



Tonga

PETROLEUM MINING ACT

Chapter 46.08

2016 Revised Edition



PETROLEUM MINING ACT

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PETROLEUM MINING ACT

AN ACT TO MAKE PROVISIONS RELATING TO THE ISSUE OF EXPLORATION LICENCE AND PETROLEUM AGREEMENT WITH REGARD TO EXPLORATION, PROSPECTING AND MINING FOR PETROLEUM IN THE KINGDOM OF TONGA AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH¹

Commencement [30th January, 1970]

1 Short title

This Act may be cited as the Petroleum Mining Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**exploration licence**” means a licence issued under section 7 authorising the licensee thereof to explore for petroleum;

“**exploration work**” means any work carried out in connection with exploration for petroleum;

“**foreshore**” means the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the tides and all land adjoining thereunto lying within 50 feet of the high water mark of the ordinary tides;

“**land**” means any area of onshore land within the Kingdom of Tonga and includes offshore land adjacent to and contiguous with such onshore land;

“**licensee**” means a person to whom an exploration licence under section 7 is issued and includes his successors in title and the person deriving title under him;

“**Minister**” means the Minister responsible for lands;²

“**off-shore land**” means all submerged lands lying within the archipelagic waters, internal waters, territorial sea, historical waters and exclusive economic zone of the Kingdom;³

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

“**person**” includes a company;

“**petroleum**” means—

- (a) any naturally occurring hydrocarbons, whether in gaseous, liquid or solid state, but excluding coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;
- (b) any naturally occurring mixture of hydrocarbons, whether in gaseous, liquid or solid state;
- (c) any naturally occurring mixture of one or more hydrocarbons, whether in gaseous, liquid or solid state, and one or more of the following that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide and includes any petroleum as defined by paragraphs (a), (b) or (c) of this definition that has been returned to its natural reservoir;

“**petroleum agreement**” means an agreement entered into by Cabinet with any person who desires to explore, prospect and mine for petroleum in the Kingdom of Tonga in accordance with sections 8 and 9.

3 Restriction on petroleum exploring, prospecting or mining

- (1) No persons shall explore, prospect or mine for petroleum or do any act with a view to such exploring, prospecting or mining upon any land except by virtue of an exploration licence or a petroleum agreement issued or entered into the provisions of this Act.
- (2) Any person who acts in contravention of this section shall be guilty of an offence and shall on conviction be liable to a term of imprisonment not exceeding 2 years, or to a fine not exceeding \$5,000 or to both such imprisonment and fine; and all machinery, tools, plant, buildings and other property together with any minerals or other products which may be found upon or proved to have been obtained from the land so unlawfully explored, prospected or mined shall be liable to forfeiture.

4 Persons by whom applications may be made

- (1) Any person desirous of exploring, prospecting or mining for petroleum may apply in accordance with the provisions of this Act for an exploration licence or a petroleum agreement in respect of any area of land.
- (2) Every application for an exploration licence or for a petroleum agreement under this Act shall be considered and approved or refused, as the case may be, by Cabinet.⁴

5 Manner in which application may be made⁵

- (1) Every application shall be made in writing in the form set out in the Schedule to this Act and shall be addressed to the Minister for consideration by Cabinet.
- (2) Every application made under this section shall be accompanied by such fees as may be prescribed.
- (3) There shall be attached to the application 2 copies of a recognised official map of the lands or any part thereof upon which shall be delineated the boundaries of the area in respect of which an exploration licence or petroleum agreement, as the case may be, is applied for; and in the case of an application for an exploration licence, such application shall be supported by evidence that the applicant intends to carry out exploration work on a serious basis over the area of land applied for.
- (4) The applicant shall, upon request by the Minister, furnish such evidence as Cabinet may consider necessary as to his financial and technical qualifications and as to his ability to comply with any terms and conditions in the exploration licence or, as the case may be, in the clauses of the petroleum agreement; and if such evidence shall not have been so furnished within 3 months of the request thereof, the application shall, unless Cabinet otherwise determines, be deemed to have lapsed and become void.
- (5) All information comprised in or furnished to Cabinet in pursuance of an application made under this Act shall be treated as confidential.
- (6) Where any person requires an exploration licence or a petroleum agreement in respect of 2 or more separate areas, a separate application shall be made in respect of each such area.

6 Lapse of application⁶

If a petroleum agreement has not been signed by the applicant company or its successor and such applicant company or its successor has not paid the fee in accordance with regulations within 6 months following the approval date of the application, the right of the applicant to such petroleum agreement shall lapse, unless Cabinet considers that the delay is not attributable to the fault of such company.

7 Exploration licence⁷

- (1) Cabinet may issue an exploration licence in respect of the whole or any part of the area of land applied for, and every exploration licence issued under this Act may, subject to the following provisos, authorise the licensee thereof to explore for petroleum over the whole or any part of the area of land specified in that licence:

Provided that an exploration licence shall not be issued in respect of an area of land which has already been covered by a petroleum agreement entered into under section 8:

And provided further that nothing in this section shall prevent Cabinet from issuing in respect of the same area of land more than one exploration licence or another exploration licence or licences to other person or persons.

- (2) Every licensee of an exploration licence shall enjoy rights and liberty granted under his licence during the continuance thereof in common with other licensees to whom exploration licences in respect of the same area may have been issued or may hereafter be issued.
- (3) Every exploration licence shall be for an initial period of 2 years and thereafter may be extended from time to time upon an application for the extension thereof made and supported by evidence that the licensee had in fact carried out during the currency of the licence exploration work upon a reasonable scale.
- (4) The licensee of an exploration licence may at any time apply to Cabinet for a petroleum agreement in respect of the whole or any part of the area held under his exploration licence; and upon the issue of a petroleum agreement covering such area or any part thereof all exploration licences covering such area or any part thereof shall determine without the Government of Tonga being liable to pay any compensation to licensees.
- (5) Cabinet may cause to be prepared and published a model exploration licence. An exploration licence shall ordinarily be in the form and contain the terms and conditions of such model exploration licence:

Provided that in respect of any exploration licence, Cabinet may make such modifications and exclusions and may add such additional clauses as Cabinet may deem fit.⁸

8 Petroleum agreement⁹

- (1) Upon an application made in that behalf by any person desirous of exploring, prospecting and/or mining for petroleum, Cabinet may, subject to the provisions of section 9 and the following subsection, enter with such person into a petroleum agreement in respect of any area or areas of land for which such application therefor has been made as herein provided.

- (2) Cabinet may cause to be prepared and published a model petroleum agreement.

A petroleum agreement shall ordinarily be in the form and contain the terms and conditions of such model petroleum agreement:

Provided that in respect of any petroleum agreement Cabinet may make such modifications and exclusions and may add such additional clauses as Cabinet may deem fit and provided further that every petroleum agreement shall cover an area not exceeding 2,000 square miles, or areas which in the aggregate do not exceed 2,000 square miles.¹⁰

9 Single petroleum agreement for areas in excess of 2,000 square miles

Cabinet may enter into a single petroleum agreement in respect of an area or areas notwithstanding that the total areas to be covered by such petroleum agreement may exceed 2,000 square miles as required by subsection (2) of section 8.¹¹

10 Grant of more than one exploration licence or petroleum agreement

Nothing in this Act shall prevent more than one exploration licence or petroleum agreement being issued to or entered into with the same person.

11 Notification of any execution, surrender etc. of a petroleum agreement¹²

Cabinet shall, as soon as may be after the execution, surrender, determination or assignment of any petroleum agreement or the rights thereunder, issue a public notification of the fact stating the name of the person with whom such petroleum agreement was made, the name of any assignee and the situation of the area concerned.

12 Regulations¹³

- (1) Cabinet may make and when made vary, alter, amend, revoke or cancel regulations generally for the purposes of carrying into effect the provisions of this Act, and in particular such regulations may provide for —
- (i) the model exploration licence and the model petroleum agreement;
 - (ii) the appointment, duties, privileges and powers of officers to enforce the provisions of this Act including an exploration licence and any petroleum agreement issued or entered into thereunder;
 - (iii) the prescribing of fees to be paid in respect of the issue of an exploration licence and the entering into of any petroleum agreement;
 - (iv) the prevention of fires in areas where oil mining is being carried on;

- (v) the establishment of safety areas around any petroleum reserve installations erected on the sea bed provided that no safety area around petroleum mining installations erected on the off-shore land shall exceed 500 metres in radius;
 - (vi) the general safety, health, working conditions and welfare of persons engaged in oil mining whether on-shore or off-shore; and
 - (vii) the amendment of the Schedule.
- (2) Any rules made in pursuance of paragraph (vi) of subsection (1) may provide that such rules shall be in addition to or in substitution for the provisions of the written law of the Kingdom relating to labour and any rules made thereunder relating to the matters specified in that paragraph.
- (3) Any person who contravenes a provision of any regulations made under subsection (1)(iv), (v) and (vi) of this section shall be guilty of an offence and shall on conviction be liable to a term of imprisonment not exceeding 2 years or to a fine not exceeding \$5,000 or to both such imprisonment and fine.

13 Permission to enter upon alienated land

- (1) Where a licensee or a person who is a party to a petroleum agreement has been refused entry upon alienated land by the holder thereof, such licensee or such person may make an application to the Minister for permission to enter upon such alienated land; and the Minister may subject to subsection (2) grant the permission applied for on condition that the applicant undertakes to pay compensation for all the damage which may have been caused to the land or crops or property therein or on such other conditions as the Minister may deem fit to impose.
- (2) Before granting the permission referred to under subsection (1), the Minister shall grant to the holder of such alienated land the right of being heard, and the permission so granted shall be final and shall not be questioned in any court of law.
- (3) Upon the production to the holder of such alienated land of the permission granted under subsection (1), such holder shall allow the person in whose favour the permission is granted or a person authorised by him to enter upon such land.
- (4) If, after having been produced to him the permission referred to under subsection (1) the holder of such alienated land refuses or fails to allow entry upon his land by the person in whose favour the permission is granted or a person authorised by him, such holder shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding \$1,000 and a further fine not exceeding \$20 for every day during which the refusal or the failure continues.
- (5) For the purpose of this section the expression “holder” includes chargee, lessee, occupier or any person having interest in the land; and the expression

“entry” includes the exercising of any rights contained in the licence or the petroleum agreement.

14 Unilateral legislative or executive measures

The basic financial, fiscal and other considerations stipulated in any petroleum agreement executed under this Act shall not be changed during the first 10 years of its term by unilateral legislative or executive measures.¹⁴

15 Extent of repeal of Minerals Act

All references to petroleum exploration and prospecting licences and to petroleum mining leases occurring in the Minerals Act shall on the coming into force of this Act be deemed to have been repealed.

SCHEDULE*(Section 5(1))***APPLICATION FOR AN EXPLORATION LICENCE OR FOR A
PETROLEUM AGREEMENT**

1. Name(s) of applicant(s) in full.
2. If application is by an individual or individuals —
 - (a) address;
 - (b) nationality;
 - (c) occupation of each individual.
3. If application is by a company —
 - (a) law under which company is incorporated;
 - (b) country where company registered;
 - (c) principal place of business;
 - (d) if principal place of business is outside the Kingdom of Tonga, name and address of duly authorized agent in the Kingdom;
 - (e) nature of business;
 - (f) name and nationality of each director;
 - (g) name of each principal shareholder and the amount of shares held by him.
4. State whether a petroleum agreement or a petroleum exploration licence is required.
5. Situation and approximate size of the area in respect of which application is made.
6. Brief particulars of previous experience in petroleum prospecting or oilfield development work.
7. Name and qualifications of technical experts or advisers.
8. Brief particulars of interest in and access to refining and marketing facilities outside the Kingdom of Tonga.
9. State amount of capital for operations under the exploration licence or petroleum agreement applied for —
 - (a) at present available;
 - (b) which applicant can make available and the source.
10. State particulars of work and minimum expenditure proposed to be carried out or expended on the area in respect of which application is made.¹⁵

11. State any significant adverse effect which the proposed operations would be likely to have on the environment and proposals for controlling or eliminating that effect.¹⁶
12. Give particulars of proposals with respect to the employment and training of citizens of Tonga.¹⁷

ENDNOTES

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- ¹ 1988 Revised Edition Cap. 134 - Acts 3 of 1969, 15 of 1976, 30 of 1978, 10 of 1980, 8 of 1985, 46 of 1988
Amended by Act 16 of 2009, commencement 26 July 2013
Amended by Act 5 of 2012, commencement 30 July 2012
- ² Amended by Act 5 of 2012
- ³ Substituted by Act 16 of 2009
- ⁴ Amended by Act 42 of 2010
- ⁵ Amended by Act 42 of 2010
- ⁶ Amended by Act 42 of 2010
- ⁷ Amended by Act 42 of 2010
- ⁸ Substituted by Act 8 of 1985
- ⁹ Amended by Act 42 of 2010
- ¹⁰ Substituted by Act 8 of 1985
- ¹¹ Substituted by Act 8 of 1983; Amended by Act 42 of 2010
- ¹² Amended by Act 42 of 2010
- ¹³ Amended by Act 42 of 2010
- ¹⁴ Amended by Act 15 of 1976
- ¹⁵ Inserted by Act 8 of 1985
- ¹⁶ Inserted by Act 8 of 1985
- ¹⁷ Inserted by Act 8 of 1985