

Chapter 348.

Petroleum Agreements (Currency Provisions) Act 1978.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 348.

Petroleum Agreements (Currency Provisions) Act 1978.

ARRANGEMENT OF SECTIONS.

1. Interpretation.
 “the Agreement relating to PPL No. 17”
 “the Agreement relating to PPL No. 18”
2. Currency provisions to have the force of law.

SCHEDULE 1 – Currency.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Petroleum Agreements (Currency Provisions) Act 1978,

Being an Act to give the force of law to certain provisions of certain agreements relating to petroleum.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**the Agreement relating to PPL No. 17**” means the agreement entered into on 25 July 1978 between the State, Australasian Petroleum Company Proprietary Limited and Niugini Gulf Oil Pty. Limited relating to Petroleum Prospecting Licence No. 17 (the area of which covers substantially the area of Permit No. 76);

“**the Agreement relating to PPL No. 18**” means the agreement entered into on 25 July 1978 between the State, Australasian Petroleum Company Proprietary Limited, BP Petroleum Development Australia Pty. Limited and Niugini Gulf Oil Pty. Limited relating to Petroleum Prospecting Licence No. 18 (the area of which covers substantially the area of Permit No. 77).

2. CURRENCY PROVISIONS TO HAVE THE FORCE OF LAW.

(1) Clause 10 of the Agreement relating to PPL No. 17, a copy of which clause is set out in Schedule 1, has the force of law as if contained in this Act and applies notwithstanding anything to the contrary in any other law in force in the country.

(2) Clause 10 of the Agreement relating to PPL No. 18, a copy of which clause is set out in Schedule 1, has the force of law as if contained in this Act and applies notwithstanding anything to the contrary in any other law in force in the country.

SCHEDULE 1 – CURRENCY.

Sec. 2.

AGREEMENT

CURRENCY.**10. Currency.**

10.1 In this Clause 10—

- (a) words and expressions which have a certain meaning in the Foreign Exchange Regulations made under the *Central Banking Act* are used with that meaning;
- (b) words and expressions which have a certain meaning in Division III.10A and III.10B of the *Income Tax Act 1959* are used with that meaning;
- (c) "Approved Affiliate Loans" means loans made to an Oil Company by any of its Affiliated Corporations under a loan agreement in the form of the draft attached hereto as Annexure A, the terms of which are hereby approved;
- (d) "Approved Dividends" means dividends which are—
 - (i) declared not more frequently than once each Quarter;
 - (ii) payable out of Distributable Profits derived during the year of income in respect of which, or in respect of part of which, each dividend is declared; and
 - (iii) paid to shareholders within three months of being declared;
- (e) "Approved Expenditure" means expenditure on goods and services which is within a programme of expenditure that has been approved by the State;
- (f) "Approved Loans" means loans the terms of which, including the timing of payments of interest and of repayments of principal, have been approved by the State;
- (g) "Distributable Profits" means an Oil Company's Taxable Income from Petroleum less—
 - (i) in relation to a year of income, the petroleum income tax and additional profits tax which have been paid or will be payable by the Oil Company on its Taxable Income from Petroleum for that year; or
 - (ii) in relation to a period shorter than a year of income, the petroleum income tax and additional profits tax which would be payable by the Oil Company in respect of the Taxable Income from Petroleum derived by the Oil Company during the period assuming Taxable Income from Petroleum is derived by the Oil Company during the whole of the year of income of which the period forms a part at the same rate;
- (h) "Net Proceeds" means for each year of income an Oil Company's assessable income from petroleum plus—
 - (i) the proceeds to the Oil Company from any sale of its property or assets; and
 - (ii) the proceeds to the Oil Company from sale of Foregone Production, less—
 - (iii) the principal of, interest and service charges on and fees and expenses related to Approved Loans (other than Approved Affiliate Loans) paid out by the Oil Company in that year of income;

- (iv) allowable capital expenditure and allowable exploration and prospecting expenditure made in that year of income;
- (v) all the other expenses of the Oil Company paid in that year of income which would be deductible under Section 68 of the Income Tax Act 1959;
- (vi) petroleum income tax and additional profits tax payable by the Oil Company in respect of that year of income; and
- (vii) the Oil Company's Distributable Profits for that year of income;
- (i) "Quarter" means—
 - (i) January, February and March; or
 - (ii) April, May and June; or
 - (iii) July, August and September; or
 - (iv) October, November and December; and
- (j) "Taxable Income from Petroleum" means assessable income from petroleum less all deductions which have been allowed or would be allowable under the Income Tax Act 1959 from that assessable income.

10.2 The State shall ensure that loans proposed to be made by each of the Oil Companies to finance Development which—

- (a) do not cause the ratio for the Oil Company of its loan capital (other than Approved Affiliate Loans) to the sum of its shareholder's capital and Approved Affiliate Loans to exceed the permitted ratio of 2:1; and
- (b) are on terms generally acceptable to banks and financial institutions lending to petroleum companies for projects compatible to the Development and with similar risks

are approved. The question of whether a proposed loan meets the requirements of paragraph (b) can be submitted by the Oil Company to arbitration under Clause 20.

10.3 Each of the Oil Companies may declare Approved Dividends after presentation to the Bank of Papua New Guinea of profit and loss statements which—

- (a) have been certified by the Oil Company's auditors as having been prepared in accordance with generally accepted accounting principles; and
- (b) show that there are Distributable Profits derived during the year of income in respect of which, or in respect of part of which, the dividends are to be declared.

Any dividend so declared shall not be paid within two weeks of its declaration. Within the period of two weeks, the Bank of Papua New Guinea may, if it is not satisfied that there are Distributable Profits out of which the dividend can be paid, require the Oil Company to submit an audited profit and loss statement showing that there are sufficient Distributable Profits and the dividend shall not be paid until such statement is presented.

10.4 At any time after the declaration of Approved Dividends, the Oil Company may, to the extent that foreign currency has not been retained overseas for this purpose under Clause 10.6(c), without any further authority purchase foreign currency from an authorized dealer and remit it overseas as payment of the Approved Dividends to shareholders resident outside Papua New Guinea.

10.5 Before the commencement of Production, each of the Oil Companies may without any further authority—

- (a) purchase foreign currency from an authorized dealer and remit it overseas; or
- (b) retain in foreign currency for a period not exceeding three months the amount of any borrowing made or any share capital received in foreign currency,

to meet its obligations to pay foreign currency during that period, in respect of—

- (c) the principal of, interest and service charges on and other fees and expenses related to Approved Loans made to the Oil Company in foreign currency for purposes of its operations under this Agreement by persons resident outside Papua New Guinea; and
- (d) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services to the Oil Companies (including capital goods and services of foreign employees and consultants) where such commitments are part of Approved Expenditure.

10.6 After the commencement of Production, each of the Oil Companies may retain in foreign currency outside Papua New Guinea proceeds of sale of its share (including its share of any Forgone Production) of all petroleum produced by the Oil Companies and exported overseas to the extent necessary to enable the Oil Company to meet its obligations to pay foreign currency during the ensuing three months in respect of—

- (a) the principal of, interest and service charges on and other fees and expenses related to Approved Loans made to the Oil Company in foreign currency for purposes of its operations under this Agreement by persons resident outside Papua New Guinea;
- (b) commitments in foreign currency to persons resident outside Papua New Guinea for the supply of goods and services to the Oil Company (including capital goods and services of foreign employees and consultants) where such commitments are part of Approved Expenditure; and
- (c) Approved Dividends declared in accordance with Clause 10.3 and payable to shareholders resident outside Papua New Guinea where such dividends relate to profits derived from sales of petroleum outside Papua New Guinea or for export from Papua New Guinea.

10.7 Where after the commencement of Production the amounts of foreign currency expected to be required by any of the Oil Companies for the purposes described in Clause 10.6 in any three month period (hereinafter called "the Excess Period") exceeds the amount of foreign currency earnings expected to be received by the Oil Company in the Excess Period, the Oil Company may at any time during the twelve months preceding the Excess Period request the State to be permitted to hold foreign currency to the level of the possible excess but not exceeding foreign currency requirements for purposes of loan repayments, whereupon—

- (a) the State shall instruct the Bank of Papua New Guinea to authorize the opening of a foreign currency account by the Oil Company with a commercial bank in Papua New Guinea;

- (b) the Oil Company may proportionately over the period from the opening of the foreign currency account until the beginning of the Excess Period pay into the account part of its foreign currency earnings until the balance in the account has reached the permitted level;
- (c) the Oil Company shall hold the foreign currency paid into the foreign currency account under this subclause until the Excess Period and in respect of that currency the Oil Company shall not be subject to any order under Section 11 of the Foreign Exchange Regulations;
- (d) during the Excess Period the Oil Company may apply the foreign currency held under this subclause to meet its obligations to pay foreign currency of the type referred to in Clause 10.6(a); and
- (e) at the end of the Excess Period, the Oil Company shall use the remaining balance of foreign currency held under this subclause to purchase kina.

10.8 Where at any time after the commencement of Production—

- (a) the sum of—
 - (i) the amount of foreign currency retained outside Papua New Guinea under Clause 10.6; and
 - (ii) the amount held in a foreign currency account under Clause 10.7, by any of the Oil Companies is, as a result of any circumstances which the Oil Company would claim was force majeure under Clause 14.2 not sufficient to meet its obligations of the type referred to in Clause 10.6(a) and (b) before any Approved Dividends are paid in accordance with Clause 10.6(c); and

(b) the Oil Company has surplus funds in Papua New Guinea in kina,

the Oil Company may without any further authority purchase foreign currency with those surplus kina funds and remit it overseas to meet its obligations of the type referred to in Clause 10.6(a) and (b) as they fall due, until foreign currency is again available for this purpose under Clause 10.6 or Clause 10.7.

10.9 Each of the Oil Companies shall submit to the Bank of Papua New Guinea—

- (a) at the end of each Quarter—
 - (i) a report on the foreign currency which it has purchased and remitted overseas under Clause 10.4, Clause 10.5(a) or Clause 10.8 during the Quarter, if any; and
 - (ii) a report on the foreign currency which it has retained overseas under Clause 10.5(b) or Clause 10.6 during the Quarter, if any;
 - (iii) a report on the foreign currency which it has paid into any foreign currency account under Clause 10.7 during the Quarter, if any; and
 - (iv) a forecast of the foreign currency which it expects to purchase and remit overseas, retain overseas or pay into a foreign currency account pursuant to this Clause 10 during the ensuing Quarter, if any; and
- (b) within two months of the end of each year of income, audited accounts showing the amount of Distributable Profits for the year of income.

10.10 Subject to the provision of a guarantee in the form of the draft attached hereto as Annexure B, or in other form acceptable to the State, by a guarantor reasonably satisfactory to the State, each of the Oil Companies may at any time apply to the Bank of Papua New Guinea after any year of income for authority under the Foreign Exchange Regulations to purchase foreign currency with its Net Proceeds for that year of income in order to—

- (a) use its Net Proceeds to repay Approved Affiliate Loans; or
- (b) remit its Net Proceeds overseas and retain or use such Net Proceeds overseas as it sees fit.

The Bank of Papua New Guinea may in its discretion grant authority for the repatriation in either of these ways of an Oil Company's Net Proceeds. The State shall ensure that the necessary authorities in Papua New Guinea for the repatriation of an Oil Company's Net Proceeds in respect of which an Oil Company makes application under this subclause to the Bank of Papua New Guinea shall be granted—

- (i) in respect of 50 per cent of the Net Proceeds for which application was so made, within five years of the date of application; and
- (ii) in respect of 100 per cent of the Net Proceeds for which application was so made, within ten years of the date of application.

10.11 The Oil Companies shall not be subject to or limited by regulations or statutes relating to foreign exchange and the control thereof that are less favourable to the Oil Companies or any of them than the regulations and statutes of general application to persons dealing with foreign exchange in Papua New Guinea, nor will regulations or statutes relating to foreign exchange and the control thereof be applied in relation to any of the Oil Companies in a manner less favourable to it than the manner in which they are generally applied to others to whom they are applicable.

10.12 Each of the Oil Companies shall have the right to buy and sell kina in accordance with the Foreign Exchange Regulations and this Clause 10 at rates of exchange no less favourable than those available to other commercial buyers and sellers of that currency.

10.13 Except as provided in Clauses 10.5, 10.6, and 10.7, each of the Oil Companies shall convert all its foreign currency earnings from the Operations into kina and remit the proceeds to Papua New Guinea to a bank account in the name of the Oil Company for its use.

10.14 The Oil Companies shall not use any provision of this Clause 10 or any authority or approval given by the Bank of Papua New Guinea or by any authorized dealer under the Foreign Exchange Regulations to engage in speculative currency transactions or to buy or sell Papua New Guinea currency with the primary object of making a profit on the exchange of currency. An Oil Company which is in breach of this subclause shall pay to the State an amount equal to ten times the amount of any profit or gain which the Oil Company makes on the transaction.

10.15 As soon as reasonably practicable after execution of this Agreement, the State shall introduce and sponsor in the National Parliament a Bill for an Act to give force of law to this Clause 10. If this Act does not come into effect on or before 31st December 1978, or such later date as the Parties may agree—

- (a) this Agreement shall be void and of no effect and none of the Parties shall have any claim against any other Party with respect to any matter or things arising out of or done or performed under this Agreement; and

- (b) the Oil Companies may apply to surrender the Prospecting Licence whereupon the State shall, subject to reasonable requirements under the Act, ensure that consent is given to the surrender.

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