establish a trust fund in accordance with the provisions of subsection (3) -

(a) into which shall be deposited annually, not later than 30 days after the end of each calendar year, such amount in such freely convertible currency as may be

determined by the board of trustees which, when accumulated with other amounts already paid into the fund, including interest earned on such amounts, and with the other amounts estimated to be paid into the fund in future years represents the estimated future costs of decommissioning the facilities in the production area on cessation of production operations in such area and the costs of the administration of the trust fund, and which shall be calculated in accordance with a formula, based on the 'levels of production, as may from time to time be determined by the Minister by notice in the Gazette; and

- (b) out of which shall be paid the costs of such decommissioning and the costs of the administration of the affairs of the trust fund in such manner as may be prescribed in the trust deed.

(2) A separate trust fund shall be established *mutatis mutandis* in accordance with the provisions of subsection (1) in respect of the decommissioning of the facilities in any area outside the production area where facilities are used in connection with the production operations of the holder of the production licence in question.

(3) Subject to the provisions of subsection (4), the trust deeds establishing the trust funds referred to in subsections (1) and (2) shall be approved by the Minister after consultation with the Minister responsible for finance, and shall provide, subject to the provisions of this section, for -

- (a) the appointment and functions of a board of trustees in respect of each trust fund;
- (b) the winding up of each trust fund.

(4) (a) The trust funds referred to in subsections (1) and (2) shall each be managed by a board of trustees consisting of such equal number of persons, not fewer than four members, as may be determined by mutual agreement between the Minister and the holder of the licence concerned of which one-half shall be nominated by the Minister and the other half shall be nominated by the holder of the licence concerned.

(b) The Minister shall designate from amongst the members nominated by him or her one member who shall be the chairperson and another such member to be the vice-chairperson of the board of trustees.

(5) A board of trustees referred to in subsection (4) shall –

- (a) open in respect of the trust fund a secure interest-yielding account at such reputable financial institution as may be determined by the board and approved by the Minister after consultation with the Minister responsible for finance;
- (b) review the state of the trust fund at least once a year;
- (c) determine, in accordance with the formula determined in terms of subsection (1)(a), the amount to be deposited into the trust fund each year and notify the holder of the licence concerned in writing of the amount so determined;

(d) report to the Minister in such form as may be determined by the Minister within 30 days at the end of each calendar year on the state of the trust fund, and submit a copy of such report to the holder of the production licence concerned.

(6)(a) No amount other than -

(i) an amount in respect of expenditure incurred in relation to the decommissioning of facilities in accordance with the decommissioning plan in the area in respect of which the trust fund has been established;

(ii) the expenditure incurred in accordance with subsection (9); and

(iii) the costs of the administration of the affairs of the trust fund,

shall be paid out of the trust fund.

(b) No expenditure referred to in paragraph (a)(i) shall be incurred as a charge against the trust fund, except with the prior approval of all the members of the board of trustees.

(c) No amounts shall be paid out of the trust fund without the approval of at least one member of the board nominated by the Minister and one such member nominated by the holder of the production licence in question.

(7) In the event of the winding up of a trust fund referred to in this section any claim against such fund in respect of expenditure incurred for purposes of the decommissioning in question shall rank *pari passu* and preferent to any other claim and abate in equal proportion.

(8) (a) The board of trustees referred to in subsection (4) shall meet at least once in every calendar year at such place and time as may be determined by the chairperson of the board.

(b) The majority of the members of the board shall form a quorum for a meeting of the board.

(c) A decision of the majority of the members present at a meeting of the board shall be a decision of the board: Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to his deliberative vote.

(9) The members of the board shall not receive any remuneration but may be paid out of the trust fund, at a tariff which may be determined by the board, their reasonable expenditure for travelling and subsistence actually incurred while engaged on the business of the board.

Exemption from taxes

68C. No tax or levy on income imposed by or under any law other than the Petroleum Taxation Act, 1991, shall be payable by a trust fund established in terms of section 68B.

Obligations and rights of holders of production licences in relation to decommissioning plans

68D. (1) The holder of a production licence shall, on cessation of production operations in the production area or any area outside such area where any facilities are used in connection with such production operations, act in accordance with the decommissioning plan prepared or, where applicable, revised or amended in terms of this Act in respect of any such area.

(2) If a holder of a production licence referred to in subsection (1) fails to comply with the provisions of that subsection, the Minister may cause such steps to be taken as may be necessary to comply with such holder's obligations in terms of the decommissioning plan in question, and may recover the costs incurred in connection with such decommissioning from the relevant trust fund established in terms of section 68B.

(3) The holder of a production licence shall -

(a) be responsible for meeting the full costs of decommissioning in accordance with the decommissioning plan, notwithstanding that there may be a shortfall between such full costs and the accumulated amount in the trust fund;

(b) be entitled to receive payment of any surplus in the trust fund in question after all expenditure in relation to the decommissioning of facilities has been paid, less such amount as may be payable on such surplus in terms of the provisions of the Petroleum (Taxation) Act 1991 (Act No. 3 of 1991).

Application of this Part

68E. The provisions of this Part shall not be construed as exempting the holder of a production licence from any other provision of this Act relating to the cessation of production operations in any production area and the removal of, or other manner of dealing with, any installations, equipment, pipelines or other facilities from such area or any other area where such facilities are used connection with the production operations of the holder of the production licence in question."

Amendment of section 1 of Act 3 of 1991

8. Section 1 of the Petroleum (Taxation) Act 1991, is hereby amended -

(a) by the substitution for paragraph (a) of the definition of "net cash receipts" of the following paragraph:

"(a) all allowable deductions other than a deduction referred to in section 8(a)(iv) as if they were, in the case of exploration expenditure and development expenditure referred to in **[sections] section 9, excluding subsection (1)(aA) thereof, and section 10, excluding subsection (1)(aA) thereof,** allowed in the year in which such exploration expenditure and development expenditure were actually incurred;" and

(b) by the substitution for the definition of "the Price Index" of the following definition:

"the Price Index' means the value of the United States Industrial Goods Producer Price Index reported for the first time **[in] for** the tax year in question in the monthly publication of the International Monetary Fund known as *'International Financial Statistics'* in the section titled *'Price, Production, Employment'*";.

Substitution of section 6 of Act 3 of 1991

9.(1) The following section is hereby substituted for section 6 of the Petroleum (Taxation) Act, 1991:

"Rate of petroleum income tax

6. The rate of petroleum income tax to be levied shall be **[42] 35** per cent of the taxable income received by or accrued to or in favour of any person from a licence area in connection with exploration operations, development operations or production operations in any tax year carried out in such licence area."

(2) Subsection (1) shall come into operation on the commencement of the first ensuing tax year after the commencement of this Act.

Amendment of section 8 of Act 3 of 1991

10. Section 8 of the Petroleum (Taxation) Act 199 1, is hereby amended -

(a) by the substitution for subparagraph (xii) of paragraph (a) of the following subparagraph:

"(xii) the restoration of a licence area, or any part thereof, after cessation of exploration operations **[development operations or production operations]** in such licence area to the extent to which such expenditure may, by virtue of any term and condition of a licence issued in respect of such area, be allowed as a deduction in determining such person's taxable income;" and

(b) by the addition of the following paragraph:

"(d)(i) the amount calculated in accordance with the formula referred to in section 68B(1)(a) of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), and deposited in the tax year concerned in the trust fund referred to in that section; and

(ii) in the tax year in which decommissioning has been completed, the shortfall referred to in section 68D(3)(a) of the Petroleum (Exploration and Production) Act, 1991."

Amendment of section 9 of Act 3 of 1991

11. Section 9 of the Petroleum (Taxation) Act 199 1, is hereby amended by the insertion in subsection (1) of the following paragraph after paragraph (a):

"(aA) in any year of production after the commencement of section 11 of the Petroleum Laws Amendment Act, 1998, in addition to the exploration expenditure referred to in paragraph (a)(i), any exploration expenditure incurred by the holder of the licence in question in respect of any other licence area or areas in which no gross income was received by or accrued to or in favour of such holder in connection with exploration operations in such other licence area or areas during that year of production or any earlier year of production after such commencement: Provided that where gross income is received by or accrued to or in favour of the person concerned in respect of a second or more than two licence areas, a portion of the exploration expenditure incurred in the other licence areas where there is no gross income shall be allowed in the proportion that the gross income so received or accrued, less the amounts deducted in terms of section 8 in respect of such gross income relating to each such area, bears to the total of all such gross income less section 8 deductions from all such areas in the year;"

Amendment of section 10 of Act 3 of 1991

12. Section 10 of the Petroleum (Taxation) Act, 1991, is hereby amended by the insertion of the following paragraph after paragraph (a):

"(aA) in addition to the exploration expenditure referred to in paragraph (a), any exploration expenditure incurred in any tax year after the year of production by the holder of the licence in question in respect of any other licence area or areas in which no gross income was received by or accrued to or in favour of such holder in connection with exploration operations in such other licence area or areas during that tax year: Provided that where gross income is received by or accrued to or in favour of the holder concerned in respect of a second or more than two licence areas, a portion of the exploration expenditure incurred in the other licence areas where there is no gross income shall be allowed in the proportion that the gross income so received or accrued, less the amounts deducted in terms of section 8 in respect of such gross income relating to each such area, bears to the total of all such gross income less section 8 deductions from all such areas in the year;".

Amendment of section 14 of Act 3 of 1991

13. Section 14 of the Petroleum (Taxation) Act, 1991, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any expenditure, including expenditure in respect of rent, incurred by a person in the tax year outside Namibia in respect of general administration and management of the business of the person referred to in section 8(a)(xi) and capital expenditure referred to in paragraph (f) of the definition of 'development expenditure' and paragraph (f) of the definition of 'exploration expenditure' in section 1, shall, if otherwise an allowable deduction under this Act, be allowed as a deduction only to the extent to which provision is made in any term and condition of a **[production]** licence or, if no such term and condition exists, to such extent as the Permanent Secretary may consider such expenditure to be just and reasonable having regard to the amount of such expenditure or to such amount and the extent and nature of the exploration operations, development operations or production operations carried out by such person."

Amendment of section 16 of Act 3 of 1991

14. Section 16 of the Petroleum (Taxation) Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any allowable deduction which may in terms of different provisions of this Act be allowed in respect of a person as a deduction, whether it may be so allowed in respect of one or more tax years or not, shall not be allowed as a deduction on more than one occasion."

Amendment of section 19 of Act 3 of 1991

15. Section 19 of the Petroleum (Taxation) Act, 1991, is hereby amended -

(a) by the substitution in subsection (2) for subparagraph (ii) of paragraph B of the formula of the following subparagraph:

"(ii) plus the average change, expressed in a percentage, during such tax year in the annual average level of the Price Index or such other price index so expressed, as may be determined in respect of such licence area by mutual agreement between the Minister and **[such person]** the holder or holders of the licence in question and made known by the Permanent Secretary by notice in the *Gazette*; and"; and

(b) by the substitution in subsection (2) for paragraph C of the formula of the following paragraph:

"C, represents the net cash receipts of **[such person]** the holder or holders of the licence in question in relation to such licence area for such tax year."

Amendment of section 21 of Act 3 of 1991

16. Section 21 of the Petroleum (Taxation) Act, 1991, is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) if the first accumulated net cash position is in respect of the tax year expressed in a positive amount, be determined at the rate of such percentage of such positive amount as may be determined in accordance with the formula -

$$\frac{56,5 - N}{P - N} \times P,$$

in which formula -

N, represents the rate at which petroleum income tax is leviable in terms of section 6 or 56,5 per cent, whichever is the lower;

P, represents 100 percent,

or, in the case of a production licence issued as provided in section 62(1)(b) and (2) of the Petroleum (Exploration and Production) Act, 1991, in accordance with the formula -

$$\frac{51,25 - N}{P - N} \times P,$$

(P - N)

in which formula

N, represents the rate at which petroleum income tax is leviable in terms of section 6 or 51,25 per cent, whichever is the lower;

P represents 100 percent;".

Amendment of section 22 of Act 3 of 1991

17. Section 22 of the Petroleum (Taxation) Act, 1991, is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) a petroleum agreement which provides for the modification of any provision of this Part in relation to -

- (i) production sharing **[or participation in any such production sharing];**
- (ii) participation by the National Petroleum Corporation of Namibia in exploration operations or production operations as provided in section 8(1)(a) or (b) of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991);".

Insertion of Part IIIA in Act 3 of 1991

18. The following Part is hereby inserted after Part III of the Petroleum (Taxation) Act, 1991:

"PART IIIA

TAX ON REFUNDS OF SURPLUS AMOUNTS IN TRUST FUNDS REFERRED TO IN SECTION 68D(3) OF THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT, 1991 (ACT 2 OF 1991)

Tax on surplus amounts in trust funds

22A. (1) In the tax year in which decommissioning of facilities has been completed, there shall be paid for the benefit of the State Revenue Fund by the holder of a production licence in respect of whose production operations a trust fund has been established in terms of section 68B of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991), a tax on any surplus amount in such trust fund, comprising the aggregate of –

(a) an amount determined by applying to such surplus the rate applicable to such holder in respect of petroleum income tax in terms of section 6; and

(b) an amount determined by applying to such surplus amount, less the amount determined in terms of paragraph (a), the highest rate, as ascertained from the Permanent Secretary, of additional profits tax paid by such holder in terms of section 21 during the period during which such holder made annual contributions to that trust fund in terms of section 68B of the Petroleum (Exploration and Production) Act, 1991 (Act 2 of 1991).

(2) The Board of Trustees which is required to refund the surplus amount referred to in subsection (1) to the holder of a production licence in question shall, before so refunding such amount -

(a) determine the amount payable by such holder in accordance with subsection (1);

(b) deduct the amount so determined from such surplus amount; and

(c) pay, on behalf of such holder, such amount over to the Permanent Secretary."

Short title and commencement

19. This Act shall be called the Petroleum Laws Amendment Act, 1998, and shall come into operation, subject to section 9(2), on a date to be determined by the Minister of Mines and Energy by notice in the *Gazette*.