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PETROLEUM BILL, 2006

MEMORANDUM

The purpose of this Bill is to establish a Petroleum Regulatory Authority which will regulate and license petroleum product providers. In more detail the Bill provides as follows:

Part I

The Bill's short title is set out in clause 1, and the clause empowers the President to bring the Bill, once an Act, into operation. Clause 2 defines the terms that are used throughout the Bill.

Part II

This Part will establish the Petroleum Regulatory Authority as a body corporate in clause 3 and will set out its functions and powers in clause 4 and the Schedule. The functions of the Authority will include ensuring the provision of sufficient petroleum product for domestic use, granting licences to persons in respect of retailing or production, procurement of petroleum products in Zimbabwe.

Part III

The activities of the Authority will be directed by a Board consisting of five members, all of whom will be appointed by the Minister of Energy and Power Development, after consultation with the President.

The qualifications of members of the Authority's Board, their terms of service and conditions of office, and the filling of vacancies on the Board, are dealt with in clauses 7 to 11, 15 and 16. Clauses 7 and 12 provide that a member's terms and conditions of service and remuneration may not, without his or her consent, be changed to his or her detriment during his or her tenure of office. Clause 13 deals with the procedure to be followed by the Board at its meetings. The Board will be empowered to appoint committees and delegate its functions to them (clause 14). The Board will be required to keep proper minutes of its proceedings (clause 18).

Part IV

This Part will provide for the financial affairs of the Authority, and sets out the sources of its funds in clause 19. In terms of clause 20, any surplus of income over expenditure at the end of the Authority's financial year will be invested in such manner as the Authority considers appropriate and the financial year of the Authority is provided for in clause 21. The Authority

will be required to keep proper accounts by clause 22. The auditing of the accounts of the Authority is provided for in clause 23.

Part V

The Minister will be empowered to issue policy directions to the Board in terms of clause 25. In terms of clause 26, the Board will be required to submit a report to the Minister every year on its activities. The Authority's day-to-day administration will be in the control of a Chief Executive Officer appointed under clause 27. The Authority, its employees, the Board and its members and members of committees will be exempted from liability by clause 28 in the bona fide exercise of their functions.

Part VI

The procurement, selling or production of petroleum products in Zimbabwe shall only be done after obtaining a licence issued by the Authority.

Clause 34 will restrict a licensee not to assign or cede his or her licence.

A person who wishes to obtain a licence will be required by clause 36 to submit an application to the Authority and the clause will empower the Authority to grant or refuse to grant a licence.

In terms of clause 40 the Authority will be empowered to suspend or cancel licences it has issued for the reasons stated in the clause. The Authority will however be required to first inform the licensee of its intention and invite representations from him or her and will be obliged to take due account of any representations made by the licensee. In addition, instead of suspending or cancelling licences, the Authority may choose to issue orders to licensees requiring compliance with the conditions of their licences. Such orders may be enforced in civil proceedings brought by the Authority or by any person affected by any non-compliance with such order.

The Authority will be required to keep a register of licences in terms of clause 42.

Part VII

Part VII sets out provisions relating to the Fuel Price Stabilisation Fund.

Part VIII

This Part provides for consumer protection standards where a licensee is required to develop and submit to the Authority for its review consumer protection standards.

Part IX

This Part deals with monitoring the provision of petroleum products so that there is no monopoly by any oil company in the provision of that product. Under this Part National Oil Company of Zimbabwe (NOCZIM) is required to maintain strategic reserves of petroleum product. The Minister shall prescribe oil product prices.

Part X

Part X makes provision for the appointment of inspectors. This Part also empowers the Minister to make regulations.

Part XI

Part XI deals with offences. The offences set out in the Part relate to failure or refusal to furnish returns.

Part XII

Clause 60 provides for savings and transitional provisions. Every by-law in force under the Control of Goods Act [*Chapter 14:05*] relating to petroleum industry shall be saved.

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PETROLEUM BILL, 2006

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BILL

To provide for the establishment of the Petroleum Regulatory Authority and its functions and management; to provide for the licensing and regulation of the petroleum industry; and to provide for matters incidental to or connected with the foregoing.

ENACTED by the President and the Parliament of Zimbabwe.

PART I

PRELIMINARY

1 Short title and date of commencement

(1) This Act may be cited as the Petroleum Act [*Chapter 13:22*]

(2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

(1) In this Act-

"Authority" means the Petroleum Regulatory Authority established by section 3;

"Board" means the Petroleum Regulatory Authority Board referred to in section 5;

"Chief Executive Officer" means the Chief Executive Officer of the Authority appointed in terms of section 27;

"fixed date" means the date fixed in terms of section 1(2) as the date of commencement of this Act;

"inspector" means an employee of the Authority appointed to be an inspector in terms of section 55;

"licence" means a procurement, retailing or production licence issued in terms of Part VI;

"licensee" means a person who holds a valid licence;

"member" means a member of the Board;

"Minister" means the Minister of Energy and Power Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"NOCZIM" means the State petroleum company called the National Oil Company of Zimbabwe (Private) Limited;

"petroleum company" means a company incorporated or registered in terms of the Companies Act [*Chapter 24:03*] that is licensed in terms of Part VI;

"petroleum product" means-

- (a) petrol; or
- (b) the fuel designed for use in a compression-ignition engine, commonly known as diesel fuel or any derivatives or substitutes thereof; or
- (c) any refined petroleum capable of being used as a motor spirit; or
- (d) illuminating paraffin; or
- (e) aviation fuel; or
- (f) power paraffin; or
- (g) liquid petroleum gas; or
- (h) lubricants that are procured, sold or produced as by-products of any of the foregoing;

"petroleum undertaking" means any activity of a licensee undertaken in connection with the procurement, supply or production of any petroleum product;

"procure" means to procure otherwise than for personal use;

"statutory body" means-

- (a) any commission established by the Constitution; or
- (b) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice-President, a Minister or any statutory body;

or by a commission established by the Constitution.

PART II

ESTABLISHMENT AND FUNCTIONS OF PETROLEUM REGULATORY AUTHORITY

3 Establishment of Petroleum Regulatory Authority

There is hereby established an authority, to be known as the Petroleum Regulatory Authority, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

4 Functions and powers of Authority

(1) Subject to this Act, the functions of the Authority shall be-

- (a) to ensure the provision of sufficient petroleum products for domestic use;
- (b) to promote the development of the procurement, sale and production of petroleum products in accordance with practicable recognised international standards and public demand;
- (c) to exercise regulatory functions in respect of the procurement, sale and production of petroleum products in Zimbabwe, including the establishment of standards and codes relating to equipment connected with the procurement, sale and production;
- (d) to promote the interests of consumers, purchasers and other users in respect of the quality and variety of petroleum products provided;
- (e) to maintain and promote effective competition between persons engaged in the petroleum industry;
- (f) to encourage the expansion of the petroleum industry;
- (g) to further the advancement of technology relating to the petroleum industry;
- (h) to represent Zimbabwe internationally in matters relating to the petroleum industry;
- (i) to advise the Minister on all matters relating to the petroleum industry.

(2) Subject to this Act, for the better exercise of its functions the Authority shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

(3) Subject to this Act, the Authority shall not, in the lawful exercise of its functions under this Act, be subject to the direction or control of any person or authority.

PART III

PETROLEUM REGULATORY AUTHORITY BOARD

5 Establishment of Petroleum Regulatory Authority Board

The operations of the Authority shall, subject to this Act, be controlled and managed by a board to be known as the Petroleum Regulatory Authority Board.

6 Constitution of Board

(1) Subject to subsection (2), the Board shall consist of five members appointed by the Minister after consultation with the President.

(2) In appointing the members of the Board the Minister shall endeavour to secure that members are representative of groups or sectors of the community concerned with or affected by the petroleum industry, and, in particular, that three of the members are chosen for their experience or professional qualifications in the following fields or areas of competence-

- (a) engineering;
- (b) finance and administration;
- (c) law.

7 Terms of office and conditions of service of members

(1) Subject to this Part, a member shall hold office for such period, not exceeding five years, as the Minister may fix on his or her appointment.

(2) A member shall continue in office after the expiry of his or her term until he or she has been re-appointed or his or her successor has been appointed:

Provided that a member shall not hold office in terms of this subsection for longer than six months.

(3) Subject to section 16, a member shall hold office on terms and conditions as the Minister may fix in relation to members generally.

(4) A retiring member is eligible for re-appointment as a member:

Provided that no member be re-appointed for a third term in office.

(5) The terms and conditions of office of a member shall not, without the member's consent, be altered to his or her detriment during his or her term of office.

8 Disqualifications for appointment as member

(1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who-

- (a) is not a citizen of Zimbabwe; or
- (b) has a financial interest in any business connected with the petroleum industry, unless the Minister is satisfied that the interest will not interfere with the person's impartial discharge of his or her duties as a member; or
- (c) has, in terms of a law in force in any country-
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

- (ii) made an assignment to, or arrangement or composition with, his or her creditors which has not been rescinded to or set aside;

or

- (d) has, immediately preceding the date of his or her proposed appointment, been convicted-

- (i) in Zimbabwe, of an offence involving dishonesty; or
- (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence involving dishonesty;

and sentenced to a term of imprisonment without the option of a fine.

- (2) A person who is-

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies;

shall not be appointed as a member of the Board, nor shall he or she qualified to hold office as a member.

(3) For the purposes of subsection (2)(b) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

9 Vacation of office by appointed members

A member shall vacate his or her office and the office shall become vacant—

- (a) three months after the date upon which he or she gives notice in writing to the Minister of his or her intention to resign, or on the expiry of such other period of notice as he or she and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment imposed without the option of a fine—
 - (i) in Zimbabwe, in respect of an offence involving dishonesty; or
 - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence involving dishonesty;

or

- (c) if he or she becomes disqualified in terms of section 8(1)(a), (b) or (c) or in terms of subsection (2) of that section, to hold office as a member; or
- (d) if he or she is required in terms of section 10 to vacate his or her office.

10 Dismissal or suspension of members

(1) The Minister, after consultation with the President, may require a member to vacate his or her office if the member—

- (a) has, subject to subsection (3), been found to have conducted himself or herself in a manner that renders him or her unsuitable as a member, including a contravention of section 16 or section 24(2); or
- (b) has failed to comply with any term or condition of his or her office fixed by the Minister in terms of section 7(3); or

- (c) is mentally or physically incapable of efficiently performing his or her duties as a member; or
- (d) has been absent without the permission of the Board from two consecutive meetings of the Board of which he or she was given at least seven days' notice, and there was no just cause for the member's absence.

(2) The Minister may suspend a member-

- (a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in subsection (1)(a); or
- (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry any functions as a member.

(3) A member suspended in terms of subsection (2)(a) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Minister showing cause why no finding of misconduct rendering him or her unsuitable to be member of the Board should be made.

(4) The Minister, after consultation with the President, shall require a member suspended in terms of (2)(a) to vacate his or her office if-

- (a) no representations are made by the member in terms of subsection (3); or
- (b) the Minister finds that, notwithstanding representations made in terms of subsection (3), the member is guilty of the misconduct alleged.

11 Filling of vacancies on Board

On the death of or the vacation of office by a member, the Minister may appoint a qualified person to fill the vacancy:

Provided that if as a result of the vacancy the number of members falls below the minimum number specified in section 6, the Minister shall fill the vacancy within three weeks.

12 Chairperson and vice-chairperson of Board

(1) The Minister shall designate one of the members as chairperson of the Board and another member as vice-chairperson of the Board.

(2) The vice-chairperson of the Board shall perform the chairperson's functions whenever the chairperson is for any reason unable to perform them.

(3) The chairperson or vice-chairperson of the Board may at any time resign his or her office as such by one month's notice in writing to the Minister.

(4) Whenever the office of chairperson or vice-chairperson of the Board falls vacant, the Minister shall fill the vacancy within three weeks.

13 Meetings and procedure of Board

(1) The Board shall hold its first meeting on such date and at such place as the Minister may fix, being not more than three months after the fixed date, and thereafter the Board shall meet for the dispatch of business as often as is necessary or expedient and, subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Board shall meet not less than six times in each financial year of the Authority.

(2) The chairperson of the Board—

- (a) may at any time convene a special meeting of the Board; and
- (b) shall convene a special meeting of the Board on the written request of not fewer than two members, not later than fourteen days after his or her receipt of such request.

(3) Written notice of any special meeting convened in terms of subsection (2) shall be sent to each member not later than seven days before the meeting and shall specify the business for which the meeting has been convened:

Provided that if, in the opinion of the chairperson, the urgency of the business for which the meeting is to be convened so requires, notice of not less than forty-eight hours may be given.

(4) No business shall be discussed at a special meeting convened in terms of subsection (2) other than—

- (a) such business as may be determined by the chairperson of the Board, where he or she has convened the meeting in terms of paragraph (a) of that subsection; or
- (b) the business specified in the request for the meeting, where the he or she has convened the meeting in terms of paragraph (b) of that subsection.

(5) The chairperson or, in his or her absence, the vice-chairperson shall preside at all meetings of the Board:

Provided that, if the chairperson and the vice-chairperson are both absent from a meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) Three members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(8) Subject to section 16, at all meetings of the Board each member present shall have one vote on each question before the Board and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to a deliberative vote.

(9) Any proposal circulated among all members and agreed to in writing by a majority of all members shall have the same effect as a resolution passed by a duly constituted meeting of the Board and shall be incorporated into the minutes of the next succeeding meeting of the Board:

Provided that if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

14 Committees of Board

(1) For the better exercise of its functions the Board may establish one or more committees and vest in the committees such of its functions as it thinks fit:

Provided that the vesting of any functions in a committee shall not divest the Board of those functions in relation to any matter that has not been decided by the committee.

(2) Where it has established a committee, the Board—

- (a) shall appoint at least one member of the Board to be a member of the committee and shall designate that member, or one of its members, as the case may be, to be chairperson of the committee; and
 - (b) subject to subsection (3), may appoint persons who are not members of the Board to be members of the committee.
- (3) The Board shall not appoint a person to be a member of a committee if he or she is disqualified in terms of section 8 from appointment as member of the Board.
- (4) The office of a member of a committee of the Board shall terminate-
- (a) in the case of a member who is a member of the Board, upon his or her ceasing to be a member of the Board;
 - (b) in the case of a member who is not a member of the Board, if he or she would be required in terms of section 9 to vacate office had that section and section 8(1)(a), (b) and (c) applied to him or her.
- (5) Subject to this section, members of committees of the Board shall hold office on such conditions as the Board may fix for members of committees generally.
- (6) The chairperson of the Board may at any time and place convene a meeting of a committee of the Board.
- (4) Subject to sections 16(2) and 18, the procedure to be followed at any meeting of a committee of the Board shall be fixed by the Board.

15 Remuneration and expenses of members of Board and members of committees

- (1) Members of the Board and of committees of the Board shall be paid from the funds of the Authority—
- (a) such remuneration, if any, as the Board, with the approval of the Minister, may from time to time fix for such members generally; and
 - (b) such allowances as the Board, with the approval of the Minister, may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Board or the committee concerned, as the case may be.
- (2) The remuneration of a member of the Board or of a committee of the Board shall not, without the member's consent, be altered to his or her detriment during his or her tenure of office.

16 Disclosure of interest of members of Board and members of committees

- (1) If a member of the Board or of a committee of the Board or a spouse of such a member-
- (a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Authority or in any application for a licence under consideration by the Authority; or
 - (b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or association of persons applying for the grant of a licence by the Authority; or
 - (c) owns immovable property or holds a right in immovable property or a direct pecuniary interest in a company or association of persons which results in his or her private

interest coming or appearing to come into conflict with his or her duties as a member;
or

- (d) commences any occupation, service or employment for remuneration which results in his or her private interest coming or appearing to come into conflict with his or her duties as a member;

the member shall forthwith disclose the fact to the Board or to the committee, as the case may be.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Board or the committee, as the case may be, which relates to any contract, right, immovable property, interest or licence referred to in that subsection.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

17 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid on the ground that-

- (a) the Board consisted of fewer than the minimum number of persons prescribed in section 6(1); or
- (b) a disqualified person acted as a member of the Board at the time the decision was taken or act was done or authorized:

Provided that the Board shall ratify any such decision or action as soon as possible after it becomes aware that the decision or action was taken in the circumstances described in paragraph (a) or (b).

18 Minutes of proceedings of Board and committees

(1) The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board and of a committee of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairperson of the meeting to which the minutes relate or by the chairperson of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

PART IV

FINANCIAL PROVISIONS

19 Funds of Authority

The funds of the Authority shall consist of—

- (a) fees, levies and other income accruing to the Authority from licences issued and other things done by it in terms of this Act; and
- (b) such moneys as may be payable to the Authority from moneys appropriated for the purpose by Act of Parliament; and

- (c) such other moneys as may vest in or accrue to the Authority, whether in the course of its operations or otherwise.

20 Investment of moneys not immediately required by Authority

Moneys not immediately required by the Authority may be invested in such manner as the Authority considers appropriate.

21 Financial year of Authority

The financial year of the Authority shall be the period of twelve months ending on the 31st December in each year or such other date as the Minister may prescribe.

22 Accounts of Authority

(1) The Board shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and property, including such particular accounts and records as the Minister may direct.

(2) Not later than three months after the end of each financial year of the Authority, the Authority shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

23 Audit of Authority's accounts

(1) Subject to the Audit and Exchequer Act [*Chapter 22:03*], the Authority shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Authority in terms of section 22(1) shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of section 22(2) and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Authority's affairs.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from its auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the Authority's operations, funds and property as the Minister may consider expedient, and the Board shall forthwith comply with any such requirement.

24 Powers of auditors

(1) An auditor appointed in terms of section 23 shall be entitled at all reasonable times to require to be produced to him or her all accounts and other records relating to such accounts which are kept by the Authority or its agents and to require from any member of the Board or employee or agent of the Authority such information and explanation as in the auditor's opinion are necessary for the purposes of his or her audit.

(2) Any member of the Board or employee or agent of the Authority who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding three years or to both fine and such imprisonment.

PART V

MISCELLANEOUS PROVISIONS RELATING TO AUTHORITY

25 Minister may give policy directions

(1) The Minister may give the Board such general directions relating to the policy which the Authority is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest.

(2) The Board shall take all necessary steps to comply with any direction given to it in terms of subsection (1).

(3) When any direction has been given to the Board in terms of subsection (1), the Board shall ensure that the direction and any views the Board has expressed on it are set out in the Authority's annual report.

26 Reports of Authority

(1) In addition to any report which the Authority is required to submit to the Minister in terms of this Act or the Audit and Exchequer Act [*Chapter 22:03*], the Authority—

(a) shall submit to the Minister such other reports as the Minister may require; and

(b) may submit to the Minister such other reports as the Authority considers advisable; in regard to the operations and property of the Authority.

(2) The Minister shall, within six months of the end of the Authority's financial year, lay before Parliament a report submitted to him or her by the Authority in terms of subsection (1), together with the statement of accounts and auditor's report for the preceding financial year of the Authority referred to in sections 22 and 23.

27 Chief Executive Officer and other employees of the Authority

(1) For the better exercise of the functions of the Authority, the Board shall, in consultation with the Minister, appoint a person to be the Chief Executive Officer of the Authority, on such terms and conditions as the Board, with the approval of the Minister, may fix.

(2) The Board shall terminate the appointment of the Chief Executive Officer if he or she would be required if he or she would be required in terms of section 9(b) or (c) to vacate his or her office had that section and section 8(1)(a), (b) and (c), and subsection (2) of that section, applied to him or her.

(3) The Board shall not terminate the services of the Chief Executive Officer on a ground other than one referred to in subsection (2) without the approval of the Minister.

(4) The Board shall employ such persons in addition to the Chief Executive Officer as it considers expedient for the better exercise of the functions of the Authority.

(5) Subject to the general control of the Board, the Chief Executive Officer shall be responsible for—

(a) managing the operations and property of the Authority; and

(b) supervising and controlling the activities of the employees of the Authority in the course of their employment.

(6) The Board may assign to the Chief Executive Officer such of the functions of the Board as the Board thinks fit:

Provided that the Board shall not assign to the Chief Executive Officer any duty that has been assigned to the chairperson of the Board.

(7) Any assignment of functions in terms of subsection (6) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Board may determine, and may be revoked by the Board at any time.

(8) The Chief Executive Officer shall have the right to attend meetings of the Board and, except in the case of any discussion relating to the terms and conditions of his or her appointment, to take part in the proceedings of the Board as if he or she were a member, but shall not have a vote on any question before the Board.

28 Exemption from liability for Authority

No liability shall attach to the Authority or any employee of the Authority or to the Board or a member or to any committee of the Board or member thereof for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Authority or the Board:

Provided that this section shall not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him or her which was caused by gross negligence or recklessness.

PART VI

LICENCES

29 Licensing requirement

(1) No person other than a petroleum company licensed under this Part shall procure, sell or produce any petroleum product.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

30 Procurement licences

(1) Subject to such terms and conditions as the Authority may fix in the licence, a procurement licence shall authorise the licensee to purchase fuel for the purpose of reselling it in bulk to one or more licensees.

(2) A procurement licensee shall sell petroleum products in an open, transparent and competitive manner unless the circumstances require otherwise or the Authority allows or requires an alternative method of sale.

31 Retailing licence

(1) A retailing licence shall authorise the licensee to supply petroleum products to customers.

(2) A retailing licensee shall purchase petroleum products for resale from a procurement or production licensee and all purchases and sales of petroleum products by the licensee shall be done in an open, transparent and competitive manner.

32 Production licence

(1) A production licence shall authorise the licensee to construct, own, operate and maintain facilities for the production of petroleum products.

(2) A production licensee may supply petroleum products to any procurement or retailing licensee and, with the approval of the Authority, to any one or more customers.

33 General duties of licensees

(1) A licensee shall comply with the provisions of its licence, any regulations made in terms of this Act and any code of conduct or standard issued by the Authority from time to time.

(2) Subject to the terms and conditions of its licence, it shall be the duty of every licensee to provide its licensed services efficiently and maintain an efficient and economic procurement, supply or production system, as the case may be.

34 Restriction on transfer, etc. of licence or petroleum undertaking

A licensee shall not assign or cede its licence or transfer its petroleum undertaking, or any part thereof, by way of sale, lease, exchange or otherwise, without the prior consent of the Authority:

Provided that, should the Authority determine that in any instance the circumstances so require, it may fix licence terms and conditions providing for its specific or general consent to the transfer of the licence or any petroleum undertaking covered by the licence.

35 Licence application

(1) An application for a licence shall be made to the Authority in the form and manner prescribed and accompanied by the prescribed fee, if any, and such information or documents as may be prescribed or as the Authority may require.

(2) Subject to subsection (5), if, on consideration of an application in terms of subsection (1), the Authority is satisfied that-

- (a) the applicant will comply with this Act and with the applicable licence terms and conditions for the petroleum undertaking to be operated by the applicant with such standard terms and conditions as apply to the petroleum product undertaking of the applicant; and
- (b) the grant of the licence does not infringe the rights of any other licensees; and
- (c) the grant of a licence is in the public interest.

the Authority shall issue the appropriate licence to the applicant.

(3) Within thirty days after the issue of a licence in terms of subsection (2) the licensee shall, at its own expense, cause the licence to be published in a newspaper circulating in the area in which it intends to operate.

(4) If, on consideration of an application in terms of subsection (1), the Authority is not satisfied as to the matters referred to in subsection (2), it shall refuse to issue a licence to the applicant concerned:

Provided that-

- (a) before so refusing, the Authority shall notify the applicant in writing of its intention to do so and shall afford the applicant an adequate opportunity to make representations in the matter;

- (b) within twenty days after its refusal to issue a licence on any ground, the Authority shall notify the applicant in writing of its decision and of the reasons for it.

(7) The period between the Authority's receipt of an application in terms of subsection (1) and all documents and information required to be submitted in support of it, and the date on which it notifies the applicant of its final decision, shall not exceed six months unless the applicant consents to an extension of the period.

36 Terms and conditions of licence

(1) A licence shall be issued subject to such terms and conditions as may be prescribed or as the Authority may reasonably determine in the circumstances.

(2) Without derogation from the generality of subsection (1), the terms and conditions of a licence may require the licensee to-

- (a) enter into agreements on specified terms with other persons for the provision or use of tankers, storage facilities and such other infrastructure and equipment that is commonly used in the petroleum industry;
- (b) refer disputes between the licensee and any other licensee for arbitration, mediation or determination by the Authority.

(3) There shall be in every licence a condition requiring the licensee to prepare and submit to the Authority each year an annual statement of accounts in such form, and containing such particulars, as the Authority may require.

37 Renewal of licence

(1) The licensee may apply for the renewal of its licence.

(2) An application for the renewal of a licence shall be made to the Authority in the form and manner and within the period prescribed, and be accompanied by the prescribed fee, if any.

38 Amendment of licence

The Authority may at any time amend a licence-

- (a) to correct any manifest error in the licence; or
- (b) if the licensee requests the amendment; or
- (c) if the amendment is made pursuant to a condition of the licence.

39 Enforcement of licence

(1) Without derogation from section 40, where the Authority is satisfied that a licensee is contravening, has contravened or is likely to contravene any of the conditions of his licence, the Authority may serve on the licensee an order-

- (a) requiring the licensee to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence; and
- (b) stipulating the period within which any requirement referred to in paragraph (a) shall be commenced and completed;

(2) Before serving an order in terms of subsection (1), the Authority shall serve a notice upon a licensee setting out the proposed order and affording the licensee an opportunity to make

representations to the Authority within such reasonable period from the date of service of the notice as it shall specify.

(3) After considering any representations made in terms of subsection (2), the Authority may serve, or refrain from or defer serving, an order in terms of subsection (1).

(4) An order served in terms of subsection (1) may specify a penalty for each day that the licensee subjected to the order is in default of compliance with the order, not exceeding the period and amount prescribed.

(5) Civil proceedings for specific performance, an interdict, damages, the recovery of any penalty imposed in terms of subsection (4) or other appropriate relief in respect of any contravention or threatened contravention of an order served in terms of subsection (1) may be brought against the licensee concerned by the Authority.

(6) The amount of any penalty imposed and recovered in terms of this section shall form part of the funds of the Authority.

40 Cancellation of licence

(1) The Authority may, on its own initiative or upon receiving a complaint from-

- (a) any consumer of a petroleum product or any association considered by the Authority to be sufficiently representative of such consumers or of traders or industrialists;
- (b) any other licensee or person involved in the transportation or distribution of petroleum products;

conduct such licensee an inquiry into the operations of any licensee to determine its compliance with this Act and its licence.

(2) In conducting an inquiry in terms of subsection (1), the Authority shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply with any such changes as may be necessary in relation to such inquiry.

(3) If, after an inquiry held in terms of subsection (2), the Authority is satisfied that-

- (a) the licensee has contravened any provision of this Act; or
- (b) the licensee has failed to comply with any term or condition of its licence; or
- (c) the financial position of the licensee is such that it is unable to fully and efficiently discharge the duties and obligations imposed on it by its licence;

the Authority may cancel the licence.

(4) The Authority shall notify the licensee in writing of the date and venue of an inquiry under this section and shall allow the licensee an opportunity to make representations at the inquiry.

41 Form of licence

A licence shall be in the prescribed form and shall specify-

- (a) the type of licence; and
- (b) the name of the licensee; and
- (c) the date of issue and expiry of the licence; and

- (d) any terms and conditions subject to which the licence is issued; and
- (e) any other matters which the Authority considers necessary.

42 Register of licences

(1) The Authority shall maintain or cause to be maintained a register of licences in which shall be recorded, in relation to each licence-

- (a) the name of the licensee; and
- (b) the nature of the licence; and]
- (c) any terms and conditions subject to which the licence was issued; and
- (d) any renewal, amendment, suspension or cancellation of the licence.

(2) The register kept in terms of subsection (1) shall be open for inspection by members of the public at all reasonable times at the office of the Authority on payment of a fee, if any, specified by the Authority.

43 Returns by licensees

Every licensee shall-

- (a) make a weekly return to the Ministry and the Authority of such matters, and in such form, as may be prescribed;
- (b) account monthly for the disposal of its petroleum products by making a monthly return to the Ministry and the Authority in the prescribed form;
- (c) no later than the third working day after the end of the month to which the return relates, submit a monthly price build-up to the Ministry and the Authority showing the amount by which the pre-sale cost of a petroleum product has increased during the month to which the return relates.

PART VII

PRICE STABILISATION FUND

44 Interpretation in Part VII

In this Part-

"fuel" means petrol and diesel referred to in paragraphs (a) and (b) of the definition of "petroleum product" in section 2(1), and includes petrol and diesel or any substitute therefor derived from a non-fossil fuel source;

"Fund" means the Fuel Price Stabilisation Fund established in terms of section 45.

45 Establishment of Fuel Price Stabilisation Fund

There shall be established a fund to be known as the Fuel Price Stabilisation Fund, whose management and control shall be vested in the Minister as trustee of the Fund.

46 Object of Fund

The object of the Fund shall be to stabilise the price at which fuel is sold to consumers by paying out such-

- (a) bounties or subsidies for the local production of fuel; and

- (b) contributions towards any scheme approved by the Minister for the direct stabilisation of the prices of fuel;

as the Minister shall think proper having regard to the financial position of the Fund and the other circumstances of the case.

47 Composition of Fund

The fund shall consist of-

- (a) the proceeds of the levy payable in terms of section 48; and
- (b) any moneys that may be payable to the Fund from moneys appropriated for the purpose by Act of Parliament; and
- (c) any moneys that the Fund may obtain, with the approval of the Minister and Minister responsible for Finance, by way of grants, donations or otherwise; and
- (d) any moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise.

48 Fuel price stabilisation levy

(1) The Minister, in consultation with the Authority, and with the approval of the Minister responsible for finance, may by notice in a statutory instrument, impose a fuel price stabilisation levy on any person or class of persons whose activities are affected by fluctuations in the prices of fuel.

(2) In prescribing a fuel price stabilisation levy in terms of subsection (1), the Minister shall prescribe-

- (a) the person responsible for the payment of the levy; and
- (b) the person responsible for the collection and remittal of the levy; and
- (c) the manner and times at which the levy shall be paid, collected and remitted; and
- (d) the imposition of interest if the levy is not paid within the time prescribed.
- (e) the date from which interest imposed under paragraph (d) shall be calculated:

Provided that such date shall not be earlier than the date of publication of the statutory instrument in the *Gazette*.

(3) A statutory instrument may not be made in terms of this section unless a draft has been laid before an approved by resolution of the House of Assembly.

(4) A fuel price stabilisation levy and any interest connected therewith shall be a debt due to the Authority and any amount of the levy or of such interest thereon that is not paid, collected or remitted may be recovered by the Authority by proceedings in a court of competent jurisdiction.

49 Financial year of Fund

The financial year of the Fund shall be a period of twelve months ending on 31 December in each year.

50 Books of accounts and audit of Fund

- (1) The Minister shall ensure that-

- (a) proper accounts and other records relating thereto are kept in relation to all financial transactions of the Fund; and
- (b) in respect of each financial year-
 - (i) a balance sheet; and
 - (ii) a statement of the transactions referred to in paragraph (a);

are prepared without delay.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him or her by section 9 of the Audit and Exchequer Act [Chapter 22:03] as though the assets of the Fund were public moneys or State property.

PART VIII

CONSUMER PROTECTION AND LICENSEE PERFORMANCE STANDARDS

51 Consumer protection standards

(1) The Authority shall require every licensee to develop and submit to the Authority, for its review, the following-

- (a) customer service standards;
- (b) customer complaint handling standards.

(2) The Authority may develop model consumer protection standards which shall be published in such manner as the Authority deems fit.

(3) The Authority shall fix safety, health and environmental standards which the licensee must follow when carrying out business in the petroleum industry.

52 Competition

The Authority shall have the responsibility for monitoring whether the provision of petroleum products is being done competitively.

PART IX

MAINTENANCE OF STRATEGIC RESERVES AND PRICE CONTROL

53 Strategic reserves

(1) The Authority shall, after consultation with the Minister, require that NOCZIM maintain prescribed minimum stocks of petroleum products as strategic reserves.

(2) The Minister shall, after consultation with the President, prescribe the drawdown mechanism in respect of the strategic reserves.

54 Petroleum product prices

(1) The Authority shall, after consultation with the Minister, prescribe the price of any petroleum product.

(2) When prescribing the price of a petroleum product, the Authority shall take into consideration the cost build-ups of petroleum products.

PART X

GENERAL

55 Inspections

(1) The Authority may appoint officers to be inspectors for the purposes of this Act and shall furnish each officer so appointed with a certificate signed by or on behalf of the Chief Executive Officer stating that he or she has been appointed as an inspector.

(2) An inspector or a police officer may require a person whom he or she has reasonable cause to suspect is a person required in terms of this Act to possess a licence to produce his or her licence.

(3) If a person referred to in subsection (2)-

- (a) is unable to produce his or her licence on demand; or
- (b) cannot be located at his or her usual or last-known place of abode or business;

the inspector or police officer concerned may serve on the person a notice in the form provided by the Authority requiring that person to produce that notice and his or her licence to the police officer in charge of a police station within seven days from the date of service of that notice.

(4) A police officer to whom a notice and a licence has been produced in terms of subsection (3) shall forthwith-

- (a) issue to the person who produced the notice and licence a receipt in the form provided by the Authority; and
- (b) notify the inspector or police officer who served the notice that the notice and the licence has been produced.

(5) If a person who has been served with a notice in terms of subsection (2)-

- (a) fails to comply with the requirement contained in that notice, he or she shall be presumed, until the contrary is proved, not to be the holder of the licence referred to in the notice;
- (b) is subsequently prosecuted for failing to comply with the requirement contained in that notice, he or she shall be presumed, unless the contrary is proved, not to have produced his or her licence in compliance with the notice.

(6) Subject to subsection (8), an inspector or a police officer may at all reasonable times enter premises of a licensee-

- (a) on which he or she has reasonable cause to suspect is established, constructed or installed petroleum outlets, storage facilities, tankers and such other infrastructure which is causing or may cause a public nuisance or an environmental or health hazard; or
- (b) on which he or she has reasonable cause to suspect an offence against this Act has been committed;

and shall have power to make such examination, inspection and inquiry and to do such things as may appear to him or her necessary for ascertaining whether compliance has been made with this Act.

(7) Subject to subsection (8), all books, records, accounts and documents required to be kept by a licensee in terms of this Act shall be open to inspection at all reasonable times by an inspector or by a police officer.

(8) The powers of entry and inspection conferred by this section shall not be exercised-

- (a) except in accordance with a search warrant issued in terms of section 90 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; or
- (b) except with the consent of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence in terms of this Act or for the obtaining of evidence relating to such an offence.

(9) An inspector or police officer may, in the exercise of the powers conferred upon him or her by this section, seize any-

- (a) petroleum products or storage apparatus which he or she has reasonable cause to suspect is being used by or is in the possession or under the control of a person in contravention of this Act; or
- (b) vehicle or tanker or other apparatus which he or she has reasonable cause to suspect is being used by or is in the possession or under the control of a person in contravention of this Act; or
- (c) book, record or document which he or she has reasonable cause to suspect will afford evidence of the commission of an offence against this Act;

and may retain it for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry.

(10) An inspector may, in the exercise of the powers conferred upon him or her by this section, order a licensee to cease using, pending inquiry by the Authority, any storage facility or other apparatus which, in his or her opinion, is causing or may cause a public nuisance or an environmental or health hazard or is being used otherwise than in accordance with this Act or the terms and conditions of his or her licence.

(11) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon the inspector by this section, exhibit the certificate issued to him or her in terms of subsection (1).

56 Appeals

(1) Any person who is aggrieved by-

- (a) a decision of the Authority not to issue a licence; or
- (b) any term or condition of a licence issued to him or her, or a refusal by the Authority to specify a term or condition in a licence; or
- (c) a refusal by the Authority to renew a licence; or
- (d) any amendment of a licence or a refusal by the Authority to amend a licence; or
- (e) the cancellation of a licence; or
- (f) any other decision of the Authority;

may appeal to the Administrative Court.

(2) An appeal to the Administrative Court in terms of subsection (1) shall-

- (a) not have the effect of suspending the decision appealed against;
- (b) be made in the form and manner and within the period prescribed in rules of court.

(3) On an appeal in terms of subsection (1), the Administrative Court may confirm, vary or set aside the decision or action appealed against and may make such order, whether as to costs or otherwise, as the court thinks just.

57 Regulations

(1) The Minister may, after consultation with the Authority, make regulations prescribing all matters which by this Act are required to be prescribed or which, in the opinion of the Authority, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof not exceeding a fine of level nine or imprisonment for a period of five years or both such fine and such imprisonment.

PART XI

OFFENCES

58 False statements and declarations and other offences

(1) Any person who, before the Authority or in any application for a licence under this Act, makes any statement which he or she knows to be false or does not have reasonable grounds to believe to be true, shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who-

- (a) in contravention of section 43, fails or refuses to furnish a return or to supply information in the manner and in the time prescribed or furnishes a false or incomplete return or supplies false or incomplete information; or
- (b) wilfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed upon him or her by or under this Act; or
- (c) fails or refuses, without reasonable cause, to give information to an inspector or police officer when required to do so in terms of this Act; or
- (d) fails to comply with any requirement contained in a notice served in terms of this Act; or
- (e) wilfully destroys, injures or removes the storage facilities, equipment or apparatus of a licensee used in connection with its petroleum undertaking;

shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

59 Disclosure of confidential information and use of information acquired by inspectors, etc., for personal gain

(1) If an inspector or member or employee of the Authority in the course of his or her duties as such acquires information relating to the financial affairs of any person, or to any commercial secret, he or she shall not for personal gain make use of such information nor disclose it to any other person except-

- (a) for the purpose of legal proceedings under this Act or any other law; or
- (b) to the extent that it may become necessary to do so for the purpose of this Act or any other law, to another inspector or member or employee of the Authority.

(2) No inspector or member or employee of the Authority shall, for personal gain, make use of any information acquired by him or her in the course of his or her duties as such for a period of five years after the date on which he or she ceased to be an inspector, member or employee.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

PART XII

SAVINGS AND TRANSITIONAL PROVISIONS

60 Savings and transitional provisions

(1) Any regulations, by-laws or notices which, immediately before the fixed date, were in force under the Control of Goods Act [*Chapter 14:05*], relating to petroleum industry shall continue in force, with such changes as may be necessary, as if they had been made by the Minister in terms of this Act, and may be amended or repealed accordingly.

(2) Any licence which was issued in terms of the Control of Goods Act [*Chapter 14:05*] and which had effect immediately before the fixed date shall continue to have effect, with any changes that may be necessary, for the remainder of its period of validity as if it had been issued under the appropriate provision of this Act.

(3) NOCZIM shall be deemed to be the holder of such licence or licences under this Act as are appropriate to its operations.

SCHEDULE (Section 4(2))

ANCILLARY POWERS OF AUTHORITY

1. To acquire by lease, purchase, or otherwise, immovable property, and to construct buildings thereon..

2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.

3. To maintain, alter and improve property acquired by it.

4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Authority may, with the approval of the Minister, determine.

5. To open bank and building society accounts in the name of the Authority and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind such suretyships or guarantees.

8. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Authority thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions. .

9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under conditions as may be approved by the Minister.

10. To employ, upon such terms and conditions as the Authority may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.

11. Subject to section 39 of the Audit and Exchequer Act [*Chapter 22:03*], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay such bonuses and the like to its employees as the Authority thinks fit.

12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.

13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.

14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Authority.

15. To sell or let dwellings and land for residential purposes to its employees.

16 With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.

17 To provide security in respect of loans guaranteed in terms of paragraph 16 by the deposit of securities.

18. With the approval of the Minister, to make loans to any employee of the Authority-

- (a) for the purpose of purchasing vehicles, tools or other equipment used him or her in carrying out his or her duties; or
- (b) not exceeding three months' salary or wages payable to him or her, for any purpose;

on such security as the Authority considers adequate.

19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.

20. To provide such services as the Authority considers could properly be provided by the Authority.

21. With the approval of the Minister, to provide financial assistance to any person, association, organisation or institution whose activities are such as to be, in the opinion of the Authority, of benefit to the Authority.

22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Authority under this Act or any other enactment.