

GUYANA

BILL No. 4 OF 2017

PETROLEUM COMMISSION OF GUYANA BILL 2017

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A BILL
Intituled

AN ACT to provide for the establishment and functions of the Petroleum Commission of Guyana and for related matters.

A.D. 2017 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Petroleum Commission of Guyana Act 2017 and shall come into operation on a date appointed by order of the Minister.

Interpretation.

2. (1) In this Act –

“good oilfield practice” means the reasonable and prudent diligent use of policies, procedures, methods, equipment and materials that result in the effective and efficient exploration, appraisal and development of petroleum including, optimum recovery of petroleum and use of efficient and effective practices for transforming produced petroleum into marketable form and delivering it to the market, having due regard for safety and other factors and means in particular, knowledge of and compliance with the latest standards developed by relevant professional institutions including but not limited to the International Organisation for Standardisation (ISO) and any other organisation deemed acceptable by the Minister;

“Board” means the Board of Directors of the Commission;

“Commissioner” means the Chief Executive Officer of the Commission appointed under section 28;

“Commission” means the Petroleum Commission established under section 3;

“development” means the planning, placement, construction and installation of facilities needed for the production of petroleum;

“Minister” means the Minister responsible for petroleum matters;

“operator” means a licensee or any other entity executing on behalf of one or several licensees, the day to day management of

petroleum activities;

“petroleum” means –

- (a) any naturally occurring hydrocarbons, whether in gaseous, liquid or solid state;
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and any other substances; and
- (d) any petroleum as defined in paragraphs (a), (b) and (c), that has been returned to a natural reservoir, but does not include coal, shale or any substance that may be extracted from coal or shale;

“production” means all activities relating to recovering oil and gas from a reservoir and preparing it for evacuation from the field area.

(2) Where the context so requires, a meaning or definition given to a word or term in the interpretation section of the Petroleum (Exploration and Production) Act shall be the same for that word or term in this Act.

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PART II PETROLEUM COMMISSION

Establishment of
the Petroleum
Commission.

3. There is established a body called the Petroleum Commission of Guyana which shall be a body corporate.

Functions of the
Commission.

4. (1) The function of the Commission is to monitor and regulate the efficient, safe, effective and environmentally responsible exploration, development and production of petroleum in Guyana.

(2) Without limiting the generality of subsection (1), the Commission shall –

(a) promote the policies of the Government in the exploration, development and production of petroleum in Guyana;

(b) review and recommend to the Minister for approval, amendment or rejection the plans, proposals, reports, analyses, data and any other information submitted by an applicant or operator in support of an

application for the granting or renewal of a petroleum prospecting licence or a petroleum production licence;

(c) when required by the Minister, manage bid rounds for the grant of licences;

(d) monitor and ensure compliance with national policies, laws and agreements related to petroleum operations;

(e) ensure that operators, contractors, sub-contractors and other persons involved in petroleum activities comply with all applicable laws;

(f) ensure compliance with health, safety and environmental standards in petroleum operations in accordance with applicable laws and agreements and in cooperation with other government agencies;

(g) ensure compliance with fiscal metering requirements in petroleum production activities in accordance with applicable laws and procedures;

(h) monitor and regulate petroleum activities, including reserve estimation and measurement of the produced oil and gas, and carry out all other inspections and audits in keeping with the functions of the Commission and as required by law;

(i) ensure well planned, well executed and cost-efficient petroleum operations for the achievement of optimal levels of petroleum extraction;

(j) promote local content and local participation in petroleum activities;

(k) ensure the establishment of a national petroleum databank including a central database of operators and other persons involved in petroleum activities, manage petroleum data and provide periodic updates and publication of the status of petroleum activities;

(l) review and recommend to the Minister for approval, amendment or rejection of any proposed exploration activity contained in the annual work programme, appraisal programme and production forecasts submitted by an operator;

(m) review and approve budgets submitted by the operators;

(n) review and advise the Minister on reports on discoveries

submitted by an operator;

(o) advise the Minister in the negotiation of petroleum agreements and in the granting, amendment, renewing, extending, and revocation of licences;

(p) ensure accurate calibration and certification of equipment used for fiscal measures for petroleum activities;

(q) participate in the measurement of petroleum to allow for estimation and assessment of royalty and profit oil or gas due to the State and be responsible for the approval of the exercise;

(r) ascertain the cost oil or gas due to operators;

(s) provide necessary information to the relevant authority for the collection of taxes and fees from petroleum operations;

(t) promote, ensure and facilitate competition, access and utilisation of facilities by third parties to ensure optimal utilisation of existing and planned facilities;

(u) monitor conditions of operators and their trade practices to ensure that competition and fair practice is maintained;

(v) assess tail-end production and cessation of petroleum activities and decommissioning plans;

(w) undertake research into optimum methods of exploring for, exploiting and utilising petroleum and petroleum products of Guyana;

(x) perform any other function as assigned to it or requested by the Minister as being incidental or consequential to its functions under this Act.

(3) The Commission, in the carrying out of its functions, responsibilities and duties, shall consult and co-operate with the Minister as well as ministries, departments and agencies of Government having duties, aims, functions or responsibilities related to those of the Commission.

(4) The Commission shall be responsible for –

(a) the enforcement of the conditions of prospecting and production leases, concessions or exclusive permissions, or any licence, permit or production sharing or joint venture agreement entered into or deemed to be granted or entered into under the Petroleum (Exploration and Production) Act.

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- (b) the collection and recovery of all rents, fees, royalties, penalties, levies, tolls and any other charges payable under the Petroleum (Exploration and Production) Act and any other revenues of the Commission.

(5) Where the discharge of any function by the Commission under this Act or any other law is subject to the approval of the Minister, it shall not be necessary to obtain that approval if the Minister is the Chairperson of the Commission.

Duties of the Commission.

5. The duties of the Commission shall be to –

- (a) advise the Minister, at the request of the Minister or on its own initiative, on any matter relating to the monitoring, regulation and the efficient, safe, effective and environmentally responsible exploration, development and production of petroleum in Guyana;
- (b) review and propose guidelines related to and optimum methods of exploring for, exploiting and utilising petroleum and petroleum products of Guyana;
- (c) carry out research on the efficient, safe, effective and environmentally responsible exploration, development and production of petroleum including the optimum methods of exploring for, exploiting and utilising petroleum and petroleum products of Guyana.
- (d) carry out any directions of the Minister given under section 8.

Conduct of functions of the Commission.

6. (1) The Commission shall discharge its functions, perform its duties, and exercise its powers in a manner that-

- (a) is open and objective;
 - (b) is practical and reasonable;
 - (c) is in the interest of Guyana; and
 - (d) promotes competitiveness.
- (2) Notwithstanding the general effect of subsection (1), the Commission shall, in the performance of its functions –

- (a) promote efficiency, conservation and safety on the part of operators in the conduct of petroleum activities;
- (b) ensure that operators carry out the petroleum activities which they are licensed to perform;
- (c) promote competitiveness in petroleum activities;
- (d) ensure transparency in relation to the activities of the petroleum sector and the Commission; and
- (e) have due regard to sound and internationally accepted financial principles.

Custody and authentication of the seal of the Commission

- 7.** (1) The official seal of the Commission shall be in a form determined by the Commission and approved by the Minister, and shall be kept in the custody of the Secretary and shall be authenticated by the signatures of the Chairperson and the Secretary.
- (2) In the absence of either the Chairperson or the Secretary, or both, the person performing the functions of Chairperson and Secretary shall sign.
- (3) Every document purporting to be an instrument under the seal of the Commission shall be received in evidence and deemed, without further proof to be so executed, unless the contrary is proved.
- (4) All documents, other than those required to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairperson, the Deputy Chairperson, or the Commissioner and the Secretary duly authorised by resolution of the Commission to execute or sign the particular documents.

Power of the Minister to give directions to the Commission

- 8.** (1) The Minister may give to the Commission general directions –
- (a) as to any policy to be observed and implemented by the Commission in the discharge of its functions;
 - (b) for the organisation of the Commission to enable it to discharge its functions, including the size of the establishment, the employment of staff and the terms and conditions of employment, the provision of equipment and use of funds; and the Commission shall comply with such directions.

- (2) In carrying out the measures of re-organization or the works of development as to involve a substantial outlay on capital account, the Commission shall act in accordance with a programme approved, from time to time, by the Minister.
- (3) In the exercise of its functions in relation to training, education and research, the Commission shall act in accordance with a programme approved by the Minister.
- (4) The Commission shall afford to the Minister information requested by him with respect to the functions and business of the Commission and shall furnish the Minister with annual estimates, and any returns as the Minister may require.
- (5) The Commission shall provide the Minister with the facilities as will enable the verification of information furnished in pursuance of this section.
- (6) The power of the Minister to give directions to the Commission shall include, but not be limited to, giving to the Commission directions as to –
 - (a) the disposal of capital assets;
 - (b) the application of the proceeds of the disposals.
- (7) Any direction given under subsection (6) may require the whole or any part of the revenues of the Commission to be paid into the Consolidated Fund.

Directions by the Commission and compliance with directions.

- 9.** (1) The Commission shall, by notice in writing served on an operator, give to the operator directions consistent with applicable law and good oilfield practice to ensure proper and optimal production of petroleum and to encourage environmentally responsible operations in licensed areas.
- (2) An operator shall comply with the directions issued by the Commission under subsection (1).
- (3) Where an operator fails or neglects to comply with directions within the time stipulated in the notice, the Commission may cause to be done all or any of the things required by the direction to be done.
- (4) The costs and expenses incurred under subsection (3) are a debt

due, owing and payable to the Government and may be recovered in a court of competent jurisdiction, notwithstanding that the operator may have been convicted of an offence under this Act.

PART III
BOARD OF DIRECTORS OF THE
PETROLEUM COMMISSION

- Board of Directors. **10.**
- (1) The Commission shall have a Board of Directors which shall be the governing body of the Commission.
 - (2) The Board of Directors shall have a life of one year from the date of commencement, provided that the Minister, with the prior approval of Cabinet, may terminate the life of the Board at any time
 - (3) Where the Board of Directors has not been appointed or is not functioning, the Minister shall discharge the functions of the Board, provided that the Minister shall not perform the functions of the Board beyond thirty days.
 - (4) The Board of Directors shall consist of –
 - (a) the Chairperson, who shall be appointed by the Minister, but if no person is so appointed, the Minister shall be the Chairperson;
 - (b) the Commissioner, employed under section 28;
 - (c) not more than eight other persons appointed by the Minister of whom at least one each shall be a representative of:
 - (i) civil society or academia; and
 - (ii) the parliamentary opposition.
 - (5) The Minister may appoint a Deputy Chairperson who shall be a member of the Board.
 - (6) The Minister shall appoint the Secretary to the Board, who shall not be a member of the Board;
 - (7) The Chairperson shall be a person qualified and experienced in the petroleum industry disciplines of geosciences, engineering, economics, finance or law.
 - (8) The other members of the Commission shall have proven experience in any of the following, such experience being advantageous to the Commission in the performance of its functions –

- (a) petroleum, geosciences or engineering;
 - (b) health, safety and environment matters;
 - (c) law;
 - (d) business administration or management;
 - (e) finance or economics;
 - (f) chemistry and process or refinery management.
- (9) The Minister may appoint *ex-officio* members of the Board to assist in the execution of the Board's functions.
- (10) The Board shall be responsible and answerable to the Minister for the execution of its policy, functions and duties as well as any directions and assignments given to it by the Minister under the provisions of this Act.

Gazetting of appointments.

- 11.** The names of members of the Board as first constituted and every change in the membership, including the termination of the life of the Board, shall be notified in the *Gazette*.

Disqualification from appointment to the Board.

- 12.** (1) A person shall not be appointed to the Board who –
- (a) holds directly shares or other beneficial interests in any entity operating in or providing services to the petroleum sector, or is a member of the board or an employee of an operator;
 - (b) has been convicted of an offence under this Act or an offence involving fraud or dishonesty by a competent court in Guyana or elsewhere;
 - (c) has been convicted of an offence and sentenced to imprisonment by a competent court in Guyana or elsewhere; or
 - (d) is an undischarged bankrupt or has made any assignment or arrangement with his creditors.
- (2) A Board member shall not accept gifts, loans, grants-in-aid or obtain any financial or other advantage directly or indirectly from any entity operating in the petroleum sector.
- (3) A person who accepts appointment as a member of the Board or otherwise performs a function of a member of the Board knowing that

any one or more of the circumstances listed in subsection (4) applies to him commits an offence.

(4) A person commits an offence who, whilst being a member of the Board or otherwise continuing to perform a function of a member of the Board, acquires or obtains the acquisition for his own benefit, directly or indirectly, by contract or other commercial arrangement –

(a) shares or other beneficial interests in any entity operating in or providing services to the petroleum sector; or

(b) power to control the decision of the board or management of an operator.

(5) A person who commits an offence under subsection (3) or (4) is liable on summary conviction to a fine of five million dollars and to imprisonment for three years.

Term of office of Board members.

13. A member of the Board shall hold office for a renewable term of one year.

Termination of appointment of Board members.

14. (1) A member of the Board may, at any time, resign his office by giving notice in writing delivered to the Minister.

(2) The Minister may revoke the appointment of any member of the Board who contravenes or fails to comply with the provisions of this Act. The Minister may also revoke the appointment of any member –

(a) if information relating to the conduct of a member, which could have precluded his or her appointment if it had been made available to the Minister, is brought to the attention of the Minister;

(b) for incompetence;

(c) for misbehavior or misconduct;

(d) for inability to perform the functions of his office arising from infirmity of body or mind; or

(e) for bankruptcy or insolvency.

(3) Where it appears to the Minister that there is cause to revoke the appointment of a member under subsection (2), the Minister shall notify the member in writing and shall give the member an

opportunity to submit his explanation or response, which shall be duly considered by the Minister.

- (4) Where it is the Minister's decision to revoke the appointment, that member shall not be entitled after the revocation to any benefits that may be payable to him or her.

Remuneration of Board members.

- 15.** The Chairperson and members of the Board shall be paid such remuneration as the Minister may determine.

Filling of vacancies on the Board

- 16.** (1) Where a member of the Board resigns, dies, is removed from office or is for any other reason unable to act as a member of the Board, the Minister shall, within one month of the occurrence of the vacancy, appoint another person to hold office for the remainder of the term of the previous member, such appointment to be made in accordance with the provisions of this Act.

- (2) Where the member of the Board referred to in subsection (1) is the Chairperson, the Minister shall, within one month of the occurrence of the vacancy, appoint one of the Board members to hold the office of Chairperson for the unexpired portion of the Chairperson's term of office.

Committees of the Board.

- 17.** (1) The Board shall appoint scientific/technical, human resources and financial committees of the Board and may appoint such other committees as is required to effectively carry out its functions -

- (a) to inquire into and advise the Board on any matter concerning the functions of the Board as it may refer to the committee; and

- (b) to exercise such powers or perform such functions of the Board as the Board may delegate or refer to the committee.

- (2) A committee appointed under subsection (1) shall consist of a Chairperson who shall be a member of the Board and other members of the committee as the Board may determine whether members of the Board or not.

- (3) The Board shall, in writing, specify the terms and conditions of service of the members of a committee appointed under this section.

- (4) Members of a committee appointed under this section shall be paid such allowances as the Board may determine.

- (5) The Board may require a committee appointed under this section to act jointly or in co-operation with any other committee.
- (6) Subject to any direction given by the Board, a committee appointed under this section shall be regulated in the manner prescribed by the Board.

Functions of the Board.

- 18.** (1) The Board is responsible for the general direction and supervision of the Commission.
- (2) Without limiting to the generality of subsection (1), the Board shall –
- (a) oversee the operations of the Commission;
 - (b) advise the Minister on petroleum related strategic issues;
 - (c) review and approve business and operating plans, budgets, reports and financial statements of the Commission;
 - (d) establish and approve rules and procedures for appointment, promotion, termination, discipline, and terms and conditions of service of the staff of the Commission;
 - (e) provide guidance to the Commissioner and staff of the Commission; and
 - (f) perform any other function conferred by this Act or which may be necessary for the proper implementation of this Act.

Delegation of functions of the Board.

- 19.** (1) The Board may, with the written approval of the Minister and by instrument of delegation, delegate to the Chairperson, a member of the Board, an officer of the Commission or to a committee established under section 17, any of the powers, duties or functions of the Board under this Act.
- (2) The terms and conditions regulating the exercise of the powers delegated under this section shall be contained in the instrument of delegation.
- (3) A person aggrieved by the decision of a person to whom functions and powers have been delegated under this section may appeal to the Board.
- (4) A person shall, in the exercise of a delegated power under this

section, comply with any directions or guidelines as the Board may, from time to time, communicate in writing.

Meetings, proceedings and related matters of the Board

Meetings of the Board.

- 20.** (1) The Chairperson shall convene every meeting of the Board at times and places as the Board may determine, and the Board shall meet for the discharge of business at least once every month, and the Board shall determine the methods for the holding of meetings.
- (2) The Chairperson may, at any time, convene a special meeting of the Board and shall also call a meeting within fourteen days, if requested to do so in writing by at least five members of the Board.
- (3) Notice of a Board meeting shall be given in writing to each member at least fourteen working days before the day of the meeting.
- (4) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson; the members present shall appoint a member from among themselves to preside at that meeting.

Quorum.

- 21.** (1) The quorum for a meeting of the Board is a majority of the members appointed.
- (2) All decisions at a meeting of the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (3) All members except the Commissioner shall have the right to vote.

Minutes of meetings.

- 22.** (1) The Board shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.
- (2) The minutes recorded under this section shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson, in the presence of the members present at the latter meeting.

Minutes receivable in evidence in legal proceedings.

- 23.** Any minutes made of any meetings of the Board shall, if duly signed by the Chairperson, Deputy Chairperson or Director presiding at a meeting of the Commission along with the Secretary, and without proof of any other matter or thing, be receivable in all legal

proceedings as *prima facie* evidence of the proceedings of the Commission of which minutes have been made and every meeting of the Commission in respect of the proceedings of which the minutes have been so made shall be deemed to have been duly convened and held and all members who were present to have been duly qualified to act.

Power to co-opt.

24. (1) The Board may invite any person who, in the opinion of the Board, has expert knowledge concerning the functions of the Board, to attend and take part in the proceedings of the Board.

(2) A person attending a meeting of the Board under subsection (1) may take part in any discussion at the meeting on which his advice is required but shall not have any right to vote.

Validity of proceedings.

25. The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by any defect in the appointment or qualification of a member or by reason that a person not entitled, took part in its proceedings.

Disclosure of interest.

26. (1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose the nature of his interest at a meeting of the Board.

(2) A disclosure shall be recorded in the minutes of that meeting.

(3) A member who makes a disclosure shall not –

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter.

(4) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part in a meeting under subsection (3) shall be treated as being present.

Regulation of procedure.

27. Subject to this Act, the Board may regulate its own procedure or any other matter relating to its meetings.

PART IV COMMISSIONER

Commissioner.

28. (1) The Commission shall have a Commissioner who shall be

appointed by the Minister, after consultation with the Board, on terms and conditions specified in his instrument of appointment.

- (2) The Commissioner shall be the Chief Executive Officer of the Commission and a full time employee of the Commission.
- (3) The Commissioner shall be a person who has qualifications and experience in petroleum geosciences, petroleum engineering, petroleum management, petroleum law or petroleum taxation and finance.
- (4) A person shall not be appointed Commissioner who –
 - (a) holds directly or indirectly shares or other beneficial interests in any entity operating in or providing services to the petroleum sector, or is a member of the board or an employee of an operator;
 - (b) is an undischarged bankrupt;
 - (c) has been convicted of an offence under this Act or an offence involving fraud or dishonesty by a competent court in Guyana or elsewhere;
 - (d) has been convicted of an offence and sentenced to imprisonment of six months or more by a competent court in Guyana or elsewhere; or
 - (e) is a public officer, a Member of Parliament, a Minister of Government or a member of a local democratic organ.
- (5) Where a person referred to in subsection (4)(e) is to be appointed the Commissioner, the person shall resign his office before assuming the office of the Commissioner.
- (6) A person commits an offence who accepts appointment as Commissioner or otherwise discharges a function of the office of Commissioner knowing that any one or more of circumstances listed in subsections (4)(a), (b), (c) and (d) applies to him.
- (7) A person commits an offence who whilst being Commissioner or otherwise continuing to discharge a function of the office of Commissioner acquires, or obtains the acquisition for his benefit, directly or indirectly by contract or other commercial arrangement -

- (a) shares or other beneficial interests in any entity operating in or providing services to the petroleum sector; or
 - (b) power to control the decision of the board or management of an operator.
- (8) A person who commits an offence under subsection (6) or (7) is liable on summary conviction to a fine of five million dollars and to imprisonment for three years.
- (9) The Commissioner shall not accept gifts, loans, grants-in-aid or obtain any financial or other advantage directly or indirectly from any entity operating in the petroleum sector.

Functions of the Commissioner

- 29.** (1) Subject to this Act and to the general supervision and control of the Board, the Commissioner shall –
- (a) initiate and implement the policies and programmes of the Commission and report on them to the Board and ensure that the agreed objectives, targets and service standards are met;
 - (b) be responsible for the proper management of the property of the Commission;
 - (c) manage the staff of the Commission;
 - (d) develop and oversee an operating plan to guide the Commission in performing its functions;
 - (e) co-operate with lead agencies and organisations in matters related to the petroleum sector;
 - (f) develop an economic, efficient and cost effective internal management structure;
 - (g) provide advice as required on all matters which fall within the area of the Commission’s responsibility; and
 - (h) perform any other duty necessary for the implementation of this Act as may be assigned to him or her by the Board.
- (2) The Commissioner is, in the discharge of his functions, answerable to the Board.

Tenure of office of the Commissioner.

- 30.** (1) The Commissioner shall hold office for three years and is eligible for re-appointment.

- (2) The Commissioner shall cease to hold office if –
 - (a) he resigns;
 - (b) he is declared or becomes bankrupt or insolvent or has made an arrangement with his creditors; or
 - (c) he has been convicted of an offence and sentenced to a term of imprisonment for six months or more by a competent court in Guyana or outside Guyana.
- (3) The Commissioner may be removed from office by the Minister, upon the recommendation of the Board, for –
 - (a) abuse of office;
 - (b) inability to perform the functions of his office arising from infirmity of body or mind;
 - (c) misbehaviour or misconduct; or
 - (d) incompetence.

Other officers and staff of the Commission.

- 31.** The Board may employ at the remuneration and on other terms and conditions it thinks fit (including the payment of pensions, gratuities or other like benefits by reference to the service of its officers and other employees) officers and other employees as the Board considers necessary for the purpose of carrying out its functions –

Provided that –

- (a) no salary in excess of such amount as may be specified in directions issued by the Minister shall be assigned to any office without the written approval of the Minister;
- (b) no appointment shall be made to any office to which a salary, in excess of such amount as may be specified in such directions, is assigned without the written approval of the Minister;
- (c) no provisions shall be made for the payment of any pensions, gratuities or other like benefits to the officers and other employees of the Commission by reference to their service, without the written approval of the Minister.

- Service of professionals.
- 32.** The Commission may at any time retain the services of professional persons and may pay their remuneration as the Minister, guided by the Commission, may determine.
- Protection from liability
- 33.** A member of the Board or an officer of the Commission or a person acting on the directions of the Board or of an officer of the Commission is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of functions, duties and responsibilities under this Act.
- Duty not to disclose information
- 34.** (1) Subject to this Act and any other applicable law, a person who is a member of the Board or officer or member of staff of the Commission shall not disclose any information, which he may have obtained in the course of his employment.
- (2) A person who ceases to be a member of the Board or officer or a member of staff of the Commission shall not disclose any information, which he may have obtained in the course of his employment for a period of ten years, and shall not be employed by, work for or be contracted by any operator under regulation for a period of two years.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for three years.

PART V FINANCE

- Funds of the Commission
- 35.** The funds of the Commission shall consist of -
- (a) monies appropriated by Parliament for the purposes of the Commission;
- (b) any revenue derived from the sale of any property, movable or immovable, by or on behalf of the Commission; and
- (c) revenues accruing to the Commission in the discharge of its functions including fees, but shall exclude revenue accruing to Government in the form of royalties, surface rentals, signature bonuses, proceeds from sale of Government share of production, and any other tax payable to Government.
- Duty to operate on sound financial principles.
- 36.** The Board shall, in the discharge of its functions have due regard to sound and internationally accepted financial and accounting

principles.

Power to open and operate bank accounts.

- 37.** (1) The Commission shall, with the approval of the Board and the Minister responsible for finance, open and maintain such bank accounts as are necessary for the discharge of the functions of the Commission.
- (2) The Commissioner shall ensure that:
- (a) all money received by and on behalf of the Commission is placed into authorised accounts held by the Commission as soon as practicable after being received; and
- (b) any and all revenue received on behalf of the Government being in the form of royalties, surface rentals, signature bonuses, proceeds from sale of Government share of production, and any other tax payable to Government is paid into the Consolidated Fund as directed by the Minister.
- (c) The Commissioner shall ensure that no money is withdrawn from or paid out of any of the Commission's authorised accounts without the prior written authority of the Board.
- (d) The Board shall authorise withdrawals or payments which are necessary for the carrying out of its functions and duties and in furtherance of its policies and programmes.

Estimates.

- 38.** (1) The Commissioner shall, two months before the end of each financial year, cause to be prepared and submitted to the Board for its approval, estimates of the income and expenditure of the Commission.
- (2) The Board shall, within one month after receipt of the estimates referred, cause to be submitted to the Minister for approval, the estimates of income and expenditure as approved by the Board.

Financial Year.

- 39.** The financial year of the Commission shall be the same as the financial year of the Government.

Accounts.

- 40.** (1) The Commissioner shall cause to be kept, proper books of accounts and records of the transactions of the Commission in accordance with accepted accounting principles and in the form as may be directed by the Minister responsible for finance.
- (2) Subject to any direction given by the Board, the Commissioner shall cause to be prepared an annual financial statement stating

the basis of accounting and shall identify any significant departure from it and the reasons for the departure.

- (3) The statement of accounts shall include -
 - (a) a balance sheet, an income and expenditure account and a source and application of Commission's statement; and
 - (b) any other information in respect of the financial affairs of the Commission as the Auditor General or an auditor appointed by the Auditor General may, in writing require.

Audit.

- 41.** (1) The Commission shall keep proper accounts and other records in respect of its transactions and operations and such accounts and other records shall be audited by the Auditor General.
- (2) The Minister may, at any time, appoint an auditor to examine the accounts of the Commission and to report on it to the Minister.
- (3) The Auditor General or an auditor appointed by the Auditor General shall, in each financial year, audit the accounts of the Commission.
- (4) The Board shall ensure that two months after the end of each financial year, a statement of accounts is submitted to the Auditor General or to an auditor appointed by the Auditor General for auditing.
- (5) The members, officers and employees of the Commission shall grant to the Auditor General or any auditor appointed to audit the accounts of the Commission access to all books, documents, cash and securities of the Commission and shall give to the Auditor General or the auditor on request all such information as may be within their knowledge in relation to the operations of the Commission.
- (6) The Auditor General or an auditor appointed under this section shall have the power to summon and examine all persons whom the Auditor General or the auditor thinks fit to examine for the purpose of obtaining information in connection with the examination and audit of the accounts of the Commission and respecting all other matters and things whatever necessary for the due performance of the functions vested in the Auditor General or the auditor; and if any person summoned is not a public officer or an employee of the Commission that person is entitled to payment for attendance as if the person were a witness

attending a legal proceeding in obedience to a summons issued at the instance of the State.

Annual Report.

- 42.** (1) The Board shall submit to the Minister, as soon as practicable but not later than two months after the end of each financial year, a report detailing the activities and operations of the Commission during the year to which the report relates including audited accounts.
- (2) The report referred to in subsection (1) shall contain information including, but is not limited to, on the following -
- (a) open areas for petroleum exploration and production;
 - (b) petroleum prospecting licences issued and relinquished;
 - (c) petroleum activities conducted, including, but not limited to, data acquisition and the drilling of wells, exploration, appraisal, development and production (volume of oil and gas produced) phases of the petroleum value chain;
 - (d) local content and local participation in petroleum activities;
 - (e) sale or transfer of interest;
 - (f) the status of development and production activities under each licence;
 - (g) the amount of petroleum produced and forecasted;
 - (h) transportation system including new pipe lines constructed and the petroleum activities to which they are related;
 - (i) research and development projects;
 - (j) royalty and fees paid by operators;
 - (k) health, safety and environment;
 - (l) decommissioning activities;
 - (m) resource status in relation to the –
 - (i) total volume of petroleum sold and delivered;
 - (ii) inactive acreage;
 - (iii) producing acreage;

- (iv) reserves in producing acreage;
- (v) discovered resources for which the plan of development is yet to be approved;
- (vi) resources in discovered acreage which are currently considered 'not commercial';

(n) volume of original hydrocarbon in place, recoverable reserves and remaining recoverable reserves (net of production) of existing acreage; and

(o) such other information as the Minister may consider necessary.

(3) The Minister shall, within three months after the receipt of the annual report, submit the report to Parliament with any statement which the Minister considers necessary.

Investments. **43.** Monies standing at the credit of the Commission may, from time to time, be invested in securities approved either generally or specifically by the Minister, and the Commission may, from time to time, with the like approval, sell all or any of the securities.

Reserve fund. **44.** (1) The Commission shall maintain a reserve fund and shall, out of the net surplus for each year, transfer to that fund a sum equal to not less than the sum as may be fixed by the Minister.

(2) If the reserve fund is in any year insufficient to cover any net loss of the Commission recorded in its Profit and Loss Account, an amount equivalent to the deficiency shall be charged on the Consolidated fund:
 Provided that if in any succeeding year any net surplus accrues to the Commission there shall be paid into the Consolidated Fund by the Commission from time to time, such sum as may be agreed with the Minister responsible for finance together with interest on it at the rate to be determined by him until the amount is fully repaid.

(3) For the purposes of this section, net surplus shall be determined by deducting from gross income all expenses together with allowances for depreciation of assets, contributions to staff benefit funds, provision for bad and doubtful debts, and such other contingencies and accounting provisions as are usually made by comparable institutions.

Recovery of monies due to the Commission. **45.** Any sum due to the Commission may be recovered by parate or summary execution and the right of recovery conferred by this section

is in addition to any other procedure available to the Commission under any other law.

- Publication. **46.** A summary of the annual report prepared and statement of accounts shall be published on the website of the Commission for public notice not later than April 1 of each year.
- Exemption from taxation. **47.** The Minister responsible for finance may, by order which shall be subject to affirmative resolution by Parliament, exempt the Commission from liability for any tax, duty, rate, levy or other charge due to the revenue of Guyana.

PART VI MISCELLANEOUS

- Transfer of assets to the Commission and other transitional provisions. **48.** (1) The appointments, composition of the Board and other requirements necessary for the effective functioning of the Commission shall be made within four months after the commencement of this Act.
- (2) The assets of the Guyana Geology and Mines Commission relating to petroleum, petroleum activities and responsibilities (including rights and interests) are hereby transferred to and vested, without further assurance, in the Commission.
- (3) The Minister may order, by writing under his hand, the transfer of all or some of the petroleum revenues from the Guyana Geology and Mines Commission to the Commission at such time or times as the Minister sees fit.
- (4) The Minister shall order, by writing under his hand, the Guyana Geology and Mines Commission -
- a) to transfer to the Commission such petroleum and related information being notes, working papers, data, records, reports, professional and technical writings and opinions, copies or other information in the possession or custody or under the control of the Guyana Geology and Mines Commission whether in print, electronic or magnetic media, and shall cause the Guyana Geology and Mines Commission to deliver to the Commission all such petroleum and related information or fragments or parts of them including any backup or supportive storage from any computer, computer programmes, databases or other electronic or other storage systems; and

b) to provide support to the Commission in any matter requested by it.

(5) For the purpose of giving effect to the provisions of subsection (2) in relation to contractual rights and liabilities, all such contracts shall as from the appointed day be construed with all due adaptations and modifications.

(6) Subject to subsection (7) the Minister may order by writing under his hand transfer some of the personnel of the Guyana Geology and Mines Commission in relation to petroleum, petroleum activities and responsibilities and shall continue to employ those personnel on terms and conditions as may be agreed on between the Commission and the personnel in accordance with the employment provisions of this Act, the terms and conditions which when taken as a whole shall be no less favourable than those applicable to the personnel immediately before the appointed day.

Cap. 27:02

(7) The Commission shall be the successor of the Government in respect of any leave which may have accrued to any personnel as mentioned in subsection (6) who continue to be employed by the Commission, and service with the Commission shall be other public service within the meaning of, and for the purposes of the provisions applicable to it in the Pensions Act.

(8) Immediately upon the appointed day, the Guyana Geology and Mines Commission shall cease to exercise any function in relation to the promotion, monitoring, regulation, management, utilisation of and any other related activity or function connected to petroleum resources in Guyana and the co-ordination of policy in relation to that function.

(9) Subject to the provisions of this Act, a Government agency or authority shall not discharge any function in relation to the promotion, monitoring, regulation, management, utilisation of and any other related activity or function connected to petroleum resources in Guyana and the co-ordination of policy in relation to that function.

Cap. 66:02
Cap. 65:01

(10) The provisions in relation to petroleum, including but not limited to, petroleum functions, responsibilities and activities contained in the Guyana Geology and Mines Commission Act, the Mining Act and any other legislation that are in any manner inconsistent with the provisions of this Act are repealed.

Regulations.

49. (1) The Minister may make regulations which, in the opinion of the Minister, are necessary or expedient for the carrying into effect of the purposes of this Act.

(2) Regulations made under this section may provide for offences for breach of the regulations, and the penalty for the commission of any of the offences shall be a fine of five million dollars and to imprisonment for three years.

Limitation provisions excluded.
Cap. 7:02

50. The Limitation Act shall not apply to proceedings instituted by the Commission for the recovery of monies due to the Commission or any other property to which a claim is made by the Commission.

Penalties.

51. Any person who commits an offence under this Act for which no special penalty is provided is liable on summary conviction to a fine of ten million dollars and to imprisonment for three years.

EXPLANATORY MEMORANDUM

Background

In May 2015, ExxonMobil and its partners Hess and CNOOC Nexen announced a discovery of significant quantities of hydrocarbons offshore in the Guyana Basin – the Liza well. In June of 2016, it was confirmed a recoverable oil resources as being closer to 1.4 billion oil-equivalent barrels (bbl). In January of 2017, two new discoveries were announced by ExxonMobil and partners –

1. Payara-1 well encounters more than 95 feet of high-quality, oil-bearing sandstone reservoirs. The well is located in new reservoir about 10 miles from Liza-1 discovery; and
2. Appraisal drilling at Liza-3 identified additional high quality, deeper reservoirs below the Liza field.

Recently in March of 2017, another discovery was announced by ExxonMobil and partners; the Snoek well located approximately five miles from the Liza discovery encountered more than 82 feet of high-quality, oil bearing sandstone reservoirs.

There is much ongoing preparation for production from the Liza well being made by ExxonMobil. The Liza field development plan has been submitted for Government's review and we anticipate first oil by 2020.

The hydrocarbon sector has been a key component of many transformative economies worldwide. It offers a range of opportunities to achieve economic growth and fiscal expansion that will drive immediate, medium and long-term benefits. Despite its potential, countries have all too often been unable to convert newly defined hydrocarbon resources into a vector for positive economic and social development and have suffered from the 'resource curse', also known as the 'paradox of plenty'.

The paradox is that countries with an abundance of natural resources such as hydrocarbons tend to remain stunted in economic growth, and have in quite a few cases less economic progress and worse development outcomes than reasonably expected.

Development of the oil and gas sector is notorious for the risks and threats that it poses to economic and political stability, and the environment. Management of the sector is a major challenge for Governments and domestic institutions. The established consensus on mitigating risk is basically twofold: (a) Governments must put in place institutions and regulatory frameworks that allow for transparent and efficient management of oil revenue; and (b) oil windfall should be directed towards productive investments in physical and human capital so that long-term sustainable and equitable growth can be generated. To this end, one of the key institutions needed is the Petroleum regulatory agency – the Petroleum Commission of Guyana. The model is based on similar agencies in other petroleum producing countries.

The Guyana Geology and Mines Commission (GGMC) is primarily responsible for the oversight and development of alluvial and hard rock mining activities within Guyana. The GGMC is also currently responsible for the oversight of the petroleum sector through its Petroleum Division. However, given the signal importance of petroleum for the future development of Guyana, the complex nature of the petroleum sector, the many cross cutting issues regarding managing the social and economic impact of hydrocarbon activities on the other sectors of the economy and the Government of Guyana's commitment to sustainably govern and develop the extractive industry sector in general, it is clear that the time has come to govern petroleum exploration and development as a distinct "stand alone" component of the extractive sector.

The Petroleum Commission would be established within a comprehensive and robust legislative regulatory framework which also takes into consideration the growth and improvement of the natural resources sector as a whole in conjunction with environmental protection and sustainable development.

Key Objectives

The key objectives of the Act are:

- (1) to provide for the establishment and functions of a petroleum regulatory agency.
- (2) to provide for the monitoring and regulation of efficient, safe, effective and environmentally responsible exploration, development and production of petroleum in Guyana.
- (3) to provide for a structured regulatory medium through which the governance tenets of efficiency, transparency, sustainability and certainty within the petroleum sector can be continuously developed and applied.

PART I – PRELIMINARY

Clause 1 contains the citation of the Bill. Provision is made for the commencement of the Act by the Minister through an order.

The interpretation provisions are set out in **Clause 2**. It should also be noted that the meanings and definitions as set out in the Interpretation section of the Petroleum (Exploration and Production) Act, Cap. 65:04, Guyana shall have the same meaning within this Act.

PART II – PETROLEUM COMMISSION

Clause 3 of the Bill establishes the Petroleum Commission as a body corporate.

Clause 4 sets out the functions of the Commission, its overarching function being to monitor and regulate the efficient, safe, effective and environmentally responsible exploration, development

and production of petroleum in Guyana. The Commission shall also have as its functions the responsibility for carrying out the following activities amongst other –

- monitoring and ensuring compliance with national policies, laws and agreements related to petroleum operations;
- ensuring compliance with health, safety and environmental standards in petroleum operations in accordance with applicable laws and agreements and in cooperation with other government agencies;
- promoting local content and local participation in petroleum activities;
- assessing tail-end production and cessation of petroleum activities and decommissioning plans;
- undertaking research into optimum methods of exploring for, exploiting and utilising petroleum and petroleum products of Guyana.

Clause 5 provides for the duties of the Commission which include –

- advising the Minister on any matter relating to the monitoring, regulation and the efficient, safe, effective and environmentally responsible exploration, development and production of petroleum in Guyana, at the request of the Minister or on its own initiative;
- carrying out research on the efficient, safe, effective and environmentally responsible exploration, development and production of petroleum in Guyana, including the optimum methods of exploring for, exploiting and utilising petroleum and petroleum products.

Clause 6 provides that the Commission's discharge of functions shall be in a manner that is open, practical, in the interest of Guyana and shall promote competitiveness. The section also provides that the Commission, in the discharge of its functions, shall –

- promote efficiency, conservation and safety on the part of operators in the conduct of petroleum activities;
- ensure that operators carry out the petroleum activities which they are licensed to perform;
- promote competitiveness in petroleum activities;
- ensure transparency in relation to the activities of the petroleum sector and the Commission; and
- have due regard to sound and internationally accepted financial principles.

Clause 7 makes provision for the custody and authentication of the seal of the Commission. It provides that the official seal of the Commission shall be kept in the custody of the Chairperson or the Secretary and authenticated by their signatures. It also provides that all documents except those required to be under seal, may be signed by the Chairperson, the Deputy Chairperson or the Commissioner and the Secretary where duly authorised by resolution of the Board to execute the particular documents.

Clause 8 provides for the Minister to give general directions to the Commission.

Clause 9 provides for Commission's power to give directions to operators that are consistent with applicable law and good oilfield practice to ensure proper and optimal production of petroleum and to encourage environmentally responsible operations in licensed areas. Operators are to comply with such directions.

PART III – THE BOARD OF DIRECTORS OF THE PETROLEUM COMMISSION

Clauses 10 to 27 contain various provisions relating to the Commission's Board of Directors, which shall be the governing body of the Commission. The Board shall be responsible to the Minister for the execution of its policy, functions and duties and shall give effect to any directions and assignments given to it by the Minister under this Act.

Clause 11 provides for the names of members of the Board and the termination of the life of the Board, to be published in the *Official Gazette*.

Clause 12 provides the reasons for the disqualification for appointment to the Board of Directors. For instance a person who hold shares or beneficial interests in any entity operating in or providing services to the petroleum sector, or is a member of the board or an employee of a operator; so also is a person who has been convicted of an offence or is an undischarged bankrupt.

Clause 13 provides that the term of office of Board members shall be for a renewable term of one year.

Clause 14 provides for the termination of appointment of Board members and allows for the Minister to revoke the appointment of any member who fails to comply with the provisions of this Act.

Clause 15 provides that the Chairperson and members of the Board shall be paid such remuneration as the Minister may determine.

Clause 16 deals with the filling of vacancies on the Board.

Clause 17 provides that the Board shall appoint scientific/technical, human resources and financial committees and may appoint such other committees as required to effectively carry out its functions.

Clause 18 contains the functions of the Board which is responsible for the general direction and supervision of the Commission. These functions include –

- overseeing the operations of the Commission;
- advising the Minister on petroleum related strategic issues;
- reviewing and approving business and operating plans, budgets, reports and financial statements of the Commission;
- establishing and approving rules and procedures for appointment, promotion, termination, discipline, and terms and conditions of service of the staff of the Commission;

Clause 19 provides for the delegation of the Board’s functions to the Chairperson, a member of the Board, an officer of the Commission or to a committee of the Board.

Meetings, proceedings and related matters of the Board

Clause 20 provides for the convening of meetings of the Board at times and places the Board determines.

Clause 21 provides that the quorum of the Board shall be a majority of the appointed members.

Clause 22 provides for the minutes of meetings of the Board.

Clause 23 provides for duly signed minutes of any meetings of the Board to be receivable in legal proceedings as *prima facie* evidence.

Clause 24 gives power to the Board to invite any person with expert knowledge concerning the functions of the Board to attend and take part in the proceedings of the Board.

Clause 25 provides that the validity of any proceedings of the Board shall not be affected by a vacancy in its membership.

Clause 26 provides for the disclosure by a member of the Board of any interest he may have in any contract made or proposed to be made by the Board.

Clause 27 gives power to the Board to regulate its own procedure or any other matter relating to its meetings.

PART IV – COMMISSIONER

Clause 28 makes provision for the Commission to have a Commissioner who shall be appointed by the Minister after consultation with the Board, and the Commissioner shall be a full time employee of the Commission. A person shall not be appointed Commissioner who –

- (a) holds directly or indirectly shares or other beneficial interests in any entity operating in or providing services to the petroleum sector, or is a member of the board or an employee of a operator;
- (b) is an undischarged bankrupt;
- (c) has been convicted of an offence under this Act or an offence involving fraud or dishonestly by a competent court in Guyana or elsewhere;
- (d) has been convicted of an offence and sentenced to imprisonment by a competent court in Guyana or elsewhere; or
- (e) is a public officer, a Member of Parliament, a Minister or a member of a local democratic organ.

Clause 29 provides for the functions of the Commissioner who shall be subject to the general supervision and control of the Board. The Commissioner shall –

- initiate and implement the policies and programmes of the Commission and report on them to the Board and ensure that the agreed objectives, targets and service standards are met;
- be responsible for the proper management of the property of the Commission;
- manage the staff of the Commission;
- develop and oversee an operating plan to guide the Commission in performing its functions;
- co-operate with lead agencies and organisations in matters related to the petroleum sector; and
- provide advice as required on all matters falling within the area of the Commission's responsibility.

Clause 30 provides for the tenure of office of the Commissioner. The Commissioner shall cease to hold office if he resigns, he is declared or becomes bankrupt or he has been convicted of an offence and sentenced to a term of imprisonment. The Commissioner shall be removed from office for abuse of office, infirmity of body or mind, misconduct or incompetence.

Clause 31 makes provision for the Board to employ officers and other employees for the purpose of carrying out its functions.

Clause 32 makes provision for the Commission to retain the services of professionals and provides that any such remuneration may be paid as the Minister may determine who shall be guided by the Commission.

Clause 33 makes provision for the protection in certain circumstances from liability of a member of the Board or an officer of the Commission or a person acting on the directions of the Board.

Clause 34 stipulates a duty of a member of the Board or officer or member of staff of the Commission not to disclose information which he may have obtained in the course of his employment. A duty not to disclose information extends for a period of 10 years after a person ceases to be a member of the Board or officer or a member of staff of the Commission.

PART V - FINANCE

Clause 35 provides for the funds of the Commission.

Clause 36 requires the Board to have due regard to sound and internationally accepted financial and accounting principles in the performance of its functions.

Clause 37 gives power to the Commission, with the approval of the Board and the Minister responsible for finance, to open such bank accounts as are necessary for the performance of its functions.

Clause 38 provides for annual estimates of income and expenditure and the approval of same by the Board and the Minister.

Clause 39 provides that the financial year of the Commission shall be the same as the financial year of the Government.

Clauses 40 and 41 provide for the accounts and audit of the Commission. The Commissioner shall cause proper books of accounts and records of transactions to be kept and shall cause to be prepared an annual financial statement. The Auditor General shall audit the accounts of the Commission and to report on it to the Minister. The Minister also has the power to appoint an auditor at any time to examine the accounts of the Commission.

Clause 42 requires the Board to submit an annual report on the activities of the Commission to the Minister including activities regarding –

- petroleum prospecting licences issued and relinquished;
- local content and local participation in petroleum activities;
- the sale or transfer of interests;
- the amount of petroleum produced and forecasted;
- research and development projects;
- royalty and fees, paid by the operators;

- health safety and the environment; and
- decommissioning activities.

Clause 43 deals with investment of monies standing at the credit of the Commission.

Clauses 44 establishes a reserve fund for the Commission.

Clause 45 deals with the recovery of monies due to the Commission and includes that any sum may be recovered by parate or summary execution. Also, the right of recovery conferred by this section is in addition to any other procedure available to the Commission under any other law.

Clause 46 provides that a summary of the annual report and statement of accounts shall be published in the website of the Commission for public notice.

Clause 47 provides that the Minister responsible for finance may, by an order which shall be subject to affirmative resolution by Parliament, exempt the Commission from liability for any tax or other charge due to the revenue of Guyana.

PART VI - MISCELLANEOUS

Clause 48 provides for the transfer of assets to the Commission and other transitional provisions.

Clause 49 provides for the Minister to make regulations for the carrying into effect of the purposes of this Act.

Clause 50 provides that the Limitation Act shall not apply to proceedings instituted by the Commission for the recovery of monies due to the Commission or any other property to which a claim is made by the Commission.

Clause 51 provides generally for penalties.

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Honourable Raphael G.C Trotman, M.P.
Minister of Natural Resources