

COMMONWEALTH OF DOMINICA**ARRANGEMENT OF SECTIONS**

Section

**PART I
PRELIMINARY**

1. Short title and commencement.
2. Interpretation.

**PART II
GEOTHERMAL RESOURCES ADVISORY
COMMITTEE**

Division 1— Establishment

3. Constitution.
4. Alternate members.
5. Persons unqualified and conflict of interest.
6. Vacancy.
7. Casting vote.
8. Meetings and quorum.
9. Signature.
10. Remuneration.
11. Funds.

Division 2— Functions, Duties and Powers

12. Functions and objectives.
13. Sub-committees.
14. Delegation by Advisory Committee.
15. Civil liability.
16. Report.

**PART III
GEOHERMAL RESOURCES**

17. Nature.
18. Content.
19. Ownership.

**PART IV
MANAGEMENT OF GEOHERMAL RESOURCE
DEVELOPMENT**

Division 1—General

20. Physical Planning Act applies.
21. Electricity Supply Act applies.
22. Aliens Land Holding Regulation Act does not apply.

Division 2— Special geothermal zones

23. Designation.
24. Effect of designation.

Division 3— Management of Reconnaissance, Explora-
tion, Use and Export

25. Reconnaissance.
26. Exploration.
27. Use.
28. Export.

**PART V
GEOHERMAL RESOURCE ALLOCATION**

29. Power of minister to allocate resources.
30. No additional permits necessary.
31. Rights accorded by Geothermal Exploration Agree-
ment.

-
32. Rights accorded by Geothermal Resources Concession.
 33. Compulsory acquisition rights.
 34. Statutory rights relating to land.

**PART VI
PROCEDURE FOR OBTAINING A GEOHERMAL
RESOURCE DEVELOPMENT AGREEMENT**

35. Geothermal resource development agreement application.
36. Submission of application.
37. Determination of application.
38. Minister's approval.
39. Execution of agreement.
40. Transfer of interests or rights.

**PART VII
FEES, BONDS AND ROYALTIES**

41. Minister to set fees and royalties.

**PART VIII
RECORD KEEPING AND PUBLICITY**

42. Register.
43. Publication in the *Gazette*.

**PART IX
COMPLIANCE AND ENFORCEMENT**

Division 1—General

44. Responsible authorities.
45. Self-monitoring.

Division 2—Inspections

- 46. Designation of inspectors.
- 47. Powers of inspectors.

Division 3—Administrative Monetary Penalties and
Other Sanctions

- 48. Commission of violation.
- 49. Notice of intention to impose penalty.
- 50. Penalty notice.
- 51. Appeal to the High Court.
- 52. Publication.
- 53. Debts to the State.
- 54. Common law principles.
- 55. Time limit.
- 56. Invalidation of agreement.
- 57. Forfeiture.

Division 4—Alternative Dispute Resolution

- 58. Dispute settlement.

**PART X
MISCELLANEOUS**

- 59. Statutory provision obligatory.
- 60. Schedule.
- 61. Regulations.
- 62. Consequential and transitional provisions.
- 63. Amendment of Physical Planning Act.
- 64. Repeal.

SCHEDULE

COMMONWEALTH OF DOMINICA

ACT No. 12 of 2016

I assent**CHARLES A. SAVARIN***President*23rd November, 2016**AN ACT TO PROVIDE FOR THE DEVELOPMENT,
EXPLORATION AND USE OF GEOHERMAL
RESOURCES AND FOR RELATED MATTERS.***(Gazetted 24th November, 2016.)*BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:**PART I
PRELIMINARY**

1. (1) This Act may be cited as the-

Short title and
commencement.**GEOHERMAL RESOURCES
DEVELOPMENT ACT, 2016.**

(2) This Act shall come into force on such date as the Minister may appoint by Order published in the *Gazette*.

Interpretation.

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

“Advisory Committee” means the Geothermal Resources Advisory Committee established under section 3;

Act No. 17 of 1995.

“alien” has the same meaning as in the Aliens Land Holding Regulation Act, 1995;

“application fee” means the application fee set by Order of the Minister under section 41;

“bid” means a proposal submitted for carrying out the terms of reference in the tender documents;

“concession area” is the land, described by parameters related to its surface area, or the area that the geothermal resource developer is authorised to develop or carry out geothermal resource development under the Geothermal Resources Concession;

Act No. 5 of 2002.

“development” has the same meaning as in the Physical Planning Act, 2002;

Act No. 10 of 2006.

“distribution” has the same meaning as in the Electricity Supply Act, 2006;

Act No. 10 of 2006.

“electricity supply control” means the terms or conditions required or authorised by the Electricity Supply Act, 2006 to be imposed on holders of a licence that is referred to in section 30 of that Act;

“enhancement” means an activity performed to improve production or injection capacity of a well;

“exploration” means activity that demonstrates the dimensions, positions, characteristics and extent of geothermal resources by geological, geochemical and geophysical studies and surveys and includes drilling, testing and enhancement of shallow temperature-gradient wells or deep exploratory wells;

“generation” means production of electrical energy from other forms of energy;

“geothermal energy” means the energy derived or derivable from and produced within the earth by natural heat phenomena, and includes geothermal water;

“Geothermal Exploration Agreement” means a development agreement referred to in sections 29(1)(a) and 31;

“geothermal resource developer” means a person who is authorised to undertake geothermal resource development under a Geothermal Exploration Agreement or Geothermal Resources Concession, and includes an entity referred to in section 29(3);

“geothermal resource development” means exploration or use of geothermal resources;

“geothermal resource development agreement” means a development agreement referred to in section 29(1);

“geothermal resource development application” means an application referred to in sections 36 and 37;

“Geothermal Resources Concession” means a development agreement referred to in sections 29(1)(b) and 32;

“geothermal water” means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius

or more, and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena;

Act No. 10 of 2006.

“IRC” means the Independent Regulatory Commission established under the Electricity Supply Act, 2006;

“Minister” means the Minister responsible for energy;

Act No. 5 of 2002.

“Physical Planning and Development Authority” means the Physical Planning and Development Authority established under section 4 of the Physical Planning Act, 2002;

Act No. 5 of 2002.

“planning and environmental controls” means the conditions and limitations on developments in general, or geothermal resource developments in particular, required or authorised by the Physical Planning Act, 2002 or Regulations made under it;

“reconnaissance” means activity which has minimal impact on the environment of the land that determines whether the land may be a source of geothermal resources, and does not include drilling;

“Register” means the register maintained by the Advisory Committee in accordance with section 42;

“special geothermal zone” means the land described in terms of its surface area and subsurface land, designated as such under sections 23 and 24;

“sustainable development and use” means managing the use, development, and protection of geothermal resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

-
- (a) sustaining the potential of geothermal resources to meet the reasonably foreseeable needs of future generations;
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any material adverse effects of activities on the environment;

“tender documents” means the documents containing the terms of reference for, and relevant details of, the tender process;

“tender process” means a competitive selection process, the rules, including selection criteria, of which are issued by the Advisory Committee for the purpose of allocating geothermal resource applications in special geothermal zones or if recommended by the Advisory Committee, outside a special geothermal zone pursuant to section 38(4);

“testing”, as it relates to wells, means the temporary use of a geothermal resource for the discharge of fluid, steam and gas from wells for the purpose of ascertaining the production capacity of the well and chemistry of the geothermal well discharge;

“transmission” has the same meaning as in the Electricity Supply Act, 2006; and Act No. 10 of 2006.

“use of a geothermal resource” means accessing the geothermal resource for the purpose of enjoying it, and drawing from it any of the profit, utility and advantage which it may produce, including geothermal energy.

PART II
GEOTHERMAL RESOURCES ADVISORY
COMMITTEE*Division 1— Establishment*

Constitution.

3. (1) There is hereby established a statutory board to be known as the Geothermal Resources Advisory Committee comprising the following members:

- (a) the Permanent Secretary of the Ministry with responsibility for energy;
- (b) the Executive Director of the IRC;
- (c) the Chief Physical Planner of the Physical Planning and Development Authority;
- (d) a senior State Attorney; and
- (e) senior technical public officers, and other professionals not in the public service, with relevant knowledge or expertise, altogether not exceeding 6 in number, appointed by the Minister.

(2) The Minister shall appoint one member to be the Chairman and the Permanent Secretary of the Ministry with responsibility for energy shall act as the Deputy Chairman, unless the Permanent Secretary is appointed Chairman, in which case the Minister shall select another member to act as Deputy Chairman.

(3) The names of the initial members, their title, if any, and the names of subsequent members, shall be published in the *Official Gazette*.

(4) A member appointed under subsection (1)(e) shall hold office for a term of three years.

(5) The Chairman and Deputy Chairman shall appoint a secretary from among the members.

(6) In the case of the absence or inability of the Chairman to act, the Deputy Chairman shall exercise the function of the Chairman.

4. (1) The Minister may appoint a person to be an alternate member for any member, other than the Chairman, so long as the alternate member possesses similar qualifications and background as the member for whom he or she is serving as an alternate.

Alternate members.

(2) The alternate member may act temporarily in the place of that member if that member is absent, incapacitated or ineligible to perform the duties of a member.

5. (1) A person is not qualified for appointment as a member if he or she—

Persons unqualified and conflict of interest.

(a) is of unsound mind;

(b) is an undischarged bankrupt; or

(c) has been convicted of a serious offence.

(2) A member of the Advisory Committee shall inform the Advisory Committee of any matter in which he or she has, either directly or indirectly, personally or by his or her spouse, partner, business associate or company, any pecuniary or business interest, and the member shall take no part, directly or indirectly, in any consideration or decision of the Advisory Committee on that matter.

(3) For the purposes of subsection (1)(c), the expression

“serious offence” means an offence for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of an enactment be sentenced on conviction to imprisonment for a term of five years; and the expression includes an attempt to commit such offence.

Vacancy.

6. If a vacancy occurs in the membership, the Minister shall appoint a person to fill the vacancy in a manner that respects the requirements in section 3 for the composition of the Advisory Committee.

Casting vote.

7. The Chairman has the right to vote at meetings of the Advisory Committee, and, in the case of an equal division, has also a casting vote.

Meetings and quorum.

8. (1) The Advisory Committee shall meet at the times that it considers necessary or expedient for the transaction of business and such meetings shall be held at the place that the Advisory Committee determines.

(2) A majority of all members constitute a quorum, provided that under no circumstance shall less than three members constitute a quorum.

Signature.

9. All decisions made by the Advisory Committee shall be signed by the Chairman, Deputy Chairman or secretary.

Remuneration.

10. The members of the Advisory Committee shall be paid remuneration as may be prescribed by Order of Cabinet.

Funds.

11. (1) A budget for the operations of the Advisory Committee shall be a charge on the Consolidated Fund.

(2) The fees, royalties, bonds and administrative monetary penalties paid under this Act must be paid in to the Consolidated Fund of the Government of the Commonwealth of Dominica.

Division 2— Functions, Duties and Powers

12. (1) The functions of the Advisory Committee are to advise the Minister respecting—

Functions and objectives.

- (a) policy formulation for the promotion, sustainable development and use of geothermal resources including policy relating to regional and international co-operation in such matters;
- (b) the determination of geothermal resource development applications in accordance with section 37;
- (c) the negotiation of regional and international initiatives and agreements relating to geothermal resources;
- (d) public education and training on geothermal resources and related matters;
- (e) setting of fees, royalties and bonds to be charged under this Act; and
- (f) other functions that the Minister may assign.

(2) In carrying out its functions the Advisory Committee shall seek to promote—

- (a) sustainable development and use of Dominica's geothermal resources, for the benefit of the people of Dominica;
- (b) provision of low cost, secure energy in Dominica, at stable prices;
- (c) investment and competition in the development of geothermal resources, where applicable; and

(d) implementation of best practices in the operation of geothermal facilities.

Sub-committees.

13. (1) The Advisory Committee may appoint sub-committees to examine and report to it on any matter relating to any of its functions under this Act.

(2) A sub-committee shall include not less than 2 members of the Advisory Committee, and may include persons who are not members.

(3) The Advisory Committee shall determine the composition and functions of a sub-committee.

Delegation by Advisory Committee.

14. The Advisory Committee may delegate, in writing, to a sub-committee or to a member, the exercise of any power or the performance of any duty vested in it by this Act, except the power to delegate under this section.

Civil Liability.

15. No civil liability shall attach to any member of the Advisory Committee in respect of anything done, or omitted, in good faith under this Act.

Report.

16. (1) The Advisory Committee shall give to the Minister any information that Cabinet may require regarding its operations.

(2) The Advisory Committee shall submit to the Minister at the end of each calendar year a report that includes—

(a) an assessment of the state of the development of geothermal resources, and its impact and significance for the development of the State;

(b) a description of the activities undertaken by the Advisory Committee; and

(c) any other matters that the Minister may require.

(3) The Minister shall cause a copy of the report to be laid before the House of Assembly within 90 days following the commencement of each calendar year.

PART III GEOHERMAL RESOURCES

17. (1) A geothermal resource is *sui generis* property and the rules relating to it, including the creation, acquisition, transfer, exercise, termination of rights respecting it, are set out in this Act. Nature.

(2) For the avoidance of doubt, it is not a mineral, nor a water resource, nor real property.

18. A Geothermal resource comprises geothermal energy and includes - Content.

(a) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(b) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) heat or associated energy found in geothermal formations; and

(d) any by-product derived from them.

19. Notwithstanding anything contained in any law or title of land, geothermal resources in, or under any land of whatsoever ownership or tenure are deemed to be, and to always have been, vested in, and are subject to the control of, the State; and the Minister, on behalf of the State, may grant rights to a geothermal resource developer only under this Act. Ownership.

**PART IV
MANAGEMENT OF GEOHERMAL RESOURCE
DEVELOPMENT**

Division 1—General

Physical Planning Act
applies.

Act No. 5 of 2002.

20. For the avoidance of doubt, a geothermal resource development is a development within the meaning of the Physical Planning Act, 2002 for which development permission must be obtained in accordance with the procedure of Part IV of that Act, except to the extent modified or excluded by this Act and Regulations made under this Act.

Electricity Supply Act
applies.

Act No. 10 of 2006.

21. For the avoidance of doubt, when electricity is derived from a geothermal resource, the generation, transmission or distribution and supply must be authorised in accordance with Part VI of the Electricity Supply Act, 2006, except to the extent modified or excluded by this Act and Regulations made under this Act.

Aliens Land Holding
Regulation Act does not
apply.

Act No. 17 of 1995.

22. (1) A geothermal resource is not land within the meaning of the Aliens Land Holding Regulation Act, 1995 and a geothermal resource developer who is an alien is consequently not subject to the provisions of the Aliens Land Holding Regulation Act in respect of his rights in respect of a geothermal resource.

Act No. 17 of 1995.

(2) The Aliens Land Holding Regulation Act, 1995 does not apply to a geothermal resource developer in respect of any interest in land that the developer is authorised to hold under the developer's geothermal resources development agreement.

Division 2— Special geothermal zones

Designation.

23. (1) The Minister may, by notice in the *Gazette*, designate any place, whether surface area or subsurface land or both, to be a special geothermal zone if—

-
- (a) the Advisory Committee advises that, on the basis of the information it possesses, the place is likely to be a source of geothermal resources; and
 - (b) the Minister reasonably believes that it is in the public interest that the right to use geothermal resources in that place be allocated, subject to section 31(5), through a tender process.

(2) The designation of an area as a special geothermal zone shall remain unchanged until any relevant geothermal resource development agreement is deemed abandoned; and an area that is located outside a special geothermal zone and subject to a geothermal resource development agreement may not be designated as a special geothermal zone until the relevant geothermal resource development agreement is deemed abandoned.

24. Once a special geothermal zone is designated under section 23—

Effect of Designation.

- (a) subject to section 31(5) or any contrary recommendation of the Advisory Committee, no right to explore or use geothermal resources in any part of that zone shall, be allocated except on application in the form of a bid for a geothermal resource development agreement under the tender process described in sections 35 and 37, as applicable; and
- (b) the Physical Planning and Development Authority shall not approve any development in that zone that is inconsistent with uses described in this Act.

*Division 3— Management of Reconnaissance,
Exploration, Use and Export*

Reconnaissance.

25. A person may conduct reconnaissance in any part of Dominica. However, the person—

- (a) is subject to the law relating to trespass and any other law relating to rights of access to, or use of land;
- (b) obtains no rights or interest in respect of any geothermal resources identified through the activities; and
- (c) has no entitlement to any privilege or priority in respect of a geothermal resource development agreement.

Exploration.

26. A person shall not, in any part of Dominica, conduct exploration for geothermal resources unless the person is authorised under a Geothermal Exploration Agreement.

Use.

27. (1) A person shall not use any geothermal resources except to the extent authorised under the terms and conditions contained in a Geothermal Resources Concession.

(2) In accordance with the sustainable development and use of geothermal resources, where practicable and appropriate to the production method, field characteristics and safety considerations, the injection of extracted geothermal fluid shall be required or authorised under the terms and conditions contained in a Geothermal Resources Concession.

Export.

28. (1) A person shall not export electricity generated from geothermal resources except if the Minister, after consultation with the Advisory Committee and the IRC, authorises such export under—

(a) a geothermal resource development agreement;
or

(b) a specific contract authorising export of electricity.

(2) Where the export of electricity generated from geothermal resources is authorised, the export shall be on the terms and subject to the conditions imposed by the geothermal resource development agreement or the specific contract authorising the export of electricity.

(3) The terms and conditions may include a requirement to pay royalties based on the use of geothermal resources or on the export of electricity, or both, as the Minister, after consultation with the Advisory Committee, the IRC, and the Minister for Finance, determines.

PART V GEOTHERMAL RESOURCE ALLOCATION

29. (1) Subject to sections 38 and 39 and to this section, the Minister may, on behalf of the State, enter into any of the following development agreements for geothermal resource development:

Power of Minister to allocate resources.

(a) a Geothermal Exploration Agreement authorising the exploration for geothermal resources; and

(b) a Geothermal Resources Concession authorising the use of geothermal resources.

(2) The Minister may enter into an agreement under subsection (1) only if the application for authorisation to carry on geothermal resources development is made in accordance with Part VI.

(3) This section applies even though the geothermal resource developer —

(a) carries on the development as a contractor of the State using State funds; or

(b) is an entity that is partly owned or controlled by the State.

No additional permits necessary.

30. A geothermal resource development agreement executed in accordance with section 39 constitutes—

Act No. 5 of 2002.

(a) development permission and building permission required by section 17(1) and section 62 respectively of the Physical Planning Act, 2002 for the geothermal resource development to the extent permitted in the geothermal resource development agreement, and subject to the planning and environmental controls that are set out in the Physical Planning Act, 2002, except as modified or excluded by this Act or Regulations made under this Act;

Act No. 5 of 2002.

Act No. 10 of 2006.

(b) authorisation required by section 29(1) of the Electricity Supply Act, 2006 for any one or more of the following activities to the extent authorised in the geothermal resource development agreement, and subject to the electricity supply controls that are set out in the Electricity Supply Act, 2006, except as modified or excluded by this Act or Regulations made under this Act:

Act No. 10 of 2006.

(i) generation,

(ii) transmission,

(iii) distribution and supply;

(c) the certificate of approval required by section 10 of the Environmental Health Services Act, 1997, for the geothermal resource development to the extent permitted in the geothermal resource development agreement, and subject to the environmental health controls that are set out in the Environmental Health Services Act, except as modified or excluded by this Act or Regulations made under this Act; and

Act No. 8 of 1997

Act No. 8 of 1997.

(d) the consent required by section 7 of the Noise Abatement Act for the works relating to the geothermal resource development to the extent permitted in the geothermal resource development agreement, and subject to the noise abatement controls that are set out in the Noise Abatement Act, except as modified or excluded by this Act or Regulations made under this Act.

Chap. 40:99.

Chap 40:99.

31. (1) A Geothermal Exploration Agreement entitles the geothermal resource developer the exclusive right to carry on exploration activities for a term, not exceeding three years, stated in the Geothermal Exploration Agreement, subject to the planning and environmental controls that are set out in the Physical Planning Act, 2002 except as modified or excluded by this Act or Regulations made under this Act, and subject further to the following—

Rights accorded by Geothermal Exploration Agreement.

Act No. 5 of 2002.

- (a) the exploration must be—
- (i) limited to the area accorded under the Geothermal Exploration Agreement,
 - (ii) in accordance with the methodology or technology approved in the Geothermal Exploration Agreement, if any, and
 - (iii) in accordance with any other term or condition not contrary to subparagraphs (i) and (ii),

contained in the Geothermal Exploration Agreement;

- (b) the geothermal resource developer must pay the fees and bonds set out in the Geothermal Exploration Agreement within the time required and must comply with the other terms and conditions contained in the Geothermal Exploration Agreement; and
- (c) the Geothermal Exploration Agreement may be renewed on the application of the geothermal resource developer, for a term, not exceeding two years, set out in the Geothermal Exploration Agreement, if the Advisory Committee so recommends in accordance with section 37.

(2) A Geothermal Exploration Agreement also entitles the geothermal resource developer to obtain the land, including easements, acquired under section 33 for the purpose of the geothermal resource development on payment of the price and in accordance with the statutory rights set out in section 34.

(3) A Geothermal Exploration Agreement shall only require a geothermal resource developer to prepare an environmental impact assessment ahead of a well drilling and testing programme.

(4) Subject to subsection (5), in a special geothermal zone, or subject to subsection (6), in an area not located in a special geothermal zone, the geothermal resource developer obtains no rights or interest in respect of any geothermal resources discovered.

(5) In a special geothermal zone a geothermal resource developer who is authorised to undertake geothermal resource development under a Geothermal Exploration Agreement has the

right to apply for and be granted a Geothermal Resources Concession through a non-competitive negotiated process under Part VI.

(6) If a geothermal resource developer operating under a Geothermal Exploration Agreement in an area not located in a special geothermal zone desires to use any geothermal resource within the area accorded under the Geothermal Exploration Agreement, the geothermal resource developer has the right to apply for and be granted a Geothermal Resources Concession through a non-competitive negotiated process under Part VI.

(7) The State shall be represented in the negotiation of any Geothermal Exploration Agreement by the Advisory Committee or any other committee appointed by the Minister for that purpose.

(8) The rights set out in this section are deemed abandoned—

(a) in the circumstances set out in the Geothermal Exploration Agreement; or

(b) in the absence of contractual provisions in the Geothermal Exploration Agreement referred to under paragraph (a), if there is no exploration for a period of two years or more from the execution of the Geothermal Exploration Agreement.

32. (1) A Geothermal Resources Concession entitles the geothermal resource developer the exclusive right to use geothermal resources in a concession area for the term, not exceeding forty years, set out in the Geothermal Resources Concession, subject to the electricity supply controls which are set out in the Electricity Supply Act, 2006, except as modified or excluded by this Act or Regulations made under this Act, and subject further to the following:

Rights accorded by
Geothermal Resources
Concession.

Act No. 10 of 2006.

- (a) the use must be—
- (i) limited to geothermal resources located in the concession area accorded under the Geothermal Resources Concession,
 - (ii) for the purposes authorised in the Geothermal Resources Concession,
 - (iii) with the methodology or technology approved in the Geothermal Resources Concession; and
 - (iv) in accordance with any other term or condition not contrary to subparagraphs (i) to (iii), in the Geothermal Resources Concession;
- (b) the geothermal resource developer must pay the fees, bonds and royalties set out in the Geothermal Resources Concession within the time required and must comply with the other terms and conditions contained in the Geothermal Resources Concession;
- (c) the Geothermal Resources Concession may be renewed on the application of the geothermal resource developer, for a term, not exceeding ten years in the first instance, set out in the Geothermal Resources Concession, if the Advisory Committee so recommends in accordance with section 37.

(2) A Geothermal Resources Concession also entitles the geothermal resource developer to—

- (a) obtain the land, including easements, acquired under section 33 for the purpose of the geothermal

resource development on payment of the price and the statutory rights set out in that section; and

- (b) export electricity generated from geothermal resources if authorised by the Minister in accordance with section 28.

(3) The State shall be represented in the negotiation of any Geothermal Resources Concession by the Advisory Committee or any other committee appointed by the Minister for that purpose.

(4) The rights set out in this section are deemed abandoned—

- (a) in the circumstances set out in the Geothermal Exploration Agreement; or
- (b) in absence of contractual provisions under paragraph (a), if the use is not started within 3 years of the execution of the Geothermal Resources Concession.

33. (1) Where the Advisory Committee advises the Minister that land is required for a geothermal resource development the State may—

Compulsory acquisition rights.

- (a) compulsorily purchase that land in accordance with the Land Acquisition Act as being land required for public purposes within the meaning of that Act; or
- (b) acquire an easement over the land in a manner consistent with the Land Acquisition Act.

Chap. 53:02.

(2) Land, or any easement in respect of land, acquired under this section and transferred to a geothermal resource

developer must be transferred to the developer for not less than the cost of acquisition.

Statutory rights relating to land.
Act No. 10 of 2006.

34. (1) Subject to subsection (2), section 44 of the Electricity Supply Act, 2006 applies to a geothermal resource developer in respect of all of the apparatus of the geothermal resource developer used in, or in the installation of, the developer's authorised geothermal resource development as if the word "licensee" were replaced with "geothermal resource developer", "Commission" were replaced with "Advisory Committee" and the words "this Act" were construed as references to this Act.

Act No. 10 of 2006.

(2) Section 44(9) and (10) of the Electricity Supply Act, 2006 applies only to a geothermal resource developer who is authorised to generate, transmit, distribute or supply electricity.

**PART VI
PROCEDURE FOR OBTAINING A GEOHERMAL
RESOURCE DEVELOPMENT AGREEMENT**

Geothermal resource development agreement application.

35. (1) An application for a geothermal resource development agreement must be made—

(a) in writing if—

- (i) the area to be developed is not located in a special geothermal zone;
- (ii) the application is for renewal of a Geothermal Exploration Agreement or Geothermal Resources Concession; or
- (iii) the application is for a Geothermal Resources Concession in a special geothermal zone through a non-competitive negotiated process pursuant to section 31(5); or

(b) subject to subsection (1)(a)(iii), in the form of a bid as part of a tender process in accordance with tender documents issued by the Advisory Committee in the event the area to be developed is located within a special geothermal zone.

(2) An application must be accompanied by the application fee set by Order of the Minister under section 40, and contain the information required—

(a) in the case of an application under subsection (1)
(b) by the tender documents prepared by the Advisory Committee;

(b) under section 23 of the Physical Planning Act, 2002 except to the extent excluded by paragraph (a); and Act No. 5 of 2002.

(c) any other information and particulars that may be prescribed by the Advisory Committee.

36. An application under this Part must be submitted to the Advisory Committee. Submission of Application.

37. (1) In this section “application” means an application for the making or renewal of a geothermal resource development agreement. Determination of application.

(2) The Advisory Committee shall review an application in accordance with the procedure set out in the Schedule and recommend in respect of an application for— Schedule.

(a) the making of a geothermal resource development agreement in respect of an area not located in a special geothermal zone, or in respect of an area located in a special geothermal zone through a non-competitive negotiated process pursuant to section 31 (5), whether approval should be given by the Minister;

(b) the making of a geothermal resource development agreement in respect of an area located within a special geothermal zone or in respect of an area not located in a special geothermal zone pursuant to section 38(4)—

(i) the list of bidders who qualify for approval in descending order starting with the highest evaluated bidder;

(ii) the parameters of the concession area to be accorded under the geothermal resource development agreement; and

(c) renewal of a geothermal resource development agreement, whether approval should be given by the Minister and the term of the renewal.

(3) The Advisory Committee shall not recommend an application under subsection (2) unless the Advisory Committee is satisfied—

(a) on consultation with the Physical Planning and Development Authority, that the application qualifies for planning approval having regard to the considerations set out in section 25 of the Physical Planning Act, 2002 and any applicable planning and environmental standards;

(b) the application does not pose an unacceptable threat to national security and establishes an acceptable balance among competing developers, if any, of the geothermal resources and competing users of land affected by the application;

(c) on consultation with the IRC, that the applicant

meets the criteria, if any, established by the IRC under section 28 of the Electricity Supply Act, 2006;

Act No. 10 of 2006.

(d) the applicant has the necessary legal capacity, financial standing, technical expertise and managerial competence to carry out efficiently, any electricity generation, transmission, or distribution as required by section 30(7) of the Electricity Supply Act, 2006 which the geothermal resource development agreement may authorise;

Act No. 10 of 2006.

(e) on consultation with the IRC, that the geothermal resource developer has, in the case of an application for renewal, during the preceding terms of the geothermal resource development agreement, continued to invest in the sustainable development and use of the resource, complied with requirements of applicable environmental and planning regulations, and met the specific terms and conditions set out in the geothermal resource development agreement.

(4) Notwithstanding any other provisions of this section, in order to encourage the sustainable development and use of the resource—

(a) when a geothermal resource developer has—

(i) during the preceding terms of the geothermal resource development agreement, continued to invest in the sustainable development and use of the resource, complied with requirements of applicable environmental and planning regulations, and met the specific terms and conditions set out in the geothermal resource development agreement, and

(ii) demonstrated the existence of geothermal resources sufficient for commercial use within the area accorded under a Geothermal Exploration Agreement,

the Advisory Committee shall recommend the making of a Geothermal Resources Concession; and

(b) when a geothermal resource developer has complied with subsection (3)(e), the Advisory Committee shall recommend the renewal of the developer's Geothermal Resources Concession.

(5) The objectives in deciding on the parameters of the concession area for the purpose of subsection (2)(b)(ii) include—

(a) allowing for the sustainable development and use of the geothermal resources;

(b) limiting conflict between geothermal resources users;

(c) fairly rewarding the investment, if any, that parties have made in exploration leading to the finding of useable geothermal resources.

(6) The Advisory Committee shall forward recommendations to the applicant promptly following communication of them to the Minister.

(7) For the purpose of this section, the Advisory Committee, or any person authorised by it in writing, has the powers of entry, examination and inquiries conferred by section 81 of the Physical Planning Act, 2002 for the purpose set out in section 81(1)(b) of that Act.

Act No. 5 of 2002.

Minister's approval.

38. (1) The Advisory Committee shall submit its recommen-

dition in respect of an application to the Minister for his approval in the time frame required under the Schedule.

Schedule.

(2) The Minister shall not give his approval in respect of an applicant recommended under section 37, unless the terms and conditions of a geothermal resource development agreement are successfully negotiated with the applicant.

(3) Subject to section 31(5), in the case of an application in respect of an area located within a special geothermal zone, the parties are bound by the terms in tender documents and the bid, where applicable, but may negotiate in respect of other terms and conditions which are not inconsistent.

(4) If the Minister does not approve an application in respect of an applicant recommended under section 37 for a particular area, be it within or outside a special geothermal zone, the Advisory Committee may recommend the allocation of the right to carry out geothermal resource development through a tender process.

39. (1) If the Minister approves an application, a geothermal resource development agreement must, to be valid, be executed by—

Execution of agreement.

(a) the Commonwealth of Dominica, represented by the Minister, as party to it;

(b) the applicant, as party to it.

(2) The details respecting sustainable development and use as it relates to a geothermal resource developer may be specified in the relevant geothermal resource development agreement.

40. (1) A geothermal resource developer who wishes to transfer their geothermal resource development agreement to a

Transfer of interests or rights.

third party must obtain the prior consent of the Minister under this section.

(2) Subject to subsection (3), an application for consent to a transfer must—

- (a) be made jointly by the geothermal resource developer and the transferee; and
- (b) be made within three months after the date of the agreement that contains the transfer; and
- (c) be accompanied by a copy of the agreement that contains the transfer.

(3) The transferee must provide to the Minister—

- (a) a statement, signed by or on behalf of the transferee, in which the person signing the statement must confirm that the transferee has the financial capability to meet its obligations under the geothermal resource development agreement; and
- (b) any specified supporting information.

(4) If the transferee is a company, a statement of financial capability must be signed on behalf of all the directors by at least two directors of the company or, if the company has only one director, by that director.

(5) Before granting consent, the Minister must consult with the Advisory Committee and be satisfied that the transferee is likely to be able to comply with the terms and conditions of, and give proper effect to, the geothermal resource development agreement.

(6) The Minister must record the transfer consented to under this section on the geothermal resource development agreement concerned and publish notice of the transfer in the *Gazette*.

PART VII FEES, BONDS AND ROYALTIES

41. (1) The Minister shall set application fees, annual fees and bonds to be payable by geothermal resource developers by Order published in the *Gazette* and the fees and bonds shall apply, unless otherwise agreed to in the geothermal resource development agreement.

Minister to set fees and royalties.

(2) The Minister, after consultation with the Advisory Committee, the IRC and the Minister for Finance, may set royalties (if any) that geothermal resource developers are required to pay by Order published in the *Gazette* and the royalties shall apply, unless otherwise agreed to in the terms and conditions of a geothermal resource development agreement.

PART VIII RECORD KEEPING AND PUBLICITY

42. (1) The Advisory Committee shall maintain a Register of all geothermal resource development plans, special geothermal zones, geothermal resource development applications, and geothermal resource development agreement.

Register.

(2) The Register shall contain the particulars of applications under this Act and an indication of whether or not the Minister's approval was given and in entering information into the register, the Advisory Committee shall take full account of the need to protect confidential and commercially sensitive information and shall, where necessary, suitably restrict disclosure of such information to achieve such goal.

(3) Subject to subsection (2), the Register shall be a public register and shall be open for inspection by members of the public at such times and on such days as the Advisory Committee determines.

(4) A person may, on payment of a fee to be determined by the Advisory Committee, require the Advisory Committee to supply such person with a copy or an extract, certified by the Advisory Committee as a true copy or extract, from any part of the Register.

(5) Notwithstanding subsection (1), the Minister may by Order published in the *Gazette* prescribe other information relating to the Act that must be maintained in the Register.

Publication in the
Gazette.

43. The Advisory Committee shall cause to be published in the *Gazette*, within six weeks of the occurrence, the following:

- (a) notice of geothermal resource development applications;
- (b) recommendations made under section 37;
- (c) notice of the execution, expiration, suspension, surrender, modification, revocation, or extension of geothermal resource development agreements.

**PART IX
COMPLIANCE AND ENFORCEMENT**

Division 1—General

Responsible authorities.

44. (1) The Advisory Committee shall—

- (a) assist the Physical Planning and Development Authority in the monitoring and enforcement of

compliance with planning and environmental controls, subject to subsection (2);

- (b) assist the IRC in the monitoring and enforcement of compliance with the electricity supply controls, ensuring the incorporation of health and safety guidance in relation to electricity supply; and
- (c) monitor and enforce any term or condition in a geothermal resources development agreement, including, but not limited to, environmental monitoring, resource monitoring, and geothermal specific safety monitoring.

(2) Notwithstanding the provisions of the Physical Planning Act, 2002, the Physical Planning and Development Authority shall exercise its monitoring and enforcement powers conferred under Part V of the Physical Planning Act, 2002 in respect of geothermal resource developments, only in accordance with the advice of the Advisory Committee.

Act No. 5 of 2002.

Act No. 5 of 2002.

(3) Notwithstanding the provisions of the Electricity Supply Act, 2006, the IRC shall exercise its monitoring and enforcement powers conferred under Parts III, VI, VII, and VIII of the Electricity Supply Act, 2006 in respect of geothermal resource developments, only in accordance with the advice of the Advisory Committee.

Act No. 10 of 2006.

Act No. 10 of 2006.

45. For the purpose of Part IX, the Advisory Committee may direct, by notice in writing, the geothermal resource developer to submit information to it, with the frequency and in the manner indicated in the notice, or by a time stipulated in the notice, concerning its activities under the geothermal resource development agreement, and the geothermal resource developer shall comply with the notice.

Self-monitoring.

*Division 2—Inspections*Designation of
inspectors.

46. (1) For the purpose of assisting in its monitoring and enforcement functions set out in section 44, the Advisory Committee may designate any qualified person, whether a member of the Advisory Committee or not, as an inspector to carry out inspections.

(2) An inspector shall be provided with a certificate of designation, which certificate the inspector shall present at the request of any person appearing to be in charge of any place entered by the inspector.

Powers of inspectors.

47. (1) An inspector may, for the purposes for which the inspector was designated an inspector under section 46—

- (a) enter and inspect, subject to subsection (2), at any reasonable time, any place owned by, or under the control of, a geothermal resource developer, in which the inspector believes on reasonable grounds there is any document, information or thing relevant to the enforcement of this Act, or a geothermal resource development agreement, and examine the document, information or thing, or remove it for examination or reproduction;
- (b) make use of, or cause to be made use of, any data processing system at the place to examine any data contained in or available to the system;
- (c) reproduce any record, or cause it to be reproduced, from the data, in the form of a print-out or other intelligible output, and take the print-out or other output for examination or copying;
- (d) make use of any copying equipment or means of communication located at the place;

-
- (e) take photographs of anything in the place being inspected and remove the photographs from the place;
 - (f) take for analysis anything in the place being inspected and remove for analysis outside the place;
 - (g) search and bore for the purpose of examining the subsoil;
 - (h) interview any person in the place being inspected; and
 - (i) make any other investigation, examination and inquiries that are necessary to achieve those purposes for which the entry was authorised.

(2) An inspector must not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (3).

(3) Where on an *ex parte* application a Magistrate is satisfied by information on oath—

- (a) that a dwelling-place is a place described in subsection (1)(a);
- (b) that entry to the dwelling-place is necessary for the monitoring and enforcement referred to in section 44; and
- (c) that entry has been refused, or that there are reasonable grounds for believing that entry will be refused, or consent to entry cannot be obtained from the occupant,

the Magistrate may issue a warrant authorising an inspector

named in the warrant to enter the dwelling-place, subject to any conditions specified in the warrant.

(4) An inspector executing a warrant issued under subsection (3) shall not use force unless the inspector is accompanied by a police officer and the use of force has been specifically authorised in the warrant.

(5) If any damage is caused by reason of the exercise of any right of entry conferred by this section, or in the making of any survey for the purpose for which such right of entry was conferred, or by the wrongful or negligent use of powers conferred, or alleged to have been conferred, by this section, the Advisory Committee, as soon as may be after such entry, must pay compensation to the person injured.

(6) If the amount of such compensation cannot be settled through negotiation, section 69(8)(c) of the Physical Planning Act shall apply *mutatis mutandis* respecting the determination of the compensation payable, and the Advisory Committee must refer the matter accordingly.

Act No. 5 of 2002.

*Division 3—Administrative Monetary
Penalties and Other Sanctions*

Commission of violation.

48. (1) A person commits a violation who—

- (a) fails to comply with a notice for information under section 45;
- (b) fails to comply with the planning and environmental control or electricity supply control to which their geothermal resource development agreement is subject;
- (c) fails to pay in full when due, a fee or royalty imposed by Order of the Minister under section 41;

-
- (d) fails to comply with or defaults under a geothermal resource development agreement; or
- (e) commits any other act which the Minister by Order published in the *Gazette*, designates as a violation.
- (2) A person who commits a violation referred to in subsection (1)(a) is liable—
- (a) in the case of an individual, to an administrative monetary penalty of \$1,000; or
- (b) in the case of a corporation, to an administrative monetary penalty of \$5,000.
- (3) A person who commits a violation referred to in subsection (1)(b) is liable—
- (a) in the case of an individual, to an administrative monetary penalty of \$2,500; or
- (b) in the case of a corporation, to an administrative monetary penalty of \$10,000.
- (4) A person who commits a violation referred to in subsection (1)(c) is liable to an administrative monetary penalty in the amount of 10% of the outstanding fee or royalty.
- (5) A person who commits a violation referred to in subsection (1)(e) is liable to the administrative monetary penalty set out in the Order, which may not exceed \$1,000 in the case of an individual and \$5,000 in the case of a corporation.
- (6) A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

Notice of intention to
impose penalty.

49. (1) If the Advisory Committee believes on reasonable grounds that a person has committed a violation, the Chairman may issue, and shall cause to be served on that person, a notice of its intention to impose an administrative monetary penalty which—

- (a) sets out the name of the person who is believed to have committed the violation;
- (b) sets out the alleged violation and the relevant facts surrounding the violation;
- (c) sets out the administrative monetary penalty prescribed in section 48 for the violation that it intends to impose; and
- (d) advises the person of the right to make written representations to the Advisory Committee and of the period within which that right must be exercised in accordance with subsection (2);

(2) A person who receives a notice under subsection (1) may, within twenty-eight days after the date on which he or she receives the notice, send written representations to the Advisory Committee respecting the facts of the alleged violation or the administrative penalty imposed or both.

Penalty notice.

50. (1) After the expiration of twenty-eight days from the date that the Advisory Committee sent a notice of intention to impose a penalty under section 49, the Advisory Committee may impose an administrative monetary penalty in the amount prescribed in section 48 by sending him a penalty notice stating—

- (a) the name of the person;
- (b) the violation for which the penalty is imposed;

-
- (c) the date on which the notice of intention to impose a penalty in respect of that violation was sent to the person;
 - (d) the amount of the penalty for the violation in accordance with section 48;
 - (e) a date, not less than twenty-eight days after the date of the penalty notice, by which the person must pay the penalty to the Advisory Committee; and
 - (f) the fact that, if the person does not pay the penalty or appeal to the High Court under section 51, the person is considered to have committed the violation and that he or she is liable for the penalty set out in the notice.

(2) Before imposing an administrative monetary penalty under this section, the Advisory Committee shall consider any written representations that it has received from the person and, where it receives such representations, it must provide reasons for the action that it takes.

(3) A person who receives a penalty notice under this section shall pay the penalty stated to the Advisory Committee on or before the date specified in the notice, or appeal to the High Court under section 50.

(4) If the person pays the administrative monetary penalty, the person is deemed to have committed the violation and proceedings in respect of it are ended.

(5) A person who neither pays the administrative monetary penalty nor appeals to the High Court under section 51 is considered to have committed the violation and is liable for the penalty.

Appeal to the High Court.

51. (1) A person served with a penalty notice under section 50 may, within twenty-eight days after the notice is served, or within any longer period that the High Court allows, appeal in writing to the High Court.

(2) On an appeal, the High Court may confirm, set aside or vary the decision of the Advisory Committee.

Publication.

52. If the Advisory Committee imposes an administrative monetary penalty on a person, the Committee shall publish the imposition of the penalty in the *Gazette* as soon as practicable after—

(a) if the person pays the penalty, the date of payment;

(b) if the person neither pays the penalty nor appeals the penalty notice, the date stipulated in the penalty notice for payment;

(c) if the person appeals under section 51, the date the High Court confirms that the person is liable to pay the penalty.

Debts to the State.

53. (1) An administrative monetary penalty constitutes a debt due to the State and may be recovered as such in the High Court.

(2) The Advisory Committee may, on or after the dates referred to in section 52(b) and (c), issue a certificate certifying the unpaid amount of any debt referred to in subsection (1) and the registration of the certificate in the High Court has the same effect as a judgment of the High Court for a debt of the amount specified in the certificate, together with the costs of registration.

(3) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the date stipulated in the penalty notice in accordance with section

50(1)(e) or, if the person appeals under section 51, the date the High Court confirms that the person is liable to pay the penalty.

(4) An administrative monetary penalty paid or recovered in relation to a violation is payable to and must be remitted to the Accountant General.

54. Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence applies in respect of a violation to the extent that it is not inconsistent with this Act.

Common law principles.

55. (1) No proceedings in respect of a violation may be commenced later than two years after the day on which the subject-matter of the proceedings became known to the Advisory Committee.

Time limit.

(2) A document appearing to have been issued by the Chairman, Deputy Chairman or secretary of the Advisory Committee, certifying the day on which the subject-matter of any proceedings became known to the Advisory Committee, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

56. (1) In this section “competent authority” means the authority empowered in accordance with section 58 to make a decision that is final and binding upon the parties to a dispute arising under a geothermal resource development agreement.

Invalidation of agreement.

(2) A geothermal resource development agreement is invalidated if a competent authority declares that the agreement is terminated owing -

(a) to the breach by a party that the competent authority considers to constitute a substantial breach; or

(b) a breach that is stated in the geothermal resource development agreement to constitute a substantial breach.

(3) When the competent authority is making a decision under subsection 2(a), he shall consider whether the breach is equally substantial to what is specifically stated to constitute a substantial breach in the geothermal resource development agreement.

Forfeiture.

57. (1) If the geothermal resource development agreement is terminated within the meaning of subsection (4), the geothermal resource developer must, as soon as practicable, and in any event, by the date stated in a notice served under subsection (2), remove any equipment, assets or other property from any land owned or leased by the State on behalf of the developer for the purpose of the geothermal resource development activities.

(2) If the geothermal resource agreement is terminated within the meaning of subsection (4), the Advisory Committee may issue a notice to the geothermal resource developer to remove any equipment, assets or other property from the land by the date stated in the notice.

(3) If a geothermal resource developer fails to comply with this section, the equipment, assets or other property is forfeited to the State on the date stated in the notice in accordance with subsection (1).

(4) A geothermal resource development agreement is terminated if—

(a) rights under a geothermal resource development agreement are abandoned in accordance with sections 31(8) or 32(4);

(b) the agreement is invalidated under section 56; or

(c) the obligations under the agreement are not executed.

Division 4—Alternative Dispute Resolution

58. Unless, and to the extent that, the geothermal resource development agreement otherwise provides—

Dispute settlement.

(a) disputes arising under the agreement shall be referred to three arbitrators, one to be appointed by the developer, one appointed by the Minister, and one appointed by the first two arbitrators; and

(b) the Arbitration Act applies and references in that Act to an arbitration agreement are to be construed as a reference to this section to the extent, if any, modified by this Act or a geothermal resource development agreement.

Chap.4:50.

**PART X
MISCELLANEOUS**

59. A provision of a geothermal resource development agreement or other document that derogates from the provisions of this Act or Regulations made under this Act is invalid, except to the extent the derogation is expressly authorised by this Act or such Regulations.

Statutory provision
obligatory.

60. The Minister may, by Order published in the *Gazette*, amend the Schedule.

Schedule.

61. (1) The Minister may make Regulations respecting anything that the Minister considers necessary or expedient for the administration or enforcement of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Minister may, from time to time, make regulations for all or any of the following purposes:

- (a) prescribing the form or content of geothermal resource development agreements, notices, reports, or any other documentation or information required under this Act, and the manner in which such documentation or information is to be provided;
- (b) prescribing the information to be provided with applications for geothermal resource development agreements;
- (c) prescribing the manner in which persons wishing to apply for geothermal resource development agreements in respect of any land are to mark out or identify the land and prescribing a particular system for the purpose of defining areas or parts of areas comprised in geothermal resource development agreements, or applications for or extensions of geothermal resource development agreements;
- (d) prescribing conditions on which geothermal resource development agreements may be applied for, granted, changed, or extended;
- (e) providing for any modification or exclusion permissible under a section of this Act respecting any Part or provision of the Physical Planning Act, 2002, Electricity Supply Act, 2006, the Environmental Health Services Act, 1997, or the Noise Abatement Act;
- (f) providing for the exemption of geothermal resource developers, either wholly or partially, and either absolutely or conditionally, from any of the conditions of their geothermal resource development agreement or from the provisions of any

Act No. 5 of 2002.

Act No. 10 of 2006.

Act No.8 of 1997.

Chap. 40:99.

regulations for the time being in force under this Act;

- (g) prescribing the duties of geothermal resource developers and the activities to be carried out under geothermal resource development agreements;
- (h) generally regulating activities carried out under geothermal resource development agreements;
- (i) providing for the keeping and provision of records, reports, information, and returns by geothermal resource developers for any purpose under this Act, and prescribing the nature of the records, reports, information, and returns, and the form, manner, and times in or at which they shall be kept or provided;
- (j) providing for standards which are to apply in connection with the remediation of geothermal wells, plant and equipment;
- (k) providing for the procedure respecting approval of changes to a geothermal resource development agreement during the term of the agreement;
- (l) respecting the regulation of the transfer of interests or rights of a geothermal resource developer under a geothermal resource development agreement;
- (m) respecting the regulation of a change of control where the geothermal resource developer is a corporate entity; and
- (n) providing for a Geothermal Reporting Code re-

pecting the methodology for estimation, quantification and categorisation of geothermal resources and reserves in Dominica and to provide an appropriate reporting basis.

(3) Regulations made under this section shall be subject to negative resolution of the House of Assembly.

Consequential and transitional provisions.

62. (1) A person who at the commencement of this Act, is validly conducting exploration activities for, or is using, geothermal resources under any licence, or other authority, does not commit a violation if he or she applies for the relevant geothermal resource development agreement in accordance with this Act within three months after the date that this Act comes into force, or such further period, not exceeding six months, as the Minister may in writing allow.

(2) An application under subsection (1) must be made in accordance with Part VI.

(3) In respect of applications under this section—

(a) the parties must negotiate on reasonable grounds and in good faith, and must respect all rights granted under existing authorisations to the extent that they are not inconsistent with this Act; and

(b) the terms and conditions must be determined by reference to arbitration under section 58, if the parties fail to agree.

Amendment of Physical Planning Act.
Act No. 5 of 2002.

63. Schedule II of the Physical Planning Act, 2002 is amended by adding the following at the end of the list—

“19. Geothermal resource development within the meaning of the Geothermal Resources Development Act.”.

64. The Geothermal Energy Act is repealed.

Repeal.
Chap.85:02.

SCHEDULE

(sections 37, 38 and 60)

ADVISORY COMMITTEE PROCEDURE FOR DETERMINING APPLICATIONS AND RELATED MATTERS

Part A

Applications subject to a tender process

This process applies only to applications for the grant of a geothermal resource development agreement in a special geothermal zone, except applications pursuant to section 31(5)
The Advisory Committee must determine the application in accordance with the procedure outlined in the tender documents which documents must include information in respect of —

- (a) technical approach and methodology; and
- (b) cost.

Part B

Applications subject to a non-competitive negotiated process

This process applies to applications for—

- *the grant or renewal of a geothermal resource development agreement in any part of the State not located in a special geothermal zone;*
- *the grant pursuant to section 31(5) or renewal of geothermal resource development agreement in*

an area that is designated as a special geothermal zone; and

- *the grant of a geothermal resource development agreement pursuant to section 62.*

1. Within 6 weeks of the receipt of an application, the Advisory Committee shall publish a notice containing particulars of the application in the *Gazette* inviting comments in writing from the public.

2. Within 120 days of the receipt of the application or, such extended time, not exceeding 30 days, that the Minister authorises, the Advisory Committee shall submit a report to the Minister containing its recommendations.

3. In determining the application, the Advisory Committee shall consider any comments and any further information requested in clarification of the comments, received in response of the notice referred to in item 1.

Part C

Information required

1. The Advisory Committee must determine the application for a Geothermal Exploration Agreement based on the documents submitted by the applicant, which must include information in respect of—

- (a) technical approach and methodology for exploration;
- (b) cost and schedule for exploration programme;
- (c) capabilities and track record in exploration and use of geothermal resources;

-
- (d) management team of the applicant/tenderer and skills and experience thereof;
 - (e) stated support from specialists organisations working in the geothermal sector;
 - (f) financial backing of the applicant/tenderer or stated ability to obtain financial backing including shareholder funds available to support the exploration, and letters of intent from commercial backers or joint venture partners;
 - (g) Community consultation plan and other stakeholder management plans and stated objectives.

2. Without prejudice to the provisions of section 31(5) and (6), the Advisory Committee must determine the application for a Geothermal Resources Concession based on the documents submitted by the applicants, which must include information in respect of—

- (a) description of proposed development;
- (b) cost and schedule for development;
- (c) technical approach and methodology;
- (d) capabilities and track record in use of geothermal resources;
- (e) compliance with health and safety standards; and
- (f) proposed tariff agreements.

Part D**Ownership of Information**

1. The following applies to information pertaining to geothermal resource development.

2. Information pertaining to reconnaissance, an activity which does not require an agreement, will always remain in the ownership of the entity performing the activity.

3. Under a Geothermal Exploration Agreement, the holder owns the information pertaining to the activities and results, but must share the information with the State.

4. On expiry, cancellation or abandonment of a geothermal exploration agreement, without conversion to a Geothermal Resources Concession, the State will take ownership of the information, with the agreement holder eligible for reward on their investment in finding useable geothermal resources.

5. Under a Geothermal Resources Concession, the holder owns the information pertaining to the activities and results, but must share the information with the State.

6. On expiry, cancellation or abandonment of a Geothermal Resources Concession, the State will take ownership of the information. This includes the situation where this is a change of ownership. Reward for investment will not apply in this instance.

Passed in the House of Assembly this 24th day of October, 2016.

MR. DANIEL JAMES

Clerk of the House of Assembly (Ag.)

DOMINICA

Printed by the Government Printer at the Government Printery, Roseau

(Price \$10.40 cents)