

2022-01-22
09:26

Filing Attorney: Mohamed R. Ali, Attorney-at-law
Address: Lot 185 Charlotte Street & King Street, Lacytown, Georgetown, Guyana
Telephone No.: 592-231-9442 / 592-226 – 2885 / 227- 3459
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2022-HC-DEM-CIV-FDA- 47

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

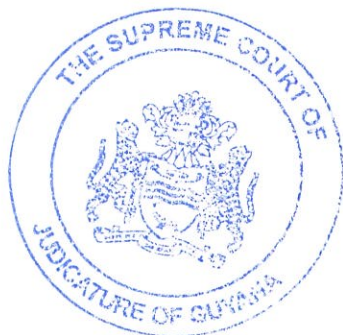
GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent



INFORMATION FOR COURT USE

- This proceeding is commenced as a:
 - Statement of Claim
 - Fixed Date Application
- This proceeding falls under the High Court's:
 - Appellate Jurisdiction
 - Admiralty Jurisdiction
 - Commercial Jurisdiction

*Regular Public
13/01/2022
10:00 am*

Criminal Jurisdiction

Family Jurisdiction

Regular Jurisdiction

3. The proceeding is a(n):

Admiralty Proceeding *in personam*

Admiralty Proceeding *in rem*

Probate Proceeding

Proceeding for Judicial Review

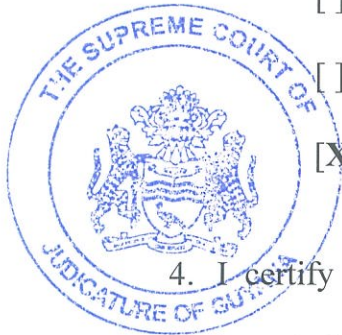
Proceeding for relief under the Constitution

Proceeding for other Administrative Order

Proceeding for Administration

Proceeding commenced under (name of Act)

Other Proceeding



4. I certify that the above information is correct, to the best of my knowledge.

Date: 2022-01-12.....

Mohamed R. Ali.....

Mohamed R. Ali

Attorney-at-law

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BETWEEN:

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BETWEEN:



GLENN LALL

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NOTICE OF APPOINTMENT OF ATTORNEY-AT-LAW

The Applicant, **GLENN LALL** has appointed **MR. MOHAMED R. ALI** as the Attorney-at-Law of record.

Date: *12th January, 2022* Signed by: *Glenn Lall*

GLENN LALL

TO: ATTORNEY GENERAL

Attorney General's Chambers

Ministry of Legal Affairs

Carmichael Street

North Cummingsburg, Georgetown.

Filing Attorney: Mohamed R. Ali, Attorney-at-law
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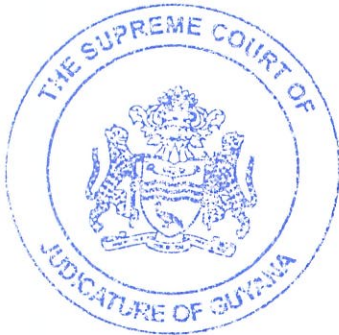
GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent



FIXED DATE APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant is set out in the following pages.

THIS APPLICATION will come on for a hearing on day of, 2022, at.....am/pm, at the Supreme Court of the High Court of Judicature, Demerara, before the Honourable Justice..... *M. Haranan*.....

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in

the application, you or an Attorney-at-Law acting for you must forthwith prepare an Affidavit in Defence in **Form 10 C** prescribed by the Civil Procedure Rules 2016, serve it on the Applicant's Attorneys-at-Law or, where the Applicant do not have an Attorney-at-Law, serve it on the applicant, and file it, with proof of service, at a Registry, **AT LEAST (TWO or FOUR, as applicable) DAYS** before the date fixed for the hearing of the application, and you or your Attorney-at-Law must appear at the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER OR JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.



THIS NOTICE OF APPLICATION has no validity unless it is served on you at least (seven or four, as applicable) days before the date fixed for the hearing of the application.

Date: 13th / 11 / 2022

A handwritten signature in black ink, appearing to read "Leandra Fraser".

Signature of Registry

Issued by:

Leandra Fraser

Where issued: **Victoria Law Court, Supreme Court Building**

Georgetown.

CERTIFIED A TRUE COPY OF THE ORIGINAL

.....
Assistant Sworn Clerk
Supreme Court of Judicature

TO: **ATTORNEY GENERAL**

Attorney General's Chambers

Ministry of Legal Affairs

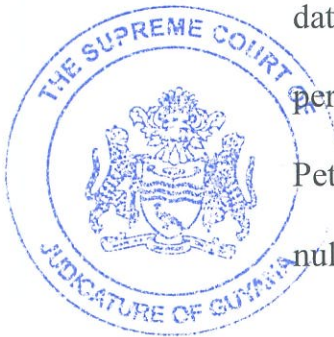
Carmichael Street

North Cummingsburg, Georgetown.

APPLICATION

1. The Applicant makes an Application for:

(a) A Declaration that Article 15.1 of the Petroleum Agreement between the Government of the Cooperative Republic of Guyana and Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited dated 27th day of June 2016, to the extent that it grants exemptions to persons other than licensees violates sections 10 and 51 of the Petroleum Exploration and Production Act Cap. 65:04, is unlawful, null and void and of no legal effect.



(b) A Declaration that Article 15.1 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is unlawful, null and void and of no legal effect.

(c) A Declaration that Article 15.4 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum

(Exploration and Production) Act Cap. 65:04 and is *ultra vires*, unlawful, null, void and of no legal effect.

(d) A Declaration that Article 15.4 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is *ultra vires*, unlawful, null, void and of no legal effect.

(e) A Declaration that section 49 of the Petroleum (Exploration and Production) Act Cap. 65:04 purporting to authorise the Minister to remit any royalty payable by a licensee or to defer the payment of such royalty, is violative of sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is *ultra vires*, null and void and of no legal effect.



(f) A Declaration that Article 15.7 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01], and is unlawful, null and void and of no legal effect.

(g) A Declaration that Article 15.9 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the

Financial Administration (and Audit) Act [formerly Cap. 73:01], and is unlawful, null and void and of no legal effect.

(h) A Declaration that the second paragraph of Article 15.10 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04 to the extent that it grants exemptions to persons other than licensees is unlawful, null and void and of no legal effect.



(i) A Declaration that Article 15.10 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01], and is unlawful, null and void and of no legal effect.

(j) A Declaration that Article 15.11 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04 to the extent that it grants exemptions to persons other than licensees and is unlawful, null and void and of no legal effect.

(k) A Declaration that Article 15.11 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of

the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is unlawful, null and void and of no legal effect.

(l) A Declaration that Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, violates Article 149 of the Constitution of the Co-operative Republic of Guyana and is unlawful, null and void and of no legal effect.

(m) A Declaration that Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, violates section 5 of the Prevention of Discrimination Act Cap. 99:08, and is unlawful, null, void and of no legal effect.



(n) A Declaration that Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, violates section 51 of the Petroleum (Exploration and Production) Act Cap. 65:04, and is unlawful, null and void and of no legal effect.

(o) A Declaration that Article 15.13 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04, and is *ultra vires*, unlawful, null and void and of no legal effect.

(p) A Declaration that Order No.10 of 2016 Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOC/Nexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) made under the Petroleum (Exploration and Production) Act Cap. 65:04 is *ultra vires*, unlawful, null and void and of no legal effect.

(q) In the alternative, a Declaration that to the extent that Order No. 10 of 2016 Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOC/Nexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) made under the Petroleum (Exploration and Production) Act Cap. 65:04 is valid, that validity applies only to the Licensees.

(r) Such further or other orders as the Court may deem just;

(s) Costs.

2. The grounds of the Application are as follows:

2.1 General

(a) The Applicant is a citizen of the Co-operative Republic of Guyana and is a businessman, publisher and managing director of the National Media and Publishing Company Limited.

(b) That several paragraphs of Article 15 of the Petroleum Agreement between the Government of the Cooperative Republic of Guyana and Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited, dated 27th day of June 2016, violate certain provisions of the Petroleum Exploration and Production Act Cap. 65:04, the Financial Administration (and Audit) Act [formerly Cap. 73:01], the Prevention of Discrimination Act Cap. 99:08 and the Constitution of the Cooperative Republic of Guyana.

(c) The provisions of the Petroleum Exploration and Production Act Cap. 65:04 referred to in paragraph (b) are as follows:



(i) Section 10 of the Petroleum Exploration and Production Act Cap. 65:04 provides that:

“The Minister may enter into an agreement (not inconsistent with this Act) with any person with respect to all or any of the following matters, namely –

- (a) The grant to that person or to any other person (including anybody corporate to be formed), identified in the agreement, of a licence;*
- (b) The conditions to be included in the licence as granted or renewed;*

- (c) *The procedure to be followed by the Minister while exercising any discretion conferred upon him by or under this Act and the manner in which the discretion shall be exercised;*
- (d) *Any matter incidental to or connected with the foregoing.”*

(ii) Section 51 of the Petroleum Exploration and Production Act Cap. 65:04 provides that:

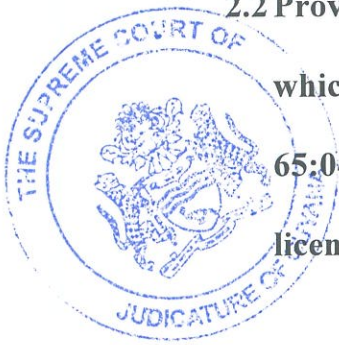


“(1) The Minister assigned responsibility for finance may, by Order, which shall be subject to affirmative resolution of the National Assembly, direct that any or all of the written laws mentioned in subsection (2) shall not apply to, or in relation to, a licensee where the licensee has entered into a production sharing agreement with the Government of Guyana.

- (2) *The written laws referred to in subsection (1) are -*
- (a) the Income Tax Act;*
 - (b) the Income Tax (In Aid of Industry) Act;*
 - (c) the Corporation Tax Act; and*
 - (d) the Property Tax Act.”*

(iii) Section 2 (1) (p) of the Petroleum Exploration and Production Act Cap. 65:04 defines a “licensee” to means the holder of a licence” while section 2 (1) (k) provides as follows:

““holder”, in relation to a licence, means the person to whom the licence is granted and, where a licence is granted to a person jointly with others, means everyone one of the persons to whom the licence is jointly granted, and includes every person to whom the licence is jointly granted, and includes every person to whom the licence or an interest therein is lawfully transferred;”



2.2 Provisions of the Petroleum Agreement dated 27th day of June 2016, which violate the Petroleum Exploration and Production Act, Cap. 65:04 by purporting to extend concessions to persons other than the licensees contrary to sections 10 and 51 of the Act.

(d) Article 15.1 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

“Subject to Article 32, and except as provided in Article 15.2, 15.8, and except as otherwise set forth in this Article 15.1, no tax, value-added tax, excise tax, duty, fee, charge or other impost shall be levied at the date hereof or from time to time thereafter on the Contractor or Affiliated Companies, in respect of income derived from Petroleum Operations or in respect of any property held, transactions undertaken or activities performed for any purpose authorised or contemplated hereunder other than.....”

(e) Paragraph 2 of Articles 15.10 of the of the Petroleum Agreement dated 27th day of June 2016 provides as follows:

“Notwithstanding any provision to the contrary in this Article, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act (Cap 81:01) and Corporation Tax Act of Guyana (Cap 81:03) during the expiration period on income earned in Guyana for any given tax year if the Affiliated Company or Non-Resident Sub-Contractors has conducted business for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”



(f) Article 15.11 of the of the Petroleum Agreement dated 27th day of June 2016 provides as follows:

“There shall be no tax, duty, fee, withholding, charge or other impost applicable on interest payment, dividends, deemed dividends, transfer of profit or deemed remittance of profits for Contractor’s, Affiliated Companies’ or Non-Resident Sub-Contractors’ branch in Guyana to its foreign or head office or to Affiliated Companies.”

(g) Article 15.12 (ii) of the of the Petroleum Agreement dated 27th day of June 2016 provides as follows:

“Notwithstanding any provision to the contrary in this Article, expatriate employees of Contractor, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act of Guyana (Cap. 81:01) and shall not be liable for personal income tax in Guyana on income earned in Guyana for any given tax year if the expatriate is physically present in Guyana for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”



(h) For all intents and purposes, the Applicant contends that “licensee” as defined by section (2)(1)(p) of the Petroleum Exploration and Production Act Cap. 65:04 refers only to Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited and not to any other person. The Applicant will argue that any exemptions referred to in Articles 15.1, 15.10, 15.11, and 15.12 (ii) purporting to extend concessions to persons other than the licensees are not consistent with the provisions of section 51 of the Petroleum Exploration and Production Act Cap. 65:04 and therefore violate section 10 of the Petroleum Exploration and Production Act, Cap. 65:04.

2.3 Articles of the Petroleum Agreement dated 27th day of June 2016 that violate the Financial Administration (and Audit) Act [formerly Cap. 73:01]

- (i) Remissions, concessions and waivers of tax can only be conferred if they satisfy the conditions set out in section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01]. Section 6 provides as follows:

“(1) Save as maybe expressly provided by any law for the time being in force, no expenditure involving a charge on the revenue shall be incurred; nor shall any sum due to the revenue be remitted, unless the Minister is empowered by the specific provisions of the relevant tax Act to permit the remission or by Order or other subsidiary legislation made under such Act.



(1A) Except as provided in subsections (1C) and (1CC), no remission, concession, or waiver is valid unless the remission is expressly provided for in a tax Act or subsidiary legislation.

(1B) No remission, concession, or waiver of tax by Order or other subsidiary legislation is valid unless the Act under which the subsidiary legislation is made expressly permits the Minister

to provide such a remission, concession, or waiver.

(1C) The Minister may make regulations or other subsidiary legislation to release the taxpayer under the procedure and conditions specified therein in whole or in part from the liability to pay tax otherwise due in cases where the taxpayer's ability to pay tax due has been affected by natural disaster, disability, mental incapacity, or death, or if the taxpayer has been rendered homeless or destitute.

(1CC) The Minister may by order which shall be subject to negative resolution of the National Assembly exempt Diplomatic, Consular, International, Charitable and Non-Profit Organisations, semi-autonomous agencies, Government departments, and public corporations from the payment of want-of-entry charges, stamp duty and environmental tax.



(1D) The Minister has the power to issue a notice making an adjustment in the tax rate so as to take into account fluctuations in the price of essential imported goods (for example, fuel); provided, however, that the effect of the change is at least revenue neutral.

(1E) Nothing in this section shall be construed to limit or restrain the Minister in the exercise of his duty to enforce the law and to exercise oversight in respect of the operations of the Ministry.”

(j) Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the Petroleum Agreement dated 27th day of June 2016 violate section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01]. These Articles provide as follows:

Article 15.1 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:



“Subject to Article 32, and except as provided in Article 15.2, 15.8, and except as otherwise set forth in this Article 15.1, no tax, value-added tax, excise tax, duty, fee, charge or other impost shall be levied at the date hereof or from time to time thereafter on the Contractor or Affiliated Companies, in respect of income derived from Petroleum Operations or in respect of any property held, transactions undertaken or activities performed for any purpose authorised or contemplated hereunder other than... ..”

Article 15.4 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

“The Minister hereby agrees:

(a) that a sum equivalent to the tax assessed pursuant to Article 15.2 and 15.3 will be paid by the Minister to the Commissioner General, Guyana Revenue Authority on behalf of the Contractor and that the amount of such sum will be considered income of the Contractor; and

(b) that the appropriate portion of the Government's share of Profit Oil delivered in accordance with the provisions of this Agreement shall be accepted by the Minister as payment in full by the Contractor of Contractor's share of each of the following levies, whatsoever the applicable rate of such levies may be, which the Minister shall then pay on behalf of the Contractor under Article 15.4 (a) to the Commissioner General, Guyana Revenue Authority or such successor authority:

(i) the Contractor's share of the income taxes imposed by the laws of Guyana, including, but not limited to, income tax imposed by the Income Tax Act and corporation tax imposed by the



Corporation Tax Act and payable at the date hereof, or from time to time thereafter, and any other levy or charge on income or profits which may become payable from time to time under any laws, acts, statutes, regulations or orders by the Government; and

(ii) any other similar charge imposed and payable in respect of Petroleum Operations at the date hereof, or from time-to-time hereafter, except charges of the type specified in Article 15.1 (a-b).”



Article 15.5 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

“The Contractor shall provide the Minister with the Contractor’s income tax returns to be submitted by the Minister to the Commissioner General, Guyana Revenue Authority so the Minister can pay income tax on behalf of the Contractor as provided under Article 15.4 (a). On such returns, the Minister shall note that he is paying the income taxes on behalf of the Contractor, so that the Commissioner General, Guyana Revenue Authority can properly prepare the receipts required under this Article 15.5. Within one hundred and eight (180) days

following the end of each year of assessment, the Minister shall furnish to the Contractor proper tax certificates in the Contractor's name from the Commissioner General, Guyana Revenue Authority evidencing the payment of the Contractor's income tax under the Income Tax Act and corporation tax under the Corporation Tax Act. Such certificates shall state the amount of tax paid individually on behalf of the Contractor or parties comprising the Contractor and other particulars customary for such certificates."



Article 15.7 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

"Subject to the conditions of section 49 of the Act, the Minister may remit in whole or in part, or defer payment of, any royalties payable by Contractor."

Article 15.9 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

"The Minister hereby agrees that the Contractor shall be exempted from the Property Tax Act pursuant to section 51 of the Act and any other act which amends or replaces in part or in whole the Property Tax Act."

Article 15.10 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

“The Minister agrees that for the duration of the Exploration Period, and for any area within the Contract Area where exploration activity is in progress, the provisions of section 10(b) of the Corporation Tax Act (Cap 81:03), including any successor provisions to section 10(b) of the Corporation Tax Act (Cap 81:03), shall not apply to the Contractor, with respect to any payments made to any Affiliated Companies or Sub-Contractors.



Notwithstanding any provision to the contrary in this Article, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act (Cap 81:01) and Corporation Tax Act of Guyana (Cap 81:03) during the expiration period on income earned in Guyana for any given tax year if the Affiliated Company or Non-Resident Sub-Contractors has conducted business for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”

Article 15.11 of the Petroleum Agreement dated 27th day of June 2016, provides as follows:

“There shall be no tax, duty, fee, withholding, charge or other impost applicable on interest payments, dividends, deemed dividends, transfer of profits or deemed remittance of profits from Contractor's, Affiliated Companies' or Non-Resident Sub-Contractors' branch in Guyana to its foreign or head office or to Affiliated Companies.”

Article 15.12 of the Petroleum Agreement dated 27th day of June 2016 provides as follows:

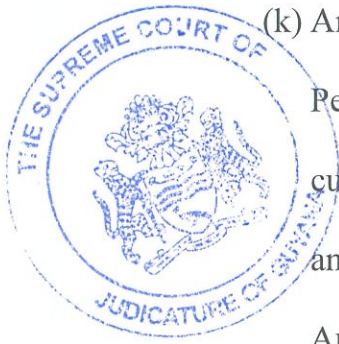
“The Expatriate employee of the Contractor, Affiliate companies and the Subcontractor shall be liable to pay personal income tax in Guyana on income earned in Guyana. Guyana (represented herein by the Minister) shall cause the proper authorities to issue appropriate tax certificates to expatriate employees when required.



(i) If an expatriate employee is liable to pay income tax in Guyana on income earned in Guyana, such expatriate employee shall pay such income tax at a rate equal to the current income tax rate of Guyana;

(ii) Notwithstanding any provision to the contrary in this Article, expatriate employees of Contractor, Affiliated Companies or Non-

Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act of Guyana (Cap. 81:01) and shall not be liable for personal income tax in Guyana on income earned in Guyana for any given tax year if the expatriate is physically present in Guyana for one hundred eighty three (183) days or less on a cumulative basis in the tax year of assessment.”



(k) Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the Petroleum Agreement dated 27th day of June 2016 separately and cumulatively alter certain tax laws to grant remissions, concessions and waivers contrary to section 6 of Financial Administration (and Audit) Act [formerly Cap. 73:01].

2.4 Articles of the Petroleum Agreement dated 27th day of June 2016 which violate the Constitution of the Co-operative Republic of Guyana and Prevention of Discrimination Act, Cap 99:08

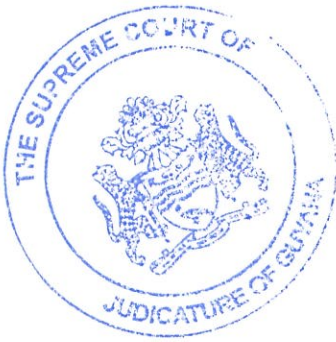
(l) Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, states that,

“The Expatriate employee of the Contractor, Affiliated Companies and the Subcontractor shall be liable to pay personal income tax in Guyana on income earned in Guyana. Guyana (represented herein by the Minister)

shall cause the proper authorities to issue appropriate tax certificates to expatriate employees when required.;

(i) *If an expatriate employee is liable to pay income tax in Guyana on income earned in Guyana, such expatriate employee shall pay such income tax at a rate equal to the current income tax rate of Guyana;*

(ii) *Notwithstanding any provision to the contrary in this Article, expatriate employees of Contractor, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act of Guyana (Cap. 81 :0 I) and shall not be liable for personal income tax in Guyana on income earned in Guyana for any given tax year if the expatriate is physically present in Guyana for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”*



(m) That Article 149 of the Constitution of the Co-operative Republic of Guyana provides, *inter alia*, that,

149. (1) Subject to the provisions of this article –

(a) no law shall make any provision that is discriminatory either of itself or in its effect;
and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this article the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their or their parents' or guardians' respective descriptions by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture whereby persons of one such description are subjected to disabilities or restrictions to which other persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description."



(n) That **section 5 of the Prevention of Discrimination Act, Cap 99:08**

also provides as follows:

“(1) It shall be unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to recruitment, selection or employment or any other person for the purpose of training,

apprenticeship or employment, to discriminate against that other person on the grounds listed in section 4 (2) –

- a) in the advertisement of the job;*
- b) in the arrangements made for the purpose of determining who should be offered that employment;*
- c) in determining who should be offered employment;*
- d) in the terms or conditions on which employment is offered;*
- e) the creation, classification or abolition of jobs.*

(2) It shall be unlawful for an employer to discriminate against an employee on the grounds listed in section (4) (2).

- (a) in terms or conditions or employment afforded to that employee by this employer;*
- (b) in conditions or work or occupational safety and health measures;*
- (c) in the provision of facilities related to or connected with employment;*
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;*
- (e) by entrenching or dismissing the employee;*
- (f) by subjecting the employee to any other disadvantage.”*



(o) Article 15.12 of the Petroleum Agreement dated 27th day of June 2016 is discriminatory to Guyanese employees by exempting from personal income tax income earned only by expatriate employees of the Contractor, Affiliated Companies or Non-Resident Sub-contractors who are physically present in Guyana for 183 days or less on a cumulative basis in the tax year of assessment.

2.5 Sections of the Petroleum Exploration and Production Act, Cap. 65:04 which violate the Financial Administration (and Audit) Act [formerly Cap. 73:01]



(p) Section 49 of the Petroleum Exploration and Production Act, Cap. 65:04 is *ultra vires* of sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is null, void and of no legal effect. Section 49 states as follows:

“The Minister may, on an application made to him by a licensee and after consultation with the Minister assigned responsibility for finance, by order, -

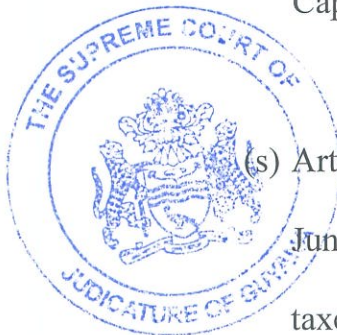
(a) Remit, in whole or in part any royalty payable by the applicant;

or

(b) Defer payment of any royalty, on such conditions (if any) as he may specify in the order.”

(q) Section 51 of the Petroleum Exploration and Production Act, Cap. 65:04 authorises the minister responsible for finance to direct that any or all of the tax laws specified therein shall not apply to or in relation to a licensee who has entered into a production sharing agreement with the Government of Guyana. However, authorisation does not empower the Minister to pay the taxes on behalf of any licensee.

(r) That section 51 of the Petroleum Exploration and Production Act, Cap. 65:04 is neither a tax act nor a subsidiary legislation.



(s) Articles 15.4 and 15.5 of the Petroleum Agreement dated 27th day of June 2016 requiring the Minister responsible for Petroleum to pay taxes for and on behalf of the Licensees and the Commissioner General to issue certificates to that effect is therefore a violation of section 51 of the Petroleum Exploration and Production Act, Cap. 65:04 and sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01].

2.6 The validity of Order 10 of 2016

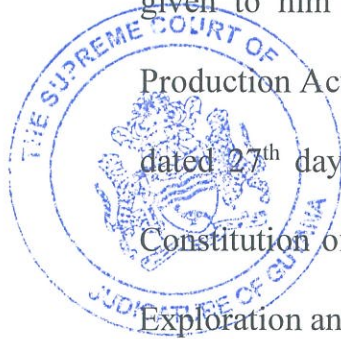
(t) Order 10 of 2016 is made under the Petroleum Exploration and Production Act, Cap. 65:04 which is not a tax act or other subsidiary

legislation made under such act. Therefore, the said Order is *ultra vires*, unlawful, null, void and of no legal effect.

(u) That sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] specifically provide that except as provided in sub-sections (1C) and (1CC) of the Financial Administration (and Audit) Act [formerly Cap. 73:01], no remission, concession, or waiver is valid unless expressly provided for in a Tax act or subsidiary legislation.

(v) That the Minister responsible for petroleum exceeded the authority given to him under section 10 of the Petroleum Exploration and Production Act, Cap. 65:04 by entering into the Petroleum Agreement dated 27th day of June 2016, containing provisions violative of the Constitution of the Co-operative Republic of Guyana, the Petroleum Exploration and Production Act, Cap. 65:04, Financial Administration (and Audit) Act [formerly Cap. 73:01] and the Prevention of Discrimination Act, Cap. 99:08.

(w) That the Minister assigned responsibility for finance violated section 51 of the Petroleum Exploration and Production Act, Cap. 65:04 and Financial Administration (and Audit) Act [formerly Cap. 73:01], when

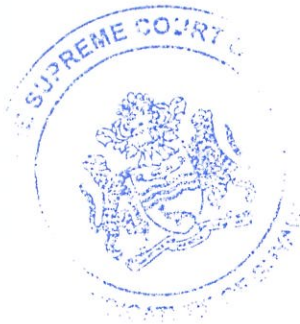


he purported to grant concessions via Order No. 10 of 2016 Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOC/Nexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) made under the Petroleum (Exploration and Production) Act Cap. 65:04 is not a Tax act.

(x) For the foregoing reasons the reliefs sought herein should be granted in their entirety.

(y) That the following documentary evidence will be used at the hearing of this Application:

(a) Affidavit of Glenn Lall



(b) Certified copy of the Petroleum Agreement dated 27th day of June 2016 between the Government of the Cooperative Republic of Guyana and Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited, registered at the Deeds Registry as Deed No.1794/2016.

Date: 12th January, 2022

Mohamed R. Ali

Mohamed R. Ali

Attorney at Law for the Applicant

The Registry is located at The Law Courts Georgetown, Demerara. The office is open to the public between 8:30 a.m. and 3:30 p.m. Mondays to Thursdays and 8:30 a.m. and 2:30 p.m. on Fridays, except holidays.

Filing Attorney: Mohamed R. Ali, Attorney-at-law
Address: Lot 185 Charlotte Street & King Street, Lacytown, Georgetown, Guyana
Telephone No.: 592-231-9442 / 592-226 – 2885 / 227- 3459
E-mail: mohamedralilawyer@gmail.com

2022-HC-DEM-CIV-FDA-

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent

.....

FIXED DATE APPLICATION

.....

Filing Attorney: Mohamed R. Ali, Attorney-at-law
Address: Lot 185 Charlotte Street & King Street, Lacytown, Georgetown, Guyana
Telephone No.: 592-231-9442 / 592-226 – 2885 / 227- 3459
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2022-HC-DEM-CIV-FDA-

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent



AFFIDAVIT OF GLENN LALL

I, **GLENN LALL**, of Lot 24 Saffon Street, Charlestown, Georgetown,

make oath and say as follows:

1. That I am the Applicant herein.
2. That the facts stated herein are true and correct and within my personal knowledge and belief except where otherwise stated to be based on information in which case I verily believe the same to be true.

3. That I am a citizen of the Co-operative Republic of Guyana and a businessman, publisher and managing director of the National Media and Publishing Company Limited.

4. That I have been advised by my Attorney and verily believe that several paragraphs of Article 15 of the Petroleum Agreement between the Government of the Cooperative Republic of Guyana and Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited, dated 27th day of June 2016 (hereinafter referred to as the Petroleum Agreement) violate certain provisions of the Petroleum Exploration and Production Act Cap. 65:04, the Financial Administration (and Audit) Act [formerly Cap. 73:01], Prevention of Discrimination Act Cap. 99:08 and the Constitution of the Co-operative Republic of Guyana. Hereto annexed and marked as **Exhibit 'A'** is a copy of the said Petroleum Agreement.

5. That I have been advised by my Attorney of the following provisions of the Petroleum Exploration and Production Act Cap. 65:04:



- (i) That section 10 of the Petroleum Exploration and Production Act Cap. 65:04 provides that:

“The Minister may enter into an agreement (not in-consistent with this Act) with any person with respect to all or any of the following matters, namely –

- a) The grant to that person or to any other person (including anybody corporate to be formed), identified in the agreement, of a licence;*
- b) The conditions to be included in the licence as granted or renewed;*
- c) The procedure to be followed by the Minister while exercising any discretion conferred upon him by or under this Act and the manner in which the discretion shall be exercised;*
- d) Any matter incidental to or connected with the foregoing.”*



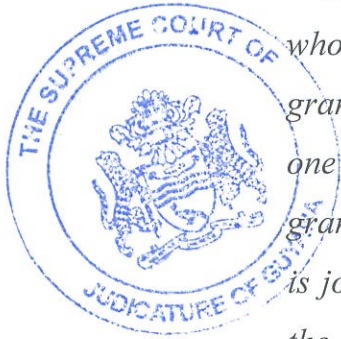
- (ii) That section 51 of the Petroleum Exploration and Production Act Cap. 65:04 provides that:

“(1) The Minister assigned responsibility for finance may, by Order, which shall be subject to affirmative resolution of the National Assembly, direct that any or all of the written laws mentioned in subsection (2) shall not apply to, or in relation to, a licensee where the licensee has entered into a production sharing agreement with the Government of Guyana.

(2) The written laws referred to in subsection (1) are -

- (a) the Income Tax Act;
- (b) the Income Tax (In Aid of Industry) Act;
- (c) the Corporation Tax Act; and
- (d) the Property Tax Act.”

(iii) That section 2 (1) (p) of the Petroleum Exploration and Production Act Cap. 65:04 defines a “licensee” to mean the holder of a licence” while section 2 (1) (k) provides as follows:

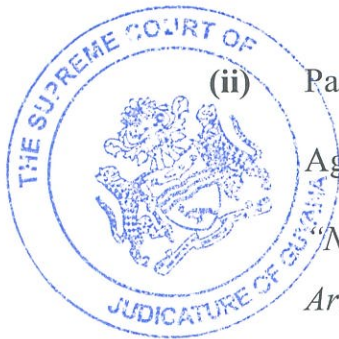


““holder”, in relation to a licence, means the person to whom the licence is granted and, where a licence is granted to a person jointly with others, means everyone one of the persons to whom the licence is jointly granted, and includes every person to whom the licence is jointly granted, and includes every person to whom the licence or an interest therein is lawfully transferred;”

6. That I have been advised by my Attorney and verily believe that the following provisions of the Petroleum Agreement dated 27th day of June 2016, violate the Petroleum Exploration and Production Act, Cap. 65:04 by purporting to extend concessions to persons other than the licensees contrary to sections 10 and 51 of the Act:

(i) Article 15.1 of the Petroleum Agreement provides as follows:

“Subject to Article 32, and except as provided in Article 15.2, 15.8, and except as otherwise set forth in this Article 15.1, no tax, value-added tax, excise tax, duty, fee, charge or other impost shall be levied at the date hereof or from time to time thereafter on the Contractor or Affiliated Companies, in respect of income derived from Petroleum Operations or in respect of any property held, transactions undertaken or activities performed for any purpose authorised or contemplated hereunder other than.....”



(ii) Paragraph 2 of Article 15.10 of the of the Petroleum Agreement provides as follows:

“Notwithstanding any provision to the contrary in this Article, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act (Cap 81:01) and Corporation Tax Act of Guyana (Cap 81:03) during the expiration period on income earned in Guyana for any given tax year if the Affiliated Company or Non-Resident Sub-Contractors has conducted business for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”

(iii) Article 15.11 of the of the Petroleum Agreement provides as follows:

“There shall be no tax, duty, fee, withholding, charge or other impost applicable on interest payment, dividends, deemed dividends, transfer of profit or deemed remittance of profits for Contractor’s, Affiliated Companies’ or Non-Resident Sub-Contractors’ branch in Guyana to its foreign or head office or to Affiliated Companies.”

(iv) Article 15.12 (ii) of the of the Petroleum Agreement provides as follows:



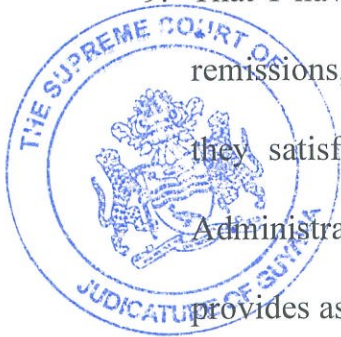
“Notwithstanding any provision to the contrary in this Article, expatriate employees of Contractor, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act of Guyana (Cap. 81.01) and shall not be liable for personal income tax in Guyana on income earned in Guyana for any given tax year if the expatriate is physically present in Guyana for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”

7. That I will contend that for purposes of the Petroleum Agreement “licensee” as defined by section (2)(1)(p) of the Petroleum Exploration and Production Act Cap. 65:04 can refer only to Esso Exploration and Production Guyana Limited, CNOOC NEXEN

Petroleum Guyana Limited and HESS Guyana Exploration Limited
(hereinafter referred to as the Contractors) and not to any other person.

8. That I will further contend that any exemptions referred to in Articles 15.1, 15.10, 15.11 and 15.12 (ii) of the Petroleum Agreement purporting to extend concessions to persons other than the licensees are not consistent with the provisions of section 51 of the Petroleum Exploration and Production Act Cap. 65:04 and therefore violate section 10 of the said Act.

9. That I have been advised by my Attorney and verily believe that remissions, concessions and waivers of tax can only be conferred if they satisfy the conditions set out in section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01]. Section 6 provides as follows:



“(1) Save as maybe expressly provided by any law for the time being in force, no expenditure involving a charge on the revenue shall be incurred; nor shall any sum due to the revenue be remitted, unless the Minister is empowered by the specific provisions of the relevant tax Act to permit the remission or by Order or other subsidiary legislation made under such Act.

(1A) Except as provided in subsections (1C) and (1CC), no remission, concession, or waiver is valid unless the remission is expressly provided for in a tax Act or subsidiary legislation.

(1B) No remission, concession, or waiver of tax by Order or other subsidiary legislation is valid unless the Act under which the subsidiary legislation is made expressly permits the Minister to provide such a remission, concession, or waiver.

(1C) The Minister may make regulations or other subsidiary legislation to release the taxpayer under the procedure and conditions specified therein in whole or in part from the liability to pay tax otherwise due in cases where the taxpayer's ability to pay tax due has been affected by natural disaster, disability, mental incapacity, or death, or if the taxpayer has been rendered homeless or destitute.



(1CC) The Minister may by order which shall be subject to negative resolution of the National Assembly exempt Diplomatic, Consular, International, Charitable and Non-Profit Organisations, semi-autonomous agencies, Government departments, and public corporations from the payment of

want-of-entry charges, stamp duty and environmental tax.

(1D) *The Minister has the power to issue a notice making an adjustment in the tax rate so as to take into account fluctuations in the price of essential imported goods (for example, fuel); provided, however, that the effect of the change is at least revenue neutral.*

(1E) *Nothing in this section shall be construed to limit or restrain the Minister in the exercise of his duty to enforce the law and to exercise oversight in respect of the operations of the Ministry.”*



10. That Article 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the Petroleum Agreement violate section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01]. This Article provides as follows:

Article 15.1 of the Petroleum Agreement provides as follows:

“Subject to Article 32, and except as provided in Article 15.2, 15.8, and except as otherwise set forth in this Article 15.1, no tax, value-added tax, excise tax, duty, fee, charge or other impost shall be levied at the date hereof or from time to time thereafter on the Contractor or Affiliated

Companies, in respect of income derived from Petroleum Operations or in respect of any property held, transactions undertaken or activities performed for any purpose authorised or contemplated hereunder other than.....”

Article 15.4 of the Petroleum Agreement provides as follows:

“The Minister hereby agrees:

(a) that a sum equivalent to the tax assessed pursuant to Article 15.2 and 15.3 will be paid by the Minister to the Commissioner General, Guyana Revenue Authority on behalf of the Contractor and that the amount of such sum will be considered income of the Contractor; and

(b) that the appropriate portion of the Government's share of Profit Oil delivered in accordance with the provisions of this Agreement shall be accepted by the Minister as payment in full by the Contractor of Contractor's share of each of the following levies, whatsoever the applicable rate of such levies may be, which the Minister shall then pay on behalf of the Contractor under Article 15.4 (a) to the Commissioner General, Guyana Revenue Authority or such successor authority:



- (i) *the Contractor's share of the income taxes imposed by the laws of Guyana, including, but not limited to, income tax imposed by the Income Tax Act and corporation tax imposed by the Corporation Tax Act and payable at the date hereof, or from time to time thereafter, and any other levy or charge on income or profits which may become payable from time to time under any laws, acts, statutes, regulations or orders by the Government; and*
- (ii) *any other similar charge imposed and payable in respect of Petroleum Operations at the date hereof, or from time-to-time hereafter, except charges of the type specified in Article 15.1 (a-b)."*



Article 15.5 of the Petroleum Agreement provides as follows:

"The Contractor shall provide the Minister with the Contractor's income tax returns to be submitted by the Minister to the Commissioner General, Guyana Revenue Authority so the Minister can pay income tax on behalf of the Contractor as provided under Article 15.4 (a). On such returns, the Minister shall note that he is paying the income taxes on behalf of the Contractor, so that the Commissioner General,

Guyana Revenue Authority can properly prepare the receipts required under this Article 15.5. Within one hundred and eight (180) days following the end of each year of assessment, the Minister shall furnish to the Contractor proper tax certificates in the Contractor's name from the Commissioner General, Guyana Revenue Authority evidencing the payment of the Contractor's income tax under the Income Tax Act and corporation tax under the Corporation Tax Act. Such certificates shall state the amount of tax paid individually on behalf of the Contractor or parties comprising the Contractor and other particulars customary for such certificates."



Article 15.7 of the Petroleum Agreement provides as follows:

"Subject to the conditions of section 49 of the Act, the Minister may remit in whole or in part, or defer payment of, any royalties payable by Contractor."

Article 15.9 of the Petroleum Agreement provides as follows:

"The Minister hereby agrees that the Contractor shall be exempted from the Property Tax Act pursuant to section 51 of the Act and any other act which amends or replaces in part or in whole the Property Tax Act."

Article 15.10 of the Petroleum Agreement provides as follows:

“The Minister agrees that for the duration of the Exploration Period, and for any area within the Contract Area where exploration activity is in progress, the provisions of section 10(b) of the Corporation Tax Act (Cap 81:03), including any successor provisions to section 10(b) of the Corporation Tax Act (Cap 81:03), shall not apply to the Contractor, with respect to any payments made to any Affiliated Companies or Sub-Contractors.



Notwithstanding any provision to the contrary in this Article, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act (Cap 81:01) and Corporation Tax Act of Guyana (Cap 81:03) during the expiration period on income earned in Guyana for any given tax year if the Affiliated Company or Non-Resident Sub-Contractors has conducted business for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”

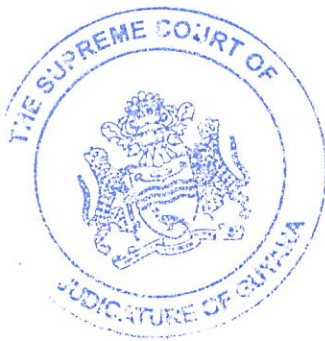
Article 15.11 of the Petroleum Agreement provides as follows:

“There shall be no tax, duty, fee, withholding, charge or other impost applicable on interest payments, dividends, deemed dividends, transfer of profits or

deemed remittance of profits from Contractor's, Affiliated Companies' or Non-Resident Sub-Contractors' branch in Guyana to its foreign or head office or to Affiliated Companies."

Article 15.12 of the Petroleum Agreement provides as follows:

"The Expatriate employee of the Contractor, Affiliate companies and the Subcontractor shall be liable to pay personal income tax in Guyana on income earned in Guyana. Guyana (represented herein by the Minister) shall cause the proper authorities to issue appropriate tax certificates to expatriate employees when required.



(i) If an expatriate employee is liable to pay income tax in Guyana on income earned in Guyana, such expatriate employee shall pay such income tax at a rate equal to the current income tax rate of Guyana;

(ii) Notwithstanding any provision to the contrary in this Article, expatriate employees of Contractor, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act of Guyana (Cap. 81.01) and shall not be liable for personal income tax in Guyana on income earned in

Guyana for any given tax year if the expatriate is physically present in Guyana for one hundred eighty three (183) days or less on a cumulative basis in the tax year of assessment.”

11. That I have been advised by my Attorney and verily believe that Article 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the Petroleum Agreement separately and cumulatively alter certain tax laws to grant remissions, concessions and waivers contrary to section 6 of Financial Administration (and Audit) Act [formerly Cap. 73:01].



12. That I have been advised by my Attorney and verily believe that Article 15.12 (ii) of the Petroleum Agreement violates the Constitution of the Co-operative Republic of Guyana and Prevention of Discrimination Act, Cap 99:08. That the said article states:

“The Expatriate employee of the Contractor, Affiliated Companies and the Subcontractor shall be liable to pay personal income tax in Guyana on income earned in Guyana. Guyana (represented herein by the Minister) shall cause the proper authorities to issue appropriate tax certificates to expatriate employees when required;

(i) *If an expatriate employee is liable to pay income tax in Guyana on income earned in Guyana, such expatriate employee shall pay such income tax at*

a rate equal to the current income tax rate of Guyana;

- (ii) *Notwithstanding any provision to the contrary in this Article, expatriate employees of Contractor, Affiliated Companies or Non-Resident Sub-Contractors shall not be subject to the provisions of the Income Tax Act of Guyana (Cap. 81 :0 I) and shall not be liable for personal income tax in Guyana on income earned in Guyana for any given tax year if the expatriate is physically present in Guyana for one hundred eighty-three (183) days or less on a cumulative basis in the tax year of assessment.”*




13. That Article 149 of the Constitution of the Co-operative Republic of Guyana provides, *inter alia*, that,

149. (1) Subject to the provisions of this article –

(a) no law shall make any provision that is discriminatory either of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this article the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their or their parents' or guardians' respective descriptions by race, place of origin, political opinion, colour, creed, age, disability, marital status, sex, gender, language, birth, social class, pregnancy, religion, conscience, belief or culture whereby persons of one such description are subjected to disabilities or restrictions to which other persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to other persons of the same or another such description."

 14. That section 5 of the Prevention of Discrimination Act, Cap 99:08 provides as follows:

“(1) It shall be unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to recruitment, selection or employment or any other person for the purpose of training, apprenticeship or employment, to discriminate against that other person on the grounds listed in section 4 (2)

- a) in the advertisement of the job;*
- b) in the arrangements made for the purpose of determining who should be offered that employment;*

- c) in determining who should be offered employment;*
- d) in the terms or conditions on which employment is offered;*
- e) the creation, classification or abolition of jobs.*

(2) It shall be unlawful for an employer to discriminate against an employee on the grounds listed in section (4) (2).

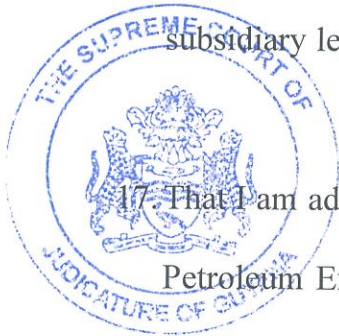
- (a) in terms or conditions or employment afforded to that employee by this employer;*
- (b) in conditions or work or occupational safety and health measures;*
- (c) in the provision of facilities related to or connected with employment;*
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;*
- (e) by entrenching or dismissing the employee;*
- (f) by subjecting the employee to any other disadvantage.”*



15. That I have been advised by my Attorney and verily believe that Article 15.4 which purports to authorise the Minister to pay the corporation tax and income tax liability of contractors violates section 51 of the Petroleum Exploration and Production Act, Cap. 65:04, which only authorises the Minister assigned responsibility for finance by Order to direct that the said Act shall apply to or in relation to a

licensee who has entered into a production sharing agreement with the Government of Guyana.

16. That I am further advised by my Attorney-at-Law and verily believe that section 51 of the Petroleum Exploration and Production Act, Cap. 65:04, is itself unlawful since it violates section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] which only permits remission, concessions or waiver if such remission, concession or waiver is expressly provided for in a Tax act or subsidiary legislation.



17. That I am advised by my Attorney-at-Law and verily believe that the Petroleum Exploration and Production Act, Cap. 65:04, is neither a Tax act nor a subsidiary legislation.

18. That I am advised by my Attorney-at-Law and verily believe that Article 15.12 of the Petroleum Agreement is discriminatory to Guyanese employees by exempting from personal income tax income earned only by expatriate employees of the Contractor, Affiliated Companies or Non-Resident Sub-contractors who are physically present in Guyana for 183 days or less on a cumulative basis in the tax year of assessment.

19. That I am advised by my Attorney-at-Law and verily believe that section 49 of the Petroleum Exploration and Production Act, Cap. 65:04 is *ultra vires* of sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is null, void and of no legal effect. Section 49 states as follows:

“The Minister may, on an application made to him by a licensee and after consultation with the Minister assigned responsibility for finance, by order, -

(a) Remit, in whole or in part any royalty payable by the applicant;

or

(b) Defer payment of any royalty, on such conditions (if any) as he may specify in the order.”



20. That I am advised by my Attorney-at-Law and verily believe that Order 10 of 2016 is made under the Petroleum Exploration and Production Act, Cap. 65:04 which is not a tax act or other subsidiary legislation made under such act. Therefore, the said Order is *ultra vires*, unlawful, null, void and of no legal effect.

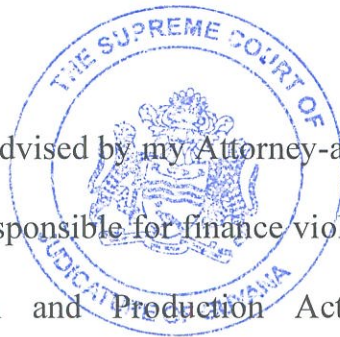
21. That I am advised by my Attorney-at-Law and verily believe that subsections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] specifically provide that except

as provided in sub-sections (1C) and (1CC) of the Financial Administration (and Audit) Act [formerly Cap. 73:01], no remission, concession, or waiver is valid unless expressly provided for in a Tax act or subsidiary legislation.

22. That I am advised by my Attorney-at-Law and verily believe that the Minister responsible for petroleum exceeded the authority given to him under section 10 of the Petroleum Exploration and Production Act, Cap. 65:04 by entering into the Petroleum Agreement dated 27th day of June 2016, containing provisions violative of the Constitution of the Co-operative Republic of Guyana, the Petroleum Exploration and Production Act, Cap. 65:04, Financial Administration (and Audit) Act [formerly Cap. 73:01] and the Prevention of Discrimination Act, Cap. 99:08.

23. That I am advised by my Attorney-at-Law and verily believe that the Minister responsible for finance violated section 51 of the Petroleum Exploration and Production Act, Cap. 65:04 and Financial Administration (and Audit) Act [formerly Cap. 73:01].

24. For the foregoing reasons, the reliefs sought herein should be granted in their entirety.



25. That this Affidavit was drawn by Mr. Mohamed R. Ali, Attorney-at-law, whose address for service and place of business is situate at Lot 185 Charlotte Street & King Street, Lacytown, Georgetown.



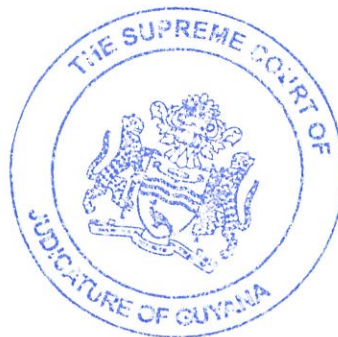
GLENN LALL

Sworn to at Georgetown Demerara

This 12th day of January, 2022 

BEFORE ME

COMMISSIONER OF OATHS TO AFFIDAVITS



Filing Attorney: Mohamed R. Ali, Attorney-at-law
Address: Lot 185 Charlotte Street & King Street, Lacytown, Georgetown, Guyana
Telephone No.: 592-231-9442 / 592-226 – 2885 / 227- 3459
E-mail: mohamedralilawyer@gmail.com

2022-HC-DEM-CIV-FDA-

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent

.....

AFFIDAVIT OF GLENN LALL

.....

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2022-HC-DEM-CIV-FDA-

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent

DRAFT ORDER OF THE COURT

BEFORE THE HONOURABLE MR. /MADAM JUSTICE

MADE this day of, 2022

ENTERED the day of, 2022

Mohamed R. Ali.: Attorney-at-law for the Applicant.

.....: Attorney-at-law for the Respondent.

THIS APPLICATION made by **GLENN LALL**, was heard this
..... day of, 2022 at the High Court of the Supreme Court

of Judicature of Guyana.

ON READING the Fixed Date Application and Affidavit of **GLENN LALL** and on hearing the submissions of Attorneys-at-law for the Applicant and the Respondent,

1. **THIS COURT GRANTS** a declaration that that Article 15.1 of the Petroleum Agreement between the Government of the Cooperative Republic of Guyana and Esso Exploration and Production Guyana Limited, CNOOC NEXEN Petroleum Guyana Limited and HESS Guyana Exploration Limited dated 27th day of June 2016, to the extent that it grants exemptions to persons other than licensees violates section 10 and section 51 of the Petroleum Exploration and Production Act Cap. 65:04 is unlawful, null and void and of no legal effect;
2. **THIS COURT GRANTS** a declaration that Article 15.1 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is unlawful, null and void and of no legal effect;
3. **THIS COURT GRANTS** a declaration that Article 15.4 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10

and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04 and is *ultra vires*, unlawful, null, void and of no legal effect;

4. **THIS COURT GRANTS** a declaration that Article 15.4 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is *ultra vires*, unlawful, null, void and of no legal effect;

5. **THIS COURT GRANTS** a declaration that section 49 of the Petroleum (Exploration and Production) Act Cap. 65:04 purporting to authorise the Minister to remit, any royalty payable by the applicant or to defer the payment of such royalty, is violative of sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is *ultra vires*, null and void and of no legal effect.

6. **THIS COURT GRANTS** a declaration that Article 15.7 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01], and is unlawful, null and void and of no legal effect;

7. **THIS COURT GRANTS** a Declaration that Article 15.9 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections

1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01], and is unlawful, null and void and of no legal effect.

8. **THIS COURT GRANTS** a declaration that the second paragraph of Article 15.10 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04 to the extent that it grants exemptions to persons other than licensees is unlawful, null and void and of no legal effect;
9. **THIS COURT GRANTS** a declaration that Article 15.10 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections 1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01], and is unlawful, null and void and of no legal effect;
10. **THIS COURT GRANTS** a declaration that Article 15.11 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04 to the extent that it grants exemptions to persons other than licensees and is unlawful, null and void and of no legal effect;
11. **THIS COURT GRANTS** a declaration that Article 15.11 of the Petroleum Agreement dated 27th day of June 2016, violates sub-sections

1A and 1B of section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01] and is unlawful, null and void and of no legal effect;

12. **THIS COURT GRANTS** a declaration that Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, violates Article 149 of the Constitution of the Co-operative Republic of Guyana and is unlawful, null and void and of no legal effect;

13. **THIS COURT GRANTS** a declaration that Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, violates section 5 of the Prevention of Discrimination Act Cap. 99:08, and is unlawful, null, void and of no legal effect;

14. **THIS COURT GRANTS** a declaration that Article 15.12 of the Petroleum Agreement dated 27th day of June 2016, violates section 51 of the Petroleum (Exploration and Production) Act Cap. 65:04, and is unlawful, null and void and of no legal effect;

15. **THIS COURT GRANTS** a declaration that Article 15.13 of the Petroleum Agreement dated 27th day of June 2016, violates sections 10 and 51 of the Petroleum (Exploration and Production) Act Cap. 65:04, and is *ultra vires*, unlawful, null and void and of no legal effect;

16. **THIS COURT GRANTS** a declaration that Order No.10 of 2016 Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOC/Nexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) made under the Petroleum (Exploration and Production) Act Cap. 65:04 is *ultra vires*, unlawful, null and void and of no legal effect;

17. **THIS COURT GRANTS**, a declaration that to the extent that Order No. 10 of 2016 Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOC/Nexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) made under the Petroleum (Exploration and Production) Act Cap. 65:04 is valid, that validity applies only to the Licensees.

18. **THIS COURT ORDERS** that the Respondents do pay costs of this application.

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THE HONOURABLE JUSTICE

IF YOU FAIL TO COMPLY WITH THE TERMS OF THIS ORDER YOU WILL BE IN CONTEMPT OF COURT AND MAY BE LIABLE TO IMPRISONMENT OR TO HAVE YOUR ASSETS CONFISCATED.

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2022-HC-DEM-CIV-FDA-47

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent

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DRAFT ORDER OF THE COURT

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