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2022-HC-DEM-CIV-FDA-47

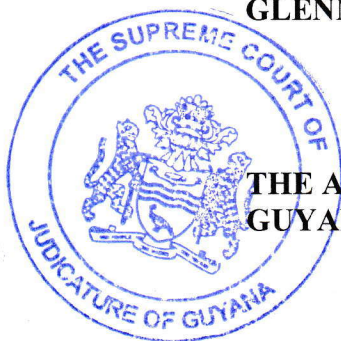
IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

REGULAR JURISDICTION

BETWEEN:-

GLENN LALL

Applicant.



-and-

**THE ATTORNEY-GENERAL OF
GUYANA**

Respondent.

-and-

**ESSO EXPLORATION AND
PRODUCTION GUYANA LIMITED**

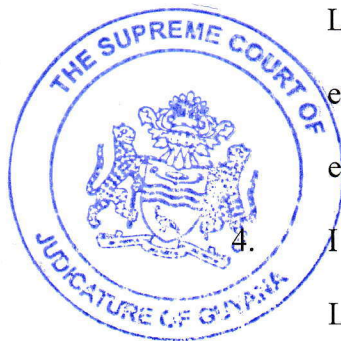
Added Respondent.

AFFIDAVIT IN DEFENCE OF ADDED RESPONDENT

I, **Alistair Routledge** of 86 Duke Street, Kingston, Georgetown, being duly sworn make oath and say as follows:-

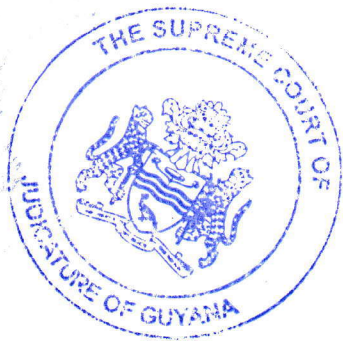
1. I am the President of the Added Respondent herein Esso Exploration and Production Guyana Limited ("the Added Respondent") and I am duly authorised to and do swear this Affidavit on its behalf.
2. From my position with the Added Respondent, I have personal knowledge of the matters deposed to herein, save and except where I expressly so state.
3. I received a BEng. degree in Mechanical Engineering from Heriot-Watt University, Edinburgh in 1990 and an MBA degree from Strathclyde Graduate Business School, Glasgow in 1995. I began my career in the oil

and gas industry in 1990 with Mobil Oil Corporation in Aberdeen, Scotland. Since that time, I have undertaken a range of individual, supervisory and managerial assignments for Mobil and ExxonMobil (following the merger in 2000). I served in various capacities in engineering, operations, planning and commercial functions while living in the United Kingdom, the United States, Venezuela, Italy, and Qatar. In the last 10 years, I have been the Vice President, Production of ExxonMobil's Qatar business responsible for stewarding operations in all of ExxonMobil's joint venture businesses associated with Qatar - RasGas, Qatargas and the three LNG regasification terminals in Italy, UK and USA. I became the President and General Manager of ExxonMobil Qatar Limited in December 2014 responsible for leading all ExxonMobil affiliated activities in Qatar as well as related international joint ventures with Qatar Petroleum in the UK, Italy and USA. I was appointed President of Esso Exploration and Production Guyana Limited (EEPGL) in July 2020. I am a widely experienced petroleum engineer and petroleum project manager, with in excess of three decades' experience in the global oil and gas industry.

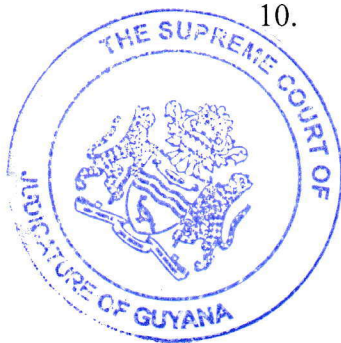


4. I have read the Fixed Date Application filed by the Applicant herein Glenn Lall dated the 13th day of January, 2022 ("the FDA"), and the Affidavit sworn to in support thereof by the said Glenn Lall dated the said 12th day of January, 2022 ("the Affidavit") and the Exhibits thereto. Save as is hereinafter expressly admitted, I deny each and every averment therein as if the same were herein set out verbatim and traversed seriatim.

5. The Added Respondent admits the allegations contained in Grounds 2.1(c) (only in so far as the literal wording of section 10 of the Petroleum Exploration and Production Act, Cap. 65:04 (“the Petroleum Act”) is set out) of the FDA, and paragraphs 1, 5(i), (ii), (iii), 13, and 14 of the Affidavit.
6. The Added Respondent denies the allegations contained in Grounds 2.1(b), 2.2(d), (e), (f), (g), (h), 2.3(i), (j), (k), 2.4(l), (m), (n), (o), 2.5(p), (q), (r), (s), 2.6(t), (u), (v), (w) and (x) of the FDA and paragraphs 4, 6.(i), (ii), (iii), (iv) (in so far as such paragraphs aver that certain provisions of the Petroleum Agreement dated the 27th day of June, 2016 (“the PA”), violate the Petroleum Act), 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the Affidavit.
7. The Added Respondent has no knowledge of the allegations contained in Grounds 2.1(a), of the FDA and paragraphs 2, 3, 9 and 25 of the Affidavit and makes no admission in respect thereof.
8. In so far as the allegations contained in paragraph 3 of the Applicant’s Affidavit are concerned, the Added Respondent is advised by its Attorneys-at-Law and verily believes that the fact that the Applicant is a citizen of Guyana and the publisher of the National Media and Publishing Company Limited, does not entitle him to bring the present proceeding in his own name in his private capacity for declaratory relief alleging breach of public rights. Nor has the Applicant shown any special loss or damage he would suffer over and above the public so as to entitle him to seek the reliefs that he does.



9. The Added Respondent is advised by the said Attorneys-at-Law and verily believes that in proceedings which are not for judicial review, and are brought in the regular jurisdiction of the court a private person such as the Applicant Glenn Lall is not entitled to seek the declaratory reliefs in order to prevent what are alleged public wrongs or to assert a right on behalf of the public. It is a fundamental principle of Guyana law that public rights could only be asserted in a civil action by the Attorney-General of Guyana representing the public. Except where a statute otherwise provides, a private person could only bring a proceeding to challenge a breach of the law if his claim was based on an allegation that the breach constituted an infringement of his private rights or would inflict special damage on him. A private person was not entitled to bring an action in his own name for the purpose of preventing public wrongs. Consequently, the court has no jurisdiction to grant relief in such a proceeding as the present one and the proceeding brought by the Applicant ought to be struck out forthwith.



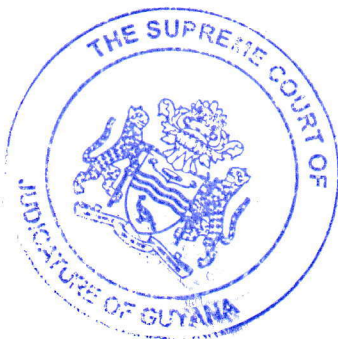
10. The Added Respondent specifically denies paragraph 4 of the said Affidavit. The Petroleum Agreement does not violate provisions of the Petroleum Act, the Financial Administration and Audit Act ("the FAA Act"), Prevention of Discrimination Act ("Prevention of Discrimination Act") or the Constitution of the Co-operative Republic of Guyana ("the Guyana Constitution"), either as the Applicant alleges, or at all.

11. The Added Respondent specifically denies paragraphs 6, 7, and 8 of the said Affidavit. The Added Respondent is advised by its Attorneys-at-Law

Messrs. Andrew M.F. Pollard, SC, and Edward Luckhoo, SC, and verily believes that Article 15.1, para. 2 of Article 15.10, Article 15.11 and Article 15.12 of the PA do not extend or purport to extend concessions to persons in a manner that is inconsistent with sections 10 and 51 of the Petroleum Act, either as the Applicant alleges or at all.

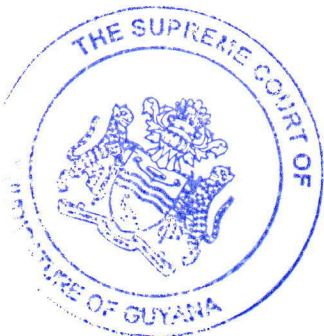
12. The Added Respondent specifically denies paragraph 10 of the Affidavit. The Added Respondent is advised by its Attorneys-at-Law and believes that Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the PA do not violate section 6 of the FAA Act, either as alleged or at all.
13. The Added Respondent specifically denies paragraph 11 of the Affidavit. The Added Respondent is advised by its Attorneys-at-Law and believes that Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the PA do not separately or cumulatively alter certain tax laws to grant remissions, concessions and waivers contrary to section 6 of the FAA Act, either as the Applicant alleges or at all, for the reasons set out below in this Affidavit.
14. Further, the Added Respondent is advised by its Attorneys-at-Law and verily believes that the provisions of the PA do not and cannot alter a law: Only Parliament may do so by way of legislative device, which is recognised and given effect to by Article 15.14 of the PA which provides as follows –

“An Order shall be made giving effect to the provisions of this Article [15] in statutory form and language as specified in section 51 of the Act [the Petroleum Act]”.



This was done by the making of the Petroleum (Exploration and Production) Tax Laws (Esso Exploration and Production Limited, CNOOC Nexen Petroleum Guyana Limited and Hess Exploration Guyana limited) Order No. 10 of 2016 (the “Section 51 Order”) dated the 2nd day of August, 2016, and its approval by the National Assembly. Exhibited hereto and marked **Exhibit “AR-1”** is a copy of the said section 51 Order.

15. The Added Respondent specifically denies paragraph 12 of the said Affidavit. The Added Respondent is advised by its Attorneys-at-Law and believes that Article 15.12(ii) of the PA does not violate or in any way contravene the Guyana Constitution or the Prevention of Discrimination Act.
16. The Added Respondent specifically denies paragraph 15 of the said Affidavit. The Applicant does not state or show in his Affidavit how or on what basis he concludes that Article 15.4 violates section 51 of the Petroleum Act.
17. Article 15.4 and the arrangements therein are based on a simple contractual arrangement whereby the Government of Guyana (as represented by the Minister responsible for petroleum) accepts the Government’s share of profit oil (crude petroleum) as satisfaction in full of the Contractors’(i.e. Licensees’) respective shares of income and corporation tax payable in respect of the petroleum operations.
18. The Minister is provided with the Contractors’ tax returns and submits these to the Guyana Revenue Authority, which then issues tax certificates



certifying that the sums represented on the certificates have been paid as income and corporation tax. The procedure set out in the Income and Corporation Tax Act requires taxpayers to submit a return to the Commissioner-General and to pay the tax represented on the return. The Commissioner-General would then issue a certificate that payment of tax has been made.

19. Section 51 of the Petroleum Act provides as follows:-

“(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 sub-section (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.

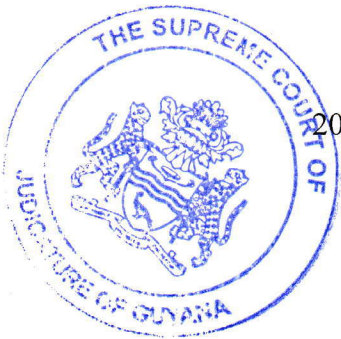
(2) The written laws referred to in subsection (1) are –

(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.”

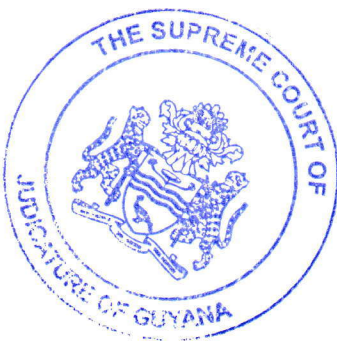


20. Further, paragraph 3. of the section 51 Order provides that:-

“For the purpose of giving effect to the Agreement [Petroleum Agreement] if so required by those provisions, any or all of the written laws mentioned in section 51(2) of the [Petroleum] Act shall not apply to or in relation to the Licensees or, as the case may be, shall so apply to the Licensees with all the adaptations, exceptions, modifications and qualifications to those laws as, at the date of this Order, are set out in the Agreement.”

21. The Added Respondent is advised by its Attorneys-at-Law and verily believes that the effect of paragraph 3. of the section 51 Order is to modify or adapt the usual process referred to in paragraph 18 above by which tax is paid to the Commissioner-General of the Guyana Revenue Authority, which is expressly authorised by the said paragraph 3. Further, the amendment to section 51 of the Petroleum Act was specifically amended to refer to a “production sharing agreement” and it was Parliament’s intent to recognize this modification and adaption as is consistent in production sharing agreements throughout the world and common practice in the oil and gas sector.

22. The Added Respondent specifically denies paragraph 16 of the said Affidavit. The Added Respondent is advised by its Attorneys-at-Law and believes that section 51 of the Petroleum Act does not contravene section 6 of the FAA Act as alleged by the Applicant. Further, the Added Respondent is advised and believes as aforesaid that both the Petroleum Act and the FAA Act are statutes of equal or concurrent jurisdiction, and so a provision of one cannot be deemed to “contravene” the other as the Applicant is alleging, even if they are inconsistent with each other. **They are both Acts of Parliament of equal stature and the only law that is above either of them is the Constitution of the Co-operative Republic of Guyana which is the supreme law.**



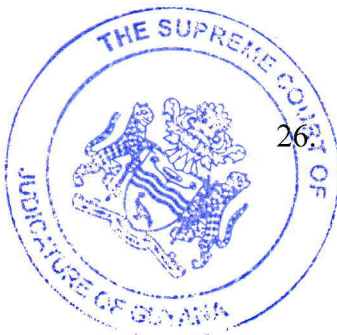
23. Further or additionally, with respect to the allegation that section 51 of the Petroleum Act contravenes section 6 of the FAA Act, the Added

Respondent is advised by its Attorneys-at-Law and verily believes that Section 6(1) of the FAA Act provides as follows:-

“Save as may be expressly provided for 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 subsidiary legislation made under such Act.”

24. The Added Respondent is advised by its Attorneys-at-Law and verily believes that in accordance with the controlling words of section 6(1) - *save as may be expressly provided for by any law for the time being in force* - the Petroleum Act is such a law which was (at the time of the making of the exemption) a “*law being in force*”.

25. Further (in addition to the authorisation contained in the controlling words of section 6(1) of the FAA Act), the Minister responsible for finance was specifically empowered by section 51 of the Petroleum Act to make the section 51 Order effecting the changes to several specific tax Acts. Accordingly, the said Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 do not contravene section 6(1) of the FAA Act.



26

The Added Respondent denies paragraph 17 of the said Affidavit. The Added Respondent is advised by its Attorneys-at-Law and believes that while the Applicant alleges that the Petroleum Act is neither a tax act nor subsidiary legislation, nowhere does Applicant define what is meant by “tax Act”. Nor do the FAA Act, the Fiscal Enactments (Amendment) Act,

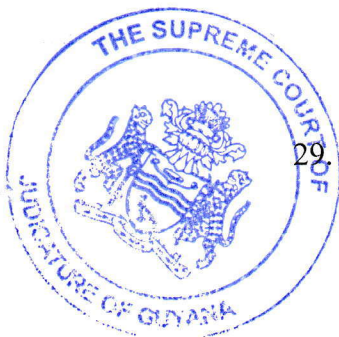
Income Tax Act, Income Tax (In Aid of Industry) Act, Corporation Tax Act or the Property Tax Act define “tax Act”.

27. The Interpretation and General Clauses Act, Cap. 2:01 defines an “Act” as meaning “any Act of Parliament...”. Added Respondent is advised by its Attorneys-at-Law and verily believes that when one is interpreting what is meant by a “tax Act”, one must look at the clear literal words used in the statute. Accordingly, in the absence of a definition of a “tax Act, both according to the definition in the Interpretation and General Clauses Act or the literal words of the statute, a tax Act is simply an Act of Parliament that has provisions that deal with tax measures.

28. As stated above, Part VI Section 51 of the Petroleum Act 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 sub-section (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.

The written laws referred to in subsection (1) are the Income Tax Act; the Income Tax (In Aid of Industry) Act; the Corporation Tax Act; and the Property Tax Act.

The Added Respondent is advised by its Attorneys-at-Law and believes that PART VI as mentioned in the preceding paragraph is headed *MODIFICATION OF TAX LAWS*. Part VI makes provision for the Minister responsible for finance (not petroleum) to make subsidiary legislation (orders) exempting the application of 4 (four) substantial “Tax Acts”



namely the Income Tax Act, the Income Tax (In Aid of Industry) Act, the Corporation Tax Act and the Property Tax Act. The Added Respondent is advised and believes as aforesaid that any law which can exempt certain persons from the operation or application of a tax Act, must itself be deemed a tax Act.

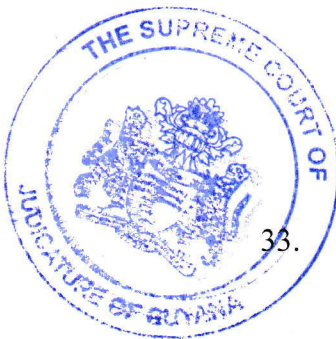
30. The Added Respondent is advised by its Attorneys-at-Law and verily believes that where there is an ambiguity in the meaning or wording of a statute, one method of statutory interpretation utilised by the courts is to apply a “purposive” approach to interpretation.

31. As stated above, section 51 of the Petroleum Act reads as follows:-

“(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 sub-section (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.”

32. The Added Respondent is advised by its Attorneys-at-Law and verily believes that while the words shall apply to a licensee are clear, the words immediately following apply to “and in relation to” a licensee, at the least may be ambiguous and unclear.

33. The Added Respondent is advised by its Attorneys-at-Law and verily believes that the words “*in relation to a licensee*”, must on a literal interpretation be given some meaning. The legislature must have placed them there for some reason. Added Respondent is advised and believes as



aforesaid that this could only be to extend the application of the section to person(s) or group(s) connected or related to licensees. The Added Respondent is further advised and believes as aforesaid that if at the very least these words create an ambiguity or are unclear, the court may resort to a purposive construction of this provision.

34. An appropriate starting point is the long title of the Petroleum Act, which states that it is:-

“An Act to make provision with respect to prospecting for and production of petroleum, and for matters connected therewith.”

35. One of the central features of the global petroleum industry both in the prospecting for, development and production of petroleum is that most activities are carried out through specialist sub-contractors and affiliated companies. These specialist sub-contractors and affiliated companies often specialise in one single (although very important) aspect of either petroleum prospecting, development or production. Thus sub-contractors and affiliated companies are an integral part of petroleum operations providing goods and services in such areas as design, construction and operation of floating production, storage and offloading (FPSO) vessels and subsea infrastructure design, engineering, construction, procurement, and operations. Drillship leases and drilling support services, including shorebase services, vessel support services, fuel, directional drilling services, drilling/completion fluids, waste management, formation evaluation, well construction materials, and completion



equipment/services, supporting exploration activities for new prospects, appraisal wells to determine commercial viability of the reserves, and development wells to economically produce hydrocarbons.

36. The use of these sub-contractors and affiliated companies often allows Operators of petroleum projects to utilize their technology and know-how, achieve synergies and cost-effective operations that could not otherwise be achieved and certainly not with the substantial savings in costs and efficiency that these produce. It is not exaggeration to state that there is no major petroleum prospecting or producing project in the world which does not feature sub-contractors and affiliated companies and certainly not in the deepwater such as encountered in the Stabroek Block located in the Economic Exclusive Zone offshore Guyana. These sub-contractors and affiliated companies are vital to the efficient and cost-effective prospecting for and production of petroleum.

37. These sub-contractors and affiliated companies whose presence is vital for the above-stated reasons, require fiscal incentives for their operations. These fiscal concessions negotiated in the PA with the Government of Guyana were always intended to be accessed by the sub-contractors and affiliates. Evidence of this is found in the provisions of Article 15 of the PA which was negotiated and agreed in toto by the Government of Guyana and the Added Respondent.

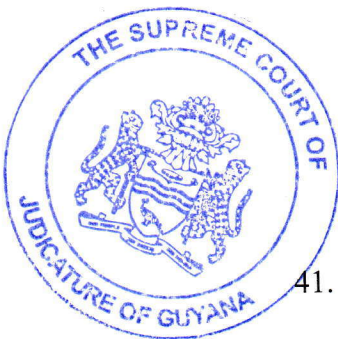


38. The Added Respondent will contend that it is necessary for its sub-contractors and affiliates to access the fiscal concessions agreed with the

Government in order to achieve cost-effective and efficient petroleum prospecting and production operations in Guyana. The Added Respondent shall further contend that if the purpose of the Petroleum Act is to make provision with respect to prospecting for and production of petroleum (and for matters connected therewith), then it is imperative that its provisions provide for the sub-contractors and affiliates of licensees to have access to and to utilise the fiscal concessions in the Petroleum Agreements.

39. The Added Respondent contends that the application of a purposive construction to section 51 of the Petroleum Act would support an interpretation that the words "and in relation to" a licensee immediately following the words "a licensee" must have been intended to identify some person or group of persons other than licensees; that is to say, sub-contractors and affiliates. This is because they are the persons who are most in need of these fiscal concessions to provide adequate oilfield production support.

40. The Added Respondent is advised by its Attorneys-at-Law and verily believes that a purposive construction is required for the proper interpretation of section 51 of the Petroleum Act to produce a logical reasonable result that is consistent with the stated purpose of the Petroleum Act.



41. The Added Respondent is advised by its Attorneys-at-Law and verily believes that if such a purposive construction is applied, Articles 15.1, 15.4, 15.7, 15.9, 15.11 and 15.12 of the PA and the section 51 Order do not

infringe the sections 10 and 51 of the Petroleum Act, nor section 6(1A) and/or (1B) of the FAA Act.

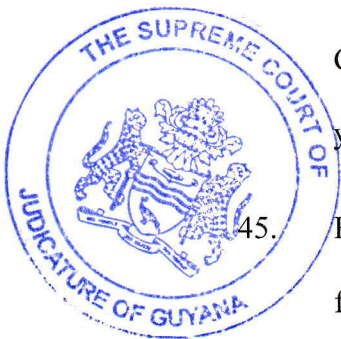
42. The Added Respondent specifically denies paragraph 18 of the said Affidavit. The Added Respondent is advised by its Attorneys-at-Law and believes that Article 15.12 is not discriminatory to Guyanese employees as the Applicant alleges in so far as it exempts from income tax expatriate employees of the Contractor, affiliated companies and/or non-resident sub-Contractors who are physically present in Guyana for 183 days or less in any year of assessment.

43. Article 149(2) of the Guyana Constitution defines the word “discriminatory” as meaning –

“...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....”

44. The Added Respondent is advised by its Attorneys-at-Law and believes that none of these classifications enumerated in Article 149(2) is applicable here. The exemption is given for persons who are not ordinarily resident in Guyana, that is physically present in Guyana, for 183 days or less in any year of assessment.

45. Further or additionally, Article 149(3) of the Constitution provides as follows:-



“Paragraph (1)(a) shall not apply to any law so far as that law makes provision –

(a) with respect to persons who are not citizens of Guyana...”

To the best of Added Respondent’s knowledge, information and belief, none of the persons to whom the exemption from income tax applies is a citizen of Guyana.

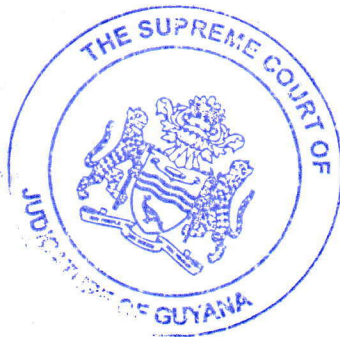
46. The Added Respondent is advised by its Attorneys-at-Law and verily believes that section 5 of the Prevention of Discrimination Act is of no application either. That Prevention of Discrimination Act is a statute that states in section 3 that it is intended to apply to employers and employees who are in an employment relationship. The Prevention of Discrimination Act makes it a criminal offence for an employer to discriminate against an employee on the grounds stated therein. The Prevention of Discrimination Act makes provision for an aggrieved employee to seek redress against an employer. The Applicant Glenn Lall is not in an employment relationship with the Added Respondent. The Added Respondent is advised and believes as aforesaid that the Applicant cannot avail himself of the provisions of the Prevention of Discrimination Act. Applicant’s invoking the Prevention of Discrimination Act is misconceived, erroneous and without merit.
47. The Added Respondent specifically denies paragraph 19 of the said Affidavit. Nowhere in the said paragraph (or anywhere else in the

Affidavit) does the Applicant explain why he views section 49 of the Petroleum Act as being contrary to section 6(1A) and (1B) of the FAA Act.

48. The Added Respondent specifically denies paragraph 20 of the said Affidavit. The Added Respondent repeats and relies upon paragraphs of this Affidavit in response to the Applicant's paragraph 20. The Added Respondent is advised by its Attorneys-at-Law and verily believes that the section 51 Order is subsidiary legislation made under the authorisation of a tax Act, namely section 51 of the Petroleum Act, which authorises the Minister responsible for finance to adapt, except, modify or qualify specific tax laws, namely, the Income Tax Act, the Income Tax (In Aid of Industry) Act, the Corporation Tax Act and the Property Tax Act.

49. The Added Respondent specifically denies paragraph 21 of the said Affidavit. In so far as the said paragraph is concerned, the Added Respondent is advised by its Attorneys-at-Law and verily believes that Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 are completely consistent with section 6(1) of the FAA Act.

50. The Added Respondent specifically denies paragraph 22 of the said Affidavit. The Added Respondent is advised by its Attorneys-at-Law and verily believes that section 10 of the Petroleum Act must be read together with section 51 of the said Act, which authorises the Minister to make the section 51 Order which effected the changes to specified tax laws. In those circumstances, the PA and its Articles 15.1, 15.4, 15.7, 15.9, 15.10 (2nd para.), 15.11, 15.12 and 15.13 cannot be said to be in contravention of the

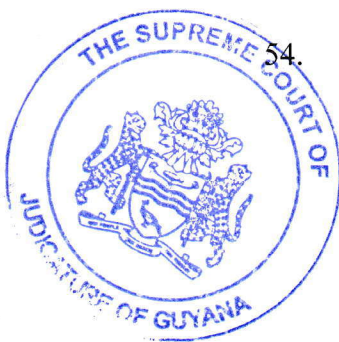


Constitution of Guyana, the Petroleum Act, the FAA Act or the Prevention from Discrimination Act.

51. The Added Respondent is advised by its Attorneys-at-Law and verily believe that the meaning of paragraph 23 of the Affidavit is not clear, thereby making it embarrassing for the Added Respondent to respond to.

52. The Added Respondent is advised by its Attorneys-at-Law and verily believes that the declaratory reliefs sought by the Applicant have a close affinity with equitable remedies and are discretionary in nature. This allows the court to take account of all objections and defences available in equitable proceedings including undue delay or laches.

53. As a result of the solemn agreements, most importantly including the Petroleum Agreement, between Esso, its co-venturers and the Guyana Government, entered into on the 17th day of June, 2016, the Added Respondent Esso is presently engaged in carrying on one of the most significant worldwide investments in petroleum exploration, development and production activities, which are occurring in the Stabroek Block, located in the Exclusive Economic Zone of the Co-operative Republic of Guyana.



54. In addition to significant ongoing expenditure related to exploring for hydrocarbons, Added Respondent has three approved petroleum projects progressing known as the Liza Phase 1 Development Project ("Liza Phase 1 Project"), the Liza Phase 2 Development Project ("Liza Phase 2 Project"), and the Payara Development Project ("Payara Project"). In addition, Added

Respondent has applied for necessary government approvals and expects to receive Government approvals for the Yellowtail Development Project (“Yellowtail Project”) and Added Respondent has begun the application process for the Uaru Development Project (“Uaru Project”). These projects are individually and collectively referred to herein as “the Projects”.

55. The expenditures required to execute the Liza Phase 1 Project are expected to total approximately \$4 billion USD (four billion dollars United States currency). The expenditures required to execute the Liza Phase 2 Project are expected to total approximately \$6 billion USD (six billion dollars United States currency). The expenditures required to execute the Payara Project are expected to total approximately \$9 billion USD (nine billion dollars United States currency). The expenditures required to execute the Yellowtail Project are expected to total approximately \$10 billion USD (ten billion dollars United States currency).

56. From the effective date of the Petroleum Agreement on the 7th day of October 2016, Added Respondent and its co-venturers have incurred and spent over \$13 billion USD (thirteen billion dollars United States’ currency) on the Projects as well as exploration, development and production activities.



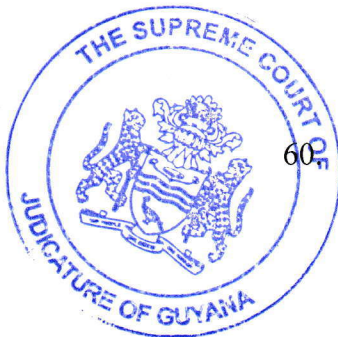
The Petroleum Agreement has been in the public domain since in or around the month of December, 2016. Since that time, Esso and its co-venturers have been steadily carrying out the development programmes required to bring these projects to production, and have incurred the above-stated costs

of \$13 billion USD (thirteen billion dollars United States' currency). If the reliefs sought by the Applicant are granted, it would be inconceivable that the projects could be carried out by Esso in the form they are designed. There would be billions of \$US dollars in additional costs which could well make the projects uncommercially viable or infeasible.

58. The Added Respondent is advised by its Attorneys-at-Law and verily believes that notwithstanding that the Applicant has been aware of the Petroleum Agreement and its contents since in or around the month of December, 2016, the Applicant did not see fit to challenge it or to seek the reliefs he is seeking until the 12th day of January, 2022. The Added Respondent shall contend that the Applicant is guilty of gross and undue delay. Nor has he explained anywhere in the Affidavit in support of the FDA as to any reason why it took him in excess of five years to institute these proceedings. The Added Respondent shall contend that it would be unconscionable to allow the Applicant the reliefs that he is seeking when he has sat on his hands for five years and allowed Esso and its co-venturers to expend these huge sums which could now be wasted.

59. The Added Respondent specifically denies paragraph 24 of the said Affidavit.

60. The Added Respondent shall contend that the Applicant's FDA and the Affidavit are misconceived, without merit, and ought to be dismissed with costs.



61. This Affidavit is drawn by Messrs. **Andrew M.F. Pollard, SC,** and **Edward Luckhoo, SC,** upon my instructions.

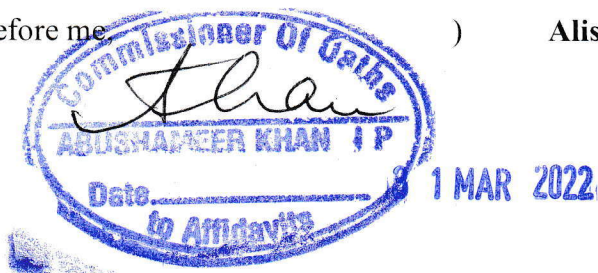
Sworn to at Georgetown, Demerara,)

This 31st day of March, 2022,)

Before me)



Alistair Routledge



A COMMISSIONER FOR OATHS)

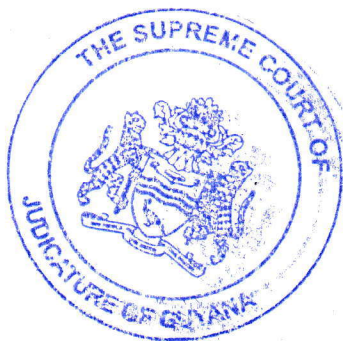


EXHIBIT AR-1

194/2016

1993



This is the document marked (AR1) referred to in the Affidavit by AR sworn before me Alan on the 19 day of 1 MAR 2022

The Official Gazette

(EXTRAORDINARY)

OF GUYANA

Published by the Authority of the Government

GEORGETOWN, TUESDAY 2ND AUGUST, 2016

TABLE OF CONTENTS PAGE

FIRST SUPPLEMENT

LEGAL SUPPLEMENT

- A. ACTS — NIL
B. SUBSIDIARY LEGISLATION — Order No. 10 of 2016 — The Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOCNexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) Order 2016 1109
C. BILLS — NIL

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TUESDAY 2ND AUGUST, 2016

THE OFFICIAL GAZETTE 2ND AUGUST, 2016
LEGAL SUPPLEMENT — B

GUYANA

No. 10 of 2016

ORDER

Made Under

THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT

(Cap. 65:04)

IN EXERCISE OF THE POWER CONFERRED UPON ME BY SECTION 51 OF THE
PETROLEUM (EXPLORATION AND PRODUCTION) ACT, I MAKE THE
FOLLOWING ORDER:-

- Citation. 1. This Order may be cited as the Petroleum (Exploration and Production) (Tax Laws) (Esso Exploration and Production Limited, CNOOCNexen Petroleum Guyana Limited and Hess Guyana Exploration Limited) Order 2016.
- Interpretation. 2. In this Order-
“Agreement” means the Petroleum Agreement between the Government of Guyana of the one part and Esso Exploration and Production Limited, CNOOCNexen Petroleum Guyana Limited and Hess Guyana Exploration Limited of the other part dated 27 June 2016 concerning the Stabroek Block, Offshore Guyana, which is a production sharing agreement;
“Licensees” means Esso Exploration and Production Limited, CNOOCNexen Petroleum Guyana Limited and Hess Guyana Exploration Limited. Any reference to one Licensee shall be a reference to all of them and vice versa.
- Tax Laws. 3. For the purpose of giving effect to the Agreement, if so required by those provisions, any or all of the written laws mentioned in section 51 (2) of the Act shall not apply to or in relation to the Licensees or, as the case may be, shall so apply to the Licensees with all the adaptations, exceptions, modifications and qualifications to those laws as, at the date of this Order, are set out in the Agreement.

Made this 2nd day of August, 2016.


Minister of Finance

2022-HC-DEM-CIV-FDA-47

IN THE HIGH COURT OF THE SUPREME
COURT OF JUDICATURE

REGULAR JURISDICTION

BETWEEN:-

GLENN LALL

Applicant.

-and-

THE ATTORNEY-GENERAL OF GUYANA

Respondent.

-and-

**ESSO EXPLORATION AND PRODUCTION
GUYANA LIMITED**

Added Respondent.

**AFFIDAVIT IN DEFENCE OF ADDED
RESPONDENT**

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