

**PETROLEUM PRODUCTION LEVY AND  
SUBSIDY ACT- 62:02**

**An Act respecting the provision for petroleum products and the imposition of a levy on persons carrying on production business.**

[1ST FEBRUARY 1974]

1. This Act may be cited as the Petroleum Production Levy and Subsidy Act.

**PRELIMINARY**

2. (1) In this Act—

“company” means a body corporate or an unincorporated association including a partnership;

“levy” means the petroleum production levy payable under section 9(1) by a person carrying on production business;

“marketing business” means the business of dealing in petroleum products by way of the purchase thereof from a refining business for resale and use in Trinidad and Tobago;

“person” includes a company;

“petroleum” means any mixture of naturally occurring hydrocarbons and hydrocarbon compounds;

“petroleum product” means any finished or partly finished product derived from petroleum by any refining process that is listed in the Schedule;

“production business” means the business of exploration for, and the winning of, petroleum in its natural state from the underground reservoir;

“refining business” means the business of the manufacture from petroleum or petroleum products of partly finished or finished petroleum products by a refining process;

“subsidy” means the sum of money payable under section 8 to a person carrying on marketing business in respect of the sales of petroleum products.

(2) For the purposes of this Act a reference to the purchase or sale of any petroleum products shall be construed as referring only to the acquisition or disposal of such products for a money consideration, in this Act called a “price”.

**APPLICATION AND CONSTRUCTION OF ACT**

3. (1) Nothing in this Act shall apply to the production business of any person, unless —

- (a) such business produces petroleum at a daily average rate in excess of three thousand five hundred barrels; and
- (b) such person is beneficially entitled to receive the proceeds of the sale of the petroleum.

(2) In this section “petroleum” does not include petroleum in the gaseous state.

4. (1) For the purposes of this Act references to marketing business, refining business or

production business carried on by any person shall be read and construed as referring to separate businesses even though the same person carries on more than one such business.

- (2) Accordingly, where more than one such business is carried on by the same person—
  - (a) the levy and the subsidy, respectively, shall apply separately to each such separate business; and
  - (b) upon the transfer of petroleum products from one such business to another, an acquisition or disposal of petroleum products from the one such business to the other shall be regarded as having taken place and as having so taken place at a price.

(3) An Order made by the Minister under section 31 of the Petroleum Act, shall have effect for the purpose of the definition of references occurring in this Act to petroleum products listed in the Schedule.

### **SUBSIDY**

**5.** (1) There is hereby established for the purposes of this Act a Petroleum Products Subsidy Fund (hereinafter called the “Fund”) and the Fund shall be managed by the Minister of Finance.

(2) Subject to this Act and to any regulations and Orders made thereunder, the Minister of Finance, acting upon the advice of the Minister is authorised to cause advances to be made from the Fund for the purpose of subsidising the prices at which petroleum products are sold by persons carrying on marketing business in accordance with price-fixing Orders made by the Minister under section 31 of the Petroleum Act.

**6.** At such times in every month as the Minister of Finance may direct, the Comptroller of Accounts shall pay from the Fund to every person carrying on marketing business, who has made a claim therefor, a sum of money, if any, as a subsidy in respect of petroleum products sold by him for the month calculated in accordance with section 8.

**7.** (1) A person carrying on marketing business shall not later than the tenth day of each month submit to the Minister a claim regarding the amount of subsidy to be paid to him in respect of petroleum products sold during the immediately preceding month.

(2) Unless the Minister in any particular case otherwise permits, any claim submitted to the Minister later than the tenth day of any month shall not be taken into account in computing the levy and no subsidy is payable in respect thereof.

(3) The claim shall be made in such manner as is approved by the Minister.

(4) In this section a reference to submitting a claim shall be construed as requiring delivery of the claim to the Permanent Secretary of the Ministry of Petroleum and Mines or other public officer designated by him for the purpose, personally.

**8.** (1) The subsidy shall be computed monthly in respect of sales of each petroleum product listed in the Schedule by a person carrying on marketing business, and shall be the

amount obtained from the application of the following formulas thereto:

- (a)  $(ERP + GM - WP)V_1$ , in respect of sales by wholesale, and
- (b)  $(ERP + GM - RP)V_2$ , in respect of sales by retail,

where—

- ERP. is the ex-refinery price for the month;
- GM. is the gross margin for the month;
- WP. is the wholesale price for the month;
- RP. is the retail price for the month;
- $V_1$ . is the volume of sales by wholesale for the month; and
- $V_2$ . is the volume of sales by retail for the month.

(2) In computing the subsidy, no account shall be taken of petroleum products sold by a person carrying on marketing business—

- (a) to an associated person (this expression here including one company that exercises or is entitled to exercise control directly or indirectly over the affairs of another and any company the majority of the shareholding of which is held by more than one other company similarly so controlled);
- (b) to a person carrying on production business or refining business or both;
- (c) to such other class or classes of persons or businesses as the Minister may by Order prescribe; or
- (d) as bunkers for ships or aircraft (other than ships and aircraft used exclusively in Trinidad and Tobago).

(3) The Order first made by the Minister after the commencement of the Petroleum (Amendment) Act 1975 (i.e. 1st January 1975) under section 31 of the Petroleum Act shall be deemed to have had effect from that date for all purposes of this Act; and accordingly the subsidy shall be computed upon the prices therein specified, from that date.

(4) For the purposes of this section the Minister shall by Order fix the gross margin in respect of each petroleum product.

(5) In this section—

“ex-refinery price” means the price, or the basis for determining the price of petroleum products, fixed by the Minister under section 31(1) of the Petroleum Act;

“gross margin” means the sum of money fixed by the Minister by Order under subsection (3) in consideration of the cost of marketing of a petroleum product in calculating the subsidy under this section;

“month” means the month in respect of which the subsidy is to be computed;

“retail price” means the price fixed by the Minister under section 31(3) of the Petroleum Act;

“sales by retail” means sales of petroleum products by way of business otherwise than by wholesale;

“sales by wholesale” means sales of petroleum products to a person who carries on a business of selling those petroleum products;

“wholesale price” means the price fixed by the Minister under section 31(3) of the Petroleum Act.

## **PETROLEUM PRODUCTION LEVY**

**9.** (1) There is hereby levied and charged on every person in respect of any production business carried on by him, a petroleum production levy of either an amount equal to four per cent of the gross income from the production of crude oil, or the amount computed in accordance with section 11(1), whichever is the lesser.

(2) The levy shall be paid to the Minister monthly within five days after the date of notification of the amount thereof in writing, by the Minister.

(3) The Minister shall, as soon as practicable after the levy has been paid, deposit or cause the levy to be deposited in the Fund.

**10.** (1) A person who fails or refuses to pay the levy within the time specified under section 9(2), is liable on summary conviction to a fine of ten thousand dollars, and in the case of a continuing offence to a further fine of two hundred dollars for each day during which the offence continues after conviction therefor.

(2) Where a company is convicted of an offence under subsection (1), nothing therein shall apply to the Directors, General Manager, Secretary or other employee of the Company, if it is shown to the satisfaction of the Magistrate that the offence was committed without the consent or connivance of the Directors, or General Manager, Secretary or any other employee of the company and that they exercised all such diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions in that capacity and to all the circumstances.

**11.** (1) The levy payable under section 9(1) shall be computed monthly in accordance with the following formula: where—

- PI. represents the production of petroleum by the production business of any person for the month immediately preceding the month for which the levy is to be computed;
- PT. represents the total production of petroleum by all persons carrying on production business in Trinidad and Tobago for the month immediately preceding the month for which the levy is to be computed;
- S. represents the total subsidy to be paid to marketing businesses in Trinidad and Tobago for the month for which the levy is to be computed; and
- L. represents the levy to be imposed on the production business of a person for the month for which the levy is to be computed.

(2) In this section “petroleum” does not include petroleum in the gaseous state.

(3) The Order first made by the Minister after the commencement of the Petroleum (Amendment) Act 1975 (i.e. 1st January 1975) under section 31 of the Petroleum Act shall be deemed to have had effect from that date for all purposes of this Act; and accordingly the levy shall be computed upon the prices therein specified, from that date.

## **MISCELLANEOUS AND GENERAL**

**12.** (1) For the purpose of computing the subsidy, a person carrying on refining business or marketing business or both shall, not later than the tenth day of each month, make a return to the Minister.

(2) The return shall be on a form approved by the Minister, after consultation with the persons carrying on refining business or marketing business and shall specify the volume and the value of petroleum products sold by a person carrying on refining business to a person carrying on marketing business or in the case of a person carrying on marketing business the volume and value of all sales by wholesale and by retail during the previous month.

**13.** (1) For the purposes of this Act each person carrying on refining business or marketing business or both shall keep proper records of accounts and of the volume and value of petroleum products sold during each month.

(2) The Minister may in writing authorise any employee of his Ministry to inspect the records of a person carrying on refining business in order to verify the accuracy of the return made pursuant to section 12(1).

**14.** All accounts relating to the Fund and the levy shall be kept separately by the Comptroller of Accounts but shall be shown in the general accounts of Trinidad and Tobago and laid therewith before Parliament.

**15.** The accounts shall be audited annually by the Auditor General in accordance with Part V of the Exchequer and Audit Act as if the Fund was established under section 43 of that Act.

**16.** (1) The levy, shall without prejudice to any other manner of recovery, be a sum enforceable as a civil debt by proceedings commenced in the name of the Minister.

(2) All or any of the sums due in respect of the levy from any person and payable to the Minister (being sums which are by law sums enforceable as a civil debt) may, whether or not they are due under one computation for a month, be included in the same complaint, summons, order, warrant or other documents required by law to be laid before a Magistrate or to be issued by a Magistrate, and every document as aforesaid shall as respects such sum be construed as a separate document and its invalidity as respects any one such sum shall not affect its validity as respects any other such sum.

(3) Any amount of the levy that is by this section a sum enforceable as a civil debt may be recovered as if it was a simple contract debt in any Court of competent jurisdiction.

(4) Any levy charged under the provisions of this Act is a debt due to the State and may without prejudice to any other manner in which the same may at any time be lawfully recovered, be sued for and recovered from the person charged therewith in the manner provided in the State Liability and Proceedings Act.

(5) Any person who in the opinion of the Court may be able to give information concerning the property or goods of the person sued or charged may lawfully be summoned to give evidence in any civil or criminal proceedings.

**17.** (1) A person who exports or attempts to export petroleum products obtained from sales by retail (within the meaning of section 8(5)) is liable to a fine of ten thousand dollars.

(2) In addition to the penalty specified under subsection (1) the Minister may seize and detain or authorise the seizure and detention of any vessel or aircraft on board of which the

petroleum products were found, for such period of time as he may consider necessary for the purpose of evidence in any legal proceedings.

**18.** (1) A person who contravenes or fails to comply with the provisions of this Act or any Regulations made thereunder is guilty of an offence and, unless otherwise specifically provided in the Act, liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

(2) Where a company is convicted of an offence under subsection (1), nothing therein shall apply to the Director, General Manager or Secretary or any other employee of the company if it is shown to the satisfaction of the Magistrate that the offence was committed without the consent or connivance of the Director, or General Manager, Secretary or any other employee of the company and that they exercised all such diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions in that capacity and to all the circumstances.

**19.** (1) Subject to this Act, the Minister shall be responsible for the due administration of this Act and for the computation, collection and recovery of the levy.

(2) Any function conferred on the Minister by this Act shall be exercised as may be necessary by any officer authorised by him and references in this Act to the Minister shall be construed accordingly.

**20.** The Minister may by Order vary the Schedule by adding thereto or removing therefrom any petroleum product.

**21.** The Minister may make such Regulations as he considers necessary or incidental to give effect to the provisions of this Act.

**22.** Any Order made by the Minister under section 31 of the Petroleum Act or under section 8(3), that is expressed to have retrospective effect from 1st February 1974, shall by virtue of this section be deemed to have had effect from that date for all the purposes of this Act, and accordingly the subsidy and the levy shall be computed upon the prices, and at the gross margin therein specified.

**23.** Where an Order is made relating to the sale of petroleum products to any person for use or bunkers for fishing or shrimping trawlers, every such sale shall for the purposes of this Act be deemed to have been a disposal for use in Trinidad and Tobago.

## CHAPTER 62:01

### PETROLEUM ACT

*An Act to consolidate and amend the law relating to petroleum so as to make better provision for the exploration for, and the development and production of, petroleum, and for matters consequential or incidental thereto.*

[30th December 1969]

1. This Act may be cited as the Petroleum Act.

Preliminary

2. (1) In this Act—

“company” means any body corporate or unincorporated association, including a partnership;

“licence” means a licence to engage in petroleum operations granted in accordance with this Act and of any Regulations;

“licensed area” means, subject to subsection (2), the area (whether a submarine area or on land) that is described by any Exploration Licence or any Exploration and Production Licence;

“licensee” means any person to whom a licence is granted, and includes his agents, representatives and assignees;

“natural gas” means petroleum in the gaseous state;

“non-resident company”, subject to the above definition of “company”, has the meaning assigned to that expression in the Corporation Tax Act;

“Order” means an Order made by the Minister under the authority of this Act or the Regulations;

“petrochemical” means such a chemical compound or a mixture of such compounds manufactured from petroleum or petroleum products as is prescribed by Order made by the Minister;

“petroleum” means any mixture of naturally occurring hydrocarbons and hydrocarbon compounds;

“petroleum operations” means the operations related to the various phases of the petroleum industry, and includes natural gas processing, exploring for, producing, refining, transporting and

marketing petroleum or petroleum products or both, and manufacturing and marketing of petrochemicals; but does not include mining operations involving the extraction of petroleum from bituminous shales, tar sands, asphalt or other like deposits;

“petroleum product” means any finished or partly finished product derived from petroleum by any refining process;

“private petroleum rights” means rights to petroleum that are not public petroleum rights;

“public petroleum rights” means rights to petroleum in its natural condition in strata existing in—

- (i) State Lands;
- (ii) submarine areas;

“Regulations” mean Regulations made under this Act;

“Rules” mean Rules made by the Minister under this Act or the Regulations;

“sub-licence” means a sub-licence to engage in specified petroleum operations on land issued in accordance with this Act and the Regulations;

“sub-licensee” means a person to whom a sub-licence is issued;

“submarine area” means land underlying the sea waters surrounding the coast of Trinidad and Tobago below the high water mark of the sea at ordinary spring tides, including the seabed and subsoil situated beneath the territorial waters and the continental shelf of Trinidad and Tobago (“continental shelf” here having the same meaning as in the Continental Shelf Act).

(2) A reference to a licensed area shall be read and construed, where such is the case, so as to refer to such part or parts thereof as remain at the disposal of the licensee from time to time in accordance with the terms of such licence.

(3) In this Act a reference to State Lands shall be read and construed as including a reference to the mineral rights in all lands by whomsoever possessed, the subject of a grant by the State after 30th January 1902.

(4) Any coastal marine swamp lands or marshes shall in no case be deemed to form part of the submarine area; except that where there are such swamp lands or marshes, a line fixed by the Director of Surveys shall be the high water mark line.

**3.** Public petroleum rights are hereby vested in the State and are exercisable by the President.



4. Private petroleum rights are exercisable by the owner thereof, subject to this Act and any Regulations, or Rules and Orders made under this Act or the Regulations, as relate thereto.

5. (1) Subject to this Act, the Minister is charged with the general administration of this Act, and in the exercise of his powers and the performance of his duties he shall conform with any general or special directions given to him by the Cabinet. Any decision made or action taken by the Minister in the exercise of his powers and the performance of his duties in accordance with this Act and the Regulations shall be deemed to be made or taken by the Government and shall be binding thereon.

(2) The Minister may, in relation to any particular matter or class of matters by writing under his hand delegate to any public officer or Agency of the Government any of his powers or functions under this Act, except this power of delegation, so that the delegated powers or functions may be exercised by such officer or Agency with respect to the matters or class of matters specified in the instrument of delegation.

(3) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Minister.

(4) Any delegation under this section and any act done in pursuance of a delegation, may be made subject to a power of review and alteration by the Minister, and the decision given upon such review or alteration shall be deemed to be that of the Minister.

## **PART I**

### **PETROLEUM OPERATIONS**

#### Licences

6. (1) Subject to this Act, no person shall engage in petroleum operations on land or in a submarine area, unless he first obtains a licence as provided for in this Act or the Regulations.

(2) A person who contravenes this section is liable on summary conviction to a fine of thirty thousand dollars and in the case of a continuing offence, to a further fine of one thousand five hundred dollars for every day during which the offence continues.

(3) Notwithstanding anything in this Act or the Regulations or any rule of law to the contrary, instead of granting an Exploration and Production (Public Petroleum Rights) Licence under this Act and the Regulations the Minister may enter into and sign an agreement (in this section referred to as “a production sharing contract”) with any person other than a person referred to in section 13 for the carrying out of petroleum operations relating to the exploration, production and disposition of petroleum in accordance with such agreement, upon such terms and conditions as the Cabinet may approve.

(4) Where a production sharing contract is entered into under subsection (3), so much only of this Act and the Regulations as are not excluded by the contract shall apply to any person carrying on petroleum operations under such contract, and where any provision of this Act or the Regulations is modified by the contract for the purposes of such contract, this Act and the Regulations shall be read and construed accordingly, and where there is any conflict or variance with reference to any matter between the provisions of the contract and this Act or the Regulations, the provisions of the contract shall prevail.

**7.** (1) Subject to section 10, applications for licences shall be made to the Minister in accordance with the Regulations and notice thereof shall be published in the *Gazette* and in at least one daily newspaper circulating in Trinidad and Tobago.

(2) An application for a licence may be made by two or more persons jointly, if the agreement between the parties thereto as to the proposed joint operation is submitted with such application to the Minister.

**8.** (1) Any person may object to the issue of a licence on the ground that it is inconsistent with, or would interfere with, rights held by him under this Act.

(2) All objections shall be lodged with the Minister within thirty days of the publication of the notice referred to in section 7(1).

(3) Objections shall be made in the form prescribed by Order made by the Minister and shall be considered and dealt with by the Minister in accordance with the Regulations.

**9.** (1) Where the Minister, after considering any objections, decides to grant a licence, he shall grant the licence in accordance with this Act and the Regulations and upon such terms and conditions as he considers appropriate.

(2) Upon granting a licence the Minister shall as soon as possible cause notice thereof to be published in the *Gazette*, stating the name of the licensee, the general nature of the licence and the location of the area concerned.

**10.** The President may determine that the grant of licences respecting any public petroleum rights, or the entry into production sharing contracts within the meaning of section 6, shall be subject to a procedure of competitive bidding in accordance with the Regulations.

**11.** Without prejudice to any other terms and conditions upon which a licence may be granted by the Minister, the financial obligations to which licensees are to be committed by the terms of licences shall include—

(a) royalties in respect of any petroleum won and saved;

(b) minimum payment in respect of the exclusive right to explore for and produce petroleum from the licensed area;

(c) petroleum impost as a levy intended to cover the expenses of the public administration of the petroleum industry;

(d) the payment of surface rent in respect of the lease of any part of the licensed area which the licensee may require for exclusive occupation;

(e) the payment, in accordance with any law, of—

(i) import duties;

(ii) other payments, including income tax, corporation tax, excise duties, charges and fees for services rendered and fees of general application,

as may be appropriate to the licence.

**12.** (1) Without prejudice to any other conditions upon which a licence may be granted by the Minister, it shall be a condition inserted in each licence for the licensee to furnish to the Minister, at such times and in such manner as the Minister may require, full information concerning his operations. Provision shall also be made for the inspection of the plant, operations, records and accounts of the licensee by persons authorised in that behalf by the Minister.

(2) In relation to information to be submitted to the Minister under subsection (1), such information as may be agreed shall be treated as confidential for such period as may be specified in the licence.

**13.** A licence shall not, either directly or indirectly, be granted to a member of Parliament or to a public officer while holding office, or within three years of such person ceasing to be such member of Parliament or to hold such office.

**14.** The grant of an Exploration Licence confers upon the licensee the non-exclusive right in respect of the licensed area to carry out the operations provided for by the licence.

**15.** The grant of an Exploration and Production (Public Petroleum Rights) Licence confers upon the licensee the exclusive right in respect of the licensed area to search for, drill and get petroleum therein and to dispose of petroleum so obtained, in accordance with the terms of the licence, but nothing in this section shall be taken to confer ownership of any petroleum in strata or to confer any other rights in land within the licensed area.

**16.** Within two months after the expiration or sooner determination of any Exploration and Production (Public Petroleum Rights) Licence, as provided for in the Regulations or the surrender of any part of the licensed area, whichever event first occurs, and without payment of any compensation in respect thereof, the licensee shall—

(a) deliver up to the Minister in good order, repair and condition, and fit for further utilisation (fair wear and tear excepted) all buildings, works, pipelines, other articles used in the licensed area, productive boreholes or wells (unless ordered by the Minister to plug them) together with all casings, engines, tubings and fixtures below surface level;

(b) fill up or fence all holes and excavations made in the licensed area or the surrendered part thereof to such extent, if any, as the Minister may require; and

(c) to the like extent restore, so far as may be possible, to their natural and original condition the surface of the licensed area or the surrendered part thereof and all buildings and structures thereon that the licensee may have damaged in the course of prospecting or producing,

and for such purposes the licensee shall have power during that period to enter on such area subject to the rights of the surface owners or other persons.

#### Default and Disputes

**17.** (1) A licence shall contain appropriate sanctions including the revocation of the licence, in case of failure by a licensee to fulfil the obligations undertaken by him.

(2) The cases in which revocation of a licence are to be provided for therein in accordance with subsection ( 1 ) may include cases in which—

(a) there is failure on the part of an Exploration and Production Licensee to fulfil the work obligations concerning commencement of exploration operations and drilling as specified in the Regulations or failure to meet expense obligations within two consecutive threeâ€year periods;

(b) there is failure on the part of an Exploration and Production Refining, Pipeline, Marketing or Petrochemical Licensee to execute such work obligations as shall have been undertaken by him, under the terms of his licence, within the time limits prescribed therein;

(c) there is breach of other terms and conditions contained in the licence in a material particular, the Minister being sole judge of such materiality;

(d) there is failure on the part of the licensee to make the payments stipulated as Minimum Payment, Rent, Royalty, Petroleum Impost or Taxes within three calendar months of the date on which such payments fall due;

(e) there is failure on the part of the licensee to pay any sum which may have been awarded against him in arbitration proceedings carried out in accordance with this Act within three months of the date fixed in the award, provided that notice shall have been duly given to him of his obligation to make such payment;

(f) the licensee becomes bankrupt or goes into voluntary or involuntary liquidation;  
or

(g) there is wilful misrepresentation by a licensee in any material particular in the process of applying for the licence.

(3) In cases falling under subsection (2)(c) the licence may provide that, if in the opinion of the Minister the breach committed is capable of remedy, the Minister shall, in giving notice require the licensee to remedy the breach and pay compensation therefor, within such time as the Minister may specify.

(4) Subject to subsection (5), where a licence is revoked under any provision contained therein, all rights, licences, privileges and powers conferred upon the licensee by that licence, and all grants and leases of State Lands held for the purpose of carrying out petroleum operations under that licence shall determine, if in each case other than that at subsection (2)(f) the Minister has given notice of non-compliance to the licensee reasonably in advance of such revocation specifying the particular ground of the exercise of the right of revocation.

(5) Such determination shall not affect any obligation or liability that may have been incurred by the terms of the licence.

(6) In the case of serious and repeated violations of any of the terms and the conditions of his licence or of any law or directions of the Minister, the President may order such of the operations provided for in the licence as he may think fit to be temporarily discontinued.

(7) For the purposes of this section, the Minister may authorise public officers and other persons to inspect and carry out studies regarding the manner in which operations provided for in any licence are being carried out, and to report to him thereon.

**18.** (1) Where in the case of revocation under a provision in the licence made in accordance with section 17(2)(c) or (g) but no other, a licensee is aggrieved by the decision of the Minister to revoke the licence, he may have recourse to arbitration in accordance with this Act.

(2) The licence may provide that in any particular case where it may be revoked and recourse to arbitration is had under subsection (1), revocation of the licence shall be of no effect, unless confirmed by the award of such arbitration, except that where it does not so provide the revocation shall take effect and all petroleum operations authorised by the licence shall cease, subject to the award.

**19.** (1) Where a licensee fails to fulfil an obligation undertaken by him because of *force majeure*, such failure shall not be treated as a failure to comply with the provisions of the licence, if it is proved to be the necessary consequence of such *force majeure*.

(2) In this section *force majeure* means any event beyond the licensee's reasonable control and includes war, insurrection, civil commotion, strike, storm, tidal wave, flood, epidemic, explosion, fire, lightning, or earthquake or any written law.

(3) Subject to subsection (4), where failure to fulfil an obligation under a licence is proved to have been the necessary consequence of *force majeure*, the period during which the fulfilment of such obligation is rendered impossible shall be added to the period fixed by the licence for the fulfilment of such obligation.

(4) Nothing in subsection (3) shall apply if the period during which the fulfilment of the obligation is rendered impossible exceeds the period, if any, stipulated in the licence as the period that is to be agreed as reasonable in all the circumstances.

**20.** (1) Any difference or dispute between licensees or between a licensee and the Minister that under any provision of this Act or the Regulations is required to be settled by arbitration (not being a difference or dispute concerning any matter the settlement of which is by some other provision of this Act or the Regulations otherwise provided for) shall be determined and assessed by arbitration and in no other way.

(2) Where a licensee proceeds otherwise than is in this Act provided, the Minister or a licensee may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to a Judge of the High Court to stay the proceedings, and such Judge shall thereupon stay such proceedings.

(3) Arbitration shall be conducted by two arbitrators, one to be chosen by the Minister and the other by the licensee, save that in case of disagreement, an umpire shall be appointed by the Chief Justice on application to him by either party. In the case of a dispute or difference between licensees, the provisions of this section shall apply *mutatis mutandis*.

**21.** Arbitration resorted to as provided for in the preceding section shall be held in Trinidad and Tobago and shall be deemed a submission to arbitration under the provisions of the Arbitration Act.

**22.** (1) Except with the consent of the President the activities which have given rise to arbitration shall be discontinued, until the issue of any award.

(2) If the award recognises that the complaint was justified, provision shall be made therein for any necessary reparation in favour of the complainant.

(3) In section 12 and sections 17 to 20, "obligation" includes undertakings by a licence as to terms, periods, years or the manner or circumstances in which the operations provided for in his licence is to be carried out by him.

## **Non-Resident Companies**

**23.** (1) Where a non-€resident company is an applicant for a licence, it shall be a condition precedent to the grant of such licence and thereafter a condition for its continuance that the company establishes and maintains during the existence of such licence an office, place of business, branch or agency in Trinidad and Tobago for the purpose of conducting such petroleum operations as are authorised by the licence.

(2) The business of a non-€resident company to which a licence is granted shall be conducted through its office, place of business, branch or agency which shall be in the charge of an individual who is resident and ordinarily resident in Trinidad and Tobago and such individual is hereby authorised to accept on behalf of the licensee service of process and any notices required to be served on the licensee under or in accordance with the laws of Trinidad and Tobago. The name and address of such person, shall be communicated in writing to the Minister.

(3) Where such individual is for any reason unable to act as such representative or is absent from Trinidad and Tobago, the licensee shall forthwith appoint another such person as his representative and notify the Minister of his name and address.

**24.** Any document may be served on such non-€resident company either personally upon such individual or by leaving it at or by sending the same by registered post to the address of the office place of business, branch or agency or of the said individual.

## **Sub-licences**

**24A.** (1) Subject to subsection (2) a licensee may, with the written approval of the Minister, issue to any person a sub-licence to engage in specified petroleum operations on land within the licensed area of the licensee.

(2) A sub-licence may not be issued to a person who is a licensee or a person referred to in section 13.

**24B.** Application for the approval of the Minister shall be made in the prescribed form by the licensee to the Minister and shall be accompanied by such fee as may be prescribed.

**24C.** The issue of a sub-licence in no way relieves the licensee from the obligations and duties imposed on him by this Act or the Regulations or the Petroleum Taxes Act or the Petroleum Production Levy and Subsidy Act save that—

(a) royalty;

(b) petroleum impost;

(c) taxes as imposed under the Petroleum Taxes Act,

are required to be paid by the sub-licensee in respect of crude oil and natural gas produced from the petroleum operations to which the sub-licence relates.

**24D.** A sub-licensee who fails to meet the requirements of this Act or the Petroleum Taxes Act or who fails to comply with any condition of his sub-licence is liable to the same sanctions and penalties as is a licensee.

## **PART II**

### **ANCILLARY RIGHTS**

**25.** Where a licence is granted and ancillary rights are required by the licensee, he shall, in accordance with any other written law relating to landholding, negotiate with—

(a) in the case of State Lands [other than State Lands that consist only of mineral rights in lands referred to in section 2(3)], the Minister who is hereby authorised to act on behalf of the President for such purpose;

(b) in any other case, the person entitled to grant the rights for a grant of such rights.

**26.** (1) Where any facility, right, or privilege is required in order that petroleum operations may be properly and conveniently carried out by a licensee, and the proper and efficient carrying out of petroleum operations is unduly hampered by the inability or failure of the licensee to obtain such right, facility, or privilege (in this Part referred to as an ancillary right), such ancillary right may, in the manner and subject to the provisions hereinafter appearing, be conferred on the licensee who is working or desirous of working them either by himself or through his lessees or assignees.

(2) In particular, but without prejudice to the generality of the foregoing provision, such ancillary rights include—

(a) a right to cut timber, rights of way and other easements including a right to get gravel, sand, limestone and other building materials;

(b) a right to use and occupy the surface for exploration, drilling, erecting, installations and constructing buildings for the purpose of petroleum operations, including dwellings for persons employed in connection with the working of petroleum or with any such works as aforesaid;

(c) a right to obtain a supply of water or other substances in connection with the working of petroleum;

(d) a right to dispose of water or other liquid matter obtained from petroleum operations or any by-product works, as well as all such ancillary rights in any State Land or land in respect of which there are public petroleum rights by virtue of section 2 (3).



(3) Without prejudice to the generality of subsection (2), the ancillary rights therein mentioned shall include a right to enter upon land and to sink boreholes therein for the purpose of searching for and getting petroleum, and a right to use and occupy land for the erection of such buildings, the laying and maintenance of such pipes, and the construction of such other works as may be required for the purpose of searching and boring for and getting, carrying away and processing petroleum; save that, where a right to lay and maintain pipes under a highway is granted by virtue of this subsection, paragraphs 10 to 16 and paragraph 21 of the Third Schedule, and paragraph 20 of the Fourth Schedule, of the Water and Sewerage Act, shall be deemed to be incorporated in the Order granting the right, subject to any modifications or adaptations specified in the Order.

**27.** (1) No ancillary right shall be granted or acquired by a compulsory purchase Order under this Act unless it is shown that it is not reasonably practicable to obtain the right in question by private arrangement for any of the following reasons:

(a) that the persons with power to grant the right are numerous or have conflicting interests;

(b) that the persons with power to grant the right, or any of them cannot be ascertained or cannot be found;

(c) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect in title, legal disability or otherwise;

(d) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.

(2) For the purposes of this Part, a person whose concurrence is necessary for the exercise of an ancillary right shall be deemed to be a person having power to grant the right or a person from whom the right must be obtained, as the case may be.

**28.** (1) A licensee who is desirous of carrying out petroleum operations, and who considers that the circumstances are such that an ancillary right can be granted under this Part, may deliver to the Minister an application for the grant of such a right.

(2) A licensee who, for the purpose of or in connection with the better carrying out of petroleum operations already carried on by him, is desirous of obtaining an ancillary right, and who considers that the circumstances are such that such an ancillary right can be granted under this Part, may deliver to the Minister an application for the grant of such a right.

(3) An application under this section shall set forth the circumstances alleged to justify the grant of the right, and shall be in such form, and accompanied by such information verified in such manner, as the Minister may direct.

(4) When the application relates to a right to obtain a supply of water, or a right to dispose of water or other liquid matter, or any other right which appears to the Minister to affect the Water and Sewerage Authority, the Minister shall send a copy thereof to the Water and Sewerage Authority in order to enable them to take such steps as they think fit for placing their views before the Minister.

(5) The Minister shall consider the application and, if satisfied that the requirements of this Part are complied with in the case of the applicant and that it is expedient in the public interest that the right applied for should be granted to him, may, by means of a compulsory purchase Order, grant the right on such terms and subject to such conditions and for such period as the Minister may think fit; and, upon such an Order being made, the right specified in the Order shall, subject to the provisions hereinafter contained, vest in the applicant.

(6) The provisions of the Second Schedule to the Water and Sewerage Act, with such modifications and adaptations as are necessary or expedient, shall have effect with respect to compulsory purchase Orders made under this section.

(7) For the purposes of this Part the acquisition of ancillary rights is hereby declared to be a public purpose.

### **PART III**

#### **MISCELLANEOUS AND GENERAL**

**29.** (1) The President may make any such Regulations as he considers necessary or expedient for carrying out the purposes of this Act, and in particular—

(a) for determining the types of licences and the procedure for issuing those licences;

(b) for fixing the fees chargeable in respect of licences and the amount to be deposited by the licensee as a guarantee of due performance;

(c) for laying down the conditions to be observed by licensees;

(d) for regulating the assignment or transfer of licences;

(e) for licensing the transport, discharging and landing of petroleum and petroleum products by aircraft, vessels, other vehicles and pipelines;

(f) for regulating and licensing the construction and operation of warehouses and tanks for the storage of petroleum and petroleum products;

(g) for prescribing the manner in which tests and measurements may be applied to petroleum and petroleum products for any purposes;

(h) for ordering safety measures to be adopted, including measures for the prevention and extinction of fires, avoidance of accidents, and protection of premises adjacent to the sites of authorised operations;

(i) for fixing petroleum conservation rules;

(j) for the prevention of pollution of land, water or air and for compensation therefor;

(k) for prescribing standards with respect to the erection of installations required for the purpose of carrying out petroleum operations;

(l) for determining the manner in which inspection on behalf of the Government shall be made of petroleum operations;

(m) for ensuring that a Register of all licences issued and any orders, judgments or awards relating thereto, is maintained in the appropriate Department or Departments;

(n) for fixing the royalty, minimum payment, surface rents and petroleum impost;

(na) for regulating the conditions to be observed by contractors and agents of licensees;

(o) for the making of Rules and Orders by the Minister respecting matters not otherwise provided for by this Act or the Regulations; and

(p) for prescribing anything by this Act required to be prescribed (other than things required to be prescribed by the Minister).

(2) Regulations may provide for the grant of licences to persons for engaging in one or more of the petroleum operations either as general contractors or as agents. Such licences shall contain such terms and conditions as the Minister shall consider appropriate in each case, including the licensee's financial, technical, working and general obligations, the manner in which such obligations are to be carried out and the supervision and control thereof by the Minister, the description and the extent of the area of operations, and the period for which the licence is granted.

(3) The rights and duties pertaining to each kind of petroleum operation shall be determined by Regulations and each licence shall specify such particular rights, in conformity with this Act and the Regulations, as relate to that licence.

(4) Regulations may be made so as to determine the procedure whereby the several items mentioned in section 16(a) shall, at the time of the termination or expiry of a licence, revert gratuitously to the State.

(5) Regulations may provide for the safety and health of persons engaged on installations concerned with petroleum operations in submarine areas and in particular may provide for—

(a) the registration and certification of such installations;

(b) the imposition of duties on owners and licensees to ensure *inter alia* that there is in respect of such installations—

(i) a valid certificate of insurance;

(ii) a duly appointed master;

(iii) equipment prescribed by such Regulations.

(6) Regulations made by the President under this section shall be subject to negative resolution of Parliament.

(7) Such Regulations may contain provisions for imposing on any person contravening the Regulations or the Rules made thereunder, a fine recoverable on summary conviction of fifteen thousand dollars in respect of each offence and, in the case of a continuing offence, a further fine of three hundred dollars for each day during which the offence continues after conviction therefor.

**30.** The Minister may make Orders for the purpose of prescribing anything by this Act required to be prescribed by Order made by the Minister.

**31.** (1) The Minister, after consultation with the Minister of Finance, is hereby authorised and required by Order to fix the prices or the basis for determining the price at which petroleum products may be disposed of or are to be deemed to have been disposed of by the refining business of any person to the marketing business of such person or any other person for disposal and use in Trinidad and Tobago.

(2) The disposal shall be deemed to have taken place even though the same person carries on both the refining business and the marketing business.

(3) In addition to the duty imposed on the Minister by subsection (1), the Minister may by Order fix the price or the basis for determining the price at which petroleum products may be sold by a person carrying on marketing business or by a marketing licensee or by any other person carrying on a business of dealing in petroleum products for use in Trinidad and Tobago.

(4) An Order made under this section may be expressed to relate to a particular person or to a particular class or classes of persons, whether by way of the exclusion of any transactions of that person or between any class or classes of persons therefrom, or otherwise.

(5) Where an Order is made relating to the sale of petroleum products to any person for use as bunkers for fishing or shrimping trawlers, every such sale shall, for the purposes of this Act and the Petroleum Production Levy and Subsidy Act, be deemed to have been a disposal for use in Trinidad and Tobago.

(6) In this section—

“marketing business” means the business of dealing in petroleum products by way of the purchase thereof from a refining business for sale and use in Trinidad and Tobago;

“marketing licensee” means a person to whom a marketing licence, within the meaning of regulation 3(1)(h)(iii) of the Petroleum Regulations, is issued under and in accordance with this Act and those Regulations;

“refining business” means the manufacture from petroleum of finished and partly finished petroleum products by a refining process and the disposal of such products from the refinery.

**31A.** (1) The Minister, after consultation with the Minister of Finance, may by Order, fix the price at which compressed natural gas may be sold by a Compressed Natural Gas Marketing Licensee.

(2) In this section, “Compressed Natural Gas Marketing Licensee” means a person to whom a Compressed Natural Gas Licence is issued under regulation 3(1)(j)(ii) of the Petroleum Regulations.

**32.** A person who contravenes any of the provisions of this Act, except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine of fifteen thousand dollars and, in the case of a continuing offence, to a further fine of three hundred dollars for each day during which the offence continues after conviction.

**33.** (1) Except as may be otherwise provided for by the licence, any permission, consent or authority granted under this Act and the Regulations or any Rules or Orders made thereunder—

(a) may be either general or specific;

(b) may be revoked or varied by the Minister;

(c) may be absolute or conditional;

(d) may be limited so as to expire on a specified date, unless renewed; and

(e) shall, except as otherwise provided in this Act or the Regulations, be published in such a way as in the opinion of the Minister to give any person entitled to the

benefit of it an adequate opportunity of getting to know of it, unless in his opinion publication is not necessary for that purpose.

(2) Any specific directions given under any provision of this Act or the Regulations, or any Rules or Orders made thereunder, shall be given to such persons and in such manner as the Minister thinks appropriate, and where so given shall be valid for all purposes, and any directions—

(a) may be either general or specific;

(b) may be revoked or varied by subsequent directions.

(3) Notwithstanding anything contained in subsection (2), a person shall not by virtue of any direction given by the Minister under this Act (not being a direction published by Order or Notice in the *Gazette*) be convicted of an offence against this Act or the Regulations unless the direction was served on him or he knew, or avoided getting to know, of the giving thereof, except that where reasonable steps were taken for the purpose of bringing the purport of the direction to his notice, it shall be for him to show that he neither knew nor avoided getting to know of the giving thereof.

(4) Any document stating that any permission, consent, authority or direction is given under any of the provisions of this Act or the Regulations by the Minister, and purporting to be signed by him or, where section 5(2) applies, by his delegate, shall be evidence of the facts stated in the document.

**34.** Any expense incurred under or by virtue of this Act by the Minister or any Government department shall be a charge on the Consolidated Fund and any sums received under or by virtue of this Act by the Minister or any Government department including the petroleum impost levied under the Regulations shall be paid into the Exchequer Account and shall form part of the Consolidated Fund.

**35.** (1) No person who obtains information by virtue of the provisions of this Act shall disclose that information otherwise than in the discharge of his functions under this Act or for the purposes of any criminal proceedings.

(2) Any person who contravenes this section is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for one year.

**36.** In the event of a war or emergency involving Trinidad and Tobago (of the existence of which the President shall be the sole judge)—

(a) the President shall have the right of pre-emption of all petroleum, petroleum products and petrochemicals produced under the licence and shall have the right to require the licensee to manufacture petroleum products and petrochemicals, for the duration of the decreed emergency;

(b) the licensee shall use his utmost endeavour to increase the supply of petroleum, petroleum products and petrochemicals for the Government to the extent required by the President;

(c) the licensee shall with every reasonable expedition convey the petroleum, petroleum products or petrochemicals purchased by the President under this section to such point of shipment or place of storage in Trinidad and Tobago as the President shall determine;

(d) the price to be paid by the President for the petroleum, petroleum products or petrochemicals taken as provided for in this section shall be the fair market price at the time and at the point of delivery;

(e) the President shall be at liberty to take control of the works, plants and premises of the licensee, who shall conform to and obey all directions issued by or on behalf of the President; provided that compensation shall be paid to the licensee for any loss or damage sustained by him by reason of the exercise of the powers conferred by this subsection, the amount of such compensation to be fixed by agreement between the parties, or failing agreement by arbitration as is provided for herein.

**37.** This Act binds the State.

#### Transitional Provisions

**38.** (1) Where at the commencement of this Act a person is carrying on petroleum operations—

(a) under or by virtue of a licence, grant or lease to carry on such petroleum operations; or

(b) in respect of which he was not required by any law to be licensed or to hold a grant or lease to do so, but in respect of which a licence is required under this Act or the Regulations,

such person shall be deemed to be a licensee in respect of such petroleum operations for the purposes of this Act, until he is licensed as such under this Act or the Regulations.

(2) Upon an application made by a person referred to in subsection (1), the Minister shall issue a licence to carry on petroleum operations under this Act, upon terms and conditions appropriate to and as reasonably close as possible to those contained in the licence, grant or lease, if any, under or by virtue of which he previously carried on or was entitled to carry on the petroleum operations, or appropriate to and as reasonably close as possible to those terms and conditions applicable to the circumstances referred to in subsection (1)(b), respectively.

(3) All existing grants or leases held for the purpose of carrying out petroleum operations by a person to whom a licence is issued under subsection (2) shall be deemed to have been granted or made for the purposes of this Act and shall continue to have full force and effect until lawfully determined.

(4) Where ancillary rights are held under licence that by virtue of subsection (1) ceases to have effect by reason of the issue of a licence under subsection (2), but for no other reason, such rights shall be deemed to have been granted by the Minister under section 25(*a*) or, in the cases referred to in section 25(*b*), by the person entitled to grant the rights or the Minister in accordance with the other provisions of Part II, as the case may be, without any charge or fee.

**\*39.** Notwithstanding the repeal by this Act of the Pipelines Ordinance, the Oil and Water Board Ordinance and the Oilfields Fires Control Ordinance, the provisions of these enactments shall continue to operate in relation to petroleum until repealed by Regulations made under section 29.



## **CHAPTER 75:04**

### **PETROLEUM TAXES ACT**

An Act respecting taxation of businesses carried on in the course of certain petroleum operations.

[1st January 1974]

1. This Act may be cited as the Petroleum Taxes Act.

Preliminary

2. (1) In this Act—

“accounting period” means a period established by section 7 of the Income Tax Act as applied for the purposes of this Act, as the case may require;

“assessment” includes a re-assessment;

“Board of Inland Revenue” or “Board” means the Board of Inland Revenue established by section 3 of the Income Tax Act;

“branch or agency” means any factorship, agency, receivership, branch or management;

“company” means any body corporate or unincorporated association, but does not include a partnership;

“corporation tax” means the tax charged under the Corporation Tax Act by section 3 thereof;

“crude oil” or “oil” means petroleum in the liquid state, including condensates and natural gasolene physically separated from a natural gas stream;

“financial year” means the period of twelve months commencing on the 1st January in each year;

“licensed area” has the same meaning as in section 2 of the Petroleum Act;

“marketing business” means, subject to section 3(5), the business of dealing in petroleum and petroleum products by way of an acquisition and a disposal to a marketing licensee or to a consumer in Trinidad and Tobago or to a person in any other prescribed country, and includes bunkering of ships and aircraft by a marketing licensee, but does not include—

(a) disposal of petroleum by a person carrying on a production business where the petroleum disposed of is produced by such person; or

(b) disposal by a person carrying on refining business of—

(i) petroleum products refined by such person;

(ii) petroleum products acquired and blended with petroleum products refined by such person, where any such disposal is made to a marketing licensee, or to the refining business of another; or

(c) bunkering of ships ex-refinery wharf in international trade by a person carrying on refining business;

“marketing licensee” means a person carrying on marketing business to whom a marketing licence, within the meaning of regulation 3(1)(h) of the Petroleum Regulations is issued or is to be issued under and in accordance with the Petroleum Act, and those Regulations;

“natural gas” means petroleum in the gaseous state;

“natural gas processing” means the recovery from natural gas of ethane, propane, butane and other natural gas products or any of them by a process of absorption, compression, refrigeration, recycling or any combination of such processes;

“non-resident company” means a company not controlled in Trinidad and Tobago, whether or not such company is—

(a) incorporated in Trinidad and Tobago; or

(b) engaged in trade or business or in the pursuit of professional or vocational activities in Trinidad and Tobago;

“penalty” means any amount or other sum (other than interest) imposed or charged on a person in addition to any tax payable on an assessment made under this Act, and includes a fine recoverable on summary conviction;

“person” includes a company;

“petrochemical” has the same meaning as in the Petroleum Act;

“petroleum” means any mixture of naturally occurring hydrocarbons and hydrocarbon compounds;

“petroleum operations” means the operations related to the various phases of the petroleum industry, and includes natural gas processing, exploring for, producing, refining, transporting and marketing petroleum or petroleum products or both, and manufacturing and marketing of petrochemicals; but does not include mining operations involving the extraction of petroleum from bituminous shales, tar sands, asphalt or other like deposits;

“petroleum product” means any partly finished or finished product derived from petroleum by any refining process;

“production business” means the business of exploration for, and the winning of, petroleum in its natural state from the underground reservoir, and includes—

- (a) the physical separation of liquids from a natural gas stream; and
- (b) natural gas processing from a natural gas stream,

produced by the production business of a person engaged in the separation or processing, but does not include the liquefaction of natural gas;

“refining business” means the business of the manufacture from petroleum or petroleum products of partly finished or finished petroleum products and petrochemicals by a refining process but not including—

(a) petrochemicals manufactured by a petrochemical plant operated separately from any such business;

(b) the liquefaction of natural gas;

(c) the physical separation of liquids from a natural gas stream and natural gas processing from a natural gas stream where the operation is carried out by a natural gas plant operated separately from any such business;

“resident company” means a company that is controlled in Trinidad and Tobago, whether or not such company is—

(a) incorporated in Trinidad and Tobago; or

(b) engaged in trade or business or in the pursuit of professional or vocational activities in Trinidad and Tobago;

“submarine area” means land underlying the sea waters surrounding the coast of Trinidad and Tobago below the high water mark of the sea at ordinary spring tides, including the sea-bed and subsoil situated beneath the territorial waters and the continental shelf of Trinidad and Tobago (“continental shelf” here having the same meaning as in the Continental Shelf Act);

“supplemental petroleum tax” means the tax on petroleum operations imposed by Part II;

“taxable profits” means the aggregate amount of the profits or gains of any person from production business, refining business or marketing business, as the case may be, remaining after allowing the appropriate deductions and exemptions under this Act;

“Trinidad and Tobago” includes the submarine area;

“withholding tax” means the tax so referred to in section 50 of the Income Tax Act.

(2) Without prejudice to any other case in which a person is engaged in or carrying on trade or business in Trinidad and Tobago, a person shall be deemed to be engaged in or carrying on trade or business in Trinidad and Tobago if he has an office or a place of business in Trinidad and Tobago or has a branch or agency therein.

(3) Except as otherwise provided by this Act and except in so far as the context otherwise requires, expressions used in the Income Tax Act have the same meaning in this Act as in that Act; but no provision of this Act as to the interpretation of any expression, other than a provision expressed to extend to the use of that expression in the Income Tax Act, shall be taken to affect its meaning in that Act as it applies for the purposes of any of the taxes imposed by this Act.

(4) Except as otherwise provided by this Act, any apportionment to different periods which falls to be made thereunder shall be made on a time basis according to the respective lengths of those periods.

(5) In the case of a resident company and non-resident company, the place where such a company is to be regarded as controlled is the place where the central control or management of the company is ordinarily situated.

### Construction and Application of Acts

**3.** (1) For the purpose of ascertaining the taxable profits of any person and the tax thereon for any year of income prior to the financial year from which this Act comes into operation, the provisions of the Corporation Tax Act that are replaced or amended by this Act shall continue to operate as if those provisions had not been replaced or amended by this Act; and no amendment contained in this Act shall render invalid any claim made or any assessment, objection or appeal made or pending or affect any liability with respect to tax arising before the commencement of this Act, except as is otherwise expressly provided by this Act.

(2) For years of income after the year of income 1973, the provisions of the Income Tax Act, other than section 50 thereof, and the provisions of the Corporation Tax Act relating to the charge of income tax and corporation tax, respectively, shall not apply to the profits or gains accruing or arising to any person if, but only if, the profits or gains of such person are within the charge to any of the taxes imposed by this Act.

(3) Accordingly, in particular where, owing to the accounting period of a person not coinciding with a financial year, a portion only of the profits or gains of such person for the accounting period is charged to any of the taxes imposed by Part I for the financial year 1974, the remainder of the profits of the accounting period shall remain charged to corporation tax, and the provisions of the Corporation Tax Act shall apply accordingly with the necessary

modifications and after making such apportionments as are appropriate to the proportion of the profits so charged. All instalments and other amounts of tax already paid in respect of the year of income 1974 shall be apportioned in the manner provided by section 11(2).

(4) For the purposes of this Act, “a source of income” is within the charge to corporation tax or income tax or the taxes imposed by this Act, as the case may be, if any of those taxes are chargeable on the income arising from it or would be so chargeable if there were any such income, and references to a person or to income being within the charge to tax, shall be similarly construed in each case accordingly.

(5) For the purposes of the definition of “marketing business” a person carrying on marketing business shall be deemed to have acquired at such prices as are prescribed under or by virtue of this Act any petroleum or petroleum products received directly or indirectly by him from production business or refining business carried on by that person and a disposal shall be regarded as having taken place accordingly.

**3A.** For the purpose of ascertaining the taxable profits of any person and the tax thereon for any financial year from 1st January 1974 to 31st December 1979 the provisions of the Act that are replaced or amended by this Act shall continue to apply as if those provisions had not been replaced or amended by this Act and no amendment contained in this Act shall render invalid any claim made or any assessment, objection or appeal made or pending or affect any liability with respect to tax arising before the commencement of this Act, except as is otherwise expressly provided by this Act.

**4.** Except as otherwise expressly provided in Part I, the Income Tax Act, the Corporation Tax Act or any other written law, the provisions of the Income Tax Act, the Corporation Tax Act or such other written law shall not apply for the purposes of the taxes imposed by Part I, and the provisions of Part I shall not, subject to this section, affect the operation of the Income Tax Act or the Corporation Tax Act as it relates to individuals or companies.

#### Administration and General Principles of Taxation

**5.** (1) The Board of Inland Revenue is responsible for the due administration of this Act and for the collection and recovery of the taxes imposed by this Act, and sections 3 and 4 of the Income Tax Act shall apply for such purposes as they apply for the purpose of income tax charged under that Act, but subject to any necessary modifications and adaptations.

(2) Any function conferred by this Act on the Board may be exercised as may be necessary by any officer authorised by it according as the Board may direct, and references in this Act to the Board shall be construed accordingly.

**6.** (1) For the purposes of this Act the following petroleum operations are classified as separate businesses in accordance with this Act, namely:

(a) exploration and production operations;

- (b) refining operations;
- (c) marketing operations,

even though the same person carries on more than one such business; and those businesses are in this Act referred to as production business, refining business and marketing business, respectively.

(2) Where the same person carries on more than one of the businesses classified under subsection (1) the income tax principles applied for the purpose of Part I shall have effect in relation to the charge to tax on the profits or gains of that person, but subject to this Act as to the computation, assessment, collection and recovery of the taxes imposed by Part I.

**7.** (1) Taxes imposed by this Act though computed and assessed annually shall be paid by quarterly instalments.

(2) In paying his quarterly instalments of tax, a person shall furnish the Board with such information as the Board may require including in particular—

(a) in respect of his production business for that quarter—

(i) the quantity of oil produced and disposed of from land operations and the quantity from marine operations;

(ii) the prices at which the oil was disposed of;

(b) in respect of refining business for that quarter—

(i) the volume of crude oil and petroleum products received;

(ii) the processing fees charged.

## PART I

### Taxation of petroleum operations

**8.** Nothing in this Part shall apply to—

(a) an individual who carries on marketing business only; or

(b) a company carrying on marketing business that does not acquire petroleum or petroleum products or both from a person carrying on production business or refining business, as the case may be,

and is not otherwise connected with production business or refining business carried on by any other person.

**9.** Subject to the provisions of this Part, tax (to be called “petroleum profits tax”) shall be payable separately, at the rate specified in the First Schedule, for each financial year upon the profits or gains or amounts deemed to be profits or gains of any person accruing in or derived from Trinidad and Tobago or elsewhere and whether received in Trinidad and Tobago or not in respect of—

- (a) production business;
- (b) refining business.

**9A.** (1) There shall be charged petroleum profits tax, in this section referred to as national recovery impost, at the rate set out in subsection (2).

(2) The national recovery impost shall be payable on the taxable profits of a person where the taxable profits are—

- (a) less than \$5,000,000—1 per cent;
- (b) \$5,000,000 but do not exceed \$15,000,000— 2 per cent;
- (c) in excess of \$15,000,000—3 per cent.

**10.** (1) Subject to any exceptions provided for by this Part, a person who is resident in Trinidad and Tobago shall be chargeable to petroleum profits tax on all his profits or gains wherever arising.

(2) Where a person who is not resident in Trinidad and Tobago is carrying on a trade or business in Trinidad and Tobago, the profits or gains thereof that are chargeable to petroleum profits tax shall be any income directly or indirectly accruing in or derived from Trinidad and Tobago.

(3) A company shall be chargeable to petroleum profits tax on profits or gains accruing for its benefit under any trust or arising under any partnership in any case in which it would be so chargeable if the profits or gains accrue to it directly, and a company shall be chargeable to petroleum profits tax on profits or gains arising in the winding up of the company.

**11.** (1) Petroleum profits tax shall be charged for each financial year upon the taxable profits of a person arising in that year; and the provisions of this Part shall be read and construed as imposing the charge to tax on the profits or gains of a person for the financial year 1974 and subsequent years in respect of the profits or gains of the accounting period ending within that year and so for subsequent financial years, but subject to this section and section 3(3).

(2) Where, however, for the financial year 1974, the accounting period of any person does not coincide with the financial year, so much of the profits of that accounting period as are

attributable to the time-period beginning 1st January 1974 and ending with the end of the accounting period shall be charged to petroleum profits tax for that year.

(3) Except as otherwise provided by this Part, petroleum profits tax shall be assessed upon the full amount of the profits or gains accruing or arising, whether or not received in Trinidad and Tobago, in the financial year without any other deduction than is authorised by this Part.

**11A.**

to *(Repealed by Act No. 8 of 1996).*

**11C.**

#### Computation of Profits

**12.** (1) Except as otherwise provided by this Part, the taxable profits of a person shall be computed in accordance with the income tax principles relating to the provisions of the Income Tax Act applied by section 16 and all questions as to the amounts which are or are not to be taken into account as profits or gains or in computing profits or gains or charge to tax as a person's profits or gains, or as to the time when any such amount is to be treated as arising, being determined in accordance with income tax law as applied by section 16 and practice.

(2) For the purpose of this section, "income tax law" means, in relation to any financial year, the law applying for the year of income to the charge on individuals of income tax.

**12A.** Where a change in the shareholding of a company has taken place in a year of income, no loss incurred in any year preceding the year of income shall be carried forward and set off, as provided by section 16 of the Income Tax Act, against the profits of the year of income unless—

(a) on the last day of the year of income the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51 per cent of the voting power on the last day of the year or years in which the loss was incurred; or

(b) the Board is satisfied that the change in the shareholding was not effected with a view to avoiding or reducing any liability to tax.

**12B.** (1) In computing the taxable profits of a person carrying on production business, there shall be allowed as a deduction, the costs other than tangible cost incurred on workovers, maintenance or repair works on completed wells, and qualifying side tracks.



(2) The costs claimed as a deduction do not fall to be treated under section 14 or 26 in computing taxable profits or the supplemental petroleum tax of the person claiming the deduction.

(3) For the purposes of this section, the maintenance and repair works and qualifying side tracks in respect of which the deduction may be claimed, shall be certified as such by the Minister to whom responsibility for petroleum is assigned.

(4) In this section—

(a) “repair works” includes recompletions;

(b) “qualifying side track” means a deviated well drilled from a well-bore previously utilised for production or injection purposes, and within one well spacing of any well previously drilled for production or injection purposes.

**12C.** (1) In computing the taxable profits of a person who incurs on or after 1st January 1988, capital expenditure on a heavy oil project on land or in a marine area in respect of his production business, that person may subject to subsection (2) elect to claim an allowance, in this section referred to as “heavy oil allowance” as follows:

(a) for the financial year in which the expenditure is incurred, 60 per cent of such expenditure;

(b) for each of the next five years 18 per cent of such expenditure.

(2) Expenditure in respect of which heavy oil allowance is claimed does not fall to be treated under section 14 or 26 in computing the taxable profits or the supplemental petroleum tax of the person claiming the allowance.

(3) For the purposes of this section, heavy oil projects on land or in marine areas shall be certified as such by the member of the Cabinet to whom responsibility for petroleum is assigned.

(4) In this section “heavy oil” means crude oil of 18° API or lower.

**13.** (1) Except in so far as this Part otherwise provides including in particular paragraph 7 of the Second Schedule, the Income Tax (In Aid of Industry) Act and any provisions of the Income Tax Act relating to the making of allowances or charges under or in accordance with the said Income Tax (In Aid of Industry) Act shall apply for the purposes of the taxes imposed by Part I.

(2) For the purposes of the taxes imposed by Part I, the right to an allowance or liability to a charge for a financial year and the rate or amount of any such allowance or charge shall be determined under the provisions referred to in subsection (1) by applying the law in force for the financial year.

**14.** (1) This section and section 15 shall have effect for the purpose of the capitalisation of expenditure referred in subsection (3) and of the allowance to be granted in respect of such capitalised expenditure and of other capital expenditure incurred by a person carrying on production business.

For the purpose of this and section 15, a reference to the capitalisation of expenditure referred to in subsection (3) shall be construed as including as capital expenditure any expenditure whether of a capital nature or otherwise.

(2) After the date of the commencement of this Act—

(a) the residue of expenditure referred to in subsection (3), if any, incurred before that date shall be apportioned between the production business of a person carried on land and any production business carried on by him in a submarine area;

(b) subject to section 15, all expenditure referred to in subsection (3) incurred after that date by any such person shall be aggregated therewith, respectively; and

(c) allowances in respect thereof shall be computed and allowed separately with respect to his production business on land from any production business carried on by him in a submarine area.

(3) In ascertaining the taxable profits of any person carrying on production business for a financial year, all expenditure incurred in exploration operations and intangible drilling and development costs must be capitalised separately with respect to his production business on land from any production business carried on by him in a submarine area. Any allowances in respect of such expenditure must be allowed in accordance with Part III, IV or V of the Income Tax (In Aid of Industry) Act, but subject always to this section.

(4) All expenditure of a tangible nature incurred in respect of the production business carried on by any person must be capitalised and allowances granted in accordance with Parts I, II and IV (where applicable) of the Income Tax (In Aid of Industry) Act.

(5) Where a production business incurs expenditure in a licensed area—

(a) after the commencement of this Act in respect of a development dry-hole; or

(b) after January 1, 1992 in respect of a dry-hole,

and the development dry-hole or dry-hole as the case may be is certified as such by the Minister to whom responsibility for petroleum is assigned, such expenditure shall be allowed as a deduction in the financial year in which such development dry-hole or dry-hole is plugged and abandoned.

(5A) The deduction to which subsection (5) refers shall be limited to the difference between the amount of expenditure so incurred and the amount of capital allowances already computed and allowed in respect of the development dry-hole or dry-hole under the Income Tax (In Aid of Industry) Act.

(6) In subsection (3) “intangible drilling and development costs” includes—

(a) the cost to a person of any drilling or development work done for him by contractors under any form of contract;

(b) all amounts paid for labour, fuel, repairs, hauling and supplies, or any of them, that are used—

(i) in the drilling, shooting and cleaning of wells;

(ii) in such clearing of ground, draining, road making, surveying, and geological works as are necessary for the drilling of wells; and

(iii) in the construction of such derricks, tanks, pipelines and other physical structures as are necessary for the drilling of wells and the preparation of wells for the production of oil or gas,

but does not include costs arising from maintenance or repair works on producing wells.

**14A.** For the purpose of ascertaining the taxable profits of any person carrying on production business—

(a) signature bonuses payable on the award of a Production Sharing Contract or on the issue of an Exploration and Production Licence may be capitalised and amortised on a straight line basis over a period of five years; and

(b) production bonuses whenever payable are deductible.

**15.** (1) Subject to subsection (4) in the case of production business carried on by any person under an Exploration and Production Licence issued, or a Production Sharing Contract entered into, after 1st January 1974, all expenditure referred to in section 14(3) incurred in such business shall be capitalised separately in respect of each such licence or contract.

(1A) Allowances on the capitalised expenditure referred to in subsection (1) are deductible only after the commencement of commercial production.

(2) Allowances in respect of any expenditure incurred in respect of an Exploration and Production Licence referred to in subsection (1) may however be allowed in ascertaining the taxable profits of any person carrying on production business whether on land or in a submarine area in accordance with section 24(2) of the Income Tax (In Aid of Industry) Act if at any time

the Member of the Cabinet responsible for petroleum certifies that there is no commercial production in the area to which that licence refers.

(3) For the purposes of this section the Minister shall determine what rate of production shall be taken to be commercial production.

(4) All production business carried on by any person on 1st January 1980 or thereafter whether under an Exploration and Production Licence or under a Production Sharing Contract or both may be consolidated.

(5) Expenditure referred to in section 14 incurred on or after 1st January 1980 in respect of production business may be capitalised and amortised.

**16.** Subject to sections 3 and 4, the provisions of the Income Tax Act in the Table below shall apply in relation to the taxes imposed by this Part as they apply in relation to income tax chargeable under the Income Tax Act but subject to any necessary modifications and adaptations, including any modifications made by this Part:

#### TABLE

##### Income Tax Provisions Applied to Part I

##### Taxes

Section 7 (Chargeable income of certain persons).

Sections 10, 11, 12 and 16 (Deductions and Allowances).

Section 27 [Approved Fund or scheme with respect to deductions allowed at section 11 (1)(f), (g) and (h)].

Section 28 to 33 (Approved Pension Fund Plans).

Sections 59 to 65 (Trustees, agents, etc.).

Sections 76 and 77 (Returns).

Section 78 (Partnerships).

Sections 79 to 82 (Payment of tax by instalments).

Sections 83 and 84 (Assessments).

Sections 85 and 88 (Assessments Lists, etc.).

Section 86 (Notices of Assessments).

Sections 43 to 43H (Appeals). Transferred to Ch. 4:50.

Sections 88 and 89 (Errors in Assessments and additional Assessments).

Section 90(1) and (2) (Repayment of Tax).

Section 93 (Relief from Double Taxation).

Section 94 (Certain income deemed to be income for the purposes of Act).

Section 97 (Power of Board to require Schedule of particulars).

Section 103 (Interest for non-payment of Tax).

Sections 104–108 (Collection).

Sections 109 and 112 (Recovery).

Sections 113 and 114 (Notices).

Section 115 (Imprisonment of defaulters).

Sections 116–119, 122–124 (General provisions).

Section 121A (Prosecution of offences).

Section 125 (Regulations).

Sections 130 and 131 (Miscellaneous powers of the Board).

Sections 133 to 141 (Expenses allowance to Directors and others).

The 5th and 6th Schedules.

**17.** For the purposes of this Part, the Income Tax Act as applied for the purposes of this Act is modified as follows:

(a) in section 79(4), by inserting immediately after paragraph (b) thereof the following new paragraphs:

“(c) tax for a full financial year was not payable in the immediately preceding year or financial year, as the case may be;

(d) notwithstanding subsection (2), in the opinion of the Board the taxable profits for the financial year are likely to be more than the taxable profits for the immediately preceding financial year.”;

(b) section 116 of the Income Tax Act shall be read and construed as requiring books of account and other records of a person carrying on any of the several separate businesses specified in this Act to keep those accounts and other records separately as far as possible with respect to each separate business and in accordance with any directions given by the Board;

(c) in section 50 by substituting the following for subsection (8):

“(8) In subsections (6) and (7) ‘profits’ means profits after the payment of income tax, corporation tax and petroleum profits tax and any unemployment levy paid in respect of such profits so however that any such profit shall be deemed to include any amount authorised to be deducted as submarine well allowance by the Income Tax (In Aid of Industry) Act in ascertaining the taxable profits of any company for the purposes of the petroleum profits tax and all such amounts shall be included accordingly. The Petroleum Taxes Act, as amended shall have effect for the purpose of the definition of such of the expressions occurring in this subsection as are defined in that Act.”.

**18.** Notwithstanding any rule of law or provision in any licence or agreement to the contrary, the provisions contained in the Second Schedule, shall have effect for the purpose of ascertaining the taxable profits and the tax chargeable thereon of a person in respect of production business, refining business and marketing business.

**18A.** Sections 10G, 10J, 10K, 10L, 10M and 10N of the Corporation Tax Act, apply to this Act, with any necessary modifications, for the purpose of determining the chargeable profits of companies charged to tax under this Act.

#### Transitional Provisions

**19.** (1) Notwithstanding section 79 of the Income Tax Act but subject to this section, every person shall for the financial year 1974 pay to the Board on or before 30th June an amount equal to one-half and on or before 30th September and 31st December, respectively, an amount equal to one-quarter of the petroleum profits tax at the rates in the First Schedule on his estimated taxable profits for 1974 and, on or before 30th April in the next year, the remainder of the tax, if any.

(2) Where, owing to the accounting period of a person not coinciding with a financial year, a person is charged to tax for the financial year 1974 in accordance with section 11(2), any instalments of income tax or corporation tax paid by that person, in respect of what would have been his liability to such tax for the year of income 1974 had this Act not been passed, shall be deemed to have been paid, firstly, in respect of any such liability as remains outstanding by virtue of section 3(3) and the remainder, if any, shall be applied towards the satisfaction of any liability for instalments under this section.

(3) For the purposes of subsection (1), the estimated taxable profits of any person for the financial year 1974 shall be taken to be the taxable profit calculated on the basis of

the continued application of the prices for the time being in force determined by the Minister of Finance or the Minister, as the case may be, under this Part for the purpose of ascertaining the taxable profits of the production business and the marketing business, if any, and generally in accordance with this Act.

**19A.** (1) Taxable profits of any person for the financial year 1980 shall be taken to be the taxable profits calculated on realised prices or fair market value as determined in accordance with the Second Schedule.

(2) Where owing to the accounting period of a person not coinciding with a financial year, so much of the profits of that accounting period as are attributable to the period beginning 1st January 1980, and ending with the end of the accounting period shall be charged to petroleum profits tax as imposed for the financial year 1980, and the profits for the remainder of that accounting period prior to 1st January 1980 shall be charged to petroleum profits tax as imposed for the financial year 1979 and shall be included in that person's return for 1980.

(3) Notwithstanding section 79 of the Income Tax Act but subject to this section every person shall pay to the Board any balance of tax owing for the financial year 1980 on or before the 30th June 1981 and no interest shall accrue on such balance up to 30th June 1981.

**19B.** In computing gross income for the financial year 1980 for the purposes of this Act, of any person engaged in production business, there shall be left out of account an amount equal to the actual prices received from or the fair market value determined for the disposal of crude oil on hand in that business as at 31st December 1979.

**19C.** (1) In computing the taxable profits or supplementary refining tax for the financial year 1980 of any person engaged in refining business, there shall be taken into account stocks of crude oil and petroleum products received and on hand in refinery storage as at 31st December 1979.

(2) In computing the taxable profits for the financial year 1980 of any person engaged in refining business, there shall be left out of account an amount equal to the actual prices received from or the fair market value determined for the disposal of stocks of petroleum products and petrochemicals refined by such person and on hand in refinery storage as at 31st December 1979.

## **PART II**

### **Supplemental Petroleum Tax**

**20.** In this Part—

“gross income” means gross income derived from disposals of crude oil;

“sub-licensee” means a person who not being a licensee, is issued a sub-licence by a licensee under the Petroleum Act, to undertake production business on land within a licensed area.

**21.** (1) There shall be a tax known as supplemental petroleum tax charged on gross income.

(2) Supplemental petroleum tax is deductible in arriving at the taxable profits for the purpose of petroleum profits tax of persons engaged in production business.

**22.** (1) Supplemental petroleum tax shall be computed separately in respect of land operations and marine operations, and is charged separately in the manner and at the rates fixed in the Third Schedule.

(2) The Minister may by Order—

(a) subject to affirmative resolution of Parliament, amend Part A of the Third Schedule;

(b) vary Part B of the Third Schedule.

**22A.** (1) In computing supplemental petroleum tax, an allowance equal in amount to fifty per cent of the geological and geophysical costs incurred in petroleum operations is deductible from gross income.

(2) In this section, “geological and geophysical costs” means direct costs incurred in the acquisition and processing of data from seismic, gravity, magnetic and such other surveys specifically approved for this purpose by the Minister to whom responsibility for petroleum is assigned.

**23.**

to *(Repealed by Act No. 15 of 1992).*

**24.**

**25.** (1) In computing supplemental petroleum tax chargeable in respect of petroleum operations carried out under Exploration and Production Licences, an exploration allowance equal in amount to 100 per cent of the direct cost of drilling exploration wells is deductible from gross income.

(2) An exploration well is a well so classified by the Member of the Cabinet responsible for petroleum.

**25A.** In computing supplemental petroleum tax, an allowance equal in amount to the royalty including overriding royalty paid by virtue of a licence or sub-licence granted or issued



under the Petroleum Act on crude oil in respect of which gross income is derived, is deductible from that gross income.

**25B.** (1) In computing supplemental petroleum tax, an allowance equal in amount to 100 per cent of all capital expenditure incurred in the drilling of wells and in the acquisition of machinery and plant for use in marine thermal recovery schemes for heavy oil, is deductible from gross income.

(2) In this section “heavy oil” means crude oil of 18° API or lower.

**26.** In computing supplemental petroleum tax an allowance equal in amount to—

(a) 40 per cent of direct intangible drilling costs (exclusive of development dry-hole and qualifying side track expenditure); and

(b) 40 per cent of tangible costs,

incurred in development activity carried out on land or in marine areas under Exploration and Production Licences is deductible from gross income.

**26A.** In computing supplemental petroleum tax an allowance of 100 per cent of all capital expenditure incurred in the acquisition of such machinery and plant as is specified in the Fourth Schedule for use in enhanced recovery on land, is deductible from gross income.

**26B.** (1) Where any machinery and plant in respect of which an allowance is granted under section 26 or 26A is disposed of within three years of the financial year in which the allowance was granted, the gross income of the financial year in which the disposal took place shall be increased by the amount of the allowance previously granted.

(2) For the purposes of subsection (1) machinery and plant is deemed to be disposed of where it is sold, or exchanged or transferred from production business to any other business or from land operations to marine operations or vice versa or where it is not put into use within three years of the financial year in which the allowance was granted.

**26C.** Allowances under this Part may be claimed only in the accounting period in which the expenditure giving rise to the allowances was incurred.

**26D.** (1) Subject to this section, in computing supplemental petroleum tax allowances in respect of land operations may only be set off against gross income from land operations and allowances in respect of marine operations against gross income from marine operations.

(2) Notwithstanding section 26C, where the allowances that are deductible exceed the gross income in any financial year, the amount of such excess shall be carried forward and shall be set off against the gross income for succeeding years.

**26E.** *(Repealed by Act No. 15 of 1992).*

**26F.** *(Not included in the original Act).*

### **PART III**

#### **Miscellaneous and General**

**26G.** Subject to sections 3 and 4, the provisions of the Income Tax Act in the Table below shall apply in relation to the taxes imposed under section 21 as they apply in relation to income tax chargeable under the Income Tax Act.

Table

Sections 43–43H ... .. (Appeals).

Section 93 ... .. (Relief from Double Taxation).

Section 97 ... .. (Power of Board to require  
Schedule of particulars).

Section 103 ... .. (Interest for non-payment of tax).

Sections 104 –108 ... (Collection).

Sections 109 and 112 ... (Recovery).

Sections 113 and 114 ... (Notices).

Sections 116–119, 122–124 ... (General Provisions).

Sections 131 and 132 ... (Miscellaneous Powers of the  
Board).

**27.** (1) Notwithstanding any rule of law to the contrary but subject to this Act, sections 10 and 11 of the Income Tax Act as applied for the purposes of this Act, shall have effect so as to enable the out-goings and expenses therein mentioned to be allowed in computing the profits or gains of any person for a financial year from each of the several separate businesses carried on by that person under this Act in such manner as is provided in subsection (2).

(2) All out-goings and expenses referred to in subsection (1), including in particular expenses incurred by a person, in respect of matters not directly connected with any of the several separate businesses carried on by him or by an associated person but incurred in common for the purposes of those businesses, that the Board may in its discretion approve, shall be allocated to each business so carried on in relation to which it was so incurred in such manner as

the Board may direct. In this subsection “associated person” includes one company that exercises or is entitled to exercise control directly or indirectly over the affairs of another and any company the majority of the shareholding of which is held by more than one other company similarly so controlled.

**28.** The books of account and other records required to be kept by a person carrying on any of the several separate businesses specified in this Act by virtue of section 116 of the Income Tax Act as applied for the purposes of this Act shall be kept separately as far as possible with respect to each separate business and in accordance with this Act and any directions given by the Board.

**29.** The Board may for any purpose related to the administration or enforcement of this Act require any person engaged in petroleum operations to prepare and furnish to it returns, statements of account and data concerning his petroleum operations in such manner and detail and within such time as the Board may, from time to time, require by notice in writing.

**30.** (1) In addition to the case where they are required by this Act to do so, the Minister of Finance and the Minister shall wherever it is necessary and expedient to do so consult with each other for the purpose of the performance of any duty or the exercise of any power respecting which they are authorised or required to perform or exercise under or by virtue of this Act.

(2) For the purpose of assessing the tax liability of any person under this Act, the Minister, the Member of the Cabinet responsible for petroleum and the Board may exchange information in respect of the petroleum operations of that person and the Board may require any government department or agency to disclose information which may assist in that assessment.

**31.** (1) A person who contravenes this Act is guilty of an offence, and any person guilty of an offence against this Act, except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for twelve months, and in the case of a continuing offence to a further fine of two thousand dollars for each day during which the offence continues after conviction therefor.

(2) Where a company is convicted of an offence under subsection (1), nothing therein shall apply to the Directors, General Manager, Secretary or other employee of the company, if it is shown to the satisfaction of the Magistrate that the offence was committed without the consent or connivance of the Directors, or General Manager, Secretary or any other employee of the company and that they exercised all such diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions in that capacity and to all the circumstances.

**32.** The President may make Regulations generally for the purpose of giving effect to this Act, and in particular for prescribing anything required or authorised to be prescribed.

## **FREEDOM OF INFORMATION ACT**

*An Act to give members of the public a general right (with exceptions) of access to official documents of public authorities and for matters related thereto.*

\*[Assented to 4<sup>th</sup> November, 1999]

### **PART I**

#### **Preliminary**

- 1.** This Act may be cited as the Freedom of Information Act.
- 2.** This Act comes into force on such date as is fixed by the President by Proclamation.
- 3.** (1) The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by—
  - (a) making available to the public information about the operations of public authorities and, in particular, ensuring that the authorisations, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorisations, policies, rules and practices; and
  - (b) creating a general right of access to information in documentary form in the possession of public authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by public authorities.
- (2) The provisions of this Act shall be interpreted so as to further the object set out in subsection (1) and any discretion conferred by this Act shall be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information.
- 4.** In this Act—

“applicant” means a person who has made a request in accordance with section 13;

“designated officer”, in relation to a public authority, means the person referred to in section 7(1)(a)(vi);

“document” means information recorded in any form, whether printed or on tape or film or by electronic means or otherwise and includes any map, diagram, photograph, film, microfilm, video-tape, sound recording, or machine-readable record or any record which is capable of being produced from a machine-readable record by means of equipment or a programme (or a

combination of both) which is used for that purpose by the public authority which holds the record;

“exempt document” means a document referred to in Part IV;

“exempt information” means information the inclusion of which in a document causes the document to be an exempt document;

“Minister” means the Minister of Government to whom responsibility for information is assigned;

“official document” means a document held by a public authority in connection with its functions as such, whether or not it was created by that authority, and whether or not it was created before the commencement of this Act and, for the purposes of this definition, a document is held by a public authority if it is in its possession, custody or power;

“personal information” means information about an individual, including—

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual;

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;

(c) any identifying number, symbol or other particular assigned to the individual;

(d) the address, telephone number, finger-prints or blood type of the individual;

(e) the personal opinions or views of the individual except where they relate to another individual;

(f) correspondence sent to a public authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;

(g) the views or opinions of another individual about the individual; and

(h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

“prescribed” means prescribed by the Minister by Regulations made under section 41;

“public authority” means—

(a) Parliament, a Joint Select Committee of Parliament or a committee of either House of Parliament;

(b) subject to section 5(2), the Court of Appeal, the High Court, the Industrial Court, the Tax Appeal Board or a Court of summary jurisdiction;

(c) the Cabinet as constituted under the Constitution;

(d) a Ministry or a department or division of a Ministry;

(e) the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;

(f) a Municipal Corporation established under the Municipal Corporations Act;

(g) a Regional Health Authority established under the Regional Health Authorities Act;

(h) a statutory body, responsibility for which is assigned to a Minister of Government;

(i) a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State;

(j) a Service Commission established under the Constitution or other written law; or

(k) a body corporate or unincorporated entity—

(i) in relation to any function which it exercises on behalf of the State;

(ii) which is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; or

(iii) which is supported, directly or indirectly, by Government funds and over which Government is in a position to exercise control;

“responsible Minister”, in relation to a public authority means—

(a) the Minister of Government to whom responsibility for the public authority is assigned; or

(b) such Minister of Government as the President may, by Order, declare to be the responsible Minister of the public authority for the purposes of this Act;

“Tobago House of Assembly” means the Tobago House of Assembly established under the Constitution.

5. (1) This Act does not apply to—

(a) the President;

(b) a commission of inquiry issued by the President; or

(c) such public authority or function of a public authority as the President may, by Order subject to negative resolution of Parliament, determine.

(2) For the purposes of this Act—

(a) in relation to its or his judicial functions, a Court or the holder of a judicial office or other office pertaining to a Court in his capacity as the holder of that office, shall not be regarded as a public authority;

(b) a registry or other office of Court Administration, and the staff of such a registry or other office of Court Administration in their capacity as members of that staff in relation to those matters which relate to Court administration, shall be regarded as part of a public authority.

6. This Act binds the State.

## PART II

### Publication of certain documents and information

7. (1) A public authority shall, with the approval of the responsible Minister—

(a) cause to be published in the *Gazette* and in a daily newspaper circulating in Trinidad and Tobago as soon as practicable after the commencement of this Act—

(i) a statement setting out the particulars of the organisation and functions of the public authority, indicating, as far as practicable, the decision-making powers and other powers affecting members of the public that are involved in those functions and particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or the administration of, the public authority;

(ii) a statement of the categories of documents that are maintained in the possession of the public authority;

(iii) a statement of the material that has been prepared by the public authority under this Part for publication or inspection by members of the public, and the places at which a person may inspect or obtain that material;

(iv) a statement listing the literature available by way of subscription services;

(v) a statement of the procedure to be followed by a person when a request for access to a document is made to a public authority;

(vi) a statement specifying the officer responsible within each public authority for the initial receipt of, and action upon, notices under section 10, requests for access to documents under section 13 and applications under section 36;

(vii) a statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection;

(viii) if the public authority maintains a library or reading room that is available for public use, a statement of that fact including details of the address and hours of opening of the library or reading room; and

(b) during the year commencing on 1st January next following the publication, in respect of a public authority, of the statements under paragraph (a) that are the statements first published under that paragraph, and during each succeeding year, cause to be published in the *Gazette* and in a daily newspaper circulating in Trinidad and Tobago statements bringing up to date the information contained in the previous statements.

(2) Nothing in this section requires the publication of exempt information.

(3) Where a public authority is created on or after the commencement of this Act, the public authority shall comply with subsection (1), as soon as practicable after its creation.

(4) Where a statement has not been published in accordance with subsection (1), the responsible Minister shall promptly give reasons, to be published in the *Gazette*, for the failure to publish.

**8.** (1) This section applies to documents that are provided by a public authority for the use or guidance of the public authority or its officers—

(a) in making decisions or recommendations, or in providing advice to persons outside the public authority, with respect to rights, privileges, benefits, obligations, penalties or other detriments, being—

(i) documents containing interpretations or particulars of written laws or schemes administered by the public authority, not being particulars contained in another written law; or



(ii) manuals, rules of procedure, statements of policy, records of decisions, letters of advice to persons outside the public authority, or similar documents containing rules, policies, guidelines, practices or precedents; and

(b) in enforcing written laws or schemes administered by the public authority where a member of the public might be directly affected by that enforcement, being documents containing information on the procedures to be employed or the objectives to be pursued in the enforcement of, the written laws or schemes.

(2) A public authority shall—

(a) as soon as practicable after the commencement of this Act—

(i) cause copies of all documents to which this section applies in respect of the public authority to be made available for inspection and for purchase by members of the public; and

(ii) with the approval of the responsible Minister, cause to be published in the *Gazette* and in a daily newspaper circulating in Trinidad and Tobago, a statement (which may be in the form of an index) specifying the documents that are, at the time of preparation of the statement, so available and the place or places where copies may be inspected and may be purchased; and

(b) during twelve months after the publication of the first statement under paragraph (a) and thereafter at intervals of twelve months, with the approval of the responsible Minister cause to be published in the *Gazette* and in a daily newspaper circulating in Trinidad and Tobago, statements bringing up to date the information contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be made available in accordance with subsection (2), but, if such document is not so made available, the public authority shall, except where impracticable, cause to be prepared a corresponding document, altered only to the extent necessary to exclude the exempt information, and cause the document so prepared to be dealt with in accordance with subsection (2).

(4) A document from which exempt information has been excluded in accordance with subsection (3) shall indicate, to the extent practicable without exempt information being disclosed, the nature of the information excluded.

(5) Notwithstanding that a document of the kind referred to in subsection (1) is an exempt document, if the fact of the existence of that document can be published in accordance with subsection (2)(a)(ii) without exempt information being disclosed, the public authority shall cause that fact to be published.

(6) A public authority that comes into existence on or after the commencement of this Act shall comply—

(a) with the provisions of subsection (2)(a) as soon as practicable after the day on which it came into existence and not later than twelve months after that day; and

(b) with the provisions of subsection (2)(b) as if the reference to “first publication” in that subsection were a reference to first publication in compliance with this subsection.

**9.** (1) This section applies, in respect of a public authority, to any document that is—

(a) a report, or a statement containing the advice or recommendations, of a body or entity established within the public authority;

(b) a report, or a statement containing the advice or recommendations, of a body or entity established outside the public authority by or under a written law, or by a Minister of Government or other public authority for the purpose of submitting a report or reports, providing advice or making recommendations to the public authority or to the responsible Minister of that public authority;

(c) a report, or a statement containing the advice or recommendations, of an inter-departmental Committee whose membership includes an officer of the public authority;

(d) a report, or a statement containing the advice or recommendations, of a committee established within the public authority to submit a report, provide advice or make recommendations to the responsible Minister of that public authority or to another officer of the public authority who is not a member committee;

(e) a report (including a report concerning the results of studies, surveys or tests) prepared for the public authority by a scientific or technical expert, whether employed within the public authority or not, including a report expressing the opinion of such an expert on scientific or technical matters;

(f) a report prepared for the public authority by a consultant who was paid for preparing the report;

(g) a report prepared within the public authority and containing the results of studies, surveys or tests carried out for the purpose of assessing, or making recommendations on, the feasibility of establishing a new or proposed Government policy, programme or project;

(h) a report on the performance or efficiency of the public authority, or of an office, division or branch of the public authority, whether the report is of a general nature or concerns a particular policy, programme or project administered by the public authority;

(i) a report containing final plans or proposals for the re-organisation of the functions of the public authority, the establishment of a new policy, programme or project to be administered by the public authority, or the alteration of an existing policy, programme or project administered by the public authority, whether or not the plans or proposals are subject to approval by an officer of the public authority, another public authority, the responsible Minister of the public authority or Cabinet;

(j) a statement prepared within the public authority and containing policy directions for the drafting of legislation;

(k) a report of a test carried out within the public authority on a product for the purpose of purchasing equipment;

(l) an environmental impact statement prepared within the public authority;  
and

(m) a valuation report prepared for the public authority by a valuator, whether or not the valuator is an officer of the public authority.

(2) A public authority shall, with the approval of the responsible Minister—

(a) cause to be published in the *Gazette* and in a daily newspaper circulating in Trinidad and Tobago as soon as practicable after the commencement of this Act, a statement (which may take the form of an index) specifying the documents to which this section applies which have been created since the date of commencement of this Act and are in the possession of the public authority;

(b) within twelve months after publication of the statement required under paragraph (a) and thereafter at intervals of twelve months, cause to be published in the *Gazette* and in a daily newspaper circulating in Trinidad and Tobago, statements bringing up to date the information contained in the previous statement or statements.

(3) This section does not require a document of the kind referred to in subsection (1) containing exempt information to be referred to in a statement published in accordance with subsection (2)(a), if the fact of the existence of the document cannot be referred to in the statement without exempt information being disclosed.

(4) A public authority that comes into existence on or after the commencement of this Act shall comply—

(a) with the provisions of subsection (2)(a) as soon as practicable after the day on which the public authority comes into existence and not later than twelve months after that day; and

(b) with the provisions of subsection (2)(b) as if the reference to “first publication” in that subsection were a reference to first publication in compliance with this subsection.

**10.** (1) A person may serve upon a public authority a notice in writing stating that, in the opinion of the person, a statement published by the public authority under section 8(2)(a) or (b) or section 9(2)(a) or (b) does not specify a document as described in section 8(1) or 9(1) that was required to be specified in the statement.

(2) The public authority shall—

(a) make a decision within twenty-one days of receiving a notice and publish the decision in relation to the document referred to in subsection (1), no later than seven days thereafter in the *Gazette*;

(b) cause the person to be given notice in writing of its decision.

(3) Where the decision is adverse to the person’s claim, the notice shall—

(a) state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision; and

(b) inform the person of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

### **PART III**

#### **Right of Access to Information**

**11.** (1) Notwithstanding any law to the contrary and subject to the provisions of this Act, it shall be the right of every person to obtain access to an official document.

(2) Nothing in this Act shall prevent a public authority from—

(a) giving access to documents or information;

(b) amending documents,

other than as required by this Act where it has the discretion to do so or where it is required to do so by any written law or order of a Court.

**12.** A person is not entitled to obtain, in accordance with the procedure provided for in this Part, access to—

(a) a document which contains information that is open to public access, as part of a public register or otherwise, in accordance with another written law, where that access is subject to a fee or other charge;

(b) a document which contains information that is available for purchase by the public in accordance with arrangements made by a public authority;

(c) a document that is available for public inspection in a registry maintained by the Registrar General or other public authority;

(d) a document which is stored for preservation or safe custody, being a document which is a duplicate of a document of a public authority.

**13.** (1) A person who wishes to obtain access to an official document shall make a request in the form set out in the Schedule, to the relevant public authority for access to the document.

(2) A request shall identify the official document, or provide sufficient information to enable the designated officer of the public authority, or an employee of the public authority who is familiar with the relevant documents, to identify the document with reasonable effort.

(3) A request may specify in which of the forms described in section 18 the applicant wishes to be given access.

(4) Subject to section 21, a request under this section may be made for access to all records of a particular description or all records relating to a particular subject.

(5) An application for access to an official document held by a public authority referred to in section 4(k)(i) or (iii) shall be made to the responsible Minister.

**14.** (1) A public authority shall take reasonable steps to assist any person who—

(a) wishes to make a request under section 13; or

(b) has made a request which does not comply with the requirements of section 13(2), to make a request in a manner which complies with that section.

(2) Where a request in writing is made to a public authority for access to an official document, the public authority shall not refuse the request on the ground that the request does not comply with section 13(2), without first giving the applicant a reasonable opportunity of consultation with the public authority with a view to the making of a request in a form that does comply with that section.

(3) Without prejudice to section 21, a public authority shall take reasonable steps to assist any person in the exercise of any other right under this Act.

**15.** A public authority shall take reasonable steps to enable an applicant to be notified of the approval or refusal of his request as soon as practicable but in any case not later than thirty days after the day on which the request is duly made.

**16.** (1) Subject to this Act, where—

(a) a request is duly made by an applicant to a public authority for access to an official document;

(b) the request is approved by the public authority; and

(c) any fee prescribed under section 17 that is required to be paid before access is granted has been paid,

the public authority shall forthwith give the applicant access to the official document.

(2) Where—

(a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document;

(b) it is practicable for the public authority to grant access to a copy of the document with such deletions as to make the copy not an exempt document; and

(c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy,

the public authority shall give the applicant access to such a copy of the document.

**17.** (1) No fee shall be charged by a public authority for the making of a request for access to an official document.

(2) Where access to an official document is to be given in the form of printed copies, or copies in some other form, such as on tape, disc, film or other material, the applicant shall pay the prescribed fee.

(3) Notwithstanding subsection (2), where a public authority fails to comply with section 15, any access to official documents to which the applicant is entitled pursuant to his request shall be provided free of charge.

(4) Notwithstanding subsection (2), where a public authority fails to give an applicant access to an official document within seven working days of the payment of the relevant fee pursuant to section 16(1)(c), the applicant shall, in addition to access to the official document requested, be entitled to a refund of the fee paid.

(5) The fees payable by the applicant shall be commensurate with the cost incurred in making documents available.

**18.** (1) Where a document to which access is required to be given under this Act is held by a public authority in printed form, the public authority shall give access to it by supplying a copy of it to the applicant or, if the applicant so requests, by making it available to the applicant for inspection.

(2) Where a document to which access is required to be given under this Act is held by a public authority other than in printed form, the public authority shall, if the applicant so requests, give access to it—

(a) by supplying a copy of it to the applicant;

(b) in the case of a document that is an article or thing from which sounds or visual images are capable of being reproduced, by making arrangements for the applicant to hear or view those sounds or visual images;

(c) in the case of a document by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of shorthand writing or in codified form, by supplying a printed transcript of the words recorded or contained in the document.

(3) Subject to this section and to section 16(2), where the applicant has requested access in a particular form, access shall be given in that form.

(4) If the form of access requested by the applicant—

(a) would interfere unreasonably with the operations of the public authority;

(b) would be detrimental to the preservation of the document or having regard to the physical nature of the document, would not be appropriate; or

(c) would involve an infringement of copyright subsisting in a person other than the State,

access in that form shall be refused but access may be given in another form.

**19.** (1) A public authority which receives a request may defer the provision of access to the document concerned if the document has been prepared—

(a) for presentation to Parliament;

(b) for release to the media; or

(c) solely for inclusion, in the same or in an amended form in a document to be prepared for a purpose specified in paragraph (a) or (b), and the document is yet to be presented or released, or included in a document to be presented or released, as the case may be.

(2) Where the provision of access to a document is deferred in accordance with subsection (1), the public authority shall, in informing the applicant of the reasons for the decision, indicate, as far as practicable, the period for which the deferment will operate.

**20.** (1) A public authority dealing with a request under this Part for access to documents, or an application under section 36 for the correction of personal information, may refuse to grant access to documents, or to correct information, in accordance with the request or application, without having caused the processing of the request or application to have been undertaken or at any later time, if the public authority is satisfied that—

(a) the request or application is made by, or on behalf of, a person who, on at least one previous occasion, has made a request or application to the public authority, or to a predecessor of the public authority, for access to the same documents or for the same correction;

(b) the request or application was refused and the High Court, on reviewing the decision to refuse the request or application, confirmed the decision; and

(c) there are no reasonable grounds for making the request or application again.

(2) A public authority shall give notice of a refusal under subsection (1) and shall inform the applicant of—

(a) the reason for the refusal; and

(b) the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

**21.** (1) A public authority dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the public authority is satisfied that the work involved in processing the request would substantially and unreasonably divert the resources of the public authority from its other operations and if before refusing to provide information on these grounds the authority has taken reasonable steps to assist the applicant to reformulate the application so as to avoid causing such interference.

(2) Subject to subsection (3) but without limiting the matters to which a public authority may have regard in deciding whether to refuse under subsection (1) to grant access to the documents to which the request relates, the public authority is to have regard to the resources that would have to be used—



(a) in identifying, locating or collating the documents within the filing system of the public authority; or

(b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used—

(i) in examining documents;

(ii) in consulting with any person or body in relation to the request;

(c) in making a copy, or an edited copy of the documents; or

(d) in notifying any interim or final decision on the request.

(3) The public authority shall not have regard to any maximum amount prescribed in Regulations, payable as a fee in relation to the request.

(4) In deciding whether to refuse, under subsection (1), to grant access to documents, a public authority shall not have regard to—

(a) any reasons that the applicant gives for requesting access; or

(b) the public authority's belief as to what are the applicant's reasons for requesting access.

(5) A public authority may refuse to grant access to the documents in accordance with the request without having identified any or all of the documents to which the request relates and without specifying, in respect of each document, the provision or provisions of this Act under which that document is claimed to be an exempt document if—

(a) it is apparent from the nature of the documents as described in the request that all of the documents to which the request relates are exempt documents; and

(b) either—

(i) it is apparent from the nature of the documents as so described that no obligation would arise under section 16(2) in relation to any of those documents to grant access to an edited copy of the document; or

(ii) it is apparent from the request or as a result of consultation by the public authority with the applicant, that the applicant would not wish to have access to an edited copy of the document.

(6) A public authority shall not refuse to grant access to a document under subsection (1) unless the public authority has—

- (a) given the applicant a written notice—
  - (i) stating the intention to refuse access; and
  - (ii) identifying an officer of the public authority with whom the applicant may consult with a view to making the request in a form that would remove the ground for refusal;
- (b) given the applicant a reasonable opportunity so to consult; and
- (c) as far as is reasonably practicable, provide the applicant with any information that would assist the making of the request in a form that would remove the ground for refusal.

(7) For the purposes of section 15, the period commencing on the day an applicant is given notice under subsection (6)(a) and ending on the day the applicant confirms or alters the request following the consultation referred to in subsection (6) is to be disregarded in the computation of the thirty-day period referred to in section 15.

**22.** (1) A decision in respect of a request made to a public authority may be made, on behalf of the public authority, by the responsible Minister, a Permanent Secretary, a Head of Department, a Chief Executive Officer or a designated officer of the public authority or by an officer of the public authority acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister, a Permanent Secretary, a Head of Department or a Chief Executive Officer.

(2) Where a request is made to a public authority for a document, and no arrangements in respect of documents of that type have been made and published under the Regulations, a decision on that request shall, for the purpose of enabling an application for judicial review to be made, be deemed to have been made by the responsible Minister of the public authority.

**23.** (1) Where in relation to a request for access to a document of a public authority, a decision is made under this Part that the applicant is not entitled to access to the document in accordance with the request or that provision of access to the document be deferred or that no such document exists, the public authority shall cause the applicant to be given notice in writing of the decision, and the notice shall—

(a) state the findings on any material question of fact, referring to the material on which those findings were based, and the reasons for the decision;

(b) where the decision relates to a public authority, state the name and designation of the person giving the decision;

(c) where the decision does not relate to a request for access to a document which if it existed, would be an exempt document but access is given to a document in

accordance with section 16(2), state that the document is a copy of a document from which exempt information has been deleted;

(d) inform the applicant of his right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made;

(e) where the decision is to the effect that the document does not exist or cannot, after a thorough and diligent search, be located, inform the applicant of his right to complain to the Ombudsman.

(2) In a notice under subsection (1), a public authority—

(a) shall not be required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document;

(b) if the decision relates to a request for access to a document which is an exempt document under section 24, 25 or 28 or which, if it existed, would be an exempt document under section 24, 25 or 28, may state the decision in terms which neither confirm nor deny the existence of any document.

## **PART IV**

### **Exempt Documents**

**24.** (1) A document is an exempt document if it is—

(a) the official record of any deliberation or decision of Cabinet;

(b) a document that has been prepared by a Minister of Government or on his behalf or by a public authority for the purpose of submission for consideration by Cabinet or a document which has been considered by Cabinet and which is related to issues that are or have been before Cabinet;

(c) a document prepared for the purpose of briefing a Minister of Government in relation to issues to be considered by Cabinet;

(d) a document that is a copy or draft of, or contains extracts from, a document referred to in paragraph (a), (b) or (c); or

(e) a document the disclosure of which would involve the disclosure of any deliberation or decision of Cabinet, other than a document by which a decision of Cabinet was officially published.

(2) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of ten years has elapsed since the last day of the year in which the document came into existence.

(3) Subsection (1) does not apply to a document that contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of Cabinet.

(4) For the purposes of this Act, a certificate signed by the Secretary to Cabinet certifying that a document as described in a request would, if it existed be one of a kind referred to in subsection (1), establishes that, if such a document exists, it is an exempt document.

(5) In this section—

(a) “Cabinet” includes a committee or subcommittee of Cabinet;

(b) a reference to a document includes a reference to a document whether created before or after the commencement of this Act.

**25.** (1) A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the defence of the Republic of Trinidad and Tobago.

(2) A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the lawful activities of the security or intelligence services.

(3) For the purposes of this Act, a certificate signed by the Minister to whom responsibility is assigned certifying that a document as described in a request would, if it existed, be one of a kind referred to in subsection (1) or (2), established that if such a document exists, it is an exempt document.

**26.** A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure—

(a) would prejudice relations between the Government of the Republic of Trinidad and Tobago and the government of any other State;

(b) would prejudice relations between the Government of the Republic of Trinidad and Tobago and an international organisation of States or a body thereof;

(c) would divulge any information or matter communicated in confidence by or on behalf of the government of another State to the Government of the Republic of Trinidad and Tobago or to a person receiving a communication on behalf of the government of that State;  
or

(d) would divulge any information communicated in confidence by or on behalf of an international organisation of States or a body thereof to the Government of the Republic of Trinidad and Tobago or to a person receiving a communication on behalf of that international organisation or body.

**27.** (1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act—

(a) would disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister of Government, or consultation or deliberation that has taken place between officers, Ministers of Government, or an officer and a Minister of Government, in the course of, or for the purpose of, the deliberative processes involved in the functions of a public authority; and

(b) would be contrary to the public interest.

(2) In the case of a document of the kind referred to in section 8(1), the matter referred to in subsection (1)(a) does not include—

(a) matter that is provided for the use or guidance of, or is used or may be used for, the purpose of making decisions or recommendations, or enforcing written laws or schemes, referred to in section 8(1);

(b) factual information;

(c) the analysis, interpretation or evaluation of, or any projection based on factual information;

(d) a statistical survey;

(e) a report by a valuator, whether or not the valuator is an officer of the public authority;

(f) an environmental impact statement or similar record;

(g) a report of a test carried out on a product for the purpose of purchasing equipment for a public authority or a consumer test report;

(h) a report or study on the performance or efficiency of a public authority, whether the report or study is of a general nature or is in respect of a particular programme or policy;

(i) a feasibility or other technical study, including a cost estimate, relating to a policy or project of a public authority;

(j) a report containing the results of field research undertaken before the formulation of a policy proposal;

(k) a final plan or proposal to change a programme of a public authority, or for the establishment of a new programme, including a budgetary estimate for the programme, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to Cabinet or a committee or subcommittee of Cabinet;

(l) a report of an inter-departmental committee task force within a public authority, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to Cabinet or a committee or sub-committee of Cabinet;

(m) a report of a committee, council or other body which is attached to a public authority and which has been established for the purpose of undertaking inquiries and making reports and recommendations to the public authority;

(n) the reasons for a final decision, order or ruling of a public authority made during or at the conclusion of the exercise of discretionary power conferred by or under a written law or scheme administered by the public authority, whether or not the written law or scheme allows an appeal to be taken against the decision, order or ruling, and whether or not the reasons—

(i) are contained in an internal memorandum of the public authority or in a letter from an officer or employee of the public authority; or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling.

(3) Where a decision is made under Part III that an applicant is not entitled to access to a document by reason of the application of this section, the notice under section 23 shall state the public interest considerations on which the decision is based.

(4) Subsection (1) shall cease to apply to a document brought into existence on or after the commencement of this Act when a period of ten years has elapsed since the last day of the year in which the document came into existence.

**28.** (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to—

(a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;

(b) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

(d) disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

(e) endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.

(2) This section does not apply to any document that is—

(a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;

(b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law;

(c) a document containing any general outline of the structure of any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;

(d) a report on the degree of success achieved in any programme adopted by a public authority for investigating breaches of, or enforcing or administering the law;

(e) a report prepared in the course of routine law enforcement inspections or investigations by a public authority which has the function of enforcing and regulating compliance with a particular law other than the criminal law;

(f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation, if it is in the public interest that access to the document should be granted under this Act.

**29.** (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

(2) A document of the kind referred to in section 8(1) is not an exempt document by virtue of subsection (1) by reason only of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8(1).

**30.** (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information of any individual (including a deceased individual).

(2) Subject to subsection (4), the provisions of subsection (1) do not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

(3) Where a request by a person other than a person referred to in subsection (2) is made to a public authority for access to a document containing personal information of any individual (including a deceased individual) and the public authority decides to grant access to the document, the public authority shall, if practicable, notify the individual who is the subject of that information (or in the case of a deceased individual, that individual's next-of-kin) of the decision and of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

(4) Nothing in this Act shall be taken to require a public authority to give information as to the existence or non-existence of a document of a kind referred to in subsection (1) where information as to the existence or non-existence of that document, if included in a document of a public authority, would cause the last-mentioned document to be an exempt document by virtue of this section.

**31.** (1) A document is an exempt document if its disclosure under this Act would disclose information acquired by a public authority from a business, commercial or financial undertaking, and—

(a) the information relates to trade secrets or other matters of a business, commercial or financial nature; or

(b) the disclosure of the information under this Act would be likely to expose the undertaking to disadvantage.

(2) In deciding whether disclosure of information would expose an undertaking to disadvantage, for the purposes of paragraph (b) of subsection (1), a public authority may take account of any of the following considerations:

(a) whether the information is generally available to competitors of the undertaking;

(b) whether the information would be exempt information if it were generated by a public authority;

(c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and



(d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of regulation by a public authority of corporate practices or environmental controls, and of any consideration or considerations which in the opinion of the public authority is or are relevant.

(3) Prior to making a determination under subsection (1) as to whether the disclosure of information would expose an undertaking to disadvantage, a public authority shall notify the undertaking which has supplied the relevant document or documents that the public authority has received a request for access to the document and shall—

(a) seek the undertaking's view as to whether disclosure should occur; and

(b) notify the undertaking where the public authority after consultation has decided to disclose the document and in such a case notify the undertaking of the right to apply to the High Court for judicial review of the decision and the time within which the application for review is required to be made.

(4) A document is an exempt document if—

(a) it contains—

(i) a trade secret of a public authority; or

(ii) in the case of a public authority engaged in trade or commerce, information of a business, commercial or financial, nature,

that would if disclosed under this Act be likely to expose the public authority to disadvantage;

(b) it contains the results of scientific or technical research undertaken by a public authority, and—

(i) the research could lead to a patentable invention;

(ii) the disclosure of the results in an incomplete state under this Act would be reasonably likely to expose a business, commercial or financial undertaking unreasonably to disadvantage;

(iii) the disclosure of the results before the completion of the research would be reasonably likely to expose the public authority unreasonably to disadvantage; or

(c) it is an examination paper, a paper submitted by a student in the course of an examination, an examiner's report or similar document and the use or uses for which the document was prepared have not been completed.

**32.** (1) A document is an exempt document if its disclosure under this Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to a public authority, and—

(a) the information would be exempt information if it were generated by a public authority; or

(b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of a public authority to obtain similar information in the future.

(2) This section does not apply to information—

(a) acquired by a public authority from a business, commercial or financial undertaking; and

(b) that relates to trade secrets or other matters of a business, commercial or financial nature.

**33.** (1) A document is an exempt document if—

(a) its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Trinidad and Tobago, including but not limited to, the premature disclosure of proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or instrument of economic management;

(b) its disclosure under this Act would be contrary to the financial interests of the public authority by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public authority for the acquisition or disposal of property or the supply of goods or services;

(c) its disclosure under this Act, by revealing information to a competitor of the public authority, would be likely to prejudice the lawful commercial activities of the public authority;

(d) subject to subsection (4), it contains information obtained by a public authority from a third party who has consistently treated it as confidential and the disclosure of that information to a competitor of a third party, would be likely to prejudice the lawful commercial or professional activities of the third party;

(e) its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use or guidance of, officers of a public authority on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to

the financial property or personal management and assessment interests of the State or of a public authority.

(2) Subsections (1)(c) and (d) do not apply to the disclosure of information which—

(a) relates to the quality, suitability or safety of the goods or services supplied by the public authority if the prejudice referred to in subsection (1)(c) or (d), as the case may be, would be likely to result from the exercise of more informed choice by persons seeking to acquire those goods or services; or

(b) consists of the results of any investigation carried out by, or any information supplied to, the public authority concerning a public safety hazard.

(3) For the purposes of subsection (2)(b), “public safety hazard” includes the hazard to the public associated with any product which is offered for sale or otherwise available to the public, or with any substance which is released into the environment or workplace or is present in food intended for human consumption, or with any form of public transport, or with any installation or manufacturing process or substance used therein, and for the purposes of this subsection “the public” includes persons in their place of work.

(4) A document referred to in subsection (1)(d) is not an exempt document if the third party has consented to its disclosure to the applicant.

**34.** A document is an exempt document if there is in force a written law applying specifically to information of a kind contained in the document and prohibiting persons referred to in the written law from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

**35.** Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant—

(a) abuse of authority or neglect in the performance of official duty; or

(b) injustice to an individual; or

(c) danger to the health or safety of an individual or of the public; or

(d) unauthorised use of public funds,

has or is likely to have occurred or in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.

## **PART V**

### Miscellaneous

**36.** (1) Where a document (whether or not it is one to which access has been given under this Act) contains personal information of an individual and that individual alleges that the information is inaccurate, the public authority which holds the document may, on the application, in writing, of that individual, correct the information.

(2) In subsection (1), “inaccurate” means incorrect, incomplete, misleading or not relevant to the purpose for which the document is held.

(3) For the purpose of this section, information may be corrected by amending, supplementing or deleting it.

**37.** Notwithstanding any other provision of this Act, where a request is made for access to a document held by the National Broadcasting Network, that company shall not be required to give access under this Act to any part of the document which discloses the source of any information obtained in the course of making any programme or broadcast.

**38.** (1) Where access to a document has been given in accordance with the requirements of this Act or in good faith, in the belief that it was required to be given in accordance with this Act, unless malice is proved—

(a) no action for defamation, breach of confidence or infringement of copyright may be brought against the public authority or against the responsible Minister, or an officer or employee of the public authority as a result of the giving of access;

(b) no action for defamation or breach of confidence may be brought, in respect of any publication involved in the giving of access by the public authority, against—

(i) any person who was the author of the document; or

(ii) any person as a result of that person having supplied the document or the information contained in it to the public authority;

(c) no person shall be guilty of an offence by reason only of having authorised, or having been involved in the giving of the access.

(2) The giving of access to a document, including an exempt document, in consequence of a request shall not be taken for the purposes of the law relating to defamation, breach of confidence or copyright, to constitute an authorisation or approval of the publication of the document or its contents by the person to whom access is given.

(3) Nothing in this Act affects any privilege, whether qualified or absolute, which may attach at common law to the publishing of a statement.

**38A.** (1) A person aggrieved by the refusal of a public authority to grant access to an official document, may, within twenty-one days of receiving notice of the refusal under section 23(1), complain in writing to the Ombudsman and the Ombudsman shall, after examining the document if it exists, make such recommendations with respect to the granting of access to the document as he thinks fit within thirty days or as soon as practicable thereof.

(2) In recommendations under subsection (1), the Ombudsman—

(a) is not required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document;

(b) may state the recommendations in terms which neither confirm or deny the existence of any document, if the recommendations relate to a request for access to a document which is an exempt document under section 24, 25 or 28 or which, if it existed, would be an exempt document under section 24, 25 or 28.

(3) A public authority is required to consider the recommendations of the Ombudsman and, to such extent as it thinks fit, exercise its discretion in giving effect to the recommendations.

**39.** (1) For the removal of doubt, a person aggrieved by a decision of a public authority under this Act may apply to the High Court for judicial review of the decision.

(2) Notwithstanding any other law to the contrary, where an application for judicial review of a decision of a public authority under this Act is made to the High Court, that application shall be heard and determined by a Judge in Chambers, unless the Court, with the consent of the parties, directs otherwise.

(3) In this section, “decision of a public authority” includes the failure of a public authority to comply with section 15 or 16(1).

**40.** (1) The Minister shall, as soon as practicable after the end of each year, prepare a report on the operation of this Act during that year and cause a copy of the report to be laid before each House of the Parliament.

(2) Each responsible Minister shall, in relation to the public authorities within his portfolio, furnish to the Minister such information as he requires for the purposes of the preparation of any report under this section and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.

(3) A report under this section shall include in respect of the year to which the report relates the following:

(a) the number of requests made to each public authority;

(b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;

(c) the number of applications for judicial review of decisions under this Act and the outcome of those applications;

(d) the number of complaints made to the Ombudsman with respect to the operation of this Act and the nature of those complaints;

(e) the number of notices served upon each public authority under section 10(1) and the number of decisions by the public authority which were adverse to the person's claim;

(f) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(g) the amount of charges collected by each public authority under this Act;

(h) particulars of any reading room or other facility provided by each public authority for use by applicants or members of the public, and the publications, documents or other information regularly on display in that reading room or other facility; and

(i) any other facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act.

**41.** (1) The Minister may make Regulations for giving effect to the purposes of this Act and for prescribing anything required or authorised by this Act to be prescribed.

(2) Regulations made under this section shall be subject to negative resolution of Parliament.

**42.** (1) A public authority shall maintain and preserve records in relation to its functions and a copy of all official documents which are created by it or which come at any time into its possession, custody or power.

(2) A person who wilfully destroys or damages a record or document required to be maintained and preserved under subsection (1), commits an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for six months.

(3) A person who knowingly destroys or damages a record or document which is required to be maintained and preserved under subsection (1) while a request for access to the record or document is pending commits an offence and is liable on summary conviction to a fine of ten thousand dollars and imprisonment for two years.