



CHAPTER 1

Examining Ghana's Petroleum Act, 2016 (Act 919) and Other Legislative Developments

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1 INTRODUCTION

Historically, Ghana's petroleum industry consisted mainly of oil trading "based on the importation of refined petroleum products under contractual agreements with multinational companies such as Shell plc and Total

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plc.”¹ The first known activities in respect of exploration of oil and gas in Ghana were in 1896. Exploration activities from 1896 to 1956 were based on wildcatting/chasing of seepages. In 1970, Ghana made a small-scale discovery of oil in the Saltpond Field when it drilled its first offshore well.²

When petroleum exploration activities commenced in Ghana, the country did not have any specific legislation for the petroleum industry. The upstream petroleum industry was subsumed under the general legislation governing the mining industry.³ Ghana started production from this Saltpond Field in 1978 and this, coupled with the worldwide oil shocks of 1978–1979, aroused a conscious effort towards making commercial discoveries in order to cushion the country from any further oil shocks. Thus, the government at the time, the Provisional National Defence Council (PNDC), enacted the *Ghana National Petroleum Corporation Act, 1983* (PNDCL 64) (**GNPC Act**),⁴ which established a national oil company, the Ghana National Petroleum Corporation (**GNPC**), to undertake the exploration, development, production and

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¹ Memorandum to *Petroleum (Exploration and Production) Bill*, 2016, i.

² GNPC, E&P Operations & History, available at: <http://www.gnpcghana.com/operations.html>, last accessed on 27 September 2020.

³ Concessions Act, 1939 (Cap 136), Section 49.

⁴ The Laws of Ghana had different suffixes depending on the epoch in which the law was made. It was deemed desirable to have them revised so as to have them all bear the same suffix, “Act.” The *Laws of Ghana (Revised Edition) Act, 1998* (Act 562) was passed, and the Statutory Law Revision Commissioner took office and carried out his mandate under that Act. Thus, Professor V.C.R.A.C. Crabbe, Statute Law Revision Commissioner, notes in the preface to the *Laws of Ghana (Revised Edition) Act, 1998* (Act 562), “Over the years, the Laws of the Republic have borne different short titles: Ordinances in the pre-independence era, Acts and Codes under constitutional rule, Decrees and Laws under the military regimes. One term has been used in this Edition, namely Act.” Pursuant to this Act, the Statute Law revision began and when completed, the *Laws of Ghana Revised Instrument 2007* came into force.

disposal of petroleum, and to ensure the Republic obtained the greatest possible benefit from the development of its petroleum resources.⁵ In that same year, the *Petroleum (Exploration and Production) Act, 1983* (PNDCL 68), was enacted to provide legislation on operations but was repealed the following year and replaced with the *Petroleum (Exploration and Production) Act, 1984* (PNDCL 84) (**Petroleum Act, 1984**). In 1986, the *Petroleum Income Tax Act, 1986* (PNDCL 185), was enacted to govern taxation in the industry but was repealed the following year by the *Petroleum Income Tax Act, 1987* (PNDCL 188) (**Petroleum Income Tax Act, 1987**).⁶ In 2007, therefore, when a consortium of companies made a large-scale commercial discovery in the Jubilee Field, these three (3) pieces of legislation and a Model Petroleum Agreement governed the industry.⁷

At the time of the commercial discovery in 2007, it became obvious that the *Petroleum Act, 1984*, was inadequate and not robust enough to properly govern the industry. There was, therefore, the need to develop a more robust regime for the industry. There were concerted efforts to repeal and replace the *Petroleum Act, 1984*, which led to the drafting of a number of Bills and eventually the 2016 Bill, which was passed into law as the *Petroleum (Exploration and Production) Act, 2016* (Act 919) (**Petroleum Act, 2016**). Section 97 of the *Petroleum Act, 2016*, titled *Repeal and Savings*, states, “Despite the repeal of PNDCL 84, the Regulations, rules, by-laws, notices, orders, directions, appointments or any act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act shall continue to have effect until revoked, cancelled or terminated.”

2 LEGISLATION GOVERNING PETROLEUM EXPLORATION AND PRODUCTION POST THE LARGE-SCALE DISCOVERY

After 2007, other pieces of legislation were enacted to deal with the gaps and inadequacies in the law. As such, the *Petroleum Revenue Management Act, 2011* (Act 815),⁸ as amended by the *Petroleum Revenue*

⁵ Section 2(2) of the *Ghana National Petroleum Corporation Act, 1983* (PNDCL 64).

⁶ This repealed the *Petroleum Income Tax Act, 1986* (P.N.D.C.L 185), which had in turn repealed the *Mineral Oil Taxation Ordinance, 1956* (No. 17), as amended by the *Mineral Oil Taxation Ordinance (Amendment) Decree, 1968* (N.L.C.D. 307).

⁷ Model Petroleum Agreement, 2000.

⁸ The Regulations appertaining to this Act are the *Petroleum Revenue Management Regulations, 2019* (L.I. 2381).

Management (Amendment) Act, 2015 (Act 893), was enacted to govern petroleum revenue management. The *Petroleum Commission Act*, 2011 (Act 821), was also enacted and established the Petroleum Commission, a technocratic, regulatory, managerial and advisory body which, inter alia, took over the de facto regulatory functions that GNPC had been performing. Part VI of the *Income Tax Act*, 2015 (Act 896), as amended,^{9,10} covers petroleum operations. The *Income Tax Act*, 2015 (Act 896), co-existed with the *Petroleum Income Tax Act*, 1987, but to the extent of any inconsistency between these two pieces of legislation, the *Income Tax Act*, 2015 (Act 896), superseded. The *Revenue Administration Act*, 2016 (Act 915), which provides for the administration and collection of tax revenue, repealed the *Petroleum Income Tax Act*, 1987 (PNDCL 188). The *Petroleum Act*, 2016, repealed the *Petroleum Act*, 1984, and set out the detailed rules governing petroleum operations in the country.

Regulations have also been passed. These include the:

- *Ghana Maritime Authority (Fees and Charges) Regulations*, 2012 (L.I. 2009)
- *Ghana Shipping (Protection of Offshore Operations and Assets) Regulations*, 2012 (L.I. 2010)
- *Natural Gas Pipeline Safety (Construction, Operation and Maintenance) Regulations*, 2012 (L.I. 2189)
- *Petroleum (Local Content and Local Participation) Regulations*, 2013 (L.I. 2204)
- *Petroleum Commission (Fees and Charges) Regulations*, 2015 (L.I. 2221) and the
- *Petroleum (Exploration and Production) (Measurement) Regulations*, 2016 (L.I. 2246), which was passed under the *Petroleum (Exploration and Production) Act*, 1984 (PNDCL 84).

A number of Regulations have been passed under the *Petroleum Act*, 2016. These are:

⁹ *Income Tax (Amendment) Act*, 2015 (Act 902).

¹⁰ *Income Tax (Amendment) Act*, 2016 (Act 907).

- *Petroleum (Exploration and Production) (Data Management) Regulations, 2017* (L.I. 2257)
- *Petroleum (Exploration and Production) (Health, Safety and Environment) Regulations, 2017* (L.I. 2258) and the
- *Petroleum (Exploration and Production) (General) Regulations, 2018* (L.I. 2359) as amended by the *Petroleum (Exploration and Production) (General) (Amendment) Regulations, 2019* (L.I. 2390).

Further, under the *Petroleum Revenue Act, 2011* (Act 815) as amended by Act 893, the *Petroleum Revenue Management Regulations, 2019* (L.I. 2381), was passed.

These pieces of legislation directly related to petroleum activities also operate in conjunction with relevant enactments which whilst not specifically enacted for the petroleum industry have significant applicability. These would include the:

- *Maritime Zones (Delimitation) Act, 1986* (P.N.D.C.L 159)
- *Customs, Excise and Preventive Service (Management) Act, 1993* (P.N.D.C.L 330) as amended
- *Environmental Protection Agency Act, 1994* (Act 490) along with the *Environmental Assessment Regulations, 1999* (L.I 1652) as amended by the *Environmental (Assessment) (Amendment) Regulations, 2002* (L.I. 1703)
- *Labour Act, 2003* (Act 651)
- *Ghana Maritime Security Act, 2004* (Act 675) as amended
- *Alternative Dispute Resolution Act, 2010* (Act 798)
- *Public Financial Management Act, 2016* (Act 921); and the
- *Companies Act, 2019* (Act 992).

Currently, the principal legislation directly governing the regulation of operations in the industry is mainly limited to the *Petroleum (Exploration and Production) Act, 2016* (Act 919) and the *Petroleum (Exploration and Production) (General) Regulations, 2018* (L.I. 2359), as amended by the *Petroleum (Exploration and Production) (General) (Amendment) Regulations, 2019* (L.I. 2390).

3 THE PETROLEUM ACT, 2016 (ACT 919)

The *Petroleum Act*, 2016, assented to on 19 August 2016, consists of 97 Sections and categorized into broad groupings. Sections 1–5 are on *General Provisions*, 6–8 on *Area Management*, 9 on *Reconnaissance License*, 10–20 on *Petroleum Agreement*, 21–25 on *Exploration*, 26–37 on *Exploration and Development*, 38–42 on *Transportation, Treatment and Storage*, 43–49 on *Cessation, Decommissioning and Removal of Facilities*, 50–72 on *General Requirements for Petroleum Activities*, 73–80 on *Health and Safety, Security and Environment*, 81–84 on *The Environment and Liability for Pollution Damage*, 85–89 on *Fiscal Provisions* and 90–97 on *Miscellaneous Provisions*.

The Preamble of the Act states that it is “AN ACT to regulate petroleum activities and to provide for related matters.” Its scope is petroleum activities within the jurisdiction of Ghana, “including activities in, under and upon its territorial land, inland waters, territorial sea, exclusive economic zone and its continental shelf.”¹¹ Its object is stated as “to provide for and ensure safe, secure, sustainable and efficient petroleum activities in order to achieve optimal long-term petroleum resource exploitation and utilization for the benefit and welfare of the people of Ghana.” The guiding tenets for the management of Ghana’s petroleum resources are “principles of good governance, including transparency and accountability and the object of [the] Act.”¹²

3.1 *Changes Made by the Petroleum Act, 2016, as Juxtaposed Against the Petroleum Act, 1984*

The *Petroleum Act*, 1984, stated in Section 1 that all petroleum in its natural state was the property of the Republic of Ghana and vested in the Provisional National Defence Council (PNDC) on behalf of the people. It did not categorically define oil and gas as a mineral. Article 257(6) of Ghana’s constitution, 1992, states:

¹¹ Section 1—*Scope of the Act*.

¹² Section 4—*Management of Petroleum Resources*.

Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana.

Thus, at the time of the large-scale commercial discovery, an issue was whether oil and gas could be classified as “minerals.” Ghana’s Institute of Economic Affairs (IEA), for instance, noted in 2010 that the interpretation of minerals was problematic and the issue was whether it included oil and gas.¹³ It then went on to suggest that the clause be amended to read as “all extractive natural resources in their natural state...”¹⁴ It opined that this would provide clarity and certainty on whether Article 257(6) covered oil and gas.¹⁵ There were implications in terms of the classification of oil and gas. If oil and gas were not classified as minerals, it would not come under the ambit of Article 257(6) with the implication being that an individual who found petroleum on his/her land could assert ownership, and thus the benefits arising therefrom as done in certain jurisdictions, particularly, Texas, USA. If it was classified as a mineral, then the State would for all intents and purposes be the owner and no individual could claim ownership even if discovered on his/her land. This issue had not yet become a matter before the courts because all operations were being done offshore where no individual could claim ownership, but could potentially be an explosive issue when operations commenced onshore. The need to clarify the position of the law and more importantly, for the government to assert ownership of any discovery, was imperative.

¹³ Institute of Economic Affairs, “Natural Resource Management in Ghana: A Case for Constitutional Amendment” (Institute of Economic Affairs, 2010), 12–13, www.ieagh.org/images/pdf/crs-8.pdf, accessed 28 March 2021.

¹⁴ *Ibid.*, 13.

¹⁵ *Ibid.* In an attempt to further safeguard the interests of the Ghanaian people, the Institute makes the further suggestion that a clause be inserted that, “The ownership rights of the people of Ghana of all natural resources shall not be varied or qualified under any transaction, contract or undertaking, and or by any other person or body of persons.”

The Constitution Review Commission of 2011, which was constituted by the *Constitution Review Commission of Enquiry Instrument*, 2010 (C.I. 64) to, amongst others, make recommendations to the government for possible amendments to the 1992 Constitution,¹⁶ also noted that, "... 'mineral' is not defined in the Constitution, leaving unanswered the question as to whether oil, gas and water are minerals...Water and oil, and still more strongly, gas, may be classed by themselves, if the analogy be not too fanciful, as minerals *ferae naturae*."¹⁷ Section 3 of the *Petroleum Act*, 2016, headed, *Title to Petroleum*, resolved this issue. Section 3 explicitly states:

Petroleum existing in its natural state, in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf, is the property of the Republic of Ghana and is vested in the President on behalf of and in trust for the people of Ghana.

Section 3 removes the ambiguity as to whether oil and gas existing in its natural state belongs to the state.

Under Section 4(4) of the *Petroleum Act*, 1984, the decision of the Secretary (Minister) to close or redefine the boundaries of open blocks was not to become operative until after the expiration of ninety days after such notice had been published in the Gazette or in such manner as the Secretary saw fit. Under the *Petroleum Act*, 2016 (Act 919), this period has been shortened to sixty days.¹⁸

Under the *Petroleum Act*, 1984, provision was made for competitive bidding for the acquisition of acreage to explore, develop and produce petroleum.¹⁹ However, in practice, Ghana engaged in direct negotiation/open door in respect of its granting of acreage mainly because its prospectivity had not yet been established and getting international oil companies (IOCs) to come and explore its acreage was a challenge. After the large-scale commercial discovery of 2007, the open door policy

¹⁶ Constitution Review Commission, "Report of the Constitution Review Commission: From a Political to a Developmental Constitution" (Republic of Ghana 2011), 10, para 1.2.3.

¹⁷ *Ibid.*, 594–595, para 53.

¹⁸ Section 8—*Closure and Redefinition of Area*.

¹⁹ Section 2(2).

came under criticism as creating room for the award of blocks to some companies that were not technically qualified or financially resourced. There was agitation by stakeholders such as civil society groups for the country to engage in competitive bidding as it was believed that it was more transparent and would produce more desirable results. As such, when the *Petroleum Act*, 2016, was enacted, it made competitive bidding the first port of call/the default system with direct negotiation to be engaged in only when it would “represent the most efficient manner to achieve optimal exploration, development and production of petroleum resources in a defined area.”²⁰ It bears noting that despite this provision for competitive bidding as the mainstay, even in the competitive bidding process, there is an element of direct negotiation as the parties selected through the competitive bidding process negotiate with the government on the terms of the petroleum agreement not already stipulated by law.²¹

Under Section 9(2) of the *Petroleum Act*, 1984,²² the Contractor or GNPC, as the case may be, had to notify the Secretary (Minister) and the now defunct National Energy Board within a period of thirty days after the date of a discovery.²³ This has been modified under the *Petroleum Act*, 2016. The Contractor is now required to “within forty-eight hours after the discovery submit written notification to the Minister before notification to a third party.”²⁴ A Contractor is defined under the Act as “a body corporate which has entered into a petroleum agreement with the Republic and the Corporation [GNPC].”²⁵ This is to be distinguished from a licensee which refers to “any person, firm, body corporate or other entity which has been granted a reconnaissance license or a license for transportation, treatment or storage of petroleum” under the Act.²⁶

²⁰ Section 10(9)—*Petroleum Agreement*.

²¹ Ghana engaged in its maiden licensing round in 2019/2020, with mixed results. There were 43 Expressions of Interest and pre-qualification applications received from 15 companies. Two companies were disqualified.

²² Section 9—*Notification and Appraisal of Petroleum Discovery*.

²³ Under Article 8.1 of the Model Petroleum Agreement 2000, titled *Commerciality*, the Contractor was mandated to notify the Minister and GNPC in writing as soon as possible in the event of a commercial discovery “but in any event not later than thirty (30) days, after such Discovery...”

²⁴ Section 25(2)(a)—*Notification of Petroleum Discovery and Appraisal*.

²⁵ Section 95—*Interpretation*.

²⁶ *Ibid*.

Under the *Petroleum Act*, 1984, the period of validity of a petroleum agreement was for a total period not exceeding thirty (30) years.²⁷ This has been reduced by the *Petroleum Act*, 2016, to a term of not more than twenty-five (25) years.²⁸ This inures to the benefit of Ghana as when the term elapses, the country has a choice as to whether to approve an extension of the petroleum agreement on the terms agreed to by the parties,²⁹ or execute a new petroleum agreement by direct negotiations.³⁰ Furthermore, as the Field will most likely be one that is still producing at a profitable rate and further away from depletion, the Contractor would want to remain and continue producing; thus, the country will be able to negotiate better terms than when the initial agreement was entered into.

Under the *Petroleum Act*, 1984, there was some confusion as to whether Contractors were required to incorporate a company in Ghana or only register a branch of a foreign incorporated company.³¹ Some Contractors used external companies for their business because of this ambiguity. Section 23(15)(a) stipulated that they were required to “register an incorporated company in Ghana...” To clear this confusion, the *Petroleum Act*, 2016, requires that any person who wants to engage in petroleum activity in Ghana should “incorporate in this country [Ghana]”³² a company solely for petroleum activities. It is categorical that the entity must be incorporated in Ghana. The *Companies Act*, 2019 (Act 992), makes a distinction between registration of a branch and an incorporation.

Bonuses were introduced under the *Petroleum Act*, 2016.³³ The *Petroleum Act*, 1984, did not make provision for bonuses. It must be further noted that the *Petroleum Act*, 2016, unlike the *Petroleum Act*, 1984, makes provision for Capital Gains Tax. The *Petroleum Act*, 1984, did not have this provision so when the EO Group sold its interest in the Jubilee Field to Tullow, when the State attempted to impose Capital Gains

²⁷ Section 12—*Period of Validity of Petroleum Agreement*.

²⁸ Section 14—*Duration*.

²⁹ Section 14(2)(a).

³⁰ Section 14(1)(b).

³¹ Section 23(15).

³² Section 70(1)(a).

³³ Section 88—*Bonus Payments*.

Tax on the transaction, it realized that there was nothing in the law—either under the *Petroleum Act*, 1984, or the *Petroleum Income Tax Act*, 1987, which permitted it so to do. The *Internal Revenue Act*, 2000 (Act 592), had provisions on Capital Gains, and there was an attempt to apply it as the general law of the land. However, it was not applicable. It was only the administrative procedures of the *Internal Revenue Act* that was applicable to the Contractors per the provisions of the *Petroleum Income Tax Act*. As such, the State lost a whooping amount of approximately \$35 million which would have accrued as Capital Gains Tax.

Prior to the passage of the *Petroleum Act*, 2016, the norm as depicted in the petroleum agreements was a minimum carried interest of 10% for GNPC. This has been enhanced under the *Petroleum Act*, 2016, to at least fifteen per cent (15%).³⁴ Thus, it is not possible to find any petroleum agreement after 2016 that has a carried interest of less than fifteen per cent (15%). That would be unlawful.

Under the *Petroleum Act*, 1984, in respect of relinquishment provisions, though it stipulated that relinquishment be done, it did not categorically specify the mode. It stated: “A petroleum agreement shall provide for the relinquishment in a phased manner of portions of an area to which the agreement relates after the expiration of the initial exploration period specified in the agreement or after the expiration of the initial exploration period specified in the agreement or after the extension of any such period.”³⁵ Thus, the manner in which relinquishment was done varied from agreement to agreement and there was no uniformity. The *Petroleum Act*, 2016, stipulates that where the Contractor elects to enter into the first extension period, the contract area³⁶ shall be reduced by at least fifty per cent (50%).³⁷ Where the Contractor elects to enter into the second or third extension period, the retained area shall not exceed twenty-five per cent (25%).³⁸ It must be noted though that the Minister is empowered under the Act in exceptional cases, and in consultation with

³⁴ Section 10(14).

³⁵ Section 14—*Relinquishment of Portions of an Area*.

³⁶ The *Interpretation* Section of the Act defines “Contract Area” as “the area covered by the petroleum agreement in which a Contractor is authorized to explore for, develop and produce petroleum but excludes portions of the area in respect of which a Contractor’s rights are from time to time relinquished or surrendered.”

³⁷ Section 22(3).

³⁸ Section 22(4).

the Commission, to determine that the area to be relinquished shall be smaller than as set out.³⁹

Like the *Petroleum Act*, 1984, the *Petroleum Act*, 2016, has provisions relating to Local Content and Local Participation from Sections 60 to 69. It covers thematic areas such as Employment and Training,⁴⁰ Use of Ghanaian Goods and Services,⁴¹ and Technology Transfer.⁴² The *Petroleum Act*, 2016, unlike the *Petroleum Act*, 1984, establishes a Local Content Fund⁴³ with the object⁴⁴ to provide financial resources for citizens and indigenous Ghanaian companies.⁴⁵ The moneys from the Fund must be applied to education, training, research and development in petroleum activities for Ghanaian citizens, indigenous Ghanaian companies and Ghanaian institutions of learning,⁴⁶ as well as to provide loans on a competitive basis to small and medium-scale enterprises⁴⁷ to support their participation in petroleum activities.⁴⁸ Sources of money to the Fund include contributions from a Contractor as agreed in a petroleum agreement,⁴⁹ contributions from a Sub-Contractor⁵⁰ of one per cent (1%) of the total consideration payable by the Contractor or licensee for

³⁹ Article 22(6).

⁴⁰ Section 60—*Employment and Training of Ghanaian Citizens*.

⁴¹ Section 61—*Use of Ghanaian Goods and Services*.

⁴² Section 62—*Technology Transfer*.

⁴³ Section 64—*Establishment of the Local Content Fund*.

⁴⁴ Section 65(1)—*Object of the Fund*.

⁴⁵ An indigenous Ghanaian company is defined under the *Interpretation* Section of the Act as “a company incorporated under the [since repealed] Companies Act, 1963 (Act 179) which i. has at least fifty-one percent of its equity owned by a citizen of Ghana; and ii. has Ghanaian citizens holding at least eighty percent of executive and senior management positions and one hundred percent of the non-managerial positions and other positions.”

⁴⁶ Section 65(2)(a).

⁴⁷ “Small and medium enterprises” is defined under the Act as “an industry, project, undertaking or economic activity that employs not more than one hundred persons with an asset base that is not more than the Ghana cedi equivalent of two million United States dollars excluding land or buildings.”

⁴⁸ Section 65(2)(b).

⁴⁹ Section 66(1)(a)—*Sources of Money for the Fund*.

⁵⁰ A “Sub-Contractor” is defined under the *Interpretation* Section of the Act as, “a third party with whom the Corporation or a Contractor has entered into a petroleum contract for the provision of goods and services for petroleum activities.”

every contract,⁵¹ moneys approved by Parliament,⁵² and grants.⁵³ As of December 2020, a Local Content Fund Secretariat had been established at the Petroleum Commission, draft Local Content Fund Operational Guidelines had been developed by the Commission for the administration of the Fund, and two bank accounts—a cedi and a dollar account—had been created at the Bank of Ghana for the purposes of collections.⁵⁴

Under the *Petroleum Act*, 1984, there were hardly any provisions on the environment. On at least three occasions—December 2009, March and May 2010—Kosmos Energy spilled barrels of Low Toxicity Oil Based Mud (LTOBM) in marine waters whilst conducting its operations in the Jubilee Field.⁵⁵ The then Minister for Environment, in March 2010,⁵⁶ set up a Committee chaired by her Deputy, to investigate the incidents. The Committee found Kosmos culpable of negligently spilling toxic substances in Ghana's waters⁵⁷ and recommended a fine of GH¢40 million (\$35 million).⁵⁸ Kosmos disputed this and argued that the Minister had no power under the Constitution or any other law to impose such a fine in the event of an oil spill. After a legal tussle, a *Settlement Agreement* was entered into between Kosmos, GNPC and the government.⁵⁹ Partly arising from this experience, cognizance was taken of the need to throw a spotlight on environmental regulation. Thus, under the *Petroleum Act*, 2016, there is an entire section titled *The Environment and Liability for Pollution Damage*. It covers Sections 81–84 and provides for matters such as Environmental Principles

⁵¹ Section 66(1)(b).

⁵² Section 66(1)(c).

⁵³ Section 66(1)(d).

⁵⁴ Public Interest and Accountability Committee, “Annual Report on Management of Petroleum Revenues for Year 2020”, 11.

⁵⁵ Ministry of Environment, Science and Technology, “Report of the Committee on the Spillage of Low Toxicity Oil Based Mud by Kosmos Energy Ghana HC in the Jubilee Field, Offshore, Ghana” (Ministry of Environment, Science and Technology, 2010), v.

⁵⁶ 30 March 2010, Reference No. MEST/GA/16, app 3 of Report.

⁵⁷ Ministry of Environment (n 56), vi.

⁵⁸ *Ibid.*, ix.

⁵⁹ In the said Agreement, the payment was staggered, and in actual fact, the stipulated sum was not only for the spillage of toxic but also for the breach of the confidentiality clause pertaining to data.

and Protection,⁶⁰ Impact Assessment,⁶¹ Liability for Pollution Damage,⁶² and Compensation for Pollution Damage.⁶³

Further, the *Petroleum Act*, 1984, had barely any provisions on decommissioning. Section 28, titled *Restoration of Affected Lands*, stated that after the termination of petroleum operations in any area, GNPC was to restore the affected areas and remove all causes of damage or danger to the environment. Such restoration included removal of things brought into the affected area, the plugging or closing of all abandoned wells, and the conservation and protection of natural resources in that area. Beyond this, there were no provisions which even alluded to decommissioning.

The *Petroleum Act*, 2016, has a whole section on decommissioning, from Sections 43 to 49, which is headed, *Cessation, Decommissioning and Removal of Facilities*, and gives a broad overview of Ghana's position of the law on decommissioning. Ghana followed the example of Norway in respect of its provisions on decommissioning. Thus, Section 5-1 of the *Norwegian Act*, titled *Decommissioning Plan*, is manifest in the *Petroleum Act*, 2016, in Section 43 for instance, where there are very similar requirements such as that the decommissioning plan be submitted not more than five (5) years and not later than two (2) years before the date on which either the use of the petroleum facility is expected to cease operation, or the petroleum agreement to which the decommissioning plan relates will expire.⁶⁴ This Act, unlike its predecessor, requires the establishment of a decommissioning fund⁶⁵ for the inevitable occasion when decommissioning has to be undertaken. The details are expected to be spelt out in Regulations. Liability in respect of decommissioning is strict.⁶⁶ Further, an assignor has secondary liability for the financial obligations for the cost of implementing a decommissioning plan⁶⁷ but the obligation is limited to costs related to petroleum facilities, including wells, which existed at

⁶⁰ Section 81.

⁶¹ Section 82.

⁶² Section 83.

⁶³ Section 84.

⁶⁴ Section 43(2)(a) and (b); *Petroleum (Exploration and Production) Act*, 2016 (Act 919).

⁶⁵ Section 45—*Decommissioning Fund*.

⁶⁶ Section 48—*Liability for Decommissioning*.

⁶⁷ Section 44(7).

the time it made the assignment, and limited to a share of the costs calculated on the basis of the size of the interest assigned.⁶⁸

It must be noted that under the *Petroleum Act*, 1984, it was the Secretary (Minister) that could authorize any person to inspect any petroleum operations, and such person had the right at all reasonable times to enter any area, structure, platform, facilities, installations, vehicles, offices and buildings.⁶⁹ Such person also had the right to inspect, test and audit, works, equipment, operations and financial books of account,⁷⁰ take and remove, for the purpose of analysis or testing, sample of petroleum, water or other substance from a well,⁷¹ inspect, take extracts from and make copies of any document relating to such operations,⁷² as well as make examinations and inquiries as was necessary to ensure that the provisions of the Law and Regulations were complied with.⁷³ Under the *Petroleum Act*, 2016, the right to authorize any person to inspect any petroleum operations is explicitly vested in the Petroleum Commission.⁷⁴

Further, under the *Petroleum Act*, 1984, it was to GNPC that a Contractor or Sub-Contractor was to furnish “performance bonds and guarantees...in order to ensure the fulfilment of the obligations undertaken by such Contractor or Sub-Contractor or the discharge of liabilities arising out of the operations under such petroleum agreement or petroleum sub-contract...”⁷⁵ Under the *Petroleum Act*, 2016, it is to the Minister that such performance bonds or guarantees are furnished.⁷⁶

It must be noted that under the *Petroleum Act*, 1984, unitization was mentioned only in the context of two fields extending into the boundaries of each other.⁷⁷ The *Petroleum Act*, 2016, includes a provision that takes

⁶⁸ Section 44(8).

⁶⁹ Section 27(2)(a)—*Inspection*.

⁷⁰ Section 27(2)(b).

⁷¹ Section 27(2)(c).

⁷² Section 27(2)(d).

⁷³ Section 27(2)(e).

⁷⁴ Section 51—*Supervision and Inspection*.

⁷⁵ Section 23(8)—*Obligations of Contractors and Sub-Contractors*.

⁷⁶ Section 58—*Security for Fulfilment of Obligations*.

⁷⁷ Section 4(7).

cognizance of a situation where a discovery extends onto the land or the continental shelf of another country.⁷⁸

Further, under the *Petroleum Act*, 1984, data was the property of GNPC.⁷⁹ However, under the *Petroleum Act*, 2016, data is the “property of the Republic.”⁸⁰

3.2 *Other Provisions in the Petroleum Act, 2016*

The litmus test for the grant of a petroleum agreement under the *Petroleum Act*, 2016, is the “technical competence and financial capacity”⁸¹ of the company. This was not stated explicitly under the *Petroleum Act*, 1984, though it was contained in the Model Petroleum Agreement.⁸² A petroleum agreement is defined as “an agreement entered into between the Republic, the Corporation and a Contractor... for the exploration, development and production of petroleum.”⁸³

Provision has been made under the *Petroleum Act*, 2016, for a reconnaissance license which basically grants to the licensee, a non-exclusive right to undertake data collection and seismic surveying and shallow drilling,⁸⁴ as well as processing and evaluation of data.⁸⁵

The *Petroleum Act*, 1984, also mandated that it be the locally incorporated company and not the parent company that should be the signatory to the petroleum agreement or petroleum sub-contract.⁸⁶ Thus, a petroleum agreement entered into between the Government of Ghana (GoG) and GNPC (10%), Aker ASA⁸⁷ (85%) and Chemu Power

⁷⁸ Section 35—*Cross-Border Cooperation and Unitization*.

⁷⁹ Section 23(2).

⁸⁰ Section 52(1).

⁸¹ Section 10(10) of the Petroleum Act, 2016, titled *Petroleum Agreement*.

⁸² Preamble, Clause 6.

⁸³ Section 95—*Interpretation*.

⁸⁴ Section 9(2)(a).

⁸⁵ Section 9(2)(b).

⁸⁶ Section 23(15)(a).

⁸⁷ ASA means “allmennaksjeselskap” in Norwegian. It is a suffix/abbreviation attached to a company name to indicate that the entity is listed on the stock exchange.

Company Limited (5%)⁸⁸ in respect of the acreage South Deepwater Tano (SDWT) was unanimously ratified by Parliament⁸⁹ on 5 November 2008⁹⁰ after receiving the requisite approvals from the Ministry of Energy and GNPC. The agreement was however challenged in January 2009 that contrary to Section 23(15)⁹¹ of the *Petroleum Act*, 1984,⁹² which requires as the signatory to every petroleum agreement a locally incorporated company, this agreement was signed by the parent company—Aker ASA—and hence was ultra vires, null and void. The then Minister for Energy terminated the agreement and directed GNPC to reimburse Aker with the cost of acquiring data, since such data belonged to the State. This position that the locally incorporated company be the signatory to the petroleum agreement has been maintained under the *Petroleum Act*, 2016.⁹³

The *Petroleum Act*, 1984, contained an equilibrium balancing clause.⁹⁴ The Act provided that the terms of a petroleum agreement could be reviewed when there was a material change in the circumstances that prevailed at the time the agreement was entered into, or at the last review of the agreement. Though the *Petroleum Act*, 1984, only made provision for economic equilibrium and not freezing stabilization clauses, the latter was included in the petroleum agreements entered into prior to the discovery of petroleum and in the immediate aftermath of commercial production in 2010. Thus, these clauses were triggered by Aker for instance, in 2020, in respect of its acreage in the Deepwater Tano/Cape Three Points to insist—under its freezing stabilization clause—that changes in the law did not apply to it whilst at the same

⁸⁸ Chemu Power Company Limited was incorporated in Ghana on 7 February 2008 and issued with its Certificate to Commence Business on 8 February 2008.

⁸⁹ The Parliament of the Republic of Ghana, Parliamentary Debates (Official Report, Fourth Series), 5 November 2008, vol. 61(20), 1469–1470.

⁹⁰ The then Minister for Energy moved the motion to ratify the agreement.

⁹¹ In this case, the court did not pay attention to the important distinction under the *Companies Act*. However, the ruling will still be same even if it made that distinction because the external company was registered after the signing of the PA.

⁹² Note that Clause 1.46 of the Definition Section of Ghana's MPA states that, "'Petroleum Law [Act]" means the *Petroleum (Exploration and Production) Law [Act]*, 1984 (PNDCL 84)."

⁹³ Section 70(1)(a)(ii).

⁹⁴ Section 13—*Review of Terms and Conditions*.

time, successfully having terms in the agreement reviewed based upon its economic equilibrium clause. The *Petroleum Act*, 2016, like that of the *Petroleum Act*, 1984, contains an economic equilibrium clause⁹⁵ and not a freezing one. However, the practice now, unlike earlier times, is a move away from the freezing stabilization clauses to an exclusive focus on economic equilibrium clauses. A petroleum agreement reviewed due to an economic equilibrium clause is subject to ratification by Parliament.⁹⁶

The *Petroleum Act*, 1984, had a provision to the effect that where there was war or other emergency affecting energy supplies, the Secretary (Minister) could require a Contractor to sell all or part of the petroleum produced at the prevailing market price to the Republic.⁹⁷ The *Petroleum Act*, 2016, has a similar provision,⁹⁸ aptly titled *Domestic Supply Requirement*.⁹⁹

The *Petroleum Act*, 1984, mandated that a petroleum agreement could not be assigned directly or indirectly, without the prior consent in writing of the Secretary (Minister),¹⁰⁰ a position maintained under the *Petroleum Act*, 2016.¹⁰¹

Like Section 25 of the *Petroleum Act*, 1984,¹⁰² which deals with transactions between Contractor and Affiliates, Section 91 of the *Petroleum Act*, 2016, similarly titled *Transactions Between Contractor and Affiliates*, also deals with the problem of transfer pricing. It states, “Subject to this Act, a transaction between a Contractor or Sub-Contractor and an affiliate in relation to petroleum activities to be carried out under this Act shall be on the basis of prevailing international competitive prices and other terms and conditions that would be fair and reasonable if the transaction had taken place between the Contractor or Sub-Contractor and

⁹⁵ Section 20—*Review of Terms and Conditions*.

⁹⁶ Section 20(2).

⁹⁷ Section 24(3).

⁹⁸ Section 71—*Domestic Supply Requirement*.

⁹⁹ Further detail has been provided under Regulation 32 of the *Petroleum (Exploration and Production) (General) Regulations*, 2018 (L.I. 2359), with an amendment by the insertion of Regulation 6A, through the *Petroleum (Exploration and Production) (General) (Amendment) Regulations*, 2019 (L.I. 2390).

¹⁰⁰ Section 8—*Non-Assignment of Petroleum Agreement*.

¹⁰¹ Section 16—*Assignment*.

¹⁰² Section 25—*Transactions Between Contractor and Affiliates*.

a non-affiliate.” An affiliate is defined as “a shareholder of a Contractor or Sub-Contractor who owns fifty per cent or more of the shares in the business of the Contractor or Sub-Contractor or an entity which controls, is controlled by or is under common control with the Contractor or Sub-Contractor.”¹⁰³

As was the situation under the *Petroleum Act*, 1984, where the “Secretary [Minister] for Fuel and Power” represented the Republic in negotiation of petroleum agreements,¹⁰⁴ the “Minister responsible for Petroleum,”¹⁰⁵ hereinafter referred to as the “Minister for Energy,” represents the Republic in the negotiation of the terms of a petroleum agreement.¹⁰⁶ Under the *Petroleum Act*, 1984, such agreement was deemed to be approved by the Executive (Council) within a month of entry by the Secretary unless disallowed by the Executive. Under the *Petroleum Act*, 2016, however, a petroleum agreement is not effective unless ratified by Parliament in accordance with Article 268¹⁰⁷ of the Constitution.¹⁰⁸

Further, the *Petroleum Act*, 2016, requires that any borrowing exceeding the cedi equivalent of thirty million US dollars for the purpose of exploration, development and production must be approved by Parliament.¹⁰⁹ This provision arose partly out of events that transpired in the industry where in 2014, GNPC sought to contract a loan facility of about \$700 million from external lenders for oil and gas exploration and development operations. The then Chief Executive Officer of GNPC relied on Section 15 of the *GNPC Act*, titled *Borrowing Powers*, to

¹⁰³ Section 95—*Interpretation*.

¹⁰⁴ Section 1(2).

¹⁰⁵ *Ibid*.

¹⁰⁶ Section 10(12).

¹⁰⁷ Article 268—*Parliamentary Ratification of Agreements Relating to Natural Resources*.

Any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or other natural resource of Ghana made or entered into after the coming into force of this Constitution shall be subject to ratification by Parliament.

¹⁰⁸ Section 10(13).

¹⁰⁹ Section 10(15).

justify the Corporation's decision to seek the loan without Parliamentary approval.¹¹⁰ The Attorney-General also opined that Parliamentary approval was not needed for the loan. The New Patriotic Party, then in opposition, argued inter alia, that Parliamentary approval was required in accordance with Article 181 of the Constitution, titled *Loans*. Taking into consideration the fierce debate that arose out of all this, Section 10(15) of the *Petroleum Act*, 2016, was intended to remove any sense of ambiguity and stipulates; "Any borrowing exceeding the cedi equivalent of thirty million United States Dollars for the purpose of exploration, development and production shall be approved by Parliament and shall be in consonance with the *Petroleum Revenue Management Act*, 2011 (Act 815)."

Section 18 of the *Petroleum Act*, 2016, provides GNPC a pre-emption right in respect of any future disposal of a Contractor's interest in a petroleum agreement. Thus, where a Contractor enters into an agreement to dispose of all or part of its interest, GNPC is given the right¹¹¹ to acquire that interest on the same terms as agreed with the potential buyer. Where the consideration agreed is not monetary, GNPC may pay the corresponding monetary value.¹¹² This was precipitated by an event which occurred in 2009 when Kosmos Energy attempted to sell its interest in the Jubilee Field to ExxonMobil for \$4 billion without the prior consent of and without first offering it to Ghana. The government objected and was of the view that Ghana had a pre-emption right so Kosmos could not sell its interest in the manner which it purported

¹¹⁰ Section 15—*Borrowing Powers*.

(1) Subject to subsection (2), the Corporation may borrow sums required for the purpose of meeting any of its obligations or performing any of its functions.

(2) The power of the Corporation to borrow money shall be exercisable only on the recommendation of the Secretary and with the approval of the Secretary responsible for Finance as to the amount, source of the loan and the terms and conditions under which the loan may be effected.

(3) An approval given for the borrowing of money under subsection (2) may be general or limited to a particular borrowing and may be with or without conditions.

(4) The Minister responsible for Finance may approve the guarantee on the conditions the Minister thinks fit of the repayment of principal and the payment of interest on the authorized borrowing made under this section.

¹¹¹ Section 18(1).

¹¹² Section 18(2).

to do,¹¹³ without government consent. After a back and forth between Kosmos and the government, Kosmos, on 18 August 2010, finally announced the termination of the *Sale and Purchase Agreement* with ExxonMobil.¹¹⁴ Thus, this provision in the *Petroleum Act, 2016*, pre-empts the occurrence of such a tussle between a Contractor and the State over the right of the State to purchase an interest that a Contractor intends to sell.

In 2011, there were faults with the flow meters on the FPSO in the Jubilee Field requiring removal for calibration. Thus, the oil being lifted was measured through ullaging where a dipstick was used to manually calculate the amount being lifted. This was heavily criticized by the public as not being accurate enough and the Ghana Revenue Authority (GRA) also reported that in its annual review as one of the challenges it was facing in its mandate to ensure that the country was not being short-changed in terms of revenue due the State. Pressure was mounted on the government by the media and civil society organizations and the problem was rectified shortly thereafter. Thus, Section 37 of the *Petroleum Act, 2016*, titled *Measurement of Petroleum Obtained*, provides for the measurement and analyses of petroleum produced and the procedure for verification of the measurement system.

Section 84 of the *Petroleum Act, 2016*, is titled *Compensation for Pollution Damage*. Section 84(3) states:

- (3) Where an event of force majeure results in pollution damage, the Minister shall on the advice of the Commission assess the damage taking into account:
- (a) the scope of the activity,
 - (b) the measures taken to avoid or mitigate the effects of the force majeure event,
 - (c) the situation of the party that has sustained the damage as a result of the force majeure event and
 - (d) the insurance opportunities of each party.

¹¹³ Ibid., 1639. See Articles 16.4 and 16.5 of Model Petroleum Agreement. It is instructive to note that the petroleum agreement between Kosmos and the State does not contain an explicit provision for “Right of First Refusal.”

¹¹⁴ Kosmos Energy, “Kosmos Energy Agreement to Sell Ghana Business Terminated” (Kosmos Energy, 2010), www.kosmosenergy.com/press/kosmos_PR_081810.pdf, last accessed 25 April 2021.

However, Section 84(4) states that, “On the basis of the assessment, the Minister shall require the person liable for the pollution damage to pay compensation.” This provision is problematic as a party cannot “be liable” for force majeure. As aptly defined under the Act, force majeure means “any event beyond reasonable control of the party claiming to be affected by the event which has not been brought at the instance of the party including, earthquake, storm, flood, lightning or other adverse weather conditions, war, acts of terrorism, embargo, blockade, riot or civil disorder.”¹¹⁵ This provision requires amendment.

Sections 85–89 of the *Petroleum Act*, 2016, under the broad heading *Fiscal Provisions*, cover an aspect of the fiscal regime of Ghana’s petroleum industry and include royalties,¹¹⁶ surface rentals,¹¹⁷ tax,¹¹⁸ bonus payments,¹¹⁹ and additional oil entitlement.¹²⁰ It should be noted that not every single aspect of Ghana’s fiscal regime—in the sense of how Ghana derives revenue—is contained under that broad heading *Fiscal Provisions*. Carried Interest for instance is contained under Section 10(14)(a), whilst Additional Participating Interest under Section 10(14)(b).

Contractor parties are jointly and severally responsible for the financial and other obligations and liabilities arising out of petroleum activities.¹²¹ Contractors and licensees are, however, not jointly and severally liable for payment of taxes, royalties in cash and additional oil entitlement.¹²²

It is worth noting that the *Petroleum Act*, 2016, extrapolates from the Norwegian Act in some respects, particularly in respect of the technical rules. The 2013 Bill had language which mirrored that of the *Norwegian Petroleum Act*¹²³ but was watered down over time such that the language was less similar though the import remained the same when the *Petroleum Act*, 2016, was finally enacted. The Norwegian influence is

¹¹⁵ Section 95—*Interpretation*.

¹¹⁶ Section 85—*Payment of Royalties*.

¹¹⁷ Section 86—*Annual Fee in Respect of Acreage*.

¹¹⁸ Section 87—*Tax*.

¹¹⁹ Section 88—*Bonus Payments*.

¹²⁰ Section 89—*Additional Oil Entitlement*.

¹²¹ Section 59(1)—*Liabilities*.

¹²² Section 59(2).

¹²³ *Act 29 November 1996 No. 72 Relating to Petroleum Activities*.

not surprising as the Norwegians assisted Ghana in the development of its industry, including legislation. In the 2011 *Oil for Development Annual Report*, Norad comments that, “Assistance was provided to the Ministry of Energy on drafting the new Petroleum (Exploration and Production) Bill and the Petroleum Commission Bill.”¹²⁴

4 ROLE OF GNPC, MINISTER FOR ENERGY AND PETROLEUM COMMISSION UNDER THE PETROLEUM ACT, 2016

It is to be noted that prior to the 2007 large-scale commercial discovery, there was no separate regulatory entity for the upstream petroleum industry so GNPC performed some quasi-regulatory functions ostensibly for and under the supervision of the Ministry of Energy. With the formation of the Petroleum Commission (**The Commission**) in 2011, GNPC was to shed all vestiges of regulatory powers and to perform strictly as a commercial entity. The role that GNPC plays under the *Petroleum Act*, 2016, is commercial unlike the *Petroleum Act*, 1984, that accorded it some quasi-regulatory functions. GNPC may undertake petroleum activities in an open area not covered by a petroleum agreement¹²⁵ and in those circumstances, is subject to virtually all the obligations imposed on a Contractor.¹²⁶ GNPC is required to be a party to all petroleum agreements entered into by the State.¹²⁷ Further, where third-party liability is

¹²⁴ Norad, “Oil for Development Annual Report 2011” (Norad, May 2011), 36, www.Norad.no/en/tools-an.d-publications/publications/publication?key=392371, last accessed 13 April 2021.

¹²⁵ Section 11(1)—*Petroleum Activities by the Corporation*.

¹²⁶ Section 24(6)—*Exploratory Drilling*, Section 25(17)—*Notification of Petroleum Discovery and Appraisal*, Section 26(4)—*Prudent Exploitation*, Section 27(15)—*Plan of Development and Operation*, Section 28(5)—*Restrictions on Approval of Plan of Development and Operation*, Section 29(3)—*Postponement of Development*, Section 30(3)—*Commencement of Petroleum Production*, Section 31(12)—*Production Programme and Permits*, Section 32(2)—*Utilization of Associated Natural Gas*, Section 33(5)—*Restrictions on Flaring*, Section 36(6)—*Third Party Use of Production Facilities*, Section 37(11)—*Measurement of Petroleum Obtained*, Section 43(8)—*Decommissioning Plan*, Section 46(5)—*Plugging and Abandonment of Well*, Section 47(2)—*Restoration of Affected Areas*, Section 48(2)—*Liability for Decommissioning*, Section 54(2)—*Reporting*, Section 61(2)—*Use of Ghanaian Goods and Services*, Section 83(1)—*Liability for Pollution Damage*, Section 86(3)—*Annual Fee in Respect of Acreage*.

¹²⁷ Section 10(1)—*Petroleum Agreement*.

incurred by a person who undertakes a task on its behalf, like a licensee, Contractor or Sub-Contractor, it is liable for damages to the same extent as, and jointly and severally with the person undertaking the task and if applicable, the person's employer.¹²⁸

GNPC, as the national oil company, as well as the holder of Ghana's interest in the petroleum blocks,¹²⁹ also has certain "special rights." In respect of ownership of physical assets purchased, installed or constructed by a Contractor for petroleum activities, it must be transferred to GNPC at its option either when the full cost has been recovered or when the petroleum agreement terminates.¹³⁰ Where at least fifty per cent of the cost of a physical asset has been recovered, GNPC can have the title transferred to it by the Contractor upon payment by GNPC of the unrecovered portion of the cost of the asset.¹³¹ Assets rented or leased by the Contractor which are of the type customarily leased for use in accordance with petroleum industry practice are not required to be transferred to GNPC.¹³² A licensee, Contractor or a Sub-Contractor must keep the State and GNPC, indemnified against claims arising from their operations, brought by a third party.¹³³ Where there is hindrance to acquisition of property, it may be acquired for GNPC, which will bear the cost.¹³⁴

Thus, as noted, after the formation of the Commission, GNPC is to play a purely commercial role whilst the Commission is to take over any vestiges of regulatory power that GNPC previously wielded. The Commission performs a technocratic, regulatory and advisory role¹³⁵ to the Minister for Energy which is manifested in the functions ascribed to it under the *Petroleum Act, 2016*.

¹²⁸ Section 59(3).

¹²⁹ A "Block" is defined under the *Interpretation* Section of the Act as, "an area that is approximately six hundred and eighty-five square kilometres as depicted on the reference map prepared by the Minister in accordance with the provisions of this Act."

¹³⁰ Section 19(1)—*Transfer of Assets to the Corporation*.

¹³¹ Section 19(5).

¹³² Section 19(6).

¹³³ Section 59(3)—*Liabilities*.

¹³⁴ Section 72(2)—*Interference with Lawful Activities, Compensation and Access to Land*.

¹³⁵ Section 3 of the *Petroleum Commission Act – Functions of the Commission*.

It is the Commission that grants permits to undertake exploration drilling,¹³⁶ and assigns designations to each well or field.¹³⁷ A Contractor cannot change the designation, classification or status of a well without its written approval.¹³⁸ The Commission is mandated to recommend to the Minister to grant an extension of the appraisal period beyond two years in special cases and may stipulate conditions for the extension.¹³⁹ A Contractor is also not permitted to commence an appraisal programme or enter into binding obligations until such a programme has been approved by the Commission.¹⁴⁰ The results of the appraisal programme stating whether the discovery is commercial or not and the basis for such a decision must also be submitted to the Commission.¹⁴¹ Where the discovery is not commercial and thus relinquishment must take place, the Commission must be notified in writing.¹⁴² The Commission is mandated to approve the delineation of the contract area and the relinquishment takes effect from the date of notification by the Contractor as approved by the Commission.¹⁴³ When a Contractor wishes to relinquish a Contract area or part thereof, it must submit a proposal to the Commission for approval.¹⁴⁴

A Contractor or Sub-Contractor cannot enter into a petroleum sub-contract without the Commission's written approval.¹⁴⁵ A Contractor cannot award a petroleum sub-contract to a company that is not registered with the Commission.¹⁴⁶ Further, it is the Commission which is mandated to approve the threshold for the value of petroleum sub-contracts.¹⁴⁷ A Contractor can also not enter into an agreement with an affiliate for the lease of a petroleum facility to be used for petroleum

¹³⁶ Section 24(2)—*Exploration Drilling*.

¹³⁷ Section 24(4).

¹³⁸ Section 24(5).

¹³⁹ Section 25(10)—*Notification of Petroleum Discovery and Appraisal*.

¹⁴⁰ Section 25(12).

¹⁴¹ Section 25(13).

¹⁴² Section 25(14).

¹⁴³ Section 15(16).

¹⁴⁴ Section 22—*Relinquishment of Contract Area*.

¹⁴⁵ Section 17(1)—*Sub-Contracting*.

¹⁴⁶ Section 17(4).

¹⁴⁷ Section 17(2).

activities without the Commission's written approval¹⁴⁸ and can also not directly or indirectly assign, whether in whole or part, a right or obligation under a petroleum sub-contract¹⁴⁹ to a third person or affiliate, without the Minister's written approval.¹⁵⁰

Production of petroleum cannot commence without the approval of the Commission.¹⁵¹ Annual permits for production or injection of petroleum,¹⁵² as well as authorization for flaring or venting petroleum, are granted by the Commission in consultation with the Environmental Protection Agency.¹⁵³ Matters in relation to third-party use of production facilities,¹⁵⁴ as well as third-party use of transportation, treatment and storage facilities,¹⁵⁵ are regulated by the Commission. The measurement system for production of petroleum is approved by the Commission after consultation with the Standards Authority.¹⁵⁶ The Commission, in consultation with the Minister, as a condition for approval of an agreement on the use of transportation, treatment and storage facilities, may, change the tariffs and other conditions agreed to between the parties having due regard to resource management risks, whilst allowing the owner reasonable returns taking into account, investment and risks.¹⁵⁷ Where permissions are needed due to the fact that the conduct of petroleum activities is likely to affect a lawful economic or social interest or activity of the inhabitants of an area, the Commission is mandated under the Act to negotiate the appropriate permission required from the relevant authorities.¹⁵⁸

¹⁴⁸ Section 17(5).

¹⁴⁹ A "petroleum sub-contract" is defined as "a contract between the Corporation and a third party or between a Contractor and a third party for the provision of goods and services for petroleum activities, but does not include a petroleum agreement."

¹⁵⁰ Section 17(6).

¹⁵¹ Section 30—*Commencement of Petroleum Production*.

¹⁵² Section 31(1)—*Production Programme and Permits*.

¹⁵³ Section 33(2)—*Restrictions on Flaring*.

¹⁵⁴ Section 36—*Third Party Use of Production Facilities*.

¹⁵⁵ Section 42—*Third Party use of Transportation, Treatment and Storage Facilities*.

¹⁵⁶ Section 37(2)—*Measurement of Petroleum Obtained*.

¹⁵⁷ Section 42(9)—*Third Party use of Transportation, Treatment and Storage Facilities*.

¹⁵⁸ Section 72(1)—*Interference with Lawful Activities, Compensation and Access to Land*.

Notice to plug or abandon a well must also be submitted to the Commission.¹⁵⁹ Supervision and inspection of petroleum activities are generally overseen by the Commission.¹⁶⁰ The Commission receives and stores petroleum data¹⁶¹ and all parties including GNPC must provide to the Commission its data and information as well as reports, studies, interpretations and analysis.¹⁶² The Commission is vested with the power to permit an entity to market its data, interpretations and analysis,¹⁶³ and can also provide any data or information to GNPC for its use.¹⁶⁴ One cannot export or permit the retention or exportation of data, documents and reservoir samples without its written approval.¹⁶⁵ Where it is so exported, it shall be returned forthwith at the Commission's written request.¹⁶⁶ The Commission is empowered to establish and maintain a register of petroleum agreements, permits, licenses and authorizations.¹⁶⁷ The Commission is in charge of promoting local content and participation,¹⁶⁸ and licensees, Contractors and Sub-Contractors must submit a local content plan to the Commission for approval.¹⁶⁹ It is also the Commission that is in charge of delimiting safety zones and it does so in consultation with the relevant authorities.¹⁷⁰ When a party fails to conduct activities in a safe manner, the Commission is empowered to take necessary measures to ensure safety and may recover the costs and expenses of doing so, from the party.¹⁷¹ The Commission in consultation with the National Insurance Commission can also give approval to a Contractor or licensee to arrange another form of security other

¹⁵⁹ Section 46—*Plugging and Abandonment of Well*.

¹⁶⁰ Section 51—*Supervision and Inspection*.

¹⁶¹ Section 3(g) of the *Petroleum Commission Act – Functions of the Commission*.

¹⁶² Section 52(3)—*Ownership of Petroleum Data*.

¹⁶³ Section 52(4).

¹⁶⁴ Section 52(5).

¹⁶⁵ Section 53(2)—*Samples, Data and Information*.

¹⁶⁶ Section 53(4).

¹⁶⁷ Section 56(1)—*Petroleum Register*.

¹⁶⁸ Section 3(f) of the *Petroleum Commission Act—Functions of the Commission*.

¹⁶⁹ Section 63(2)—*Local Content Plan*.

¹⁷⁰ Section 77(2)—*Safety Zones*.

¹⁷¹ Section 79(1)—*Measures to Ensure Safety*.

than insurance cover.¹⁷² Further, it is to the Commission that various administrative penalties are to be paid.¹⁷³

It bears noting that under the *Petroleum Act*, 2016, the Minister for Energy is vested with considerable powers. The Minister, in consultation with the Commission, prepares a reference map that shows areas of possible accumulation of petroleum.¹⁷⁴ The Minister makes the decision as to whether to open an area for petroleum activities,¹⁷⁵ close an area,¹⁷⁶ or redefine the boundaries of an area declared open but not yet covered by an existing petroleum agreement.¹⁷⁷ The Minister has the power to reserve a block, part of a block or a number of blocks in an open area for GNPC,¹⁷⁸ which power he exercised in Ghana's first competitive bidding licensing. The Minister can request that a consortium be formed as a condition for entering into a petroleum agreement.¹⁷⁹ The Minister in consultation with the Commission can determine that a petroleum agreement be entered into by direct negotiations, without public tender, where it represents the most efficient manner to achieve optimum results.¹⁸⁰ The Minister represents the Republic in negotiation of petroleum agreements and licensing in general,¹⁸¹ and grants reconnaissance licenses in consultation with the Commission.¹⁸² The Minister has the power to grant an exclusive right to undertake reconnaissance activities in an area not covered by an existing reconnaissance license but which right does not affect any proprietary rights of the State to data or preclude it from undertaking reconnaissance or other petroleum activities

¹⁷² Section 92(5)—*Insurance*.

¹⁷³ Section 93—*Offences and Penalties*.

¹⁷⁴ Section 6—*Reference Map*.

¹⁷⁵ Section 7—*Opening of an Area*.

¹⁷⁶ Section 8(1)(a)—*Closure and Redefinition of Area*.

¹⁷⁷ Section 8(1)(b).

¹⁷⁸ See Sections 7(9) and 11(1).

¹⁷⁹ Section 10(11)—*Petroleum Agreement*.

¹⁸⁰ Section 10(9).

¹⁸¹ Section 10.

¹⁸² Section 9(1)—*Reconnaissance License*.

within that area.¹⁸³ He may decline on stated reasons not to enter into a petroleum agreement.¹⁸⁴

The Minister approves the Operator.¹⁸⁵ He can also appoint an Operator if the parties cannot agree on one,¹⁸⁶ or even in consultation with the Commission, change an Operator where it fails to meet material requirements of the Act.¹⁸⁷ An Operator can be a Contractor (Oil Company), the Corporation (GNPC), a body corporate owned by the Corporation such as Explorco¹⁸⁸ or a body corporate owned by the Contractor and the Corporation such as Saltpond Offshore Producing Company Limited (SOPCL).¹⁸⁹ A Contractor cannot transfer a share of the incorporated company in Ghana to a third party without the Minister's written approval,¹⁹⁰ and a Contractor can also not assign directly or indirectly,¹⁹¹ or mortgage its interest without the Minister's approval.¹⁹² A mortgage lapses if the facility is decommissioned.¹⁹³

It is the Minister in consultation with the Commission that is empowered under the Act to extend the exploration period¹⁹⁴ for a company beyond the stipulated seven years.¹⁹⁵ It is the Minister as well who, in exceptional cases and in consultation with the Commission, makes that determination that the area to be relinquished be smaller than as set out in the Act.¹⁹⁶ Where a Contractor fails to fulfil its minimum work obligation

¹⁸³ Section 9(3).

¹⁸⁴ Section 10(4)—*Petroleum Agreement*.

¹⁸⁵ Section 13(1)—*Operator*.

¹⁸⁶ Section 13(2).

¹⁸⁷ Section 13(5).

¹⁸⁸ Exploratory arm of GNPC.

¹⁸⁹ GNPC and Lushann-Eternit Energy Limited formed SOPCL as the joint venture vehicle and local operator of the Saltpond Field.

¹⁹⁰ Section 15—*Change of Ownership*.

¹⁹¹ Section 16—*Assignment*.

¹⁹² Section 57(1)—*Mortgaging of Participating Interest*.

¹⁹³ Section 57(6).

¹⁹⁴ "Exploration Period" is defined under the *Interpretation* Section of the Act as "the period commencing on the effective date and continuing during the time within which the Contractor is authorized to carry out exploration operations."

¹⁹⁵ Section 21(5)—*Exploration Period and Extension*.

¹⁹⁶ Section 22(6).

stipulated in the petroleum agreement and no extension has been granted to it, it is the Minister who terminates the petroleum agreement.¹⁹⁷

It is to the Minister that a Plan of Development is submitted¹⁹⁸ and it is he who sets a deadline for the submission of the Plan.¹⁹⁹ A Plan of Development only becomes effective upon the Minister's prior written approval.²⁰⁰ He can refuse to approve it²⁰¹ and can also demand that changes be made. In consultation with the Commission, the Minister can, in the national interest, limit the approval to the development and production of individual reservoirs or phases, and the development and production may be subject to conditions determined by him.²⁰² The Minister can revise the long-term production schedule if he feels it is "warranted by resource management considerations or significant socio-economic considerations."²⁰³ A Contractor must notify the Minister if there is a deviation from the assumptions and preconditions on which a Plan was submitted or has been approved,²⁰⁴ and any alteration requires the written approval of the Minister,²⁰⁵ who can require a new or amended Plan of Development to be submitted.²⁰⁶ Where public or national interest requires, the Minister may, after consultation with the Contractor, postpone a Field's development.²⁰⁷

The Minister can authorize that contract areas be unitized,²⁰⁸ and stipulate conditions and make directions thereof.²⁰⁹ It is the Minister who

¹⁹⁷ Section 23(3)—*Minimum Work Obligation*.

¹⁹⁸ Section 27(1)—*Plan of Development and Operation*.

¹⁹⁹ Section 27(2).

²⁰⁰ Section 27(10).

²⁰¹ Section 28—*Restrictions on Approval of Plan of Development and Operation*.

²⁰² Section 27(7).

²⁰³ Section 27(8).

²⁰⁴ Section 27(11).

²⁰⁵ Section 27(12).

²⁰⁶ Section 27(13).

²⁰⁷ Section 29—*Postponement of Development*.

²⁰⁸ Section 34(1).

²⁰⁹ Section 34(5).

grants a license to install or operate a facility for transportation, treatment or storage of petroleum,²¹⁰ and it is to him that prior written approval must be sought when there is a material deviation or alteration of the terms and preconditions on which the application was approved.²¹¹ The Minister may stipulate tariffs set by the Commission for use of the facility²¹² and make further directions thereof in respect of the facility.²¹³ It is also the Minister who in consultation with the Petroleum Commission makes the determination as to the manner and place in which petroleum is delivered by the Contractor and GNPC.²¹⁴ Where petroleum is needed to meet domestic supply requirements, it is the Minister that makes the determination as to the percentage of petroleum required.²¹⁵ It is to the Minister that a decommissioning plan is submitted²¹⁶ and who makes a decision as to its approval,²¹⁷ after a statutory obligation to seek the advice of the Commission.²¹⁸ It is also the Minister to whom performance bonds or guarantees are furnished, for the fulfilment of obligations.²¹⁹ Further, where natural resources other than petroleum are discovered in an area, it is the Minister, in consultation with the relevant authorities, who makes that determination as to which of the activities to be postponed.²²⁰ It is also the Minister who by legislative instrument has the power to make Regulations to prescribe for matters necessary for giving effect to the Act.²²¹

²¹⁰ Section 38—*License to Install and Operate Facilities for Transportation, Treatment and Storage of Petroleum.*

²¹¹ Section 39(5)—*Application to Install and Operate Facilities.*

²¹² Section 40(2)(a).

²¹³ Section 40(2)(b).

²¹⁴ Section 41—*Landing of Petroleum.*

²¹⁵ Section 71(2)—*Domestic Supply Requirements.*

²¹⁶ Section 43—*Decommissioning Plan.*

²¹⁷ Section 44—*Decision on the Decommissioning Plan.*

²¹⁸ Section 43(1).

²¹⁹ Section 58—*Security for Fulfilment of Obligations.*

²²⁰ Section 90(3)—*Natural Resources Other than Petroleum Resources.*

²²¹ Section 94—*Authority to Issue Regulations, Guidelines and Stipulate Conditions.*

5 SUBSIDIARY LEGISLATION

The power to pass regulations was hardly utilized by the Minister under the Petroleum Act, 1984. This is however not the case after the large-scale discovery in 2007. As enumerated earlier, there are a number of regulations currently in force in respect to Ghana's upstream petroleum industry. These regulations were passed pursuant to the power granted to the Minister under the Petroleum Act, 1984, the Petroleum Commission Act, 2011 (Act 821), the Petroleum Revenue Management Act, 2011 (Act 815) as amended by Act 893 and the Petroleum Act, 2016. Some key ones are discussed below.

5.1 *Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204)*

The *Local Content Regulations* came into force on 20 November 2013. The purpose of the *Local Content Regulations* is to ensure maximum level of participation by Ghanaians in the upstream petroleum industry. Thus, it requires Contractors, Sub-Contractors, licensees and other participants in the petroleum sector to make local content a focal part of their operations through the use of local expertise, goods and services, development of local capacities through skills and technology transfer, know-how and active research and development programmes. Also, the *Local Content Regulations* aim to create petroleum and related supportive industries in order to sustain economic development, and achieve and maintain some degree of control for Ghanaians in the upstream petroleum industry.²²²

With respect to equity participation and ownership of petroleum operations, the Local Content Regulations provide that preference must be given to indigenous Ghanaian Companies (IGC) in the grant of a petroleum agreement.²²³ It also provides that in addition to the interest provided GNPC by law, there must be at least five percent (5%) equity participation of an IGC in every petroleum agreement that is executed. The interest held by an IGC in a petroleum agreement is not transferable to a non-IGC.²²⁴ An IGC is defined as a company incorporated in Ghana

²²² *Local Content Regulations* 1.

²²³ *Ibid.*, Regulation 4(1).

²²⁴ *Ibid.*, Regulations 4(2) and (5).

that has at least fifty percent (50%) of its equity owned by Ghanaian citizens and has Ghanaian citizens holding at least eighty percent (80%) of executive and senior management positions and hundred percent (100%) non-managerial and other positions.²²⁵

Where a non-IGC wants to provide services in the upstream petroleum sector, that non-IGC must incorporate a joint venture company with an IGC, and the IGC must be afforded at least ten percent (10%) equity participation in the company.²²⁶

To ensure full compliance with local content, a Contractor, Sub-Contractor, licensee or other allied entity is required to prepare and submit a local content plan for approval before it engages in any petroleum activity in the country.²²⁷ The local content plan is required to have sub-plans for employment and training, research and development, technology transfer, legal and financial services.²²⁸

In addition to the local content plan, a Contractor, Sub-Contractor, licensee or other allied entity is required to establish and implement a bidding process for acquisition of goods and services. This process must give preference to IGCs. Thus, they must not award contracts solely on the principle of the lowest bidder. Hence, an IGC that is qualified to execute a job must be awarded a contract if that company's bid is not more than ten percent (10%) of the value of the lowest bidder (foreign Sub-Contractor).²²⁹

5.2 Petroleum (Exploration and Production) (Measurement) Regulations, 2016 (LI 2246)

The *Petroleum (Measurement) Regulations* came into force after November 2016. It was passed under the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84). It remains in effect even though the Petroleum Act, 1984 has been repealed because Section 97 of the Petroleum Act, 2016 states; "Despite the repeal of PNDCL 84, the Regulations, rules, by-laws, notices, orders, directions, appointments or

²²⁵ Ibid., Regulation 49.

²²⁶ Ibid., Regulation 4(6).

²²⁷ Ibid., Regulation 7.

²²⁸ Ibid., Regulation 9(3).

²²⁹ Ibid., Regulations 11 and 12.

any act lawfully made or done under the repealed enactment and in force immediately before the commencement of this Act shall continue to have effect until revoked, cancelled or terminated.” Its objective is to ensure that an accurate measurement system is in place for petroleum resources produced thereby ensuring that the basis of sharing petroleum revenue accruing from the country’s resources between Contractors and the Republic is accurate.²³⁰ The *Petroleum (Measurement) Regulations* apply to planning, design, testing, calibration, operation and maintenance of a metering system, equipment and methods for measuring, allocating and determining quantities of petroleum produced, transported, sold, used for fuel or flaring gas in petroleum activities.²³¹ It gives the Commission power to conduct the supervision and inspection of any metering and allocation system from the design to the operation stage or in consultation with the Standard Authority, to appoint an independent person to carry out this function on its behalf.²³²

5.3 *Petroleum (Exploration and Production) (Data Management) Regulations, 2017 (LI 2257)*

The *Petroleum (Data Management) Regulations* applies to the reporting and management of petroleum data obtained from conducting petroleum operations in the Republic.²³³ It also specifies the format, contents and standards required for the preparation and submission of geophysical, geological and production data related to petroleum activities to support the efficient exploitation of petroleum resources in the country.²³⁴ It provides that the State owns all petroleum data related to petroleum activities in the country.²³⁵ All Contractors, Sub-Contractors, GNPC and all their agents, affiliates or persons, who act directly or indirectly for them, are required to comply with the *Petroleum (Data Management) Regulations*.²³⁶

²³⁰ *Petroleum Measurement Regulations*, Regulation 2.

²³¹ *Ibid.*, Regulation 1.

²³² *Ibid.*, Regulation 4(1).

²³³ *Petroleum Data Management Regulations*, Regulation 1.

²³⁴ *Ibid.*, Regulation 2.

²³⁵ *Ibid.*, Regulation 3.

²³⁶ *Ibid.*, Regulation 4.

5.4 *Petroleum (Exploration and Production) (Health, Safety and Environment) Regulations, 2017 (L.I. 2258)*

The *Petroleum (Health, Safety and Environment) Regulations* aim to promote high standards for health, safety and the environment in respect of the conduct of petroleum activities in the country. To achieve these standards, it provides minimum health, safety and environmental requirements that persons engaged in petroleum activities must comply with in order to prevent adverse effects of petroleum activities on health, safety and the environment. It further aims to ensure systematic implementation of measures to comply with requirements and achieve set goals in an applicable working environment and safety standards.²³⁷ The *Petroleum (Health, Safety and Environment) Regulations* impose a duty to develop and update a management system, health and safety plan and an emergency preparedness plan for dealing with any risks, hazards, accidents and pollution that may arise during the course of petroleum operations.²³⁸

5.5 *Petroleum (Exploration and Production) (General) Regulations, 2018 (L.I. 2359) as amended by the Petroleum (Exploration and Production) (General) (Amendment) Regulations, 2019 (L.I. 2390)*

The *Petroleum (General) Regulations* came into force on 26 July 2018. The Minister and the Commission are responsible for implementing and enforcing the *General Regulations*. The *General Regulations* supplement the *Petroleum Act, 2016*, by providing further details and guidelines on the implementation of the *Petroleum Act, 2016*. The *General Regulations*

²³⁷ *Petroleum HSE Regulations*, Regulation 1.

²³⁸ *Ibid.*, Regulations 3, 8, 9, 157 and 9.

broadly deal with Area Management,²³⁹ Grant of Petroleum Agreement,²⁴⁰ Petroleum Agreement,²⁴¹ Petroleum Activities by the Corporation,²⁴² Management of Petroleum Activities,²⁴³ Exploration,²⁴⁴ Development and Production,²⁴⁵ Transportation, Treatment and Storage of Petroleum,²⁴⁶ Cessation, Decommissioning and Removal of Facilities,²⁴⁷ Information and Reporting,²⁴⁸ Fiscal Provisions,²⁴⁹ and Miscellaneous Provisions (Offences and Penalties, Interpretation).²⁵⁰

The *(General) (Amendment) Regulations* make changes to the *General Regulations* and amend provisions pertaining to *Invitation to Tender, Direct Negotiations, Petroleum Register, Joint Operating Agreements, Application for an Extension of a new petroleum agreement, Grant of Extension or a new petroleum agreement, Domestic Supply Requirement, Relinquishment of Contract Area, Additional Oil Entitlement*, as well as the *Interpretation*.

Thus, it bears noting for instance that under the *General Regulations*, GNPC and the other parties were mandated to enter into a Joint Operating Agreement²⁵¹ in accordance with a Model Agreement provided by the Minister.²⁵² Beforehand, GNPC was not a party and the Minister had no say concerning this private contract. However, under the *General Regulations*, the Minister was granted extensive powers in respect of decision-making of what was essentially a private contract between the

²³⁹ Regulation 2–8.

²⁴⁰ Regulation 9–21.

²⁴¹ Regulation 22–33.

²⁴² Regulation 34–37.

²⁴³ Regulation 38.

²⁴⁴ Regulation 39–42.

²⁴⁵ Regulation 43–50.

²⁴⁶ Regulation 51–60.

²⁴⁷ Regulation 61–65.

²⁴⁸ Regulation 66–70.

²⁴⁹ Regulation 71–78.

²⁵⁰ Regulation 79, 80.

²⁵¹ Regulation 25.

²⁵² Regulation 25(2).

Contractor parties on how to regulate the relationship amongst themselves. The *(General) (Amendment) Regulations*, repealed the provision granting such powers to the Minister. The current position is that GNPC and its subsidiary are required to be parties to the Joint Operating Agreement if they acquire a commercial interest in a petroleum agreement.²⁵³

The *(General) (Amendment) Regulations* insert provisions pertaining to *Submission of Work Program and Budget, Decommissioning of a petroleum facility*, as well as *General Requirement on the issue of performance bond or guarantee*.

6 CONCLUSIONS

The *Petroleum Act, 2016*, was largely enacted to deal with the inadequacies of the *Petroleum Act, 1984*. It sets out the broad framework for managing petroleum operations from exploration to production. Whilst the Petroleum (Exploration and Production) Bill remained a work in progress, Ghana decided to use contractual means to bridge the gap in the law. As such, many of the proposed provisions were incorporated in the petroleum agreements granted after the large-scale discovery of 2007, to deal with the inadequacies in the law. These modifications to the petroleum agreements were concretized into statute when the *Petroleum Act, 2016*, was enacted. Hence, a great deal of the provisions in the current Model Petroleum Agreement are covered by statute and the Agreement has been modified to make references to the applicable statutory provisions.

The laws governing Ghana's petroleum industry in general are still a work in progress as evidenced by the many Regulations enacted under the *Petroleum Act, 2016*. There is the intention to enact additional Regulations under the *Petroleum Act, 2016* to deal specifically with various matters requiring further regulation, for instance, decommissioning. Although the petroleum industry legislation is work in progress, there is sufficient legislation to guide effective operation of the industry as it stands. Failure to achieve the noble objectives that the *Petroleum Act, 2016*, seeks to achieve will lie not so much in any inadequacies or

²⁵³ Regulation 4 of *Petroleum (Exploration and Production) (General) (Amendment) Regulations, 2019* (L.I. 2390).

limitations in the laws but a failure of duty bearers to implement them proactively and effectively.

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