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CHAPTER 197

GEOTHERMAL ENERGY

Act 6 of 1987

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GEOTHERMAL ENERGY

An Act to regulate and control the exploitation of geothermal energy and to provide for incidental matters.

PART 1 – INTERPRETATION

1. Interpretation

(1) In this Act, unless the context otherwise requires –

"Director" means the Director of Geology, Mines and Rural Water Supplies;

"geothermal energy" means energy derived or derivable from within the ground or thereunder by natural heat, and includes all steam, water or other fluid and any mixture of all or any of them that has been heated by such energy, and every kind of matter derived from a bore and for the time being with or in any such steam, water, fluid or mixture; but does not include water that has been heated by such energy to a temperature not exceeding 70°C;

"land" includes land beneath water and the sea-bed, and the subsoil thereof;

"licence" means a production licence or a prospecting licence;

"licensee" means a person who is, for the time being, the lawful holder of a licence;

"prescribed" means prescribed by the Minister in regulations made under this Act;

"production" includes the tapping, extraction, obtention or use of geothermal energy by applying it for any purpose;

"production licence" means a licence granted under section 20;

"prospecting licence" means a licence granted under section 11;

"prospecting operations" includes boring and all operations and tests for the purpose of prospecting for geothermal energy, but does not include the use of geothermal energy for purposes other than prospecting.

(2) In this Act, a reference to "the territorial sea", "the continental shelf", "the exclusive economic zone", is a reference to that sea, shelf or zone as lawfully determined from time to time.

(3) In this Act a reference to the conditions of a licence is a reference to the conditions on which the licence is granted, as from time to time varied.

PART 2 – PROPERTY IN GEOTHERMAL ENERGY TO VEST IN THE REPUBLIC OF VANUATU

2. Vesting of property in geothermal energy

The property in and control over all natural reserves of geothermal energy in land is vested in the Republic of Vanuatu.

3. Rights in continental shelf, etc.

(1) All rights exercisable, in relation to geothermal energy, by Vanuatu with respect to the continental shelf or the exclusive economic zone are hereby vested in the Republic of Vanuatu.

(2) This Act shall apply in relation to the sea-bed and subsoil of the continental shelf and beneath the waters of the exclusive economic zone, as it applies in relation to land.

PART 3 – SERVICE OF NOTICE AND DOCUMENTS, ETC.

4. Service of documents

(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act may be served or given –

(a) in the case of an individual other than the Minister or the Director, by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business;

(b) in the case of the Minister or the Director, in the manner prescribed.

(2) For the purpose of service of documents the principal office of a company incorporated outside Vanuatu is its principal office within Vanuatu.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where –

(a) two or more persons constitute the applicant for the grant of a licence; or

(b) the holder of a licence is constituted by two or more persons,

a document of notice served on or notice given to any one of those persons in accordance with this section shall be treated as having been served on or given to all of them.

(5) Where a document or notice is sent by post pursuant to this section service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

5. Restriction on disclosure of information

(1) No information, obtained under or by virtue of this Act, about prospecting or production under a licence shall be disclosed, unless the disclosure is made –

(a) with the consent of the licensee;

(b) in relation to land which has ceased to be subject to the licence;

(c) for the purpose of facilitating the performance of any functions under this Act;

(d) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings;

(e) for the purpose of any civil proceedings brought by or against a licensee;

(f) for the purpose of facilitating the performance by a consultant to the Government of any functions under the consultancy arrangement;

(g) for the purpose of the determination of the liability to make any payment under this Act or of any tax;

(h) for any purpose, or in any circumstances, prescribed in the licence;

(i) to another government department.

(2) Where any disclosure is made to a person pursuant to subsection (1) paragraph (a), (c), (f), (g) or (i) then for the purposes of this section that person shall be treated as having obtained the information by virtue of this Act.

6. Prohibition against holding licence, etc.

(1) In this section –

"member of the family", in relation to a relevant person, means –

(a) the husband or wife, or reputed husband or wife; and

(b) the son or daughter (being a minor), whether born in or outside wedlock,

of the relevant person,

"relevant person" means a public servant or public officer or any person engaged in the service of the Government of Vanuatu.

(2) No relevant person, in his private capacity, shall acquire, attempt to acquire or hold –

(a) a licence or an interest in a licence; or

(b) a share in a body corporate that is entitled under this Act to carry on prospecting or production operations in Vanuatu.

(3) In proceedings on a prosecution for an offence under this section of acquiring a share of a kind referred to in subsection (2)(b), it is a sufficient defence if the person charged proves –

(a) the licence interest or share was acquired before he became a relevant person; or

(b) the share was acquired before the body corporate became entitled under this Act to carry on prospecting or production operations; and

(c) since he became a relevant person or since the body corporate became so entitled, as the case may be, all reasonable steps necessary to dispose of the licence interest or share have been, or are continuing to be, taken.

(4) For the purposes of this section, the acquisition or holding by a member of the family of a relevant person (not herself or himself being a public servant) of any licence, interest or share of the kind referred to in subsection (1), is deemed to be a holding by the relevant person of the licence, interest or share.

(5) This section applies with respect to shares whether acquired before or after the commencement of this Act (10 August 1987), or whether acquired by a person before he became a relevant person.

(6) Nothing in this section shall affect the operation of the principles of Chapter 10 of the Constitution.

7. Indemnity

A public servant does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

PART 4 – APPLICATIONS

8. Form of applications

An application for the issue of a licence under this Act to the Minister or the Director –

(a) shall be made –

(i) in accordance with this Act; and

(ii) in such manner and form as may be prescribed;

(b) shall be accompanied by such fee as may be prescribed; and

(c) may be withdrawn by the applicant giving to the Minister or, as the case may be, the Director a notice of withdrawal.

9. Powers of Minister with respect to applicants

(1) Without prejudice to any other provision of this Act, upon receipt of an application for the grant or renewal of a licence, the Minister may –

(a) cause such investigations, negotiations or consultations to be made or carried on relating to such application as the Minister considers necessary;

(b) by notice served on the applicant, require the applicant to furnish the Minister, within such reasonable period as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application as the Minister specifies in the notice; or

(c) publish notice of the application for a period of time and in the places as may be prescribed.

(2) Unless the Minister is satisfied that those requirements as may be specified under subsection (1) have been complied with, he shall refuse to proceed further with application.

10. Grant of licence to more than one person

(1) A licence may be granted to two or more persons associated together in any form of joint arrangement.

(2) Where, at any time, a licensee is constituted by two or more persons, the obligations to be observed and performed by the licensee under this Act are joint and several obligations, but without prejudice to any right of contribution which may exist between all or any of them.

PART 5 – PROSPECTING LICENCES

11. Disposal of application for prospecting licence

(1) Subject to this Act, on application duly made, the Minister may grant on such conditions as he determines, or refuse to grant, a prospecting licence.

(2) An application for grant of a prospecting licence shall include -

(a) the full name and nationality of the applicant, or in the case of a partnership or an association of individuals, the full names and nationalities of all applicants;

(b) in the case of a company or corporation the full names and nationalities of the directors and the full names and nationalities of every shareholder and the full names and nationalities of every ultimate beneficial owner, of 5 per cent or more of the issued capital;

(c) full information as to financial status, technical competence and experience;

(d) a description of the area over which the prospecting licence is sought together with a plan thereof to such specification as may be prescribed;

(e) the proposed programme of prospecting and the estimated cost thereof;

(f) such further information as the Minister may require.

(3) The application shall be registered by the Director and the date and hour of its deposition shall be recorded in a register provided for the purpose, and which shall be open to public inspection. Applications shall be credited with an order of priority determined by the date and hour of registration.

(4) A prospecting licence shall not be granted to an applicant in relation to any land which is, at the time the application for the grant of the licence is made, comprised in –

(a) an existing prospecting licence, or

(b) a production licence.

(5) The area of land in respect of which a prospecting licence is granted shall cover such area, not exceeding 100 km² and be of such size, shape, or orientation as may be prescribed.

(6) No prospecting licence shall be granted to an applicant –

(a) unless the Minister is satisfied that –

(i) he has adequate financial resources, technical competence and experience to carry on effective prospecting operations;

(ii) his programme of prospecting work to be fulfilled is adequate; and

(iii) his proposals for the employment and training of citizens of Vanuatu are adequate; or

(b) if, being a licensee, he is in default.

(7) For the purposes of this section, an applicant who is a licensee is in default if he is in breach of the conditions of his licence, or of the requirements of this Act in relation to him or his licence, when he makes application for the grant of a prospecting licence.

12. Form and content of prospecting licence

(1) A prospecting licence –

(a) shall –

(i) be in such form as may be prescribed;

(ii) state the date of grant of the licence;

(iii) identify the land in respect of which the licence is granted;

(iv) state the conditions on which the licence is granted; and

(v) state the term, not exceeding 3 years, for which the licence is granted; and,

(b) shall describe the programme of prospecting work to be fulfilled in the period of the grant of the licence in or in relation to the prospecting area and the estimated cost thereof.

(2) There may be included in a prospecting licence provision with regard to future joint arrangements for any future production licence on land to which the licence relates.

(3) There may be included in the prospecting licence provision for the determination of disputes, in relation to any identified matters, by way of arbitration or otherwise in such manner as is specified in the licence.

13. Renewal of prospecting licence

(1) Subject to section 14, on application duly made to the Minister in accordance with this Act for the renewal of a prospecting licence, the Minister shall, by instrument in writing, renew the licence on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act.

(2) An application for renewal of a prospecting licence shall be submitted not later than 60 days before the expiry of the licence and shall be accompanied by –

(a) a report on prospecting operations so far carried out and the direct cost incurred thereby;

(b) a proposed programme of prospecting operations to be carried out during the period of renewal and the estimated cost thereof; and

(c) such other information as the Minister may require.

(3) The instrument in writing renewing a prospecting licence –

(a) shall –

(i) identify the land in relation to which the licence is renewed which shall not exceed in area 50 per cent of the area of the land in respect of which the licence was granted or, in the case of a second renewal, was first renewed;

(ii) state the conditions on which the licence is renewed; and

(iii) state the term, not exceeding 2 years for which the licence is renewed; and

(b) shall describe the programme of prospecting work to be fulfilled during the period of the renewal in or in relation to the prospecting area and the estimated cost thereof.

(4) An instrument in writing renewing a prospecting licence shall, for the purposes of this Act, form part of the licence.

14. Restrictions on renewal of prospecting licence

(1) A prospecting licence shall not be renewed on more than 2 occasions.

(2) Subject to subsection (3), the Minister shall refuse to grant a renewal of a prospecting licence if the licensee is in default.

(3) The Minister shall not refuse to renew a licence on the ground that the licensee is in default unless –

(a) he has given to the licensee notice of his intention to do so giving in the notice –

(i) particulars of the alleged default;

(ii) a date before which the licensee may make representations in writing in relation to the alleged default, or remedy it; and

(b) the licensee has not, before that date –

(i) remedied the default; or

(ii) in a notice given to the Minister, made representations which satisfy the Minister that the licensee is not in default, or that in the circumstances he is justified in renewing the licence notwithstanding the default.

(4) For the purposes of this section, a licensee is in default if he is in breach of the conditions of his licence, or of the requirements of this Act in relation to him or his licence, when he makes application for the renewal of the licence.

(5) If an application for renewal is made, the licence shall be deemed to continue in force until such application is determined.

15. Rights under prospecting licence

A prospecting licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence, the exclusive right to carry on prospecting

operations in the area of the licence and to execute in the licensed area such works as are necessary for that purpose.

16. Obligations of holder of prospecting licence

(1) The holder of a prospecting licence shall keep, to the satisfaction of the Director, full and accurate records of his prospecting operations which shall show –

(a) boreholes drilled, with detailed logs of strata penetrated;

(b) the results of any geochemical or geophysical analysis;

(c) the geological interpretation of the records maintained under paragraphs (a) and (b);

(d) other work done in connection with the prospecting licence; and

(e) such other matters as may be prescribed;

and shall supply, at least once every 3 months, copies of such records to the Director, together with any reports prepared as a result of such records.

(2) The holder of a prospecting licence shall, within 3 months after the expiration thereof, submit a report to the Minister setting forth all results of his prospecting operations in the area of the licence; such report shall be accompanied by –

(a) all geological, geochemical and geophysical maps, profiles, and diagram charts made by such holder;

(b) copies of all tests and analyses made by such holder;

(c) copies of all reports made by such holder;

(d) a statement of direct costs incurred by the holder in the prospecting programme.

PART 6 – WORK PROGRAMME UNDER PROSPECTING LICENCES

17. Performance of work programme under prospecting licence

(1) During the term for which a prospecting licence is granted, the licensee shall, subject to section 18, fulfil the programme of prospecting work described in the licence.

(2) During the term for which a prospecting licence is renewed, the licensee shall, subject to section 18, fulfil the programme of prospecting work described in the instrument renewing the licence.

18. Amendment of work programme

The Minister may, on application made to him by a licensee, by instrument in writing, amend, in the manner proposed in the application, any programme of exploration work or prospecting work.

19. Damages for failure to perform work programme

A licensee is liable to pay to the Republic of Vanuatu damages in respect of any failure to fulfil an obligation under section 17, which damages –

(a) shall be those prescribed in respect of any such failure in the licence; or

(b) if not so prescribed, shall be assessed on the basis that the failure constitutes a breach of a contract with the Republic of Vanuatu to fulfil the obligation.

PART 7 – PRODUCTION LICENCES

20. Application for production licence

(1) Subject to this Act, on an application duly made, the Minister may grant or renew on such conditions as he determines, or refuse to grant or renew a production licence.

(2) An application for grant or renewal of a production licence shall include –

(a) full name and nationality, or, in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of an application by a corporate body, the registered name of such body;

(b) in the case of a company or corporation, the full names and nationalities of the directors and the full names and nationalities of every shareholder and the full names and nationalities of every ultimate beneficial owner of 5 per cent or more of the issued capital;

(c) full information as to his financial status, technical competence and experience;

(d) the number or numbers of his prospecting licence;

(e) details, illustrated by an approved plan, of the area in respect of which the application is made;

(f) the period for which the licence is sought;

(g) a technological report on production possibilities and the intention of the applicant in relation thereto;

(h) a proposed programme of operations which shall include –

(i) the date by which the applicant intends to commence production;

(ii) full details of how the energy is to be treated, converted, transmitted and marketed;

(iii) a detailed programme for the progressive reclamation and rehabilitation of lands disturbed and for the minimization of the effects, of such work on adjoining land and water areas;

(i) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;

(j) a programme for the employment and training of Vanuatu citizens;

(k) a report of the goods and services required for the operations which can be obtained within Vanuatu and the applicant's intention in relation thereto;

(l) details of expected infrastructure requirements; and

(m) such further information as the Minister may require or as may be prescribed.

21. Grant to holder of a prospecting licence

Subject to section 22 –

(a) on application duly made by the holder of a prospecting licence for the area the Minister shall grant the production licence applied for on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act; and

(b) on application duly made by any other person, the Minister may grant on such conditions as he may determine, or refuse to grant, the licence applied for.

22. Restrictions on grant of production licence

(1) A production licence shall not be granted –

(a) unless –

(i) the proposals of the applicant would ensure the most efficient, beneficial and timely use of the resources concerned;

(ii) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective mining operations;

(iii) the applicant would be able and willing to comply with the conditions on which a licence would be granted;

(iv) the applicant's proposals for the employment and training of citizens of Vanuatu are satisfactory; and

(v) any option given under section 12(2) has been properly disposed of, or arrangements satisfactory to the Minister have been made for that purpose; or

(b) if the applicant is in default, unless the Minister considers that special circumstances exist which justify the granting of the licence notwithstanding the default.

(2) Where an application is made by the holder of a prospecting licence for the area the Minister shall not refuse to grant a production licence to the applicant–

(a) on any ground referred to in subsection (1)(a), unless the Minister has given notice to the applicant of his intention to do so on that ground and has allowed the applicant, within such reasonable time as is specified in the notice, to make representation in relation to the proposed refusal and where appropriate, to put forward proposals either in alteration of or in addition to those in his application, and has taken into account any such representations and proposals;

(b) on the ground that the applicant is in default, unless the Minister 'has given notice to the applicant of his intention to do so, giving in the notice –

(i) particulars of the alleged default; and

(ii) a date before which the applicant may make representations in relation to the alleged default, or remedy it, and the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made representations which satisfy the Minister that the applicant is not in default, or that in the circumstances he is justified in granting the licence notwithstanding the default.

(3) A production licence shall not be granted to an applicant in relation to any land which is, at the time the application for the grant of the licence is made, comprised in –

(a) a single prospecting licence, unless the applicant is the holder of the prospecting licence, or applies with the written consent of that holder;

(b) more than one prospecting licence, unless, subject to subsection (4) –

(i) the applicant is the holder of one of those prospecting licences;

(ii) the Minister is satisfied that the public interest requires that the production licence should be granted; or

(c) an existing production licence, unless the applicant is the holder of it.

(4) Where, in the circumstances referred to in paragraph (b) of subsection (3) –

(a) the Minister is satisfied as provided in subparagraph (ii) of that paragraph; and

(b) every holder of a relevant prospecting licence or, if the applicant for the production licence is the holder of such a prospecting licence, every other holder of such a prospecting licence, gives his consent in writing to the grant of a production licence to the applicant.

such a licence may be granted to the applicant notwithstanding subsection (3)(b)(ii).

(5) For the purposes of this section, an applicant is in default if he is in breach of the conditions of any licence held by him, or of the requirements of this Act in relation to him or any such licence, when he makes application for the grant of a production licence.

23. Form and content of production licence

(1) A production licence –

(a) shall –

(i) be in such form as may be prescribed;

(ii) state the date of the grant of the licence;

(iii) identify the land in respect of which the licence is granted;

(iv) state the conditions on which the licence is granted; and

(v) state the term, which shall not exceed 30 years; and

(b) shall describe a programme of work to be fulfilled; and

(c) may contain such other matter as may be necessary to give effect to subsection (2) or (3), if applicable, or for any other purpose as may be determined by the Minister.

(2) There may be included in a production licence conditions with respect to the disposal of waste and protection of the environment.

(3) There may be included in a production licence provision for the determination of disputes, in relation to any identified matters, by way of arbitration or otherwise in such manner as is specified in the licence.

24. Rights conferred by production licence

(1) A production licence, while it remains in force confers on the licensee subject to this Act and to the conditions specified in the licence, exclusive rights –

(a) to exploit the geothermal energy in the licensed area and do everything related to its production;

(b) to sell any energy produced in a manner approved by the Minister and store and dump any mineral or waste products, in a manner approved by the Minister.

(2) A production licence shall be renewable subject to such conditions as may be reasonable.

PART 8 – SURRENDER OF LICENCE

25. Surrender of licence

A holder of a prospecting licence may at any time –

(a) surrender his licence, or

(b) relinquish part of the land covered by the licence, unless the remaining land would be in more than 3 parcels.

26. Relinquishment of land in production licence area

A licensee may, at any time when his production licence is in force and by giving to the Director not less than 3 months' previous notice of his intention to do so, relinquish any land in the licensed area identified in the notice, and the land ceases to be subject to the licence at the end of the period of the notice.

27. Relinquishment does not affect obligations

Any relinquishment made pursuant to this Part is without prejudice to any obligation incurred by the licensee in respect of the relinquished area before the date of relinquishment and does not, in particular, affect the obligation to fulfil any programme of exploration, prospecting or mining work.

PART 9 – CANCELLATION AND FORCE MAJEURE

28. Cancellation

(1) Subject to this section and section 38, where a licensee is in default the Minister may, by notice in writing served on the licensee, cancel the licence.

(2) The Minister shall not, under subsection (1), cancel a licence on the ground of any default unless –

(a) the Minister has, by notice in writing served on the licensee, given not less than 30 days notice of the Minister's intention to so cancel the licence on that ground;

(b) the Minister has, in the notice, specified a date before which the licensee may, in writing, submit any matter which he wished the Minister to consider; and

(c) The Minister has taken into account –

(i) any action taken by the holder to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Minister by the holder pursuant to paragraph (b).

(3) The Minister shall not, under subsection (1), cancel a licence on the ground that the holder of the licence has failed to pay any amount payable by him under this Act or his licence if, before the date specified in a notice referred to in subsection (2)(b) the holder pays the amount of money concerned, together with any other amount which may be payable.

(4) The Minister may, by notice served on a licensee, cancel the licence –

(a) if the holder, being an individual, is –

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditor or takes advantage of any law for the benefit of debtors; or

(b) if, in the case of a licensee that is a body corporate, an order is made or a resolution is passed winding-up the affairs of the body corporate, unless the winding-up is for the purposes of amalgamation and the Minister has consented to the amalgamation, or is for the purpose of reconstruction and the Minister has been given written notice of the reconstruction.

(5) Where two or more persons constitute a licensee, the Minister shall not, under subsection (4) cancel the licence on the occurrence, in relation to one, or some only of the persons constituting the licensee, of an event entitling the Minister under that subsection to cancel the licence, if any other person or persons constituting the licensee satisfies or satisfy the Minister that that person or those persons, as the case may be, is or are willing and would be able to perform the duties and obligations of the licensee and take such steps as the Minister may require to secure that performance.

(6) On the cancellation of a licence, the rights of the licensee thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former licensee may be so commenced or continued.

29. Force majeure

(1) Any failure on the part of a licensee to fulfil any of the conditions of his licence or to meet any requirement of this Act, shall not be treated as a breach of the licence or this Act in so far as the failure results from an act of war, hostility, insurrection, or from an exceptional, inevitable and irresistible natural phenomenon, or from any other cause specified in the licence as constituting force majeure for the purposes of this section.

(2) Where a licensee fails to fulfil any of the conditions of his licence or to meet any requirements of this Act because of the occurrence of circumstance of the kind referred to in subsection (1), he shall forthwith notify the Minister giving in the notice particulars of the failure and its cause.

(3) Where a licensee is prevented from exercising any of his rights under his licence for any period because of the occurrence of circumstance of the kind referred to in subsection (1), then that period, as agreed by the Minister shall be added to the term of his licence.

(4) This section does not apply with respect to any failure to pay any amount in relation to royalty, rent or fees payable, under this Act or a licence.

PART 10 – MISCELLANEOUS

30. Control of company holding production licence

(1) A company or corporation which is the holder of a production licence shall not, without the prior consent in writing of the Minister –

(a) register the transfer of any equity share or shares in the company to any particular person or his nominee; or

(b) enter into an agreement, arrangement or understanding, (whether or not having legal or equitable force) with any particular person,

if the effect of doing so would be to give to the particular person or, in the case mentioned in paragraph (b), the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise he shall refuse to give his consent, and for the purpose of considering any such. application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section –

(a) a person is deemed to have control of a company –

(i) if the person or his nominee holds, or the person and his nominee hold, a total of 20 per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of the issued equity shares in the company;

(b) "equity shares", in relation to a company, means shares in the company having voting rights at any general meeting of the company and includes preference shares, other than preference shares which do not have such voting rights;

(c) "preference shares" means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights; and

(d) the reference in paragraph (a)(iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

PART 11 – RESTRICTIONS AND SURFACE RIGHTS

31. Application of Part 11

Notwithstanding anything in this Act the provisions of this Part apply –

(a) in relation to the exercise by a licensee of his rights in respect of certain lands;

(b) in relation to surface rights; and

(c) with respect to the payment of compensation for damage done by a licensee.

32. Restrictions

(1) Notwithstanding any provision of this Act, a licensee shall not exercise any of his rights under this Act or his licence –

(a) except with the written consent of the Minister responsible for land in respect of –

(i) any public land, or

(ii) any land dedicated as a place of burial or which is a place of religious significance;

(b) subject to subsection (3), except with the written consent of the lawful occupier thereof in respect of –

(i) any land which is the site of, or which is within 200 metres or such greater distance as may be prescribed, of any inhabited, occupied or temporarily unoccupied house or building,

(ii) any land within 50 metres or such greater distance as may be prescribed, of land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of, or upon which there are growing, agricultural crops;

(c) in respect of any land within, or within 200 metres or such greater distance as may be prescribed, of the boundaries of any township, except with the written consent of the local authority having control over the township;

(d) in respect of any land within, or within 200 metres or such greater distances as may be prescribed, of the boundaries of any village, or of any land set aside or required for a village, a new village or a village extension, except with the written consent of the Minister responsible for land; or

(e) in respect of any prescribed land or area except with such consent as may be prescribed.

(2) Any consent under subsection (1) paragraph (a), (c) or (d) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

(3) Where, in the opinion of the Minister responsible any consent under subsection (1)(b) is being unreasonably withheld, he may, on such conditions (if any) as he may impose, give in writing the consent required.

(4) Any dispute as to whether subsection (1)(b) applies in relation to any land or as to whether any person is a lawful occupier of the land shall be decided by the Minister responsible for land.

33. Compensation for disturbance of rights, etc.

(1) Where, in the course of prospecting or production operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the licensee is liable to pay to any lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

(2) If the licensee and a lawful occupier fail to reach agreement with respect to the payment of compensation, or the amount of compensation payable, pursuant to subsection (1) in any particular case, either party may refer the matter to the Valuer-General whose decision thereon shall be final.

34. Compulsory acquisition of land

(1) Notwithstanding any provision of this Act or any other law for the time being in force, the Minister responsible for land may, from time to time, in exercise of the powers conferred by Part 6 of the Land Reform Act [Cap. 123] including any amendment or re-enactment thereof and any other powers vested in him in that behalf, declare any land which, in his opinion, ought to be so declared for geothermal energy purposes or for any of the purposes of this Act; and such purposes shall in relation to the exercise of any such powers, be deemed to be public purposes.

(2) In assessing any compensation for land declared public land in accordance with subsection (1) there shall be taken into account the market value of the land (exclusive of the increase in the value of such land by reason of the existence thereon of any minerals) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance and if there be a lessee or custom owners thereon they shall receive reasonable compensation for disturbance.

(3) If no agreement is reached on the amount of compensation payable in pursuance of subsection (2) either party may refer the matter to the Valuer-General whose decision shall be final.

35. Registration of interest in the land register in certain circumstances

(1) Every licence conveying any interest in or over land which is registered in accordance with the Land Leases Act [Cap. 163] including any amendment or re-enactment thereof and every variation of the term thereof and every surrender or other

determination thereof shall be noted in the land register; and upon being notified in writing by the Director and furnished with such information as he may require, the Director of the department responsible for land shall note in the land register the licence variation, surrender or determination, as the case may be, in such manner as he thinks fit.

(2) Without prejudice to the power of the Director of the department responsible for land to require further information, a notification from the Director shall be sufficient evidence to support a note in the land register as aforesaid.

(3) The Director of the department responsible for land shall not be concerned to note any dealing in any licence, nor to file in the land registry, nor to furnish copies thereof, nor to provide for inspection any instrument embodying a licence, variation, surrender or determination as aforesaid.

PART 12 – OFFENCES, PENALTIES AND PROCEEDINGS

36. Power of Director and authorised persons

For the purposes of this Act, the Director or any person authorised by him may at any reasonable time –

(a) enter any premises or land which is subject to a licence;

(b) inspect anything on that land;

(c) take samples of anything on that land; and

(d) carry out such other function as may be prescribed.

37. Offences

Subject to the following provisions, any person who contravenes any provision of this Act or regulations made under it shall be guilty of an offence and liable on conviction–

(a) in the case of an individual, to a fine of VT 100,000 or to imprisonment for a term not exceeding 6 months or to both;

(b) in the case of a body corporate, to a fine not exceeding VT 500,000.

38. Illegal operations

(1) Any person who engages in prospecting operations, or production operations when he is not acting as, or for or on behalf of, the holder of a licence which covers those operations is guilty of an offence and is liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(2) Any person who, without reasonable excuse, obstructs, molests, hinders or prevents a licensee in or from the doing of any act which he is authorised by this Act or his licence to do is guilty of an offence and is liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(3) Any person who –

(a) in, or in connection with, any application under this Act, knowingly or recklessly gives information which is false or misleading in a material particular; or

(b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

is guilty of an offence and is liable on conviction –

(i) in the case of an individual, to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment, or

(ii) in the case of a body corporate, to a fine not exceeding VT 500,000.

39. Offences by body corporate

When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other office bearer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

40. Order for forfeiture in respect of certain offences

Where a person is convicted of an offence against this Act, a court of competent jurisdiction may, in addition to any other penalty imposed, make an order for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence.

41. Evidentiary provision

(1) The Director may issue a certificate in respect of any of the following matters, namely, that –

(a) a licence was granted, issued, transferred, or cancelled on or with effect from the date specified in the certificate;

(b) any land identified in the certificate, is or was on the date specified in the certificate, subject to a licence;

(c) the person named in the certificate is or was on the date specified in the certificate the holder of a licence;

(d) a condition specified in the certificate –

(i) is or was on the date specified in the certificate a condition of the licence; or

(ii) is a condition on which any consent or approval, as specified, was issued or given;

and, without prejudice to the right to adduce evidence in rebuttal, such a certificate is admissible as evidence of that matter in any proceedings before a court.

(2) The power under subsection (1) to issue a certificate affirming any matter includes a power to issue a certificate denying that matter.

PART 13 – ORDERS AND REGULATIONS

42. Orders and regulations

(1) The Minister may by Order published in the Gazette make regulations for the better carrying into effect the provisions of this Act and may prescribe in such regulations all things and matters which are required or necessary to be prescribed under it.

(2) Any Order or regulations made under this section or any other provisions of this Act may provide that any failure to comply therewith or any contravention or breach thereof shall be punishable by such fine not exceeding VT 100,000 or by such term of imprisonment not exceeding 12 months as may be specified in such Order or regulations, or by both such fine and imprisonment.

Table of Amendments

33, 34	*Reference to Lands Referee changed to Valuer-General, per Act 22 of 2002*
35(1),(2),(3)	*Title of Director updated per Act 24 of 2003*