

OCEAN THERMAL ENERGY CONVERSION ENACTMENT 2024

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## STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR  
BIN DATUK HAJI MAHIRUDDIN,  
*Yang di-Pertua Negeri.*

10 MAY, 2024.

### **No. 1 of 2024**

An Enactment to provide for the regulation and licensing of exploration activity, construction or operation of the ocean thermal energy conversion facility or plantship and for purposes connected therewith.

ENACTED by the Legislature of the State of Sabah as follows:

### PART I PRELIMINARY

#### **Short title and commencement**

**1.** (1) This Enactment may be cited as the Ocean Thermal Energy Conversion Enactment 2024.

(2) This Enactment comes into operation on the date of its publication in the *Gazette*. [16.05.2024]

## Interpretation

2. In this Enactment, unless the context otherwise requires —

“authorized officer” means any public officer or officer of the Commission who is authorized in writing by the Minister for the purposes of this Enactment;

“Chief Executive Officer” means the Chief Executive Officer of the Commission;

“Commission” means the Commission established under the Energy Commission of Sabah Enactment 2023 [*No. 11 of 2022*];

“danger” means danger to health or to human life or limb from shock, burn, or other injury and includes danger to property;

“exploration” means to search for potential ocean thermal energy conversion area and includes prospecting;

“facility” means an ocean thermal energy conversion facility;

“Government” means the Government of the State of Sabah;

“licence” means a licence issued under section 6;

“licensee” means a person licensed under section 4;

“Minister” means the Minister for the time being charged with the responsibility for matters relating to energy;

“ocean thermal energy conversion” means a process used for production of electricity or other form of energy by using temperature differences between deep ocean water and ocean surface water;

“ocean thermal energy conversion facility” means any facility which is located onshore or fixed or moored in Sabah waters and which is designed to use temperature differences between deep ocean water and ocean surface water to produce electricity or another form of energy capable of being used directly to perform work and includes any equipment installed on such facility;

“ocean thermal energy conversion plantship” means any vessel floating unmoored or moving through Sabah waters which is designed to use temperature differences between deep ocean water and ocean surface water to produce electricity or another form of energy capable of being used directly to perform work and includes any equipment installed on such vessel;

“plantship” means an ocean thermal energy conversion plantship;

“Sabah waters” means the area of the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sabah under the North Borneo (Alteration of Boundaries) Order in Council 1954;

“safety” means the obviation of danger to the general public or to property; and

“this Enactment” includes any subsidiary legislation made under this Enactment.

## PART II

### FUNCTIONS AND DUTIES OF COMMISSION

#### **Functions and duties of Commission**

3. (1) The Commission shall have the following functions and duties:

- (a) to issue licences under section 6;
- (b) to regulate the exploration activity and the construction, operation and location of the facility and plantship;
- (c) to protect the interests of Government in the exploration activity and in the construction, operation and location of the facility and plantship;
- (d) to advise the Minister on all matters relating to ocean thermal energy conversion, including recommendations on policies, laws and actions to be applied to promote ocean thermal energy conversion;

- (e) to carry out, arrange, support or promote the conduct of researches and innovation activities, assessments, studies and advisory services, and to collate, analyse and publish information, statistics and factors influencing or relevant to the development of ocean thermal energy conversion sector;
- (f) to facilitate the development of facility and plantship;
- (g) to monitor the operation of the facility and plantship including to carry out investigations, collect, record and maintain data, information and statistics and to provide such data, information and statistics to the Minister as he may from time to time require;
- (h) to conduct, promote and support, in such manner as the Commission deems fit, training or other programmes relating to the development of human resources and capacity building in the ocean thermal energy conversion sector;
- (i) to act as a focal point to assist the Minister on matters relating to ocean thermal energy conversion; and
- (j) to carry on all such other activities as may appear to the Commission requisite, advantageous or convenient for the purpose of carrying out or in connection with the performance of its functions and powers under this Enactment.

(2) The functions and duties of the Commission may at any time be carried out by any officer of the Commission duly appointed in writing by the Commission for such purpose.

### PART III

### LICENSING

#### **Licensing**

4. (1) No person shall carry out any exploration activity, construction or operation of the facility or plantship unless such person is licensed under this Enactment.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both, and in the case of a continuing offence, to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

(3) Any licensee who, without the written approval from the Commission, carries out any exploration activity, construction or operation of facility or plantship outside the area specified in his licence shall be deemed to be operating without a licence and commits an offence under subsection (2).

#### **Application for licence**

5. (1) A person may apply to the Commission for a licence under section 4 subject to such prescribed fee as may be imposed by the Commission.

(2) Any person applying for a licence under subsection (1) shall provide to the Commission any information as determined by the Commission.

(3) All persons applying for a licence under this Enactment shall comply with the principles and procedures as may be prescribed by the codes or guidelines issued by the Commission for the purpose of making such application.



## **Grant of licence**

**6.** (1) The Commission may, with the approval of the Minister, grant a licence to a person on such terms and conditions and on payment of such prescribed fee as may be imposed by the Commission.

(2) A licence shall not be granted to any person —

(a) if the grant of the licence may, in the opinion of the Commission, give rise to a conflict of interest in the discharge of any duty imposed on the person under this Enactment or any other licence granted to him under this section; or

(b) who is not incorporated in Malaysia or does not have a place of business in Sabah.

(3) For the purpose of granting a licence under this section, the Commission may grant more than one licence to any person as the Commission deems fit.

(4) No licence shall be capable of being transferred, assigned, sub-assigned or otherwise disposed of unless the written consent of the Minister or the Commission has been obtained.

(5) Licences may be for such periods as the Commission may in each case approve.

(6) Any licence granted under this section may extend to the determination of the area of the exploration activity, construction or operation of the facility or plantship by the Commission.

(7) Subject to the approval of the Minister, any licence granted under this section may authorize the licensee to lay, place or carry —

(a) onshore; or

(b) on, under or over Sabah waters,

to the extent and in the manner specified in the licence, such equipment as may in the opinion of the Commission be necessary or proper for the purposes of the licence, and subject always to the approval of the Minister, the said authorization may be given or added to at any time during the validity of the licence.

## **Security**

**7.** (1) Before the grant of any licence, the Commission may require a security, either in the form of cash or bank guarantee as the Commission may specify, to be furnished for the due observance of the terms and conditions of the licence.

(2) The amount of the security shall be based on the licensee's exploration, construction or operational costs, as the case may be, as determined by the Commission and such amount may be reviewed from time to time.

(3) If a licence is revoked under section 10, the security shall be forfeited as the Commission deems fit.

(4) For the purpose of this section, "operational costs" means all costs calculated by the Commission to be the costs of operating the facility or plantship including wages, costs of fuel, spare parts, labour charges and lubricants but not including capital costs or loans.

## **Licensee to comply with terms and conditions of licence**

**8.** (1) A licensee shall comply with the terms and conditions of a licence granted under section 6.

(2) Any licensee who fails to comply with any terms and conditions specified in the licence commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and in the case of a

continuing offence, to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

**Power to impose additional terms or conditions or to amend terms or conditions**

**9.** The Commission may, at any time —

- (a) impose any additional terms or conditions on the licence granted under section 6; or
- (b) amend any of the terms or conditions imposed on the licence granted under section 6.

**Suspension or revocation of the licence**

**10.** (1) The Commission may suspend or revoke a licence under any of the following circumstances:

- (a) the licensee has contravened any provisions of this Enactment;
- (b) the licensee has failed to comply with any of the terms or conditions of the licence;
- (c) the licensee has default of payment of any moneys payable under this Enactment;
- (d) the licensee has ceased to carry out exploration activity or to construct or operate the facility or plantship which he was authorized to do under the licence;
- (e) the licensee has failed or refused to carry out exploration activity or to construct or operate the facility or plantship stipulated in the licence;
- (f) the licensee had improperly or illegally obtained the licence;

- (g) the licensee has been convicted of an offence under this Enactment;
- (h) a receiver, receiver and manager, provisional liquidator or like official has been appointed over the whole or substantial part of the licensee's assets and such appointment is not revoked or annulled within a period of sixty days from the date of appointment; or
- (i) there has been any act or default on the part of the licensee or there has been a change of circumstances such that the licensee would no longer be entitled to be granted a licence under this Enactment.

(2) Before the Commission makes a decision under subsection (1), the Commission shall give the licensee —

- (a) a written notice of its intention to suspend the licence; and
- (b) an opportunity to make written representations within a period specified in the written notice which shall not be less than fourteen days.

(3) After the expiry of the period specified in the notice, the Commission shall, after considering the written representations made by the licensee under subsection (2), if any, decide whether to suspend the licence or not.

(4) The Commission shall give the licensee a written notice of its decision under subsection (3) as soon as practicable.

(5) Upon the suspension of a licence, the Commission may —

- (a) require the licensee to rectify any breach of any condition of the licence or to pay any moneys accrued due thereunder within a certain specified period; and
- (b) in the interest of the public, authorize another person to continue —

- (i) the exploration activity; or
- (ii) the construction or operation of the facility or plantship, if the facility or plantship has been in construction or operation for the period of suspension.

(6) If the Commission is satisfied that the licensee has complied with the requirement under paragraph (5)(a) the suspension may be lifted and the licensee may be allowed to continue the exploration activity, construction or operation of the facility or plantship, as the case may be.

(7) If the licensee fails to rectify the breach as required under paragraph (5)(a), the Commission may revoke the licence.

(8) Upon revocation of a licence, the Commission may —

- (a) require the licensee, within a reasonable period of time, to remove his equipment, facility or plantship at the licensee's cost;
- (b) acquire the facility or plantship on payment of adequate compensation to the licensee and appoint another licensee to complete the construction of, or to operate the facility or plantship; or
- (c) authorize another licensee, on payment of adequate compensation, to acquire the facility or plantship and to complete the construction of, or to operate the facility or plantship.

(9) A licensee whose licence is suspended or revoked shall not be entitled to any compensation for any loss caused to him by the suspension or revocation of a licence under this Enactment.

(10) If a licence is revoked under this section the security shall be forfeited as the Commission deems fit.

## PART IV

### PROVISIONS RELATING TO THE LICENSEE

#### **Obligation to submit business plan**

**11.** (1) Subject to the terms and conditions of a licence, licensee shall submit a five year, or such other period as determined by the Commission, rolling business plan relating to the construction or operation of the facility or plantship updated on an annual basis or any other time period as determined by the Commission according to procedures provided in the guidelines issued by the Commission.

(2) Any licensee who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

#### **Commission may require licensee to submit information, data, etc.**

**12.** (1) The licensee shall furnish to the Commission, upon request, such information, data and documents relating to the exploration activity, construction or operation of the facility or plantship.

(2) Any licensee who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit and in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for every day or part of a day during which the offence continues after conviction.

#### **Requirements on licensing**

**13.** (1) Notwithstanding any other provisions of this Enactment, if at any time it appears to the Commission that a licensee has failed to comply with any requirement of or to meet any of his duties or obligations under this Enactment or the terms and conditions of the licence, the Commission may issue a direction requiring the licensee to rectify the failure or to comply

with the requirements, duties or obligations or terms and conditions of the licence within a specified period as the Commission may determine.

(2) The licensee shall take all reasonable measures to comply and submit periodic compliance reports on the measures taken to the satisfaction of the Commission.

(3) Any licensee who contravenes subsection (2) commits an offence.

## PART V

### OFFENCES AND PENALTIES

#### Offences

**14.** (1) Any person who by any wilful, dishonest or negligent act or omission removes, destroys or damages any facility or plantship commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) Any person who by any dishonest, rash or negligent act or omission, tampers with or damages any facility or plantship so as to cause or to be likely to cause injury to human life or limb or damage to any property commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

#### Confidentiality

**15.** (1) Any person who discloses or makes use of any confidential information with respect to a particular person, including a licensee, or the affairs of an individual obtained by virtue of any provision of this Enactment commits an offence and shall, on conviction —

- (a) be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence, to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both; or
  - (b) if such person is a body corporate, be liable to a fine not exceeding one million ringgit, and for a second or subsequent offence, to a fine not exceeding five million ringgit.
- (2) Nothing in subsection (1) shall operate to prevent the disclosure of information where —
  - (a) the disclosure is made with the consent of the person from whom the information was obtained;
  - (b) the disclosure is necessary for the performance of the functions or powers of the Commission; or
  - (c) the disclosure is made in connection with an investigation of an infringement or an offence under this Enactment.
- (3) For the purposes of this section, “confidential information” means trade, business or industrial information that belongs to any person, that has economic value and is not generally available to or known by others.

## PART VI

### ENFORCEMENT

#### **Authorized officer**

**16.** (1) The Minister may in writing authorize any public officer or officer of the Commission to exercise the powers of enforcement under this Enactment.



(2) Any such officer shall be deemed to be a public servant within the meaning of the Penal Code [Act 574].

### **Authority card**

**17.** (1) There shall be issued to each authorized officer an authority card to be signed by the Minister.

(2) Whenever an authorized officer exercises any of the powers under this Enactment, he shall, on demand, produce to the person against whom the power is being exercised, the authority card issued to him under subsection (1).

### **Power of entry, inspection and examination**

**18.** An authorized officer may, for the purposes of discharging any of his duties or carrying out any of his functions under this Enactment, or otherwise for any of the purposes of this Enactment, enter at any reasonable time upon any facility or plantship to inspect and examine such facility or plantship, or for any other proper cause including the investigation of any offence under this Enactment.

### **Power to investigate**

**19.** (1) The authorized officer shall have the power to investigate the commission of any offence under this Enactment.

(2) The authorized officer may, in relation to any investigation in respect of any offence committed under this Enactment, exercise the special powers in relation to police investigation, except that the power to arrest without warrant, given by the Criminal Procedure Code [Act 593] in any seizable offence.

## **Obstruction**

### **20. Any person who —**

- (a)* refuses any authorized officer access to any facility or plantship which the authorized officer is entitled to have under this Enactment or in the execution of any duty imposed or power conferred by this Enactment;
- (b)* assaults, obstructs, hinders or interferes with any authorized officer in the execution of his duty imposed or power conferred by this Enactment; or
- (c)* refuses to give any authorized officer any information relating to an offence or suspected offence under this Enactment or any other information which may reasonably be required of him and which he has in his knowledge or power to give,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both, and in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for every day or part of a day during which the offence continues after conviction.

## **PART VII**

### **MISCELLANEOUS**

#### **General penalty**

**21.** A person who commits an offence under this Enactment for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both, and in the case of a continuing offence, to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

### **Compounding of offences**

**22.** (1) The Chief Executive Officer may compound any offence committed by any person under this Enactment by making a written offer to such person to compound the offence on payment to the Commission of an amount not exceeding fifty per cent of the amount of the maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) If the amount specified in the offer made under subsection (1) is not paid within the time specified in the offer or within such extended period as the Commission may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made.

(5) All sums of money accepted under this section shall be paid into the State Consolidated Fund.

### **Prosecution**

**23.** No prosecution shall be instituted for an offence under this Enactment except by or with the consent in writing of the Public Prosecutor.

### **Register**

**24.** (1) The Commission shall maintain a register in both electronic and non-electronic form of all matters which are required to be registered under this Enactment.

(2) Any person may on payment of any prescribed fee —

- (a) inspect the register; and
- (b) make a copy of, or take extracts from, the register.

(3) If a person requests that a copy be provided in an electronic form, the Commission may provide the relevant information —

- (a) on a data processing device; or
- (b) by way of electronic transmission.

**Audit of licensee, etc.**

**25.** (1) The Commission may —

- (a) carry out or cause to be carried out audit of any licensee, any information furnished to the Commission or on any other matters as directed by the Commission;
- (b) require a licensee to appoint, at their own cost, an independent expert, with qualifications as may be stated by the Commission to review or audit on any licence granted under this Enactment, any information which a licensee furnishes to the Commission or on any other matters as directed by the Commission.

(2) For the purpose of subsection (1), the review or audit shall be carried out in accordance with any codes, guidelines or directions issued under this Enactment, or as may otherwise be determined by the Commission.

(3) A licensee, or any other person as determined by the Commission who

—

- (a) fails to furnish any information as may be required by the Commission;

- (b) intentionally alters, suppresses or destroys any document or information which he has been required by written notice to produce; or
- (c) refuses to assist or facilitate, or obstructs the Commission, its authorized officers or appointed independent expert in conducting the audit,

under this section, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit and in the case of a continuing offence, to a further fine not exceeding ten thousand ringgit for every day or part of the day during which the offence continues after conviction.

### **Serious accidents to be reported**

**26.** (1) Whenever any accident or fire causing or resulting in loss of life or hurt to any person or serious damage to any property has occurred in connection with facility or plantship, the licensee, as the case may be, shall report the accident or fire to the Commission by the quickest means available, and subsequently with the least possible delay shall report in writing the facts of the matter so far as they are known to them respectively.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

### **Protection against suit and legal proceedings**

**27.** No action shall lie or prosecution shall be brought, instituted or maintained in any court against —

- (a) the Commission, the Chief Executive Officer or the officers duly authorized under this Enactment for or on account of

or in respect of any act ordered or done for the purpose of carrying into effect this Enactment; and

- (b) any other person for any act done or purported to be done by him under the order, direction or instruction of the Commission or any other officers duly authorized under this Enactment, if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it and for the carrying into effect the provisions of this Enactment.

### **Public Authorities Protection Act 1948**

**28.** The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission, Chief Executive Officer, authorized officers, employee or agent of the Commission in respect of any act, neglect or default done or committed or any omission by it or him in good faith, in such capacity.

### **Development of codes by the Commission and compliance of codes**

**29.** (1) The Commission may, with the approval of the Minister, develop and issue codes relating to the exploration activity, construction or operation of the facility or plantship.

(2) The Commission may develop and issue such additional codes as the Commission deems fit and expedient or as the Minister may direct, as the case may be.

(3) All codes developed and issued under this section shall only be effective upon registration by the Commission.

(4) All licensees and any other parties who have entered into any agreement shall comply with the codes.

(5) Unless otherwise determined by the Commission, in ensuring reliability, safety and security of the facility or plantship, the codes issued under this section shall take precedence over any agreement that may exist between the parties mentioned in subsection (4).

(6) Any person who contravenes subsection (4) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

### **Guidelines or directions by the Commission**

**30.** (1) The Commission may issue guidelines or directions on any matter as provided under this Enactment or as may be expedient or necessary for the better carrying out of the provisions of this Enactment.

(2) The Commission may issue directions in writing to any licensee, or any person on the compliance or non-compliance of this Enactment, conditions of licences issued, including the remedying of a breach of a licence condition or on any other matter requiring the making of a direction or specifically to be made the subject of a direction in accordance with such procedures as may be prescribed.

(3) The guidelines or directions issued by the Commission under this section shall be registered and shall be effective from the date of such registration or such later date as the Commission may specify in the guidelines or directions.

(4) A licensee or any person shall comply with the guidelines and directions.

(5) A licensee or any person who fails to comply with any guideline or direction of the Commission commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

**Modification, variation, review or revocation of code, guideline or direction by the Commission**

**31.** (1) The Commission may modify, vary, review or revoke any code, guideline or direction issued under this Enactment.

(2) The procedures set out in subsections 29(2), (3), (4), (5), 30(2), (3) and (4) shall apply in respect of any modification, variation, review or revocation of the codes, guidelines or directions.

**Power of the Commission to obtain information**

**32.** (1) The Commission may by notice require any person to furnish, within a reasonable period specified in the notice, all information and documents relating to such matters as may be reasonably be required by the Commission to carry out its functions or duties under this Enactment, which are within the knowledge of that person or in his custody or under his control.

(2) Any person who fails without any reasonable excuse to do anything required of him by notice under subsection (1) commits an offence.

(3) Any person who —

(a) intentionally alters, suppresses or destroys any information or documents which he has been required by any notice under subsection (1) to furnish; or

(b) in furnishing any documents required by any notice under subsection (1), makes any statement which he knows to be false in a material matter or recklessly make such a statement,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.



(4) If any person fails to comply with the notice under subsection (1), the court may, on the application of the Commission, make such order as the court thinks fit to secure compliance with such notice.

(5) Any order referred to in subsection (4) may provide that all the cost and expenses of and incidental to the application shall be borne by such person or by any officer of a company or other association who is responsible for the failure.

### **Disclosure of information obtained**

**33.** (1) This section applies to —

- (a) any information or document given by any person to the Commission under this Enactment; and
- (b) such information or document given whereby the person giving it notifies the Commission in writing that it is of a confidential or commercially sensitive nature.

(2) The Commission shall not disclose to any person the information or the contents of a document to which this section applies unless —

- (a) the Commission is of the opinion that —
  - (i) the disclosure of the information or the contents of the document would not cause detriment to the person supplying it or to any other person who is aware of the information or document; or
  - (ii) although the disclosure of the information or the contents of the document would cause detriment to the person supplying it or to any other person who is aware of the information or the contents of the document, the public benefit in disclosing outweighs that detriment;

- (b) the Commission gives written notice to —
  - (i) the person who supplied the information or document; and
  - (ii) any other person whom the Commission is aware has supplied the information or document to the person referred to in subparagraph (i), where the identity of such other person is known to the Commission, stating that the Commission wishes to disclose the information or contents of the document, specifying the nature of the intended disclosure and detailed reasons why the Commission wishes to make the disclosure and setting out a copy of this section; and
- (c) no appeal is made to the Minister under subsection (3) within twenty-one days of the date of the notice.

(3) A person aggrieved by the notice under paragraph (2)(b) may appeal to the Minister within twenty-one days of the date of the notice.

(4) Subsection (2) shall not prevent the Commission from disclosing any information or the contents of any document —

- (a) to any member, officer or employee of the Commission or any agent, consultant, committee or panel acting for or under the direction of the Commission;
- (b) to the Minister or any agent, consultant, committee or panel acting for or under the direction of the Minister;
- (c) when required to do so by any court or under this Enactment or any other written law; or
- (d) for the purposes of any criminal proceedings.

(5) For the purposes of this section, the disclosure of any information or the contents of a document already in the public domain at the time the

Commission wishes to disclose it cannot cause detriment to any person referred to in paragraph (2)(a).

### **Licensees' infrastructure information security**

**34.** (1) Any licensee as directed by the Commission shall be responsible for the preservation of confidentiality, integrity and availability of the licensees' information, information systems and supporting network infrastructure pertaining to the construction or operation of the facility or plantship, duties and other matters as provided under this Enactment.

(2) The licensee shall —

- (a) take the necessary measures, establish and implement standards and employ the relevant information security controls to prevent, avoid, remedy, recover or restore its information, document, instrument or records stored in its computers and for its operational system by its computers from any risk of —
  - (i) threat or unauthorized access; and
  - (ii) intrusion or removal;
- (b) take necessary measures to ensure the resiliency of its supporting network infrastructure to minimize business impact against various threats to the construction or operation of the facility or plantship; and
- (c) ensure that the reliability, continuity and quality of the construction or operation of the facility or plantship, its performance of duties and conformity to the provisions of this Enactment shall not be jeopardized thereby,

and shall, within the time specified by the Commission, submit such information as required by the Commission and in the event of any incident which may interfere or affect the performance of the licensed construction

or operation of the facility or plantship, report to the Commission and other relevant authorities.

(3) Any licensee who fails or neglects to comply with or contravenes any provision of this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding ten years or to both.

(4) For the purposes of this section —

“supporting network infrastructure” refers to relevant connection, network devices, hardware and software that provides network services in supporting business functions;

“information security controls” refers to means of managing risk, including policies, procedures, guidelines, practices or organizational structures, which can be administrative, technical, management or legal in nature; and

“resiliency” means an ability of an organization to resist being affected by an incident.

### **Special powers in emergency**

**35.** (1) The Yang di-Pertuan Agong may, on the occurrence of any industrial unrest, strike, lock-out or any other event which gives rise to an emergency, or in the interest of public safety, authorize the Commission to —

- (a) suspend the licence of any licensee, take temporary possession of any facility or plantship of such licensee and operate it in such manner as the Commission deems fit; or
- (b) withdraw either partially or totally the operation of any facility or plantship from any person or class of persons.

(2) If any doubt arises as to the existence of an emergency or whether

any act done under subsection (1) was in the interest of public safety, a certificate signed by the Yang di-Pertuan Agong and exhibited at such places as the Minister deems fit shall be conclusive proof on the point.

(3) Where the Commission takes possession of any licensees' facility or plantship under paragraph (1)(a) the licensee shall be paid adequate compensation which shall be determined by the Commission after giving an opportunity to the licensee to be heard on the matter.

### **Exemption**

**36.** The Minister may, by notification in the *Gazette*, exempt any person or class of persons from being licensed under section 6 and may, by similar notification, cancel any exemption so notified.

### **Power to make regulations**

**37.** (1) The Minister may make regulations in respect of any matter which may be prescribed under this Enactment and in particular —

- (a) the procedures for the Commission in the exercise of its functions, duties and powers under this Enactment;
- (b) the management of the exploration activity, construction or operation of the facility or plantship;
- (c) the fees to be paid for licences which are required to be prescribed under this Enactment;
- (d) the standard and methods for the construction of and the materials to be used for the facility or plantship;
- (e) to prescribe all matters relating to the issuance of licences granted under this Enactment, including the eligibility of persons applying for licences, licence fees for different types of licences, the duration of the licences, the forms of licences, the standard conditions of the licences and renewal fees;

- (f) the manner of service and the form of notices;
- (g) the means to be adopted, whether by forbidding or otherwise, to prevent or abate any nuisance likely to arise or arising from the exploration activity, construction or operation of the facility or plantship;
- (h) the interval, time and manner for any facility or plantship to be inspected, the notice to be given in relation to any inspection and the preparation to be made by the licensee or any person for such inspection;
- (i) the offences which may be compounded and the forms to be used in and the method and procedure for compounding offences;
- (j) the method and procedure for the investigation of any serious accident reported pursuant to section 26; and
- (k) any other matter generally to give effect to the provisions of this Enactment.

(2) Any regulations made under subsection (1) may prescribe any act in contravention of the regulations to be an offence and may prescribe a fine not exceeding one million ringgit or imprisonment for a term not exceeding ten years or to both, for such offence.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 25th day of April, 2024.

DATUK SERI PANGLIMA HAJI KADZIM BIN HAJI M. YAHYA,  
*Speaker,*  
*State Legislative Assembly.*