



Tonga

# **PETROLEUM MINING REGULATIONS**

**Chapter 46.08.1**

**2016 Revised Edition**





# PETROLEUM MINING REGULATIONS

## Arrangement of Regulations

### Regulation

|  |   |           |
|--|---|-----------|
| 1  | Short title .....   | 7         |
| <b>PART I — DEFINITIONS</b>                    |   | <b>7</b>  |
| 2  | Interpretation .....  | 7         |
| 3  | Graticulation of earth's surface and constitution of blocks.....    | 10        |
| 4  | Reference Map.....  | 11        |
| <b>PART II — FINANCIAL PROVISION</b>           |   | <b>11</b> |
| 5  | Royalty .....   | 11        |
| 6  | Prohibition on disposal of petroleum .....                          | 12        |
| 7  | Remission of royalty etc.....                                       | 12        |
| 8  | Security for compliance and recovery of royalty .....               | 12        |
| 9  | Right of distress .....   | 12        |
| 10   | Fees in respect of petroleum agreement and exploration licence..... | 13        |
| <b>PART III — RECORDS, ACCOUNTS, ETC.</b>      |   | <b>13</b> |
| 11   | Company to keep and give records .....                              | 13        |
| 12   | Company to keep samples .....                                       | 14        |
| 13   | Company to keep accounts .....                                      | 15        |
| 14   | Company to furnish copy of agreements .....                         | 16        |
| 15   | Treatment of information supplied by company .....                  | 16        |
| <b>PART IV — RIGHTS RESERVED BY GOVERNMENT</b> |   | <b>17</b> |
| 16   | Government may work other substances in Scheduled Lands.....        | 17        |
| 17   | Government may enter Scheduled Lands for other purposes .....       | 18        |

|    |  |    |
|----|--|----|
| 18 | Government may alienate Scheduled Lands to third parties subject to company's rights .....     | 18 |
| 19 | Government may alienate surface in certain case so as to interfere with Company's rights ..... | 19 |
| 20 | Government may exclude lands for public purposes .....   | 20 |
| 21 | Fishing and navigation .....   | 20 |

## **PART V — MISCELLANEOUS DUTIES OF A COMPANY** **21**

|    |   |    |
|----|---|----|
| 22 | Restrictions as to alienated lands .....                            | 21 |
| 23 | Occupation of Scheduled Lands for surface purposes .....            | 21 |
| 24 | Company not to cause damage .....                                   | 22 |
| 25 | Timber cutting in Reserved Forest restricted .....                  | 22 |
| 26 | Limitation of right over foreshore .....                            | 22 |
| 27 | Limitation of rights over sea areas and reclamation .....           | 22 |
| 28 | Installations in Sea areas .....                                    | 23 |
| 29 | Pollution .....   | 23 |
| 30 | Company not to use lands other than the purposes of Agreement ..... | 23 |
| 31 | Company not to obstruct working of other minerals .....             | 23 |
| 32 | Distance of boreholes or wells from boundaries .....                | 24 |
| 33 | No drilling operations to be carried on near public roads etc. .... | 24 |
| 34 | Notice of the site and commencement of boreholes and wells .....    | 24 |
| 35 | Abandonment and plugging of boreholes .....                         | 24 |
| 36 | Methods of working .....  | 25 |
| 37 | Provision of storage tanks .....                                    | 25 |
| 38 | Disposal of waste oil .....   | 25 |
| 39 | Health and safety .....   | 26 |
| 40 | Unit development .....  | 26 |
| 41 | Refined products .....  | 27 |
| 42 | Right of pre-emption in emergency .....                             | 27 |
| 43 | Land required by a Company for its operations .....                 | 28 |
| 44 | Compensation .....  | 29 |
| 45 | Indemnity against third party claims .....                          | 29 |
| 46 | Statements, Prospectuses, etc. ....                                 | 29 |
| 47 | Notice of fresh issues of capital .....                             | 30 |
| 48 | Lands included by inadvertence in the Scheduled Lands .....         | 30 |
| 49 | Establishment of boundary mark .....                                | 30 |

## **PART VI — MISCELLANEOUS PROVISIONS** **31**

|    |  |    |
|----|--|----|
| 50 | Notification of Assignments .....  | 31 |
| 51 | Measurement of Petroleum .....   | 31 |
| 52 | Power for Government to perform Company's obligations .....                      | 31 |
| 53 | Employment and Training of Citizens of Tonga etc. ....                           | 32 |
| 54 | Rate of production .....   | 32 |
| 55 | Local resident manager .....   | 32 |
| 56 | Delivering up of productive boreholes and wells at end of agreement period ..... | 33 |

|    |  |    |
|----|--|----|
| 57 | Plugging of boreholes and wells at end of agreement period ..... | 33 |
| 58 | Applications .....   | 33 |
| 59 | Obstruction of a Company or Licensee .....                       | 33 |
| 60 | Power of Entry .....   | 34 |
| 61 | Miscellaneous Offences .....                                     | 35 |
| 62 | Offence committed by a body corporate .....                      | 36 |





Tonga

# PETROLEUM MINING REGULATIONS<sup>1</sup>

Commencement [1<sup>st</sup> January 1985]

## 1 Short title

These Regulations may be cited as the Petroleum Mining Regulations.

## PART I — DEFINITIONS

## 2 Interpretation

In these Regulations, unless the context otherwise requires —

“**agreement period**” means the period during which a petroleum agreement subsists as determined under the provisions of these regulations and the petroleum agreement;

“**agreement year**” means a year commencing on the date or anniversary of the commencement of the agreement period;

“**associated natural gas**” means natural gas, including the free gas cap, produced from any well in the Scheduled Lands, the predominant production of which is crude oil, and which is separated from crude oil in accordance with normal oil field practice, but shall exclude any liquid hydrocarbons extracted or in a gas plant;

“**authorised officer**” in relation to any provision of these Regulations means an officer acting under the authority of the Minister;

“**barrel**” means 42 U.S. gallons or 9,702 cubic inches, being equivalent to 34.9726 Imperial gallons;

“**block**” means a block constituted as provided by Regulation 3.

“**calendar month**” or “**month**” means any of the twelve months of the calendar year;

“**calendar year**” or “**year**” means a period of twelve consecutive months according to the Gregorian calendar, starting with 1 January and ending with 31st December;

“**casing head petroleum spirit**” means any liquid hydrocarbons obtained from natural gas (before the crude oil from which it is derived has been measured for royalty) by separation or by any chemical or physical process;

“**Company**” means a party to a petroleum agreement with the Government of the Kingdom of Tonga and for the purposes of these Regulations such party may be an individual;

“**crude oil**” means mineral oil in its natural state before the same has been refined or otherwise treated, but excluding water and foreign substances;

“**Discovery**” means a discovery of petroleum, not previously known to have existed, recovered at the surface in a flow measurable by conventional petroleum industry production testing methods;

“**discovery area**” means a block or blocks within the Scheduled Lands containing, so far as the boundaries of the Scheduled Lands permit, the geological feature (as mapped by the relevant seismic data) or any part thereof, in which a discovery of petroleum is located;

“**exploration licence**” means a licence issued under Section 7 of the Petroleum Mining Act authorising the licensee thereof to explore for petroleum in Tonga;

“**foreshore**” means the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the sea tides and all land adjoining thereunto lying within fifty feet of the high water mark of the ordinary tides;

“**gas condensate**” means the liquid hydrocarbons extracted or recovered from the natural gas either by normal field practices of petroleum gas processing or in a gas plant;

“**graticular section**” means a section referred to in Regulation 3;

“**Government**” means Government of the Kingdom of Tonga;

“**licensee**” means a licensee as defined in the Petroleum Mining Act;

“**Minister**” means the Minister of Lands, Survey and Natural Resources;

“**natural gas**” means gas obtained from bore holes and wells and consisting primarily of hydrocarbons;

“**non-associated natural gas**” means natural gas other than associated natural gas;



“**off-shore land**” means all submerged lands lying within the extent and boundaries of the Kingdom of Tonga, as defined by the Petroleum Mining Act;

“**on-shore land**” means the surface area of the islands of Tongatapu, 'Eua, Ha'apai, Vava'u and other islands in the Kingdom of Tonga, including the foreshores of these islands;

“**Part**” means a Part of these regulations;

“**petroleum**” means petroleum as defined in the Petroleum Mining Act;

“**petroleum agreement**” means a petroleum agreement as defined in the Petroleum Mining Act;

“**petroleum field**” means an area forming a part of a discovery area and including in a single area, so far as the boundaries of the Scheduled Lands permit, the entire area of the reservoir in respect of which a Company has submitted a development plan under the terms of its petroleum agreement;

“**petroleum operations**” means searching for a winning or obtaining of petroleum in Tonga by or on behalf of a Company for its own account by any drilling, mining, extracting or other like operations or process in the course of a business carried on by that company engaged in the course of a business carried on by that company engaged in such operations, and all operations incidental thereto, and/or any sale or disposal by any petroleum company or companies or any purchase exclusively for sale by way of export by any other company or companies of petroleum so won or obtained, and includes the transportation within Tonga by or on behalf of that company of petroleum so won or obtained to any point of sale or delivery or export, but does not include:

- (a) any transportation of petroleum outside Tonga;
- (b) any process of refining at a refinery; or
- (c) any dealings with products so refined.

“**reservoir**” means a discrete accumulation of petroleum in a geological feature located in part or in whole within the Scheduled Lands, limited by:

- (a) lithological boundaries;
- (b) structural boundaries;
- (c) the contact zone between the petroleum and water level; or any combination of these limitations, so that the entire accumulation of petroleum is in pressure, fluid or gas communication. If only part of a reservoir is located within the Scheduled Lands, reference in these Regulations to such reservoir shall mean only that part thereof located within the Scheduled Lands.

“**Scheduled Lands**” means the lands specified in an exploration licence or a petroleum agreement, as the case may be, as the areas to which the said licence or agreement is applicable;

“**surface lands**” means the surface area of the islands of Tongatapu, 'Eua, Ha'apai, Vava'u and other islands in the Kingdom of Tonga, excluding the foreshore of these islands.

Words not defined in these Regulations but which are defined in the Petroleum Mining Act shall, unless the context otherwise requires, have the meaning given to them in the Act.

### **3 Graticulation of earth's surface and constitution of blocks**

- (1) For the purpose of these Regulations, the surface of the earth is deemed to be divided into sections:
  - (a) by the meridian of Greenwich and by the meridians that are at a distance from that meridian of 10 minutes or a multiple of 10 minutes of longitude; and
  - (b) by the equator and by parallels of latitude that are a distance from the equator of 10 minutes, or a multiple of 10 minutes of latitude, each of which is bounded by:
    - (i) portions of two of those meridians that are at a distance from each other of 10 minutes of longitude; and
    - (ii) portions of two of those parallels of latitude that are at a distance from each other of 10 minutes of latitude.
- (2) Where the area in respect of which a petroleum agreement is in force includes one, or more than one, portion of a block constituted as provided by sub-regulation (1):
  - (a) the area of that portion or those portions constitutes a block; and
  - (b) the area of the remaining portion or portions of the first-mentioned block (but not including any part of that area in respect of which a petroleum agreement is in force) constitutes a block.
- (3) Where a petroleum agreement ceases to be in force in respect of an area referred to in sub-regulation (2)(a), the Minister may, by instrument in writing, determine that the area shall be amalgamated with another block or blocks, being a block or blocks:—
  - (a) constituted as provided by this regulation;
  - (b) forming part of the graticular section of which the area forms part; and
  - (c) that is or are either:
    - (i) a block or blocks in respect of which a petroleum agreement is in force; or
    - (ii) a block or blocks constituted under sub-regulation (2)(b.)
- (4) Where a determination is made under sub-regulation (3),

- (a) the area and blocks, both of which are the subject of the determination, cease to constitute separate blocks and their areas together constitute a single block; and
  - (b) in respect of the area and a block, in relation to which there is a petroleum agreement in force, the block constituted by the determination is a block for the remainder of the term of that petroleum agreement.
- (5) In these regulations:
- (a) a reference to a block that is constituted by a graticular section includes a reference to a block that is constituted by an area of a part of a graticular section; and
  - (b) a reference to a graticular section that constitutes a block includes a reference to a graticular section, a part only of which constitutes a block.

#### **4 Reference Map<sup>2</sup>**

- (1) Cabinet may cause to be prepared a reference map showing the geographical area of the Kingdom of Tonga divided into blocks constituted as provided in regulation 3.
- (2) The reference map prepared pursuant to sub-regulation (1) shall be deposited at such office as may, from time to time, be appointed by Cabinet by notice published in the Gazette.
- (3) Each block on the reference map may be given a number and a letter, or either, on the map for the purpose of identification.
- (4) The Minister may, from time to time, certify a map to be a true copy of the reference map prepared pursuant to this regulation, and any such copy shall be received in all proceedings as evidence of the contents of the reference map so prepared.
- (5) Following publication of the reference map prepared pursuant to this regulation 4, any reference in an exploration licence or a petroleum agreement granted pursuant to the Petroleum Mining Act to an identified block shall be treated as a reference to the block so identified on the reference map.

## **PART II — FINANCIAL PROVISION**

#### **5 Royalty**

A Company shall pay royalty in accordance with the petroleum agreement and these regulations.

## **6 Prohibition on disposal of petroleum**

If a Company fails to pay any royalty payable by it on or before the due date, or any extension thereof allowed by the Minister, the Minister may, by order served on the Company, prohibit the removal of, or any dealings in or with, any petroleum from the petroleum field concerned, or from any other petroleum field covered by a petroleum agreement to which the Company is a party, or from both, until all outstanding royalty has been paid or until an arrangement has been made and accepted by the Minister, for the payment of the royalty; and the Company shall comply with the order.

## **7 Remission of royalty etc.**

The Minister may, on application made to him by the Company:

- (a) remit, in whole or part, any royalty payable; or
- (b) defer payment of any royalty on such conditions (if any) as he may determine and specify in the instrument of remission or deferment.

## **8 Security for compliance and recovery of royalty**

- (1) The Minister may, from time to time, make such arrangements as appear appropriate to him to secure that a Company complies with these regulations and the petroleum agreement, or either, and in particular may accept guarantees whether from shareholders in the Company or otherwise, in respect of that compliance.
- (2) A sum of money payable in respect of royalty pursuant to regulation 5 is a debt due to the Kingdom of Tonga and may be recovered in a court of competent jurisdiction.
- (3) A certificate of the Minister certifying that a specified sum of money payable in respect of royalty by a person identified in the certificate shall, in any proceedings instituted against that person for the recovery of any royalty, be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

## **9 Right of distress**

If and whenever any of the fixed periodic payments of royalties reserved by a petroleum agreement or any part thereof respectively shall be in arrear or unpaid for the space of two calendar months next after any of the days whereon the same ought to be paid (whether the same shall have been legally demanded or not); then and so often as the same may happen the Government may by any officer duly authorised thereto (as an additional remedy and without prejudice to any other rights and remedies to which it would be entitled) enter into and upon any area which shall for the time being be possessed or occupied by the Company for the purposes of a

petroleum agreement or the exercise of any of the rights granted by such an agreement and may seize and distrain and sell as landlords may do for rent in arrear all or any of the stocks of petroleum and products thereof, engines, machinery, tools, implements, chattels and effects belonging to the Company which shall be found in or upon the area so entered upon and out of the money arising from the sale of such distress may retain and pay all the arrears of the said fixed periodic payments and royalties and also the costs and expenses of and incidental to any such distress and sale rendering the surplus (if any) to the Company, provided that if there is any dispute or failure to agree between the parties affecting the amount of the royalties payable, such amount only as is admitted by the Company to be the minimum amount of royalties payable is paid by the Company then the Government shall not exercise its rights under this regulation.

## 10 Fees in respect of petroleum agreement and exploration licence

The fees payable under Section 5(2) of the Petroleum Mining Act shall be \$1,000 in respect of an application for a petroleum agreement and \$500 in respect of an application for an exploration licence.

## PART III — RECORDS, ACCOUNTS, ETC.

### 11 Company to keep and give records

- (1) A Company shall keep full and accurate records, in such form as is from time to time approved by the Minister, containing particulars of the following matters:
  - (a) the drilling, deepening, plugging or abandonment of all boreholes and wells;
  - (b) the strata and subsoil through which all boreholes and wells are drilled;
  - (c) the casing inserted in all boreholes and wells and any alteration to such casing;
  - (d) any petroleum, water and other economic minerals encounters;
  - (e) the areas in which any geological or geophysical work has been carried out;
  - (f) such other matters related to the above as the Minister may from time to time reasonably require;

and shall also keep accurate geological maps and plans and geophysical records and interpretations relating to the Scheduled Lands. Such maps, plans, records and interpretations and all geological and geophysical reports made by or for the Company shall be available for inspection by the Minister or his duly authorised officers, and the Company shall deliver copies of such maps, plans, records, interpretations and reports to the Minister whenever required.

- (2) The Company shall give the Minister:
- (a) within one month after the end of each quarter year period:
    - (i) a summary of all geological and geophysical work carried out;
    - (ii) a summary of all drilling activity and results obtained;
    - (iii) a list of maps, a list of reports and a list of other geological and geophysical data prepared by or for the Company;
    - (iv) notification of future exploration plans:
  - (b) within two months after the first day of January and the first day of July in each year, estimates of crude oil and natural gas production and exports for each of the four half-year periods immediately following the said date;
  - (c) within four months after the end of each calendar year:
    - (i) estimates of economically recoverable reserves of crude oil and natural gas at the end of that year;
    - (ii) a record, in a form approved by the Minister, which describes the results of all exploration, development and other works carried out by the Company during that year in connection with searching for, boring for and obtaining petroleum;
  - (d) summaries of exploration wells, including general lithological groups, letter classification boundaries and hydro-carbon zones, within six months of completion of drilling. Such information as cannot reasonably be obtained within this period shall be submitted as soon as available;
  - (e) from time to time, such other plans and information as to the progress and results or the Company's operations as the Minister may reasonably require; and
  - (f) on relinquishment of any part of the Scheduled Lands, such maps, plans, reports, records, interpretations and data, made or obtained by or for the Company, relating to exploration, development, production, and any operations in the surrendered lands, as the Minister may require.

## **12 Company to keep samples**

A Company shall as far as reasonably practicable correctly label and keep for reference for a period of one calendar year characteristic samples of any petroleum found in the Scheduled Lands and for a period of two calendar years characteristic samples of the strata found in any borehole or well. The Minister or his representative shall have access to such samples at all reasonable times and shall be entitled to require that representative specimens of any such samples be delivered to him. Furthermore, the Minister may retain any specimens so delivered.

### 13 Company to keep accounts

- (1) A Company shall keep full and correct accounts, in such form as is from time to time approved by the Minister, at all times during the agreement period. These accounts shall contain accurate entries of:
- (a) the gross quantity of:
    - (i) crude oil obtained from the Scheduled Lands;
    - (ii) untreated natural gas obtained from the Scheduled Lands;
  - (b) the grades and gravity of the crude oil produced and the composition of natural gas produced;
  - (c) the quantities sold of:
    - (i) crude oil;
    - (ii) natural gas;
    - (iii) casing head petroleum spirit;
    - (iv) each refined petroleum product, including liquefied petroleum gases;
    - (v) sulphur, in any form, or any other gases, liquids or solids, together with the names of the purchasers, the quantity purchased and the price paid by each purchaser;
  - (d) the quantity injected into the formation of:
    - (i) crude oil;
    - (ii) natural gas;
    - (iii) casing head petroleum spirit;
    - (iv) each refined petroleum product, including liquefied petroleum gases;
    - (v) water and other liquids or gases;
  - (e) the quantity consumed for drilling and other production operations (other than quantities reported under (d) above) and consumed in pumping to field storage and refineries in the Kingdom of Tonga of:
    - (i) crude oil;
    - (ii) natural gas;
    - (iii) casing head petroleum spirit;
    - (iv) each refined petroleum product, including liquefied petroleum gases;
  - (f) the quantity of crude oil refined in the Kingdom and the quantity of each refined product, including liquefied petroleum gases, obtained from it; and
  - (g) the quantity of natural gas treated in the Kingdom for the removal of casing head petroleum spirit or other liquids and liquefied petroleum gases and the quantity of:

- (i) casing head petroleum spirit;
  - (ii) butane;
  - (iii) propane;
  - (iv) any other liquids or gases or any solids obtained from it;
  - (h) the quantity of natural gas flared;
  - (i) such further information as the Minister may reasonably require from time to time.
- (2) The Company shall, within two calendar months after the first day of January and the first day of July in each year, deliver to the Minister a summary of the said accounts for each such half-year period, in a form from time to time approved by the Minister, together with a statement of all royalties payable in respect of each such half-year period.

#### **14 Company to furnish copy of agreements**

A Company shall, within two calendar months of the date of execution, give to the Minister copies of all conveyances, leases, assignments, agreements and deeds relating to the Scheduled Lands or any interest therein and to which the Company is a party or under which the Company either directly or indirectly obtains any benefit or incurs any liability.

#### **15 Treatment of information supplied by company**

- (1) A Company shall keep the Minister currently advised of all major developments regarding the operations under a petroleum agreement including, but not limited to, information in respect of the drilling, deepening, workover, repair, plugging, abandonment or completion of wells.
- (2) All well records including lithologies, electric logs, composite well logs, core samples and core descriptions; maps and magnetic tapes; and all other geological and geophysical information interpretations and reports prepared or obtained by it as a result of its activities under a petroleum agreement and all technical, financial, and economic reports, studies, analyses, evaluations and interpretations prepared by or for the Company, relating to the Scheduled Lands shall be the property of the Government, provided, however, that the Company shall be entitled to retain copies of interpretations, reports, maps, tapes, logs and portions of samples for its own use. The Company shall deliver to the Minister within a reasonable time after they have become available copies of the above. Sepia copies shall be supplied by the Company whenever requested.
- (3) The maps, plans, reports, tapes, samples, studies, records, interpretations and data which the Company is required to deliver to the Minister under a petroleum agreement shall be supplied at the expense of the Company and, subject to this regulation, shall be treated as confidential by the Company and



the Government, except as otherwise agreed. The Government shall be entitled:

- (a) at any time to make use of any information received from the Company for the purpose of preparing and publishing aggregated returns and general reports on the extent of operations under a petroleum agreement;
  - (b) at any time, to make use of topographical survey information, including submarine topography, for any purpose whatever;
  - (c) at any time, to make use of information received from the Company for the purpose of any arbitration or litigation between the parties;
  - (d) at any time, to make use of any information regarding economic minerals other than petroleum;
  - (e) to release or use the materials set out in sub-regulation (2) relating to the surrendered parts of the Scheduled Lands, immediately upon their surrender; and upon termination to release or use the said materials relating to the remainder of the Scheduled Lands not previously surrendered.
- (4) The Company shall have the right to use the materials set out in sub-regulation (2) for any purpose in connection with the Company's operations under a petroleum agreement and to disclose the information contained in such materials to outside consultants engaged in connection with the Company's operations thereunder, to a bank or financial institution from whom the Company may be seeking to obtain financing or, with the approval of the Minister, to any third party who has a bona fide interest in acquiring by purchase, exchange or otherwise all or a portion of the Company's rights and interest in a petroleum agreement. The Company shall inform the Government of the disclosure or disposal of any rights or interest pursuant to this provision.

## PART IV — RIGHTS RESERVED BY GOVERNMENT

### 16 Government may work other substances in Scheduled Lands

The Government or any other person authorised by the Government for that purpose shall hold the right:

- (a) to enter into and upon the Scheduled Lands and the seas over any part thereof in order to search for, dig for and take any substances other than petroleum therein or for all and every purpose other than those for which a petroleum agreement is entered into;
- (b) to sink, build and use such pits, shafts, levels, drains, water-courses, tunnels, buildings, engines, machinery and other things on, in or under the Scheduled Lands as the Government thinks necessary or desirable

for the purposes specified in paragraph (a) of this sub - regulation; and to grant such rights, permits or wayleaves over the Scheduled Lands as may reasonably be required by other persons for the purpose of laying, operating and maintaining pipes, cables, telephone and power lines and intercommunication and passage to the shore:

Provided that the said rights shall be exercised in a manner which does not interfere with the rights of a licensee under an exploration licence or a Company under a petroleum agreement; provided also that fair compensation shall be paid for all loss or damage which a licensee or Company may incur because of the exercise of the said rights.

### **17 Government may enter Scheduled Lands for other purposes**

The Government or any other person authorised by the Government for that purpose shall hold the right:

- (a) to enter into and upon the Scheduled Lands in order to make and maintain on the Scheduled Lands such reservoirs, pumping stations, generating stations, radio transmitting and receiving apparatus, waterways, roads, railways, telegraph and telephone lines and pipelines or other things as in the opinion of the Government, are necessary or desirable for any purpose;
- (b) to obtain from and out of the Scheduled Lands such stone, earth and other minerals as may be necessary or required for making and maintaining the things specified in paragraph (a) of this regulation;
- (c) at all times to draw water from the Scheduled Lands and to have free access thereto; and
- (d) to go to and from at all times on and through the Scheduled Lands for all such purposes as may be required:

Provided always that the said rights shall be exercised in a manner which does not interfere with the rights of a licensee under an exploration licence or a Company under a petroleum agreement; provided also that fair compensation shall be paid for all loss or damage (but not including the value of any materials taken) which a licensee or a Company may incur because of the exercise of the said rights.

### **18 Government may alienate Scheduled Lands to third parties subject to company's rights**

The Government shall hold the right at any time to alienate to any person all or any area or areas of the Scheduled Lands for any purpose, provided that such alienation shall be made subject to the rights of a Company under a petroleum agreement.

**19 Government may alienate surface in certain case so as to interfere with Company's rights**

- (1) The Government may, at any time or times, give notice to a Company that application has been made to the Government to acquire rights over the surface of such area or areas of any Scheduled Lands as is mentioned in such notice.
- (2) If the Company does not give notice to the Government that it objects to the Government consenting to such application within ninety days after receipt of such notice, then the Government shall hold the right at any time or times thereafter to alienate all or any part of the surface of such area or areas;

PROVIDED THAT such alienation shall not exclude the said area or areas from the Scheduled Lands but only exclude the Company's rights to enter on and occupy the surface thereof.

- (3) If any such objection is made by the Company within the said period and the Government desires to effect the alienation notwithstanding such objection, then the question whether the proposed alienation ought or ought not to be effected shall be referred to arbitration.
- (4) If the arbitrators decide that the proposed alienation may be made without seriously harming the rights of the Company under a petroleum agreement, then it shall be lawful for them to award that it may be made either:
  - (a) freed from the right of the Company under a petroleum agreement to occupy the surface; or
  - (b) subject to the right of the Company under a petroleum agreement in relation to the surface of all or any parts of such area or areas (in whatsoever way defined as the Arbitration may determine);

Provided that such rights may nevertheless be exercised only on condition that before the exercise of any right in respect of the surface, the Company:

- (i) shall give to the acquirer and his successors in title 60 days' previous notice of the Company's intention to exercise such rights; and
  - (ii) shall make an agreement with him to pay compensation (to be assessed in a case of dispute by arbitration) for all loss or damage which he may incur because of the exercise of such rights.
- (5) Whenever an award is made under paragraph (b) of sub-regulation (4) of this regulation, the proposed alienation, if made, shall be made expressly subject to the provisions of the award.
  - (6) The Company shall hold a prior right to have any area or areas alienated under this regulation again included in the Scheduled Lands over which the Company holds the right to occupy the surface under a petroleum agreement, if such area or areas shall subsequently become available for this purpose.

- (7) The foregoing provisions of this regulation shall not prevent the Company obtaining the right by agreement to occupy the surface of any area or areas alienated under the provisions of this regulation if the title of the acquirer and his successors in title so allows.

## **20 Government may exclude lands for public purposes**

- (1) The Government shall hold the right at any time to withdraw a Company's right to occupy the surface of any area or areas of any Scheduled Lands if such area or areas are required for existing villages or new villages, village extensions, water reserves, harbour limits, navigational purposes or any other public purposes whatsoever, provided that:
- (a) during the agreement period, the area or areas so excluded shall not exceed 10 square miles as regards any one area, and in all shall not exceed 50 square miles; and
  - (b) the area or areas excluded under this regulation shall continue to form part of any Scheduled Lands subject to a petroleum agreement:

Provided that no operations are carried on, in or under such area or areas other than searching for or mining petroleum by means of deviated drilling from Scheduled Lands not so excluded; and

- (c) the exclusion of any area or areas shall not be required if:
  - (i) any active operations such as well drillings, road construction, waterworks and/or other operations relating to the obtaining of petroleum have previously been commenced or are in progress therein; or
  - (ii) the Company has given notice that such area or areas are required for occupation and paid or offered compensation in respect thereof under sub-regulation (3) of regulation 23.

Instead, some other equal area or areas of the Scheduled Lands shall be excluded which are suitable in the opinion of the Government for the said public purposes.

## **21 Fishing and navigation**

A Company shall not carry out any operations authorised by an exploration licence or petroleum agreement in or about the Scheduled Lands in such manner as, in the opinion of the Minister, interferes unjustifiably with navigation or fishing in the waters around or in the Scheduled Lands or with the conservation of the living resources of the sea.

## **PART V — MISCELLANEOUS DUTIES OF A COMPANY**

### **22 Restrictions as to alienated lands**

To the extent that any part or parts of the Scheduled Lands are at the date of a petroleum agreement held by third parties under the provisions of any written law relating to land tenure:

- (a) the rights granted to a Company in respect of such part or parts of the Scheduled Lands shall be subject to the provisions of such written law relating thereto as then existing; and
- (b) The Company shall not exercise any of the rights granted under the petroleum agreement in respect of any area or areas of such part or parts of the Scheduled Lands without the previous consent of the Minister who shall give such consent upon proof to his satisfaction that:
  - (i) the Company has agreed with the registered holder or holders of the surface of such area or areas for payment of compensation to such registered holder or holders in respect of any damage which may be done to such area or areas or to any cultivation or buildings thereon because of the exercise of such rights; or
  - (ii) the Company has made reasonable efforts to make such an agreement but has failed to do so through no fault of its own; or
  - (iii) the Company is unable to make such an agreement because such registered holder or holders or any of them cannot be found, or are out of the Kingdom, or are for any reason legally incapable of making such an agreement.

### **23 Occupation of Scheduled Lands for surface purposes**

- (1) Before occupying any area or areas of Government land within the Scheduled Lands for the purposes of surface operations, a Company shall give to the Minister not less than 28 days' previous notice specifying by name, amount or other sufficient designation the area or areas proposed to be occupied and the purpose for which the area or areas is or are required.
- (2) The Minister shall state his objections, if any, on the grounds of public interest, to the proposed site within 28 days after receipt of such notice. The validity of such objections, if a dispute occurs, shall be determined by reference to local arbitration by the Land Court, as constituted under the Land Act.
- (3) The Company shall always pay or offer reasonable compensation to the landholder of any area or areas of the Scheduled Lands before the Company occupies such area or areas. Thereafter the Company shall be entitled to occupy such area or areas (subject to any adverse award by the arbitrators) but shall pay the amount of rent and compensation to the landholder. Rent and

compensation hereunder and the Company and any dispute arising shall be assessed by reference to local arbitration by the Land Court as constituted under the Land Act.

## **24 Company not to cause damage**

A Company shall not exercise the rights granted by a petroleum agreement in a way which may cause damage by water or otherwise to land not occupied by the Company.

## **25 Timber cutting in Reserved Forest restricted**

The following restrictions on rights granted under a petroleum agreement with regard to the cutting down of brushwood and under-growth and the felling of timber for the purpose of facilitating the carrying out of petroleum operations on the Scheduled Lands shall apply to any Scheduled Lands that may have been proclaimed to be a Reserved Forest:

- (a) a plan of the whole of any area or areas which it is proposed to develop shall be given to the Minister;
- (b) a plan of any portion of the area or areas to be cleared shall be given to the Minister and the proposed locations for well sites shall be shown on it; such plans shall be made from actual survey and shall, if practicable, be on the same scale as the plan referred to in paragraph (a) of this regulation with points of connection to enable them to be plotted on that plan;
- (c) clearings shall be strictly limited to the actual area or areas necessary for the efficient conduct of the operations under a petroleum agreement together with such additional clearings as may be necessary for the protection of such operations from fire and other hazards;
- (d) due care shall be exercised in felling all trees so as not to damage other trees outside the area or areas being cleared;
- (e) the clearings for well sites shall not usually exceed two acres.

## **26 Limitation of right over foreshore**

The rights granted by a petroleum agreement shall be exercised on the foreshore only when it is necessary to carry out any operations under a petroleum agreement. A Company shall not cause any reasonably avoidable obstruction to the use of such foreshore for other purposes through exercising such rights.

## **27 Limitation of rights over sea areas and reclamation**

Nothing in a petroleum agreement shall be deemed to give any rights to a Company over the sea areas of the Scheduled Lands other than such rights as may be

necessary for carrying out its operations under the agreement and obtaining petroleum from the Scheduled Lands in a proper and efficient manner or other than such rights as may be expressly mentioned in the agreement.

## **28 Installations in Sea areas**

Any works or installations erected by a Company under a petroleum agreement in or over any part of the sea-bed for the time being comprised in the Scheduled Lands shall be of such sort and shall be made, placed, marked and buoyed, equipped and maintained in such a way as to leave at all times and in any conditions safe and convenient channels for shipping in the area and as not unreasonably to interfere with any shipping. The Company (if required to do so by the Government) shall maintain audible and visible navigational aids and illuminate between the hours of sunset and sunrise all derricks, piers, survey marks, and any other installations erected in or over such part of the sea bed and in such manner and by such means as are satisfactory to the Minister.

## **29 Pollution**

- (1) A Company shall adopt all practicable precautions (which shall include the provision of modern equipment) to prevent pollution of the high seas or coastal waters by oil, mud or other fluid or substance which might contaminate the sea water or shore line or which might cause harm or destruction to marine life.
- (2) In the event that, as a result of the Company's petroleum operations pollution occurs, the Company shall take such measures as shall be specified in its petroleum agreement to remove the said pollution and to minimise the consequences to the environment.

## **30 Company not to use lands other than the purposes of Agreement**

A Company shall not, except with the consent of the Minister, use the Scheduled Lands in any manner except for the purposes of a petroleum agreement.

## **31 Company not to obstruct working of other minerals**

A Company shall not, whenever reasonably avoidable, exercise the rights granted by a petroleum agreement in a manner which may obstruct or interrupt the development and working of any minerals (other than petroleum) within the Scheduled Lands or lands adjacent to them. The Company shall at all times (so far as lies within its powers) give the holders of licences or leases in respect of any such minerals reasonable means of access and passage on and across the Scheduled Lands to such minerals for the purposes of searching for, digging for, taking and carrying away such minerals.

**32 Distance of boreholes or wells from boundaries**

No borehole or well shall be drilled:

- (a) within a distance of 600 feet from the boundaries of the Scheduled Lands except with the consent of the Minister, or
- (b) so as to deviate at any point from the Scheduled Lands.

**33 No drilling operations to be carried on near public roads etc.**

Except with the previous consent of the Minister or of any authorised officer and subject to any conditions which may be connected with such consent, no drilling operations shall be carried on by a Company on the Scheduled Lands at any place within 100 yards of any reservoir, canal, railway or public road which is not constructed by the Company, or within 100 yards of any other public works or any building or inhabited site which is not the property of the Company, other than for maintenance or repair of existing wells. Moreover, no storage tanks shall be erected at any point within 300 yards of such places, provided that if such places are situated on or within any of the areas falling under the operation of regulations 18, 19 or 20 the provisions of this regulation shall not apply.

**34 Notice of the site and commencement of boreholes and wells**

- (1) As soon as the site of any borehole or well has been decided, a Company shall notify the Minister of the site of it. The borehole or well shall be described by a certain number in the records, maps and plans which the Company is required to keep under the provisions of these Regulations. The Company shall notify the Minister of any change in the number of any such borehole or well which may be made.
- (2) No borehole or well shall be commenced and no borehole or well shall be recommenced after work has been discontinued thereat for more than six months unless seven days' notice in writing shall have first been given to the Minister, provided that the operation of this regulation shall not apply to cleaning out operations in a producing well.

**35 Abandonment and plugging of boreholes**

- (1) No borehole or well shall be abandoned and no cemented string or other permanent form of casing shall be withdrawn from any borehole or well which it is proposed to abandon without the prior consent of the Minister or, in the case of an exploration borehole or well, without notification to the Minister as soon as practicable. Consent shall not be unreasonably withheld in respect of boreholes or wells which have become or are unproductive.
- (2) Every borehole or well which a Company intends to abandon shall be securely plugged by the Company in order to prevent entry and exit of water



in and from any portion of the strata bored through, unless the Minister otherwise determines.

- (3) The Minister may require on any occasion that no borehole or well shall be plugged except in the presence of an officer authorised by him.

### **36 Methods of working**

- (1) A Company shall proceed with all due diligence to carry out exploration and development work at a reasonable and economically justifiable rate.
- (2) The Company shall maintain all apparatus and appliances and all boreholes and wells capable of producing petroleum in good repair and condition. The Company shall carry out all operations under its petroleum agreement in a workmanlike manner and in accordance with generally accepted standards of good petroleum field operations and conservation practices. Without prejudice to the general nature of the foregoing provisions the Company shall take all steps practicable in order—
  - (a) to control the flow and to prevent the escape or waste of petroleum discovered in the Scheduled Lands;
  - (b) to prevent damage to petroleum bearing strata in the Scheduled Lands and in adjoining areas outside the Scheduled Lands;
  - (c) to prevent the fortuitous entrance of water through boreholes and wells to petroleum bearing strata; and
  - (d) to prevent the pollution of any water well, spring, stream, river, lake, reservoir, estuary or harbour, the high seas or coastal waters and shoreline by oil or mud or other fluid or substance which might cause harm or destruction to marine life.
- (3) The Company shall obey any instructions from time to time given by the Minister in writing relating to any of the matters specified in paragraphs (a) to (d) of sub-regulation (2) of this regulation, provided that if the Company objects to any such instruction for the reason that it is unreasonable, it may refer the matter to the Supreme Court within 28 days after the date when such instruction was given.

### **37 Provision of storage tanks**

A Company shall use generally accepted standards of the international petroleum industry for confining the petroleum obtained from the Scheduled Lands in tanks, gasholders, pipes, pipelines or other receptacles constructed for the purpose.

### **38 Disposal of waste oil**

A Company shall drain all waste oil, salt water and refuse from tanks, gasholders, boreholes and wells into proper receptacles, which shall be constructed and

maintained by it for that purpose, at a safe distance from such tanks, gasholders, boreholes, wells and other structures whether situated within the Scheduled Lands or not. The Company shall dispose of such waste oil, salt water and refuse in a manner from time to time approved by the Minister.

### **39 Health and safety**

A Company shall comply with any instructions given from time to time by the Minister for maintaining the health and safety of persons employed by the Company in or about the Scheduled Lands.

### **40 Unit development**

If any time during the agreement period:

- (a) other petroleum agreements are at the time in force in respect of a common petroleum reservoir;
- (b) the Government shall consider that it is in the interests of the Kingdom, in order to secure the maximum ultimate recovery of petroleum and to avoid unnecessary competitive drilling, that this common petroleum reservoir should be worked and developed as a unit in co-operation by all the persons whose petroleum agreements extend to or include any part of this common petroleum reservoir;

then the following provisions shall apply:

- (i) the Minister may require a Company by notice to co-operate with such other persons as are parties to petroleum agreements with the Government in respect of any part or parts of the common petroleum reservoir as may be specified in the said notice (in this regulation called “the other Operators”) in the preparation of a scheme (in this regulation called “a development scheme”) for the working and development of the common petroleum reservoir as a unit by the Company and the other Operators in co-operation. The said notice shall contain a description by reference to a map of the area or areas in respect of which the Minister requires a development scheme to be submitted and shall state the period within which such scheme is required to be submitted for approval by the Minister.
- (ii) upon receipt of such notice the Company shall be bound to submit such a scheme jointly with the other Operators for the approval of the Minister;
- (iii) if a development scheme is not submitted to the Minister within the period limited by the said notice, or, if a development scheme is so submitted but is not approved by the Minister, then the Minister may prepare a development scheme which shall be fair and equitable to the Company and the other Operators. Moreover

the Company shall obey all the provisions of any such development scheme applicable to the Company, provided that if the Company objects to any such development scheme prepared by the Minister, it may refer the matter within 28 days from the date when notice of such development scheme is given to it by the Minister for decision by a sole expert appointed by agreement between the parties. In the event that the Company and the Minister are unable to agree on a sole expert the said expert shall be appointed by the Secretary-General of the International Centre for the Settlement of Investment Disputes. The costs of the reference shall be borne by the Company.

#### **41 Refined products**

A Company shall, if so requested by the Government, supply as much of its production of crude oil in the Kingdom as shall be necessary for the supply of refined products for local consumption in the Kingdom, in a proportion of total demand in the Kingdom similar to the proportion that its production of crude oil bears to total production in the Kingdom.

#### **42 Right of pre-emption in emergency**

Whenever a Proclamation of Emergency is issued under section 2 of the Emergency Powers Act, the following provisions shall apply:

- (a) the Government shall hold the first right to purchase all crude oil obtained by any Company from the Scheduled Lands under its petroleum agreement and all the products of that crude oil;
- (b) the Company shall use its best endeavours to increase as far as reasonably possible with facilities that then exist, the supply of crude oil and/or products of that crude oil to the extent required by the Government;
- (c) with all reasonable speed, the Company shall endeavour to deliver all crude oil or products of that crude oil which are purchased by the Government under this regulation in the quantities, at the time and the manner required by the Government at a convenient place of shipment or a place of storage in the Kingdom to be determined by the Minister (whether belonging to the Government or otherwise). If a vessel employed to carry any such crude oil or products of such crude oil on behalf of the Government is detained on demurrage at the port of loading, then the Company shall pay the amount owing for demurrage according to the terms of the charter party and/or the rate of loading previously agreed unless the delay is due to causes outside the control of the Company;
- (d) the price to be paid for all crude oil or products of it which are purchased by the Government shall be either:

- (i) separately agreed by the parties; or
- (ii) in default of agreement, a fair price at the places and on the dates of delivery to be settled by a sole expert, appointed by agreement between the parties or in the event of a failure to agree by the Secretary-General of the International Centre for the Settlement of Investment Disputes.

To assist in arriving at a fair price at the places and on the dates of delivery the Company shall give particulars to the Government and the sole expert if so required, in respect of the quantities, descriptions and prices of crude oil or products previously sold to other customers and of charters or contracts entered into for carriage. The Company shall also show to the Government and the sole expert original or authenticated copies of contracts or charter parties entered into for the sale or carriage of such crude oil or products. The foregoing information shall be treated as confidential; and

- (e) The Government shall also hold the right to take control of the plant and premises of the Company in the Kingdom, and if this happens the Company shall conform to and obey all directions issued by the Minister or on his behalf. Reasonable compensation shall be paid to the Company for any loss or damage that may be proved to have been incurred by the Company by reason of the exercise by the Government of the powers given by this paragraph of this regulation.

### **43 Land required by a Company for its operations**

- (1) The Government may at the request of a Company use its best endeavours to make available to the Company at the Company's expense such land on shore outside the Scheduled Lands but within the Kingdom, for use by the Company and for erection, operation and maintenance of shore installations, storage, processing, residential and recreational facilities, and facilities for the appropriation of water and pipelines, harbours and jetties and all other buildings and works as the Company may reasonably require for the exercise of its rights under a petroleum agreement or carrying out its operations thereunder:

This land shall be of such a size, in such an area or areas and be made available on such conditions as may be agreed between the Government and a Company.

Provided that—

- (a) where such land is alienated land the Company shall first have made an offer to the holder thereof to acquire or lease the land at a reasonable price or on reasonable terms;
- (b) where the Crown Land made available to the Company in accordance with the provisions of this regulation is situated within the area of any

other lands the subject of a petroleum agreement to which the Company is a party then such land shall be held on the same terms and conditions as if the land so made available had been occupied by the Company in accordance with the provisions of that petroleum agreement;

- (c) nothing in this regulation shall compel the Government compulsorily to acquire land for the above purposes under the provisions of any written law relating to the compulsory acquisition of land by the Government.
- (2) If the Company's rights over any lands, outside the Scheduled Lands and the subject of a petroleum agreement to which the Company is a party, are surrendered or in any way terminated, the Company shall have the right to occupy for the duration of the petroleum agreement any area of such lands upon which stand shore installations, residential areas, supplies of water or any other building, construction or plant as are necessary for the exercise by the Company of its right under the agreement.
- (3) The Government shall also grant to the Company such rights, permits or wayleaves over the continental shelf outside the Scheduled Lands and use its best endeavours to procure the grant of such rights, permits or way-leaves over territorial waters for the purpose of laying operating and maintaining pipes, cables, telephone and power lines and intercommunication and passage between the Section and the shore as the Company may reasonably require for the exercise of its rights under a petroleum agreement or carrying out its operations hereunder.

#### **44 Compensation**

A Company shall pay reasonable compensation in respect of legal liability arising from injury to the property and rights of third persons which may be done by the Company, its agents and servants in the exercise of the rights granted by a petroleum agreement.

#### **45 Indemnity against third party claims**

A Company shall at all times indemnify the Government, the Minister and every public officer of the Kingdom against all actions, costs, charges, claims and demands whatsoever which may be made or brought by any third person in connection with anything done or purported to be done by the Company under a petroleum agreement.

#### **46 Statements, Prospectuses, etc.**

- (1) No statement shall be made by or with the consent of the Company claiming or suggesting whether expressly or by implication that any Government Department or any person or body acting on behalf of the Government has or

have formed or expressed any opinion that the Scheduled Lands are from their geological formation or otherwise likely to contain petroleum.

- (2) The foregoing provisions of this regulation or a statement to the effect thereof shall be included in or endorsed on any prospectus, statement in lieu of prospectus, notice, circular advertisement or other invitation issued by or with the consent of the Company offering to the public for subscription or purchase any shares or debentures of a company or a company proposed to be brought into existence.

#### **47 Notice of fresh issues of capital**

A Company shall report to the Minister particulars of any fresh issues of capital which may be made by it from time to time and any alteration which may be made in the Memorandum and Articles of Association or in the constitution of the Company.

#### **48 Lands included by inadvertence in the Scheduled Lands**

In the event of the inclusion by inadvertence in the Scheduled Lands of any area over which it may subsequently be proved that the Government is not entitled to the petroleum rights or of lands or areas in respect of which the petroleum rights have already been granted to other individuals or companies, the petroleum agreement concerned shall be deemed to have been amended by exclusion from the Scheduled Lands of any such lands or areas from the date of such proof or the grant of the said petroleum agreement.

#### **49 Establishment of boundary mark**

A Company shall, unless the Minister otherwise determines, carry out at its own expense such survey operations as are necessary to connect every angle and corner of the boundary line of the Scheduled Lands to fixed marks co-ordinated on the 1,000 metre Universal Transverse Mercator Grid Zone, Universal spherical where any angle or corner is at a place which is above low water the Company may be required to erect forthwith and at all times maintain substantial boundary marks of brick stone or concrete not less than one foot high. Such boundary marks shall be connected survey to fixed marks co-ordinated on the 1,000 metre Universal Transverse Mercator Grid Zone, Universal spherical in such a manner that the boundaries of the Scheduled Lands can be accurately traced on the ground. The Company shall ensure that the area demarcated on the ground shall conform as closely as possible to the area delineated on the plan annexed to the relevant petroleum agreement.

## PART VI — MISCELLANEOUS PROVISIONS

### 50 Notification of Assignments

Where a Company wishes to transfer its interest or rights under a petroleum agreement or an exploration licence to any person or persons with the consent of the Government as provided for under the terms of a petroleum agreement or an exploration licence, it shall give written notice to the Minister of the transfer to be made at least 60 (sixty) days before the date on which it is proposed to make the transfer effective. The Minister shall notify the Company within 30 (thirty) days after receipt of the Company's notification whether he consents to the said transfer.

### 51 Measurement of Petroleum

- (1) The Company shall measure or weigh, by a method or methods customarily used in good oilfield practice and from time to time approved by the Minister all petroleum won and saved from the Scheduled Lands.
- (2) The Company shall not make any alteration in the method or methods of measurement or weighing used by it or in any appliances used for that purpose without the consent in writing of the Minister and the Minister may in any case require that no alteration shall be made save in the presence of a person authorised by the Minister.
- (3) The Minister may, from time to time, direct that any weighing or measuring appliance shall be tested or examined in such manner, upon such occasions or at such intervals, and by such means as may be specified in the direction.
- (4) If any measuring or weighing appliance is, upon any such test or examination as is mentioned in sub-clause (3), found to be false or unjust the appliance shall, if the Minister so determines after considering any representations in writing by the Company be deemed to have existed in that condition during a period that is represented by half of the period from the last occasion upon which the appliance was tested or examined pursuant to sub-regulation (3) the date when appliance was found to be false or unjust, and any royalty or other amounts payable under this Agreement, the Principal Act or the Regulations affected thereby for that period shall be adjusted accordingly.
- (5) For the purposes of measuring natural gas won and saved from the Scheduled Lands the volume of the natural gas shall be calculated at an absolute pressure of one atmosphere and at a temperature of 60° F.

### 52 Power for Government to perform Company's obligations

If a Company at any time fails to comply with any of the obligations which must be complied with by the Company under these regulations or under its petroleum agreement, then and in any such case, the Government shall be entitled, after giving

to the Company reasonable notice, to do any of the things which, in the opinion of the Government, may be necessary to ensure compliance with such obligations and to recover the costs and expenses of so doing from the Company.

### **53 Employment and Training of Citizens of Tonga etc.**

- (1) A Company shall, to the extent practicable, employ nationals of Tonga for all types of work in the conduct of its operations. Subject to the law in force from time to time relating to entry into Tonga, to the extent that the local supply of man-power with the necessary qualifications may be inadequate, the Company shall be permitted to bring in expatriate skilled workers and experts (including their spouses and dependent children) into Tonga for the purpose of petroleum operations.
- (2) The Company shall use reasonable efforts to train nationals of Tonga for all types of work with respect to its petroleum operations, including technical, administrative, executive and management positions. Towards this end, the Company shall undertake a programme of on-the-job training agreed with the Minister.
- (3) The Company shall, to the extent possible, engage local firms in Tonga (including companies incorporated in Tonga) to carry out any works for, or supply materials to, the Company, but nothing in this sub-regulation shall be taken as requiring the Company to engage local firms which are not competitive with non-local firms.

### **54 Rate of production**

- (1) Where petroleum is being recovered in a petroleum field, the Minister may, by instrument in writing served on a Company, direct the Company to take all necessary practicable steps to reduce the rate at which the petroleum is being recovered to such rate as the Minister specifies in the instrument.
- (2) Where the Minister is not satisfied with the steps taken or being taken by a Company to whom a direction has been given under sub-regulation (1), the Minister may, by instrument in writing served on the Company, give to the Company such directions as the Minister thinks necessary for or in relation to the reduction of the rate at which petroleum is being recovered in the area.
- (3) The Minister may agree to derogate from his powers under this regulation.

### **55 Local resident manager**

A Company shall, before commencing any operations in the Scheduled Lands, furnish to the Minister the name and address of the manager resident in the Kingdom under whose supervision such operations are to be carried on.



**56 Delivering up of productive boreholes and wells at end of agreement period**

Within two months after the end of the agreement period or any earlier determination of a petroleum agreement, the Company shall deliver up to the Government all productive boreholes or wells made by the Company in good repair and condition and fit for further working (unless ordered by the Minister to plug them as provided for in regulation 57 unless boreholes and wells have been previously abandoned with the consent of the Minister).

**57 Plugging of boreholes and wells at end of agreement period**

Within two months after the end of the agreement period or at any earlier determination of a petroleum agreement, a Company shall plug all boreholes and wells if required so to do by the Minister.

**58 Applications**

- (1) The Minister may require an applicant for an exploration licence or petroleum agreement to make such arrangements as may be satisfactory to the Minister for the execution of a bond or some other form of security for the performance and observance of the condition to which the licence, when granted, or the agreement, when entered into, may be subject.
- (2) The Minister may require an applicant for an exploration licence or petroleum agreement to furnish him with any information that may be relevant to the application and may, in particular, where an applicant is a body corporate, require the applicant to furnish him with such information as may be necessary to enable him to ascertain the extent of any controlling power over the direction of the affairs of the body corporate by a company incorporated outside Tonga or by individuals resident outside Tonga.
- (3) To enable Cabinet to dispose of an application for the grant of an exploration licence or petroleum agreement the Minister may ask the applicant to submit proposals on such matters as he may specify and cause such investigations, negotiations or consultations to be carried on as he considers necessary.<sup>3</sup>

**59 Obstruction of a Company or Licensee**

Any person who, without reasonable excuse, molests, hinders or prevents a licensee or a Company in or as the case may be, from the doing of any act which the said licensee or Company is authorised to do by the Petroleum Mining Act, these regulations, a petroleum agreement or an exploration licence, is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and a further fine not exceeding \$20 for every day during which the said offence of obstruction continues.

**60 Power of Entry<sup>4</sup>**

- (1) For the purposes of these regulations, the Minister, or an authorised officer, at all reasonable times may:
  - (a) enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being, or is to be used in connection with:
    - (i) exploration operations; or
    - (ii) production operations.
  - (b) inspect and test, or have tested by a qualified person, any machinery or equipment that, in his opinion, has been, is being or is to be used in connection with any of the operations referred to in paragraph (a);
  - (c) take or remove for the purpose of analysis or testing or for use in evidence in connection with an offence against these regulations samples of petroleum, water or other substances from a well;
  - (d) inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (a);
  - (e) with respect to the health and safety of persons employed by a licensee or Company as the case may be in or in connection with any of the operations referred to in paragraph (a) issue directions to and impose restrictions on the Company or licensee, or any persons so employed, by instrument in writing;
  - (f) may order, by instrument in writing:
    - (i) the cessation of operations on or in, and the withdrawal of any person from, any area, structure or building that is being used in connection with any of the operations referred to in paragraph (a); or
    - (ii) the discontinuance of the use of any machinery or equipment; which he considers unsafe, unless and until action as is necessary for safety and specified in the instrument is taken and completed;
  - (g) make such examinations and enquiries as are necessary to ensure that the provisions of these regulations and any directions issued, restrictions imposed, or orders made under these regulations, are being complied with;
  - (h) enter any part of the Scheduled Lands to carry out any operations which the Government may be entitled to carry out under these regulations or a petroleum agreement; and
  - (i) obtain and record statements from witnesses, and appear at or conduct enquiries held regarding accidents occurring in the course of any of the operations referred to in paragraph (a), and appear at inquests, and call and examine witnesses, and cross-examine witnesses.
- (2) Before exercising any of his powers under sub-regulation (1), if there is any person present who is or appears to be in charge of the area, structure, vehicle,

vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Minister or authorised officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

- (3) Any person who is aggrieved by a decision, direction or order of an authorised officer made under this regulation may appeal in writing to the Minister or, in the case of a decision, direction or order made by the Minister, to Cabinet, which shall, as soon as practicable, hear and dispose of the appeal, but the bringing of the appeal does not affect the execution and operation of the decisions, direction or order appealed against, pending disposition of the appeal.
- (4) On appeal under sub-regulation (3), the Minister or Cabinet, as the case may be, may rescind or affirm the decision, direction or order appealed from, or may make a new decision, direction or order in substitution therefore, and that decision, direction or order shall not be subject to further appeal.
- (5) In exercising his powers under sub-regulation (1), the member or an authorised officer may be accompanied by any person who, the Minister or the officer as the case may be believes, has special or expert knowledge of any matter being inspected, tested, or examined.
- (6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in sub-regulation (1), shall provide the Minister or an authorised officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of the powers under this regulation.

## 61 Miscellaneous Offences

Any person who —

- (a) in, or in connection with, any application under the Petroleum Mining Act or these regulations for an exploration licence or petroleum agreement knowingly or recklessly gives or permits to be given information which is false or misleading in a material particular;
- (b) in any report, return or affidavit submitted in pursuance of an exploration licence or a petroleum agreement, knowingly or recklessly includes, or permits to be included, any information which is false or misleading in a material particular; or
- (c) places or deposits, or is accessory to the placing or depositing of, any petroleum or substance in any place with the intention of misleading any other person as to the possibility of petroleum or a petroleum reservoir existing in that place;

is guilty of an offence and liable on conviction:

- (d) in the case of an individual to a fine not exceeding \$20,000 or

- (e) in the case of a body corporate to a fine not exceeding \$50,000.

## **62 Offence committed by a body corporate**

Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that officer, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly

## ENDNOTES

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<sup>1</sup> Made by His Majesty in Council; G S 107/1985

<sup>2</sup> Amended by Act 42 of 2010

<sup>3</sup> Amended by Act 42 of 2010

<sup>4</sup> Amended by Act 42 of 2010