



No. of 2020.

Oil and Gas (Amendment) Bill 2020.

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 194. SECTION 57 AS AMENDED."**



No. of 2020.

A Bill

for

An Act

entitled

Oil and Gas (Amendment) Bill 2020,

Being an Act to amend the *Oil and Gas Act 1998,*

MADE by the National Parliament.

**1. FORM OF APPLICATION FOR PETROLEUM DEVELOPMENT LICENCE
(AMENDMENT OF SECTION 54).**

Section 54 of the Principal Act is amended by -

(a) deleting the heading and replacing it with the following new heading:

**“54. FORM OF APPLICATION FOR PETROLEUM DEVELOPMENT
LICENCE AND PROVISION OF INFORMATION BY DIRECTOR
OR MINISTER.”; and**

(b) repealing Subsections (2) and (3) and replacing them with the following new subsections:

“(2) The Director or the Minister may, by instrument served on the applicant, require the applicant to furnish, within a period, or by a date, specified in the instrument -

- (a) such further written information in connection with the application as the Director or the Minister specifies in the instrument; and
- (b) such proposals, in addition to or by way of alteration to any proposals that have already been furnished under Subsection (1) as the Director or the Minister specifies in the instrument, including proposals relating to any of the matters referred to in Section 35(2); and
- (c) such information and proposals, or information and proposals in addition to or by way of alteration to information and proposals already supplied, relating to any other matter specified by the Minister.

(3) For the purposes of this division, an application made under Section 53 will lapse if an applicant fails to comply with any instrument served on the applicant under Subsection (2) or any further instrument served on the applicant under Subsection (2) as allowed by Subsection 56(1)(b) by the date which is -

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- (a) the last day of the period specified in the instrument served on the applicant under Subsection (2); or
- (b) if before the expiration of the period specified in the instrument served on the applicant under Subsection (2), the Minister consents in writing to any longer period, the date which is the last day of such period.”

**2. NOTIFICATION OF GRANT OF PETROLEUM DEVELOPMENT LICENCE
(AMENDMENT OF SECTION 56).**

Section 56 of the Principal Act is amended by -

- (a) deleting the heading and replacing with the following new heading:

**“56. NOTIFICATION OF DECISION RELATING TO PETROLEUM
DEVELOPMENT LICENCE.”; and**

- (b) repealing Subsection (1) and replacing it with the following new subsection:

“(1) Where an application for the grant of a petroleum development licence has been made under Section 53(1) or (2) (and not lapsed pursuant to Section 54(3)) and the time allowed for compliance by the applicant with any instrument served on the applicant under Section 54(2) (together with any further instrument served on the applicant under Section 54(2) as allowed by Paragraph (b) of Subsection (1)) has expired, the Minister, having regard to physical planning considerations and the benefit or otherwise to be derived by the State, shall, by instrument served on the applicant, inform the applicant -

- (a) that -

- (i) the Minister is prepared to approve the proposals wholly or in part, and to grant to the applicant on the basis of the approved proposals, a petroleum development licence in respect of the blocks specified in the application; and
 - (ii) the applicant will be required to lodge a security deposit for compliance with -
 - (A) the conditions relating to the protection and restoration of the environment; and
 - (B) the provisions of this Act; and
 - (C) any requirement in any law relating to the protection and restoration of the environment, or any condition imposed on the licensee under any such law; and
 - (D) any condition relating to the physical planning of the area; and
 - (iii) the applicant will be required to pay the first annual fee as a condition of the grant of the licence; or
- (b) that the Minister will defer consideration of a decision on the proposals until the applicant furnishes such information or such proposals, in addition to or by way of any additional information or alteration to the proposals previously furnished under Section 54, as the Minister specifies in a further instrument served on the applicant under Section 54(2) of this Act, including information and proposals relating to any of the matters referred to in Section 35(2), 54(2)(c) or Section 56A(e); or

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- (c) that the Minister is prepared to approve the proposals and to grant to the applicant a petroleum development licence in respect of the blocks specified in the application, subject to the applicant -
 - (i) making such alterations to the proposals; or
 - (ii) complying with such conditions in relation to the proposals, as the Minister thinks reasonable; or
 - (d) that the Minister is proposing to refuse to grant the petroleum development licence the subject of the application,
- provided that, before serving an instrument on the applicant under any of Paragraph (a), (b) or (c), the Minister must form a view on whether any industry for the recovery of petroleum from the blocks the subject of the application would likely be of national significance, and must first do the things referred to in Section 56A if the Minister's view is that it would."; and

- (c) repealing Subsection (4); and
- (d) repealing Subsection (5) and replacing it with the following new subsection:

"(5) An application the subject of an instrument served on the applicant under Subsection (1)(a), (b) or (c) will lapse if the applicant does not, within one month of the date of that instrument (or such period as agreed in writing by the Minister before the expiration of the month period), comply with any requirement contained in that instrument."

3. NEW SECTIONS 56A, 56B AND 56C.

The Principal Act is amended by inserting the following new sections immediately after Section 56 as follows:

"56A. MINISTER'S INSTRUMENT OF NOTIFICATION TO APPLICANT.

Where subject to Section 56(1), this section applies, the Minister must:

- (a) by instrument served on the applicant, notify the applicant that this section applies; and
- (b) seek the advice of the Board on whether the applicant's proposals should reflect a minimum expected return to the State over the life of any recovery of petroleum from the blocks the subject of the application and, if so:
 - (i) what that minimum expected return should be (specifically or according to a conditional or sliding scale or calculation); and
 - (ii) the appropriate methodology for its assessment or calculation; and
 - (iii) the appropriate milestones for its achievement (and any compensation regime that should apply if those milestones are breached); and
- (c) based on, but without being limited by that advice, the materials already furnished by the applicant in support of the application and any other information otherwise available to the Minister relevant to the application, form the Minister's own view on the matters referred to in Paragraph (b) and, by further instrument served on the applicant, notify the applicant of that view; and

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- (d) where proposals already provided by the applicant:
 - (i) meet or exceed the minimum requirements contained in that further instrument; and
 - (ii) contain binding undertakings to that effect enforceable on acceptance by the State as an agreement pursuant to, or as an amendment to an existing agreement under, either of Sections 183 and 184,
serve an instrument on the applicant under Section 56(1)(a), (b), or (c) as the Minister determines; and
- (e) otherwise proceed under Section 56(1)(b) save that the Minister must as a minimum require proposals under Section 56(1)(b) at least satisfying the minimum requirements referred to in Paragraph (d),
and the Minister may in any event, and notwithstanding any other provision of this Act to the contrary, impose conditions on the grant of any application to which this section applies that implement the Minister's view referred to in Paragraph (c).

56B. MINISTER TO INFORM APPLICANT WITHIN 30 DAYS.

Where the Minister gives notice pursuant to Section 56(1)(d) -

- (a) the Minister must, at the same time (either in the notice or otherwise), inform the applicant of the reason or reasons why the Minister is proposing to refuse to grant to the applicant the relevant petroleum development licence; and
- (b) within 30 days of being informed of such reason or reasons, the applicant may provide to the Minister any response which addresses the relevant reason or reasons; and
- (c) within a reasonable time following the receipt and consideration of such response (or after 30 days if no response is received), the Minister must by written notice either inform the applicant -
 - (i) in one of the manners contemplated by Section 56(1)(a), (b) or (c); or
 - (ii) that the Minister has refused to grant the petroleum development licence in respect of the blocks specified in the application.

56C. MINISTER'S POWERS.

The powers of the Minister under Sections 56, 56A and 56B may only be exercised by the Minister personally."

4. GRANT OR REFUSAL OF PETROLEUM DEVELOPMENT LICENCE (AMENDMENT OF SECTION 57).

The Principal Act is amended in Section 57 by -

- (a) repealing Subsections (1) and (2) and replacing them with the following new subsections:

"(1) An applicant who has been served with an instrument under Section 56(1)(a), (b) or (c) may, before the expiration of -

- (a) the period of one month after the date of service of the instrument on him or such further period or periods as the Minister allows in writing; or

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- (b) the period specified by the Minister under Section 56(5), whichever is the later, serve on the Minister -
- (c) a written request that the Minister grant to him the licence to which the instrument relates; and
- (d) any further proposals required under Section 56(1)(b); and
- (e) payment of the first annual fee to the Director; and
- (f) where Section 56(1)(a) applies, lodgment of the security deposit referred to in the instrument issued under Section 56(1)(a).
- (2) Where an applicant has, within the period specified in Subsection (1) -
- (a) made a request under Subsection (1)(c); and
- (b) paid the first annual fee to the Director; and
- (c) furnished the Minister with any further proposals required under Section 56(1)(b); and
- (d) where Section 56(1)(a) applies, lodged with the Director, the security deposit referred to in the instrument issued under Section 56(1)(a), the Minister must consider -
- (i) the applicant's request and proposals; and
- (ii) any further submissions of information; and
- (iii) a report from the Board (if any); and
- (iv) where it is available, the relevant cost-benefit analysis carried out and made available to the National Executive Council by the National Economic and Fiscal Commission under Section 117(8)(a)(v) of the *Organic Law on Provincial Governments and Local-level Governments*; and
- (v) whether the proposals for development -
- (A) will achieve maximum efficient recovery and prevention of resource waste by applying good oilfield practice; and
- (B) do not interfere with the rights of licensees of adjacent tenements covering common petroleum pools; and
- (C) comply with the State's policy on non-discriminatory access for other persons to any strategic pipelines or strategic petroleum processing facilities involved in the proposals; and
- (D) provide adequately for the protection of the environment and the welfare of the people of the area; and
- (E) demonstrate that the applicant has adequately identified the persons who are customary land owners in areas specified under Section 47(5); and
- (F) have duly considered co-ordinated development of any adjacent petroleum discoveries which studies and investigations conducted pursuant to a direction given under Section 65 reveal to be in the interest of the State; and

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- (G) promote viable domestic utilisation of petroleum and petroleum products to the extent reasonably possible; and
 - (H) will otherwise be in the best interests of the Independent State of Papua New Guinea.”; and
- (b) repealing Subsections (3), (4), (5), (6) and (7); and
- (c) repealing Subsection (9) and inserting the following new subsection:

“(9) Where a licensee makes application under Section 53(1) and (2) for a petroleum development licence and the petroleum prospecting licence or Petroleum retention licence would but for this subsection expire before the application has been dealt with in accordance with this section, the petroleum prospecting licence or the petroleum retention licence, as the case may be, shall, notwithstanding the provisions of Division 2 or 4 as to the expiry thereof, continue in force in respect of the block or blocks until the applicant has been:

- (a) granted a licence under Section 57A; or
- (b) served with an instrument or licence under Section 57B.”.

5. NEW SECTIONS 57A AND 57B.

The Principal Act is amended by inserting the following new sections immediately after Section 57 as follows:

“57A. MINISTER TO APPROVE APPLICANT’S PROPOSAL UPON SATISFACTION.

If the Minister is satisfied in respect of each of the matters in Section 57(2)(d)(v), the Minister shall, by instrument in writing, either -

- (a) approve the proposals and grant to the applicant a petroleum development licence in respect of the blocks referred to in the applicant’s application; or
- (b) approve the proposals subject to conditions and grant to the applicant a petroleum development licence in respect of the blocks referred to in the applicant’s application.

57B. MINISTER MAY REFUSE GRANT BY INSTRUMENT.

If the Minister is not satisfied in respect of any of the matters in Section 57(2)(d)(v), the Minister may, by instrument, refuse to grant the licence.”.

6. PETROLEUM AGREEMENT (REPEAL AND REPLACEMENT OF SECTION 183).

The Principal Act is amended by repealing Section 183 and replacing it with the following new section:

“183. PETROLEUM AGREEMENTS.

The Minister may, on behalf of the State, execute an agreement with a licensee, providing for -

- (a) the definition of the extent of a particular petroleum project and operation for that petroleum project, for the purposes of this Act and any other law; and
- (b) the transfer and assignment of a State equity interest in that petroleum project to the nominee of the State under Sections 165, 167 and 175A.”

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7. GAS AGREEMENT (REPEAL AND REPLACEMENT OF SECTION 184).

The Principal Act is amended by repealing Section 184 and replacing it with the following new section:

“184. GAS AGREEMENTS.

The Minister may, on behalf of the State, execute an agreement with a licensee, providing for -

- (a) the definition of the extent of a particular gas project and gas operation for the gas project, for the purposes of this Act and any other law; and
- (b) the transfer and assignment of a State equity interest in that gas project to the nominee of the State under Sections 165, 167 and 175A.”

8. AGREEMENTS BY THE STATE (REPEAL AND REPLACEMENT OF SECTION 185).

The Principal Act is amended by repealing Section 185 and replacing it with the following new section:

“185. AGREEMENTS BY THE STATE.

Notwithstanding any other provision of this Act, or any other Act (but without limiting Section 183 or 184), where in a written agreement with a licensee, whether entered into before or after the commencement of this Act, the State agrees that a discretion under this Act or any other Act or any regulations under this Act or any other Act will be exercised in a certain way, or that certain rights or consents or authorisations or licences under this Act or any other Act or any regulation under this Act or any other Act will be granted to the licensee, then that discretion shall be exercised, and those rights or consents or authorisations or licences shall be granted, in accordance with that written agreement, but, notwithstanding such agreement, in all cases this will be subject to consideration by the Minister of, in priority to any other matter, the factors set out in Section 57(2)(d)(v) of this Act.”.

9. NEW SECTIONS 191, 192, 193, AND 194.

The Principal Act is amended by inserting the following new sections immediately after Section 190 as follows:

“191. MATTERS BEFORE DATE OF CERTIFICATION.

(1) Sections 54, 56, 56A, 56B, 56C, 57, 57A, 57B, 183, 184 and 185, as amended, do not apply to a petroleum development licence issued before the date of commencement of the 2020 amendment.

(2) Sections 183, 184 and 185, as amended, do not apply to any written agreements, entered into before the date of commencement of the 2020 amendment, to which Sections 183, 184 and 185 as previously worded would have applied.

192. SECTION 54(3) AS AMENDED.

(1) Section 54(3), as amended, applies to any application made under Section 53 on or after the date of commencement of the 2020 amendment.

(2) If, before the date of commencement of the 2020 amendment, an applicant had -

- (a) submitted to the Director an application under Section 53 which complied with Section 54(1) at the time it was submitted to the Director; and

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(b) been served with an instrument under Section 54(2), as amended (a pre-2020 instrument),
that applicant may respond to the pre-2020 instrument by no later than 30 days after the date of commencement of the 2020 amendment.

(3) If the applicant referred to in Subsection (2) does not respond to a pre-2020 instrument in accordance with Subsection (2):

- (a) that pre-2020 instrument ceases to have any effect; and
- (b) after the date of commencement, the Director or the Minister may serve on that person an instrument under Section 54(2), as amended (a post-2020 instrument); and
- (c) Sections 54, 56, 56A, 56B, 56C, 57, 57A, 57B, 183, 184 and 185, as amended, will apply to that post-2020 instrument.

193. SECTION 56 AS AMENDED.

(1) Section 56, as amended, applies to applications submitted under Section 53 on or after the date of commencement of the 2020 amendment and also applies to applications submitted under Section 53 before the date of commencement of the 2020 amendment in the following circumstances:

- (a) where the Minister proposes to serve an instrument on the applicant under Section 56 (1)(a), (b) or (c) after the date of commencement of the 2020 amendment, but in respect of an application submitted before that date, the Minister must form the view required to be formed pursuant to Section 56(1), as amended; and
- (b) if that view is that any industry for the recovery of petroleum from the blocks the subject of the application is likely to be in the national interest, then Section 56, as amended, will apply to that application.

(2) If, before the date of commencement of the 2020 amendment, an applicant had -

- (a) submitted to the Director an application under Section 53 which complied with Section 54(1) at the time it was submitted to the Director; and
- (b) not been served with an instrument under Section 56(1) as then worded and applied before the date of commencement of the 2020 amendment,

such application will be an incomplete application and the Minister may, no later than 90 days after the date of commencement, provide to the applicant an instrument under Section 56(1)(a), (b) or (c), as then worded and applied before the date of commencement of the 2020 amendment.

(3) If the Minister does not provide to an applicant an instrument under Subsection (2) within the period specified in Subsection (2):

- (a) the Minister may serve on the applicant an instrument under Section 54(2), as amended; and
- (b) for the avoidance of doubt, upon service of an instrument under Subsection (2), Sections 54, 56, 56A, 56B, 56C, 57, 57A, 57B, 183, 184 and 185, as amended, will apply to any incomplete application.

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194. SECTION 57 AS AMENDED.

(1) Where, prior to the date of commencement, a question was properly referred to arbitration under Section 57 as then worded and applied before the date of commencement of the 2020 amendment, Subsections (5), (6) and (7) of that Section 57 will continue to apply to that referral.

(2) In any other case, Section 57, as amended, applies to any decision by the Minister made on or after the date of commencement to refuse an application under Section 57, as then worded and applied before the date of Commencement of the 2020 amendment.”.