

#### DISCLAIMER

Set out below is the unofficial translation of the Act for Greenland on Exploitation of Hydropower for the Production of Energy (the “unofficial Translation”) and is provided for information and teaching purposes only. This unofficial Translation does not contain - and shall not be interpreted of containing - any legal effect and may not be used in any manner as basis for solving disputes, directly or indirectly. In the event of any ambiguity regarding the meaning of certain translated terms or of any discrepancy between the Danish version of the Act and the unofficial translation, the Danish version of the Act shall prevail in all matters, as the unofficial Translation has no legal effect.

**Revision sheet**

Replacing the Bill dated 27 June 2018

*(A technical revision of a legislative nature has been made in the Danish version. The revision was made in section 29)*

**Bill: Greenland Parliament Act no. 05 of November 2018 on Exploitation of Hydropower for the Production of Energy**

**Part 1**

*Scope*

**Section 1**

(1) This Greenland Parliament Act applies to prospecting for and exploitation of hydropower resources for the production of energy and related activities.

(2) Activities falling within the scope of this Greenland Parliament Act must be performed safely with due regard to health, safety, environment, resource utilisation and social sustainability as well as appropriately and in accordance with generally accepted good international practice in similar conditions.

**Part 2**

*Prospecting and exploitation*

**Section 2**

The Self-Government has the exclusive right to prospect for and exploit hydropower resources for the production of energy, but see section 3.

**Section 3**

(1) The Government of Greenland may grant licences to prospect for and exploit hydropower resources for the production of energy subject to terms laid down by the Government of Greenland. Prospecting licences and exploitation licences are granted separately.

(2) Activities falling within the scope of a licence granted under subsection (1) must be performed in compliance with this Greenland Parliament Act, the provisions issued hereunder and the licence terms.

(3) The Government of Greenland may grant licences under subsection (1) to two or more applicants at the same time if the individual applicants only expect to exploit part of the hydropower potential of a hydropower resource.

---

EM 2018/22

INN ref.: 2017-24303

#### **Section 4**

(1) A prospecting licence is granted for a specific hydropower resource with related geographically delineated onshore areas and subject to terms laid down by the Government of Greenland.

(2) A prospecting licence is granted on a non-exclusive basis for a period of up to five years. The Government of Greenland may grant an extension of the period of a prospecting licence to allow further prospecting activities to be performed. Such extension may be for up to an additional five years. The total period of a prospecting licence may not exceed 10 years.

(3) At least once a year, the licensee under a prospecting licence must submit a report to the Government of Greenland on the activities performed under the licence. The report must include prospecting results and the underlying data.

(4) Reports and data submitted by a licensee to the Government of Greenland, see subsection (3), are confidential for a period of up to three years after the end of the licence period, unless otherwise provided by provisions or licence terms laid down in pursuance of this Greenland Parliament Act.

(5) Terms on reporting and on confidentiality in this connection will be laid down in the licences.

#### *Exploitation*

#### **Section 5**

(1) Licences to exploit a hydropower resource for the production of energy are granted on a non-exclusive basis for a specific hydropower resource with related geographically delineated onshore areas and subject to terms laid down by the Government of Greenland, but see subsection (2).

(2) An exploitation licence under subsection (1) may be granted on an exclusive basis if so dictated by conditions relating to water resources and production.

(3) An exploitation licence is granted for a period of up to 40 years, but see section 14(2)-(4).

(4) An exploitation licence must include terms on:

- 1) minimum or maximum water extraction;
- 2) lower water extraction elevations within the geographically delineated onshore areas of the exploitation licence;
- 3) minimum annual energy output.

(5) The Government of Greenland may amend the terms laid down under subsection (4) subject to special terms.

#### **Section 6**

(1) The construction of the hydropower plant must begin within three years of the grant of the exploitation licence. The hydropower plant must be put into service within six years of the grant of the exploitation licence.

(2) In an exploitation licence, see section 11(5), the Government of Greenland may lay down terms concerning revocation of the exploitation licence in case of non-compliance with the time-limits set out in subsection (1).

(3) The Government of Greenland may extend the time-limits set out in subsection (1) subject to special terms.

### **Section 7**

(1) At least once a year, the licensee must submit a report on its business and activities performed under the exploitation licence and on the results thereof. The report must include data and investigation results.

(2) Reports submitted by a licensee to the Government of Greenland, see subsection (1), are confidential until the end of the licence period, unless otherwise provided by provisions or licence terms laid down in pursuance of this Greenland Parliament Act.

(3) Terms on reporting and on confidentiality in this connection will be laid down in the licences.

## **Part 3**

### *Terms and conditions*

### **Section 8**

(1) An exploitation licence can only be granted to a licensee which is organised as a private limited company (*ApS*-type company) or a public limited company (*A/S*-type company) or as an enterprise owned by the Self-Government. The licensee must have the requisite professional expertise and economic background to engage in the business and activities under the licence. The licensee's registered office must be located in Greenland. For the entire licence period, the licensee must satisfy the requirements mentioned in the 1st-3rd sentences and must have full control of its assets.

(2) The licensee under an exploitation licence must also be the owner of one or more hydropower plants and all related facilities, including dams, channels, tunnels, basins, pipelines, turbines for the production of energy under the licence granted. The 1st sentence does not apply to hydropower plants and related facilities leased from the Self-Government.

### **Section 9**

(1) The Government of Greenland may lay down provisions and terms for licences to prospect for and exploit hydropower resources for the production of energy.

This means, among other things, that the Government of Greenland may lay down provisions and licence terms on:

- 1) the design of the prospecting project, time schedule and time-limits;
- 2) the conclusion of agreements concerning surplus output capacity and the delivery and pricing of part of the output to a public electricity grid;
- 3) the conclusion of agreements concerning mutual access to reserve output capacity and pricing between Nukissiorfiit and private licensees and between licensees;
- 4) the documentation of the licensee's organisational, economic and technical capacity;
- 5) the duty to inform and provision of guarantees;
- 6) the licensee's obligations on termination of the prospecting and exploitation stages to remove plants etc. established by the licensee, and to otherwise clean up the affected areas;
- 7) nature restoration, monitoring and provision of financial security therefor;

8) the resolution of disputes between the Government of Greenland and the licensee by arbitration.

### **Section 10**

(1) A licence granted under section 5 must specify the royalties which are payable by the licensee to the Self-Government based on:

- 1) the size of the hydropower resource covered by the licence (volume royalty);
- 2) the actual exploitation of the hydropower resource (exploitation royalty);
- 3) the energy output (output royalty).

(2) Furthermore, terms may be laid down providing for the payment to the Self-Government of a share of the economic profit from the activities under the licence (profit royalty).

(3) In the context of determining the amount payable by a licensee in royalties to the Self-Government under subsections (1) and (2), the licensee may be granted full or partial tax exemption for the activities under an exploitation licence for hydropower resources for the production of energy.

(4) Before granting any tax exemption under subsection (1), the Government of Greenland must obtain authorisation to do so by including a note to this effect on the Finance Act.

### **Section 11**

(1) The Government of Greenland may lay down licence terms and provisions on the licensee's use of Greenland workers.

(2) To the extent necessary for the activities, however, the licensee may use non-Greenland workers where similar qualified workers are not available in Greenland.

(3) The Government of Greenland may lay down licence terms and provisions on the licensee's use of Greenland enterprises as contractors and suppliers of goods and services. However, non-Greenland enterprises may be used if Greenland enterprises are not technically or commercially competitive.

(4) The Government of Greenland may lay down licence terms and provisions to the effect that the licensee must conduct investigations and assessments of technical, environmental and socio-economic aspects.

(5) The Government of Greenland may lay down licence terms and provisions as to the circumstances under which a prospecting and exploitation licence for hydropower resources for the production of energy will terminate or may be revoked by the Government of Greenland. The licence must state the licence terms in this regard and refer to any provisions in this regard.

### **Section 12**

(1) A licensee and any other persons falling within the scope of this Greenland Parliament Act must pay the expenses of regulatory processing carried out hereunder. The amount payable may be collected as a charge or as reimbursement of expenses.

(2) The Government of Greenland may lay down more specific provisions and licence terms on payment and determination of fees and reimbursement of expenses.

### **Section 13**

(1) An exploitation licence for a hydropower potential may be granted to two or more licensees where for reasons relating to water resources and economic reasons it is possible to extract water from the same catchment area for energy production distributed on two or more hydropower plants.

(2) Following negotiations with the licensees, the Government of Greenland may order the licensees to engage in coordinated exploitation. If the licensees do not enter into an agreement on the terms of such coordinated exploitation, the Government of Greenland may lay down terms to this effect in its order for coordinated exploitation.

(3) In an order for coordinated exploitation under subsection (2), the Government of Greenland may lay down terms to the effect that a licensee must be entitled, against a fee, to use a transmission line, pipeline facilities, channels or other facilities operated and used by another licensee in connection with its exploitation.

(4) The Government of Greenland will not decide to impose an order for coordinated use of facilities under subsection (2) or (3) if the licensee operating the facilities is planning to use the full capacity of the facilities in future or if the licensee's planned use of the facilities would otherwise be prevented or be disproportionately costly or burdensome if ordered to engage in coordinated use of the facilities.

## **Part 4**

### *Renegotiation of exploitation licences*

### **Section 14**

(1) Halfway into the period of the exploitation licence, the licensee and the Government of Greenland may initiate negotiations concerning the time after the expiry of the licence period.

(2) The Government of Greenland may grant an extension of the period of an exploitation licence by up to 20 years subject to terms laid down by the Government of Greenland.

(3) In the interests of the realisation of a project, the Government of Greenland may, if necessary – in addition to an extension granted under subsection (2) – grant the licensee a right to extend the licence period by up to an additional 20 years subject to terms laid down by the Government of Greenland.

(4) The total period of an exploitation licence may not exceed 80 years.

(5) If the parties are unable to reach agreement by negotiation under subsection (1), the Government of Greenland may decide that the hydropower plant will revert to the Self-Government on expiry of the licence period, see section 15(1).

## **Part 5**

### *Reversion*

### **Section 15**

(1) The Government of Greenland may lay down licence terms to the effect that a hydropower

plant will revert to the Self-Government on expiry or other termination of a licence. In such case, the licensee must transfer to the Self-Government, without consideration, the ownership of the hydropower plant and all related facilities, including dams, channels, tunnels, basins, pipelines, turbines, transmission lines, infrastructure, etc. as well as accommodation facilities and equipment relating to the operation of the hydropower plant.

(2) Any right of reversion provided for on the grant of the licence, see section 5, must be registered with the Court in Greenland.

(3) In connection with reversion, see subsection (1), the Government of Greenland may decide that the hydropower plant is to transfer, fully operational, unless it is evident that such term would be disproportionately burdensome to the licensee.

(4) In the last three years before a hydropower plant is to revert to the Self-Government, the Government of Greenland is entitled to full and unrestricted access to the hydropower plant and all related facilities and to make necessary decisions to prepare for the transfer to the Self-Government and to ensure continuous operations. This must be done without significant inconvenience or expense to the licensee under the exploitation licence.

(5) If the hydropower plant does not revert to the Self-Government, the licensee under the exploitation licence must discontinue the activities and close down the hydropower plant in accordance with the rules and licence terms laid down by the Government of Greenland in this regard.

(6) The Government of Greenland may lay down more detailed licence terms and provisions on reversion, including concerning the matters mentioned in subsections (1)-(5).

### **Section 16**

All charges and encumbrances affecting the hydropower plant will be extinguished when the hydropower plant reverts to the Self-Government under section 15(1).

### **Section 17**

The Government of Greenland may enter into an agreement to lease a reverted hydropower plant to a lessee. The lessee will be granted an exploitation licence pursuant to the provisions of this Greenland Parliament Act.

## **Part 6**

### *Regulatory processing*

### **Section 18**

(1) Applications for a prospecting or exploitation licence for hydropower resources for the production of energy, see section 3, must be submitted to the Government of Greenland.

(2) The Government of Greenland may request applicants and licensees to provide all information which the Government of Greenland deems necessary for purposes of regulatory processing under this Greenland Parliament Act, regulations issued hereunder and the licence terms.

(3) The Government of Greenland may lay down rules on collection and notification of

information, including rules on confidentiality and rules on exclusion of information from public access.

### **Section 19**

(1) Applications for an exploitation licence must be accompanied by a plan for the energy production and the facilities in this regard, together with drawings, maps or the like as well as a calculation of output capacity and estimated water extraction for production purposes.

(2) No measures to establish plant and facilities, etc. may be initiated before the Government of Greenland has issued an approval of the production and construction plans.

(3) Before issuing any approval, the Government of Greenland must ensure that the construction and energy production can be carried out safely with regard to safety, health, environmental protection and social sustainability and that production will take place with the best possible exploitation of water extraction, see section 1(2).

### **Section 20**

(1) A prospecting licence, see section 3, for non-urban areas will exempt the licensee from satisfying the area allotment requirements under the provisions of the Greenland Parliament Act on Planning and Area Use.

(2) The Government of Greenland will give notice of area allotment for hydropower plants and all related facilities, including dams, channels, tunnels, basins, pipelines, transmission lines, roads, ports and other buildings and structures under an exploitation licence for hydropower resources for the production of energy.

### **Section 21**

(1) Before an exploitation licence is granted, a consultation procedure must be conducted which includes the following parties:

- 1) Anyone with an individual significant interest in the outcome of the case.
- 2) Employer and employee organisations as well as Greenlandic associations and organisations which, according to their articles of association, safeguard significant interests concerning social sustainability, environmental protection or human rights.
- 3) Affected municipalities and authorities.

(2) The Government of Greenland must set a time-limit of at least six weeks for interested parties to submit their responses.

## **Part 7**

### *Supervision*

### **Section 22**

(1) The Government of Greenland will supervise the licensees' activities under this Greenland Parliament Act and may issue orders for compliance with this Act and with regulations and terms issued hereunder.

(2) The Government of Greenland is entitled, without a court order and against proper



identification, to access all parts of the enterprise to the extent required for the performance of its supervisory duties.

(3) If the licensee under an exploitation licence fails to comply with any order within a reasonable time-limit, the Government of Greenland is entitled to have such order complied with at the licensee's expense and risk.

## **Part 8**

### *Registration, insurance and access*

#### **Section 23**

(1) The licensee must ensure that the exploitation licence granted for hydropower resources for the production of energy is registered with the Court in Greenland.

(2) Any transfer, whether direct or indirect, of an exploitation licence is subject to consent from the Government of Greenland. The Government of Greenland may grant the licensee advance approval of a transfer on terms laid down by the Government of Greenland.

(3) In connection with the approval of a transfer of an exploitation licence for hydropower resources for the production of energy under subsection (2), the Government of Greenland will also approve a transfer of licences etc. under the Greenland Parliament Act on Planning and Area Use. The Government of Greenland may lay down terms for such approval.

#### **Section 24**

(1) The Government of Greenland may lay down licence terms to the effect that the licensee's liability in damages must be covered by insurance or that other security must be provided.

(2) The Government of Greenland may lay down provisions to the effect that the liability of subcontractors and suppliers of goods and services – to the extent that the goods or services provided are used in the business or activities under a licence granted pursuant to this Greenland Parliament Act – must be covered by insurance or other security.

#### **Section 25**

Licensees under an exploitation licence must ensure that there will be no unauthorised access to the hydropower plant and its surrounding areas which pose a particular risk to any person in the area.

## **Part 9**

### *Compulsory sale*

#### **Section 26**

The Government of Greenland may acquire property and rights under the rules of the Greenland Parliament Act on Compulsory Sale for purposes of prospecting for and exploitation of hydropower resources for the production of energy.

## **Part 10**

## *Penalties*

### **Section 27**

(1) Any violation of sections 2, 3(2), 7, 19(2), 24 and 25 may result in measures in the form of a fine under the provisions of the Criminal Code for Greenland.

(2) For regulations issued under section 11, measures may be imposed in the form of a fine under the provisions of the Criminal Code for Greenland.

(3) Where this Greenland Parliament Act or regulations issued hereunder provide for a fine to be imposed, such fine may be imposed on a legal entity under the provisions of the Criminal Code for Greenland.

(4) Proceedings under subsections (1)-(3) must be issued before the Court in Greenland as the first instance court.

(5) Fines imposed under subsections (1)-(3) will belong to the Greenland Treasury.

### **Section 28**

(1) If a financial benefit has been obtained by a violation of the provisions of this Greenland Parliament Act or by a violation of provisions and licence terms laid down hereunder, such benefit will be seized in accordance with the provisions of the Criminal Code for Greenland. Where seizure is not possible, such benefit must be taken into account when determining the amount of the fine.

(2) Any benefit seized will belong to the Greenland Treasury.

## **Part 11**

### *Entry into force, repeal and transitional provision*

#### **Section 29**

(1) This Greenland Parliament Act enters into force on 1 January 2019.

(2) Greenland Parliament Act no. 11 of 8 June 2014 on Exploitation of Hydropower Resources for the Production of Energy is repealed at the same time.

(3) Any prospecting or exploitation licences for hydropower resources which fall within the scope of this Greenland Parliament Act, but were granted before this Act entered into force will remain valid and in full force and effect for the period granted.

*The Self-Government of Greenland, xx xxx 2018*

Kim Kielsen

## Explanatory notes to the Bill

### General explanatory notes

#### 1. Introduction

Hydropower is a central element in the transition of energy supply in Greenland to renewable energy. A continued expansion of hydropower capacity in Greenland will be of decisive importance to the ability to combine economic growth in Greenlandic society with sustainable development.

The hydropower potential in Greenland is closely connected with the amount of meltwater from the ice sheet and the amount of precipitation. Therefore, the current changes in the global climate have direct economic consequences and thus impact on the formulation of a strategy for the future energy supply. An adequate decision-making basis for a possible expansion of hydropower in Greenland should include, as a minimum, an assessment of the significance of the climate changes that have already taken place. To this end, the Government of Greenland has asked the Geological Survey of Denmark and Greenland to map out Greenland's hydropower resources and estimate the amounts of melt-water running off the ice sheet and the precipitation-driven meltwater from ice-free areas. Hydropower resources are divided into large industrial-size potentials, which depend on the amount of meltwater running off the ice sheet, and small-scale potentials located in the vicinity of towns, which often primarily depend on the precipitation in ice-free areas. The intention with this Bill is to change the conditions for granting prospecting and exploitation licences so as to allow for the differences in the hydropower resources and the need for water extraction based on a case-by-case assessment of the individual hydropower project, its capacity and the water resources available in the catchment area.

Experience gained from current legislation has made the Government of Greenland aware of a number of inexpediencies in the current Greenland Parliament Act no. 11 of 8 June 2014 on Exploitation of Hydropower Resources for the Production of Energy (the Hydropower Act). For one thing, the inexpediencies have resulted in very low activity in terms of prospecting activities. Only one prospecting licence has been granted under the Hydropower Act. The licence was granted in 2017 in connection with a mineral resources project.

In connection with the Alcoa aluminium smelter project, a large part of Greenland's viable hydropower potential in the catchment area between Nuuk and Maniitsoq was earmarked for this project. This has most likely been a contributing factor to the absence of any other commercial interest in exploring the possibilities of exploiting the hydropower potential. After negotiations with Alcoa, the contractual ties have been lifted with regard to the possibility of granting prospecting and exploitation licences to third parties for this area. At the same time, the data collected for the Alcoa project have been made available against payment of the data collection costs.

The Hydropower Act provides a general rule to the effect that prospecting licences and exploitation licences must be granted at the same time. The intention was to ensure that a licensee under a prospecting licence can be sure that it will be granted an exploitation licence if the prospecting activities establish that the basis for commercial exploitation of a hydropower resource exists. It has been regarded as a crucial factor in attracting international investors that they have been secured the right to exploit the hydropower resource in advance. It is a principle that has been repeated from the area of mineral resources, but the experience gained from the Hydropower Act has shown that no such connection exists in the hydropower area with regard to the grant of an exclusive prospecting licence and an exploitation licence. This lack of connection is attributable to the fact that the geographical area that makes up the catchment area of a hydropower plant may be of a very significant size geographically and cannot be demarcated accurately in the same way as a commercial deposit of mineral resources.

Like the Mineral Resources Act, the Hydropower Act builds on the assumption that through prospecting activities, it is possible to delineate and properly define a hydropower resource which may be the subject of an exclusive exploitation licence for a catchment area corresponding to the geographical area stated in the licence to perform hydropower activities. A catchment area is the onshore area which contributes to creating the hydropower resource through draining of meltwater. The term onshore area is used, as opposed to offshore area, and also covers lakes and the ice sheet.

However, the hydropower industry has been hampered in its development by the fact that a licensee may occupy all water resources in its geographical licence area without implementing an exploitation plan in whole or in part. Under the Hydropower Act, the Government of Greenland may as a general rule in such cases not license third parties to exploit an unexploited part of the resource in question. This may mean that a water resource or a part of such resource in a licence area is not exploited in the best way possible, thus resulting in a socio-economic waste.

As a result, the Bill proposes to allow two or more licensees to be granted an exploitation licence for a shared water resource if the potential of the resource in question in the catchment area allows for extraction of water for more than one hydropower plant. The granting of an exploitation licence for more than one hydropower plant will therefore depend on an assessment of the size of the minimum water extraction volumes needed for optimum energy production at the individual hydropower plants. Conversely, it means that no licence may be granted for additional exploitation of a hydropower resource if an exploitation licence has already been granted for the same hydropower resource where the permitted water extraction volumes require that the entire hydropower resource is reserved for this purpose.

A few of the provisions of the Hydropower Act are not sufficiently clear to ensure that no doubt will arise in the dealings between public authorities and applicants/licensees under the Hydropower Act and the Mineral Resources Act. Unclear wording in the legislative licensing basis may give rise to disputes between applicants/licensees. The scope of the Hydropower Act extends to cases with potentially large implications in terms of liability in damages and financially.

Consequently, in a parallel process with this Bill, the Government of Greenland therefore introduces a Bill to amend the Act on Mineral Resources and Mineral Resource Activities (the Mineral Resources Act) to remove the existing provisions on hydropower from the Mineral Resources Act.

## **2. Main features of the Bill**

### *2.1 Current law*

The current legislation in the hydropower area is Greenland Parliament Act no. 11 of 8 June 2014 on Exploitation of Hydropower Resources for the Production of Energy (the Hydropower Act). Until the current Act entered into force, the exploitation of hydropower was governed by Greenland Parliament Act no. 12 of 1 December 2009 on Exploitation of Hydropower Resources for the Production of Energy, which replaced Greenland Parliament Regulation no. 14 of 6 November 1997 on Energy Supply. The provisions on hydropower plants in the Regulation on Energy Supply still apply to small-scale hydropower resources.

One licence has been granted for the exploitation of hydropower for the production of energy under the then applicable Hydropower Act on Mineral Resources etc. in Greenland. The licence concerns the hydropower plant at Buksefjorden, which was put into service in 1993 and extended in 2008 to 45 MW. Four licences have been granted under the Greenland Parliament Regulation on Energy Supply. The licences concern Tasiilaq, Qaqortoq-Narsaq (Qorlortorsuaq), Sisimiut and Ilulissat. All of the above-mentioned hydropower plants are operated by Nukissiorfiit and, except for the plant at Buksefjorden, they have been

constructed with Nukissiorfiit as the client. In 2017, one prospecting licence was granted under the Hydropower Act.

With Parliamentary Motion no. ME2012/113, the Parliament of Greenland laid down the framework conditions for the negotiations with Alcoa concerning the construction of a hydropower plant for the supply of energy for an aluminium smelter at Maniitsoq. For purposes of complying with the Parliamentary Motion, a number of amendments were made in hydropower legislation by adoption of the then applicable Greenland Parliament Act on Exploitation of Hydropower Resources for the Production of Energy.

Prospecting licences and exploitation licences are granted for a specific hydropower resource with related geographically delineated onshore areas and subject to specific terms.

Prospecting and exploitation licences are generally granted on an exclusive basis to prospect for and exploit hydropower resources in the areas covered by the licences.

If the Government of Greenland has granted a prospecting or an exploitation licence to a licensee to exploit a hydropower resource in an area on an exclusive basis, the exclusivity will generally mean that the Government of Greenland cannot also grant a prospecting or exploitation licence for the resource in question to other parties.

Regulatory processing under the Hydropower Act is based on the one-stop principle. Applicants will only have to deal with one public authority, which will then coordinate all regulatory processing, including any coordination with municipal authorities concerning grant of area allotments required for prospecting or exploitation and environmental approvals with the environmental authority.

However, applications for licences to prospect for and exploit hydropower resources for the production of energy in connection with mineral resources are excluded from the above. The Mineral Resources Act provides that regulatory processing in the mineral resources area must be a totally integrated process where particularly environmental, technical, safety-related and resource-related factors are incorporated into a whole. As regards exploitation of hydro-power resources, applications for the hydropower resource as such will be processed under the Hydropower Act, while other regulatory processing will be subject to the Mineral Resources Act.

## *The Bill*

### *2.1.1 Scope*

The Hydropower Act applies to all hydropower resources that may be exploited for the production of energy, regardless of the size of the energy potential and the output capacity installed. A change has been made in relation to the Hydropower Act with the scope being

determined according to the energy potential of the hydropower potential. The change means that all hydropower potentials will fall within the scope of the Act.

### *2.1.2 The Mineral Resources Act*

The Bill proposes to remove the provision in section 4(2) of the Hydropower Act which provides that hydropower activities that can be characterised as an exploitation measure within the meaning of the Mineral Resources Act may not be initiated without approval from the mineral resources authorities in accordance with the considerations underlying the Mineral Resources Act.

In order for a hydropower activity to be regarded as an exploitation measure within the meaning of the Mineral Resources Act, it follows from the provision in section 11(2) of the Hydropower Act that the energy output must, to the furthest extent possible, be used in connection with mineral resources exploitation.

Under the provision in section 29(2) of the Mineral Resources Act, it is a requirement for an exploitation licence to be granted that the licensee must have demonstrated and defined a commercial deposit. In order to comply with this requirement, the licensee must be able to demonstrate by way of a profitability study that it will be possible to obtain project funding from the banks. In line with standard practice, geological documentation must be available to show that the deposit can most likely be commercially exploited for an estimated period of time, and the documentation will be taken into account when the repayment term of the external bank funding is determined. A hydropower plant typically has a planned life of 50+ years. Given the substantial costs involved in the construction of a hydropower plant, it has turned out in practice to be difficult and not expedient to make this regulatory coupling as assumed in the Mineral Resources Act. This is particularly due to the differences in the conditions of funding between a mining project and a hydropower project, respectively.

The provisions in section 4(2) and section 11(2) of the Hydropower Act involve an inexpedient double regulatory processing process which cannot be justified in practice. The Bill proposes to separate the regulatory processing of an exploitation licence for mineral resources from the regulatory processing of an exploitation licence for hydropower, even if the hydropower plant is envisaged to supply the mine with energy.

Exploitation of hydropower to supply energy to a mine is envisaged to be possible if an agreement is made between the hydropower company and the mining company. In consequence of the above, the condition in section 8(2) of the Hydropower Act that “transmission lines” must be owned by the holder of the exploitation licence has been removed. It will also affect other major customers like, for example, the utility companies that electricity can be taken out and calculated from the transformer station of the hydropower plant in the sense that the output transmission lines are installed by the user of the energy by agreement with the hydropower company.



### *2.1.3 Greenland Parliament Act no. 11 of 19 May 2010 on Conservation and Other Protection of Cultural Heritage (the Cultural Heritage Act)*

The Cultural Heritage Act contains provisions on the protection of earthfast ancient monuments in connection with the physical planning and preparations for earthworks, and of earth-fast ancient monuments discovered in connection with earthworks. As the construction of a hydropower plant falls within the category of earthworks, those provisions must also be observed in connection with the planning and construction of a hydropower plant. The Greenland National Museum and Archives must be involved in the processing of hydropower exploitation licences if they may impact earthfast ancient monuments.

The Cultural Heritage Act contains rules on archaeological inspections and examinations of an area and on the circumstances under which the Greenland National Museum and Archives may decide to initiate an inspection or examination, as the case may be, of an area of its own motion. In this connection, provisions have been laid down as to time-limits for such inspections and investigations. There are also provisions specifying who will pay the expenses. In addition, there is a duty to report any earthfast ancient monuments that are discovered during earthworks and a provision to the effect that the works must be paused to the extent that they impact the ancient monument.

### *2.2.3 Grant of non-exclusive prospecting licence*

The Bill proposes to grant prospecting licences on a non-exclusive basis, see section 4(2) of the Bill. The period of a prospecting licence is up to five years and may be extended, if so applied for, by up to an additional five years. Under the Bill, the period of a prospecting licence may not exceed ten years. After the end of the licence period, a new prospecting licence may be applied for. The limitation in time is intended to ensure that the data collected do not remain confidential indefinitely, but are only confidential for a sufficient period of time to enable commercial prospecting and data collection. It is in the public interest to promote prospecting activities and knowledge of water resources as much as possible, and this is best done by making data and prospecting results available to the industry and the general public within a short timeframe. A non-exclusive prospecting licence means that third parties will not be prevented from prospecting in a geographical area although one licensee is already performing prospecting activities in the area.

### *2.2.4 Grant of exploitation licence*

If the Bill is enacted, it will no longer be a condition to the grant of an exploitation licence that it is granted on the basis of a prior prospecting licence.

If the licensee does not initiate exploitation measures within five years after the grant of the licence, the licence will lapse without further notice. The five-year time-limit is absolute and cannot be extended. If the Government of Greenland has granted an exclusive exploitation

licence to a licensee for exploitation of a water resource in an area, the exclusivity generally means under the current regime that the Government of Greenland cannot also grant an exploitation licence to other parties for the resource in question.

Experience gained from the Hydropower Act and its application in practice has shown that the grant of exclusive exploitation licences may generally delay and restrict the initiation of exploitation of hydropower resources in Greenland. This would be the case where a licensee does not initiate exploitation of the hydropower resources in a licence area in full. Under the current Hydropower Act, the Government of Greenland may as a general rule in such cases not grant another party a licence to exploit the rest of the resource in question, resulting in a socio-economic loss.

It follows from section 5 of the Bill that an exploitation licence is generally non-exclusive, unless special conditions dictate that an exclusive exploitation licence be granted for a specified and geographically delineated hydropower resource, see section 5(2). Under the provision in section 5(2) of the Bill, the Government of Greenland may decide to grant an exclusive exploitation licence for a specified and geographically delineated hydropower resource if so dictated by special conditions. This would be the case where the licensee's planned activities under the exploitation licence and the planned energy production require water extraction on such a scale that the licensee needs exclusivity to ensure the necessary inflow of water to the geographical area specified in the licence.

The Bill is intended to ensure that a licensee under an exploitation licence will not "reserve" an area without using it. The licensee under an exploitation licence must thus generally perform its exploitation activities under the licence for the entire licence period. The licensee should therefore generally be allowed reasonable time to make the relevant investigations and establish the relevant buildings, plant and installations, etc. before the licensee is required to initiate exploitation under the licence. Under the provision in section 6(1), a time-limit of not more than three years after the grant of a licence applies with regard to initiating the construction of the hydropower plant, and the hydropower plant must be put into operation within six years of the grant of the licence.

The Bill thus proposes to enable two or more licensees to be granted an exploitation licence for the same hydropower resource if so allowed by the potential of the resource in question. This will ensure that the hydropower potential in Greenland is utilised in the best and most expedient manner and that, where possible, the potential is not wasted. All licences for shared hydropower resources will result in a need for the licences to be coordinated, and it may also require a cooperation agreement to be entered into by the owners in the construction as well as operational phase. The provision in section 13 is generally intended to contribute to ensuring that hydropower resources in Greenland will be utilised in the best and most expedient manner.

It may also be economically advantageous for the licensees to engage in coordinated exploitation of, for example, transmission lines and pipelines, etc. Furthermore, it may be best and most expedient from the perspective of society for the licensees to engage in coordinated exploitation.

This requires appropriate and due care in granting exploitation licences for a shared water resource so that all licensees with a right to extract a specified volume of water for hydropower purposes generally also in practice have the option of extracting the necessary volumes of water for energy production on the scale assumed, as set out in the exploitation licence.

### 2.3. Economic terms

#### *2.3.1 Payment of royalties to the Self-Government and expenses in connection with case administration and other regulatory processing*

The clear statutory basis for granting model prospecting and exploitation licences is continued in the Bill. The option of granting model licences enables the Self-Government to prepare standard terms so that potential applicants can acquaint themselves with the terms.

The Bill continues the principles in section 11(3) of the Hydropower Act concerning the economic terms of the licences. Terms on the payment of royalties will only be set out in exploitation licences and not in prospecting licences. In case any terms on the payment of royalties apply, they must be stated in the licence to ensure that the enterprise is aware of the terms in advance.

It follows from section 10(1) of the Bill that an exploitation licence may lay down terms to the effect that the licensee must pay royalties to the Self-Government. The wording of the provision – “*payment of royalties*” – is also found in the Mineral Resources Act, and it has thus been made clear that the royalty is not a tax. Under the provisions, terms may be laid down in licences to the effect that the licensee must pay a royalty based on the size of the hydropower resource covered by the licence (volume royalty), the actual exploitation of the hydropower resource (exploitation royalty) or based on the energy output (output royalty). Under the proposed provision in section 10(3), the licensee may be granted a tax exemption for activities under a licence. In principle, the proposed provision corresponds to the provision in section 17(1) of the Mineral Resources Act, except for the fact that the royalty may be fixed at an amount that is less onerous than taxation would have been.

The Bill continues and also expands on the provision on payment of expenses in connection with case administration and other regulatory processing. It follows from section 12(1) and (2) of the Bill that licensees and any other persons falling within the scope of the Hydropower Act must pay the expenses involved in case administration and other regulatory processing

under the Hydropower Act. The amount payable may be collected as a charge or as reimbursement of expenses. The Government of Greenland may lay down more detailed rules in this regard.

### **3. Economic and administrative consequences for the public sector**

The Bill is not expected to have any economic or administrative consequences for the public sector.

### **4. Economic and administrative consequences for the business sector**

The Bill is not expected to have any economic or administrative consequences for the business sector.

If the Bill is enacted, more licensees may be granted an exploitation licence to exploit the same water resource. Under section 5(2) of the Bill, the Government of Greenland may decide to grant an exclusive exploitation licence for a geographical area if there are special reasons for doing so. This could be in situations where the licensee's planned activities under the exploitation licence include major investments in plant, infrastructure or the like in Greenland. In such and other similar cases, the licensee may have a special need to be granted an exclusive exploitation licence. Reference is made in general to section 5(2) of the Bill and the relevant notes.

### **5. Consequences for the environment, nature and public health**

The Bill has no consequences for the environment, nature or public health.

### **6. Consequences for citizens**

The Bill is not expected to have any consequences for the citizens.

### **7. Other significant consequences**

The Bill is not expected to have any other significant consequences.

### **8. Consultation of authorities and organisations etc.**

In the period from 22 November to 23 December 2017, the Bill was made available on the consultation portal of the Self-Government.

The Bill was also put out to consultation to the following authorities, organisations, etc.:

GE – the Greenland Business Association, Greenland Survey, TELE Greenland A/S, SIK, KANUKOKA, Kommuneqarfik Sermersooq, the Municipality of Qaasuitsup, the Municipality of Qeqqata, the Municipality of Kujalleq, the Ministries of the Self-Government, the Greenland Institute of Natural Resources, WWF Greenland, ICC, KNAPK, Royal Greenland A/S, Nukissiorfiit.

The Government of Greenland received responses from the following authorities, organisations, etc.:

GE – the Greenland Business Association, Greenland Survey, Nukissiorfiit, the Municipality of Qeqqata, the Ministry of Education, Culture, Church and Foreign Affairs, the Ministry of Mineral Resources,

Based on the responses received, amendments and additions have been made to the Bill and the notes. The Bill was prepared by a prior administration for introduction during the 2018 parliamentary session, but there is a wish to continue the process with the Bill in unchanged form, and it is therefore not relevant to conduct a new consultation process.

Below, the responses received in connection with the consultation process are discussed. It should be noted that the responses are italicised and that the responses are mainly included based on an evaluation of materiality. For purposes of discussing the responses, comments have been obtained from Nukissiorfiit.

*Response received from GE – the Greenland Business Association:*

*The consultee has noted that the wording of section 1(3) and (4) should be amended so as to clarify that preference is given to Greenland workers and Greenland enterprises in connection with the performance of works concerning exploitation of the hydropower resources. GE recommends amending “may lay down” in section 11(3) and (4) to “will lay down”.*

For practical administrative reasons, the authorisation provision is worded in the manner chosen in order to allow the Government of Greenland to lay down provisions on the use of Greenland workers and Greenland enterprises in a smooth and flexible manner which are adjusted to a particular situation on the labour market and the particular capacity of the business sector. At the same time, it is also possible for the Government of Greenland to formulate provisions and terms under section 11(3) and (4) in a flexible manner which are adjusted to reflect private investors’ requirements to investments in hydropower in Greenland. Detailed rules establishing a preference for Greenland workers and enterprises under section 11(3) and (4) may be laid down more appropriately in the individual exploitation licences.

In addition, GE – the Greenland Business Association pointed out some linguistic errors in the Bill, which have been corrected.

*Response received from: Nukissiorfiit*

*Nukissiorfiit notes: “... in order to avoid misunderstandings, section 2 should have the following wording: “This Greenland Parliament Act applies to the exploitation of hydropower resources with a potential of more than 6 gigawatt hours per year (GWh/year)”*

Section 2 has been left out in the final version of the Bill.

*Response received from the Municipality of Qeqqata*

*The Municipality of Qeqqata notes with regard to section 9(1), line 5, that it is unclear which 1st-3rd sentences the reference concerns.*

The reference made is to the 1st to 3rd sentences of section 9(1). (Now the 1st to 3rd sentences of section 8(1)).

*The Municipality of Qeqqata notes with regard to section 10(1)(vi) (now, section 9) concerning the licensee's obligations on termination of the prospecting and exploitation stages to remove plants etc. established by the licensee, and to otherwise clean up the affected areas:*

*"... that the municipality should have a say in the degree of clean-up and what the licensee removes or changes. ... In addition, access roads and any other infrastructure should be planned in cooperation with the municipality as the municipality may have an interest in where the plants are situated."*

In connection with the construction of a hydropower plant, the municipality will play an important role as a consultee matching the exercise of authority and the responsibility imposed on the municipality under the law. Similarly, the municipality may exercise its authority when the hydropower plant is planned and constructed and later on, when it is closed with the subsequent clean-up and restoration measures.

It is specified in environmental legislation which role and power the Self-Government and the municipalities, respectively, have within the scope of the Act. The Government of Greenland is the central environmental authority. In a number of specific areas, the Government of Greenland has been entrusted with the power to issue approvals and the Government of Greenland also exercises the supervisory authority. Thus, according to the Environmental Protection Act, the Government of Greenland is the supervisory and approval authority for enterprises etc. subject to requirements for preparation of an environmental impact assessment in connection with approval of major construction and infrastructure works in accordance with the provisions in Part 8 of the Environmental Protection Act. Construction of hydropower plants is one of the types of activities where requirements are made for the preparation of an environmental impact assessment and the Government of Greenland's approval of an EIA report.

Under the Greenland Parliament Act on Environmental Protection, the Government of Greenland may decide, following negotiations with the municipal council, to leave the task of supervising a number of specified activities to the municipal council. Such decision must be made under environmental legislation and not under legislation concerning exploitation of hydropower resources.

*The Municipality of Qeqqata notes with regard to section 19 of the Bill that meteorological data must be included together with a calculation of output capacity and estimated water extraction.*

The types of data mentioned by the consultee are some of the usual data which are collected in the course of prospecting for hydropower resources for the production of energy. The prospecting results and collected data are the basis that must be obtained in order to apply for exploitation of a hydropower resource and are a precondition to being able to perform a calculation of output capacity and estimated water extraction.

*The Municipality of Qeqqata notes with regard to section 19(4) and (5) that the municipalities should be given veto power on the situation of a hydropower plan and lines if there is a conflict with municipal interests such as tourism.*

If the Municipality's proposal is accepted and the municipalities are given a legally binding power to veto the decisions of the Government of Greenland concerning specific hydropower projects, this would mean that part of the authorisation (powers) concerning the exercise of the executive power – the final decision-making power in the hydropower area – would in effect transfer from the Government of Greenland to the municipality.

The hydropower area is an area of major public importance to the entire population and the entire country. It has therefore been regarded as essential to keep the final decision-making power unambiguously in the hands of the Government of Greenland.

If the Bill is enacted and the municipality's decision on veto power is given legal significance, the municipality would in effect be able to exercise a part of the executive power in the hydropower area. In addition, the municipality would not be responsible for its exercise of this veto power in the hydropower area in the same way as the Government of Greenland, which is accountable to the Greenland Parliament.

*The Municipality of Qeqqata notes with regard to section 21(3) that the municipality should have a right to object before an order is imposed on a licensee to comply with the provisions of the Act.*

Reference is made in general to the above comments on the general democratic and constitutional principles and consequences of a transfer of authority from the Government of Greenland to a municipality. More specifically, the Municipality's proposal would create much uncertainty with regard to the Government of Greenland's supervision with the licensee's activities and in practice render effective supervision difficult.

*The Municipality of Qeqqata notes with regard to section 22 that the municipality should be the competent area authority in this field or, alternatively, that area allotment should be subject to approval from the municipality or that the municipality should be given veto power.*

Under the current Greenland Parliament Act on Exploitation of Hydropower Resources, the Self-Government has the exclusive right to exploit hydropower resources for the production of energy. This is an area of major and significant public importance to the entire population and the entire country. The proposal from the Municipality could therefore conflict with fundamental democratic and constitutional principles concerning the exercise of a part of the executive power by the transfer of such from the Government of Greenland to the municipality. Reference is also made to the above concerning the response received from the Municipality of Qeqqata.

*Response received from the Ministry of Mineral Resources:*

*The Ministry points out that the exploitation of hydropower resources in connection with mineral resources activities is subject to regulation under the Mineral Resources Act. The provision in section 4 of the Bill may cause doubt about the state of play and in particular the relationship with the provision in section 20 of the Mineral Resources Act.*

In order to avoid any uncertainty about the regulation of the exploitation of hydropower resources for the production of energy for activities governed by the Mineral Resources Act, a new provision is inserted as a new subsection (3) in section 29 of the Bill, whereby amendments are made at the same time in Greenland Parliament Act no. 7 of 7 December 2009 on Mineral Resources and Related Activities as amended (the Mineral Resources Act) in the provisions concerning regulation of the exploitation of hydropower resources in connection with mineral resources activities.

*Response received from Greenland Survey*

*Greenland Survey notes with regard to the provision in section 5(2) of the Bill that the period of prospecting licences may be too short where the areas concerned are areas in which no surveys have been carried out to estimate the size of the water resource. In this connection, Greenland Survey refers to the Nukissiorfiit report entitled "Greenland's hydropower*



*resources, A survey August 2005”, which recommends supporting a decision to establish a hydropower plant by at least ten years of measurements of the water resource.*

The response has given rise to an amendment of the provision in section 5(2) to the effect that the period of a prospecting licence is five years, with an option to extend for up to an additional five years. The total period of an exploitation licence may not exceed ten years. The provision is now contained in section 4(2).

*Greenland Survey notes with regard to the wording of the provision in section 8(2), read with the notes to this provision, that it may be problematic to lay down terms concerning maximum water extraction and, at the same time, lay down terms concerning the maximum water extraction elevation permitted in the water reservoir. As the inflow into the reservoir will vary from year to year (in years of large inflows, the reservoir may typically hold two to five times as much water as in years of low inflows) there is a risk that in some years it will be impossible to comply with both requirements; i.e. that in years of large inflows, the licensee will have to tap more than the maximum volumes of water in order to keep the water extraction elevation in the reservoir below the maximum allowed. Therefore, Greenland Survey recommends that no upper limit is set for the water extraction elevation in the water reservoir.*

As a result of Greenland Survey’s comment, the provision in section 8(2) has been amended to the effect that the requirement for a maximum water extraction elevation to be set is left out. The provision is now section 5(4).

*Response received from the Ministry of Education, Culture, Church and Foreign Affairs*

*The Ministry of Education, Culture, Church and Foreign Affairs proposes to include a reference in the notes to the provisions in sections 11-17 of Greenland Parliament Act no. 11 of 19 May 2010 on Conservation and Other Protection of Cultural Heritage (the Cultural Heritage Act).*

A new paragraph has been added to the general notes which describes the relationship between this Bill and the Cultural Heritage Act.

*Response received from the Ministry of Finance*

*The Ministry of Finance has the following general comments to make.*

*Exploitation of the Greenlandic hydropower resources for the production of energy represents a potential for economic growth in this country. The framework legislation in the area is therefore a specific issue where the Greenland Parliament may have an impact on the development opportunities.*

*The hydropower potentials must be used to supply the population with environmentally friendly energy and also as the basis for possible development with the establishment of different types of energy-intensive industry or possibly, in the long term, for direct electricity exports. The Ministry of Finance therefore fully supports the statements in the general explanatory notes concerning the importance of ensuring that “the hydropower potential ... is utilised in the best and most expedient manner”. The notion that two or more licensees may have access to exploiting the same resource is therefore generally an interesting idea.*

*According to the Bill, non-exclusive exploitation licences are the main rule, although section 8(5) provides that exclusive exploitation licences may be possible “if so dictated by conditions relating to water resources”. The notes specify that the “qualifying circumstances” in question “include major investments in plant, infrastructure or the like”. But does that not mean that, in practice, exclusive licences will invariably be the most frequent types? It may therefore be considered whether to reverse the logic so that the non-exclusive licence is the exception and the exclusive licence is the general rule as far as exploitation licences are concerned.*

In relation to the current Hydropower Act, the licensee must prepare a calculation of output capacity and estimated water extraction for production purposes and, as documented, will be contained in the exploitation licence. By coupling the size of the contemplated plant with the required water extraction volumes more accurately it will be possible, where the water catchment area has sufficient potential, to optimise resource utilisation. By not granting exclusivity, the Government of Greenland will retain the option of granting an exploitation licence to others in areas where a sufficiently large hydropower resource can be demonstrated to exist.

*The Ministry of Finance supports the idea of coordinated operation in situations where two or more licensees use the same hydropower resource.*

*The Ministry has noted that as regards the period of the exploitation licence, the Bill mentions up to 40 years, which may be extended by up to 2 x 20 years – a total maximum of 80 years. This is a very long period of time where social conditions as well as technological possibilities will most likely change in yet unforeseen directions. An exploitation licence under this Act will therefore limit the Government of Greenland and the Greenland Parliament far into the future in terms of their freedom to act. That is probably the way it is, given the need to also safeguard investors’ interests in recouping their invested capital plus a risk and interest premium. However, the concession period should be adjusted to suit the need in each case; in most cases, a mine wishing to construct a (small-scale) hydropower plant for an anticipated operating period of, for example, 10 - 15 years would hardly need a 40 + 2 x 20-year concession. This should be clarified in the notes.*

*To the extent that it makes sense economically, it is also possible to imagine, for example, that Nukissiorfiit would take over, against a fee, a plant of relevance to the public energy supply which the licensee plans to no longer use after 10 - 15 years. A kind of “reversion against payment”, if you will.*

The experience gained by the Self-Government from the Alcoa project showed that the establishment of competitive framework conditions was a precondition to maintaining interest in hydropower investments from private players, including the possibility of extending the period of an exploitation licence to a duration that was adjusted to reflect the major investments required for the construction of a large-scale hydropower plant and all related installations and infrastructure.

Moreover, experience gained from energy plants associated with mining projects has shown that it is difficult to raise total funding due to the relatively short repayment profile of mining projects which depend on the size of a deposit that has been demonstrated to exist, while the life of a hydropower plant is typically 40+ years. The absence of any connection between the financial terms for extraction of mineral resources and construction of hydropower plants is a major reason why the Bill proposes to separate regulatory processing of an exploitation licence for mineral resources from regulatory processing of an exploitation licence for hydropower in the future, although energy from the hydropower plant is used to supply a mine with energy.

*In connection with the payment of a royalty at an amount specified in the exploitation licence, section 12 provides for the possibility of granting the enterprise full or partial tax exemption. To the extent that such tax exemption is granted, the Government of Greenland must be provided with separate authority to do so in advance by virtue of a note in the annual finance acts. The Ministry of Finance supports the model of including a note in the relevant Finance Act when an enterprise is to be granted tax exemption.*

*However, the question of granting specific enterprises in a specific industry an exemption from ordinary direct and indirect taxes is always a subject that should be addressed with the utmost care. Basically, it is not in the public interest for specific enterprises or industries to be given terms that differ from those applying to the rest of the business sector. If ordinary taxation is replaced by a royalty according to a note and the conditions of the relevant exploitation licence, we must therefore either secure proceeds which do not deviate significantly from ordinary taxation proceeds or ensure that we are acting to safeguard very exceptional interests concerning employment, social development or the like. In this connection, it should be noted that the operation of hydropower plants is not particularly labour-intensive. Employment is therefore mainly an issue in the construction phase or in any associated industry.*

The economic framework conditions must be competitive relative to the framework conditions of other countries, if the objective of attracting and retaining private investment in Greenland hydropower potentials is to have any reality behind it. The employment and social development effects of expanding hydropower production are not directly linked to hydropower operations as such, but to the utilisation by energy-intensive companies of the potential which is made available by the access to cheap and environmentally friendly energy which is provided with the construction of hydropower plants.

*To the extent that the concessionaire and the purchaser of the energy are one and the same party or otherwise have significant common interests, it may be cause for concern if the Act were to pave the way for tax optimisation by moving profits from a taxed company to an untaxed company. Consequently, the aim should be a high degree of coherence in the taxation/payment of royalty, where relevant through verifiable transfer pricing provisions.*

*Specific comments on individual sections.*

*Section 3 could be worded more simply. Instead, by way of example, it could read: "The hydropower resources belong to the Self-Government", as it says in the notes. The statement that the Self-Government holds the exclusive prospecting and exploitation rights, followed by provisions governing other parties' right to perform prospecting activities and exploit the hydropower resources seems strange.*

The provision corresponds to the current provision in section 3 of Greenland Parliament Act no. 11 of 8 June 2014 on Exploitation of Hydropower Resources for the Production of Energy.

*Section 10(8) mentions dispute resolution by arbitration. In this connection, the Ministry of Finance would like to stress that the significance of ensuring a dispute resolution mechanism that reflects a Nordic-European approach to the overall public interests has been a matter of consideration on previous occasions, in connection with the grant of licences in this area as well as in other areas. The arbitration procedure should therefore be based on a Greenlandic-Danish perception of the law.*

The arbitration provisions are laid down as terms in the individual licences, e.g. in model licences. When it comes to matters concerning a hydropower plant in Greenland constructed in accordance with applicable Greenlandic legislation, it would be natural for the dispute resolution mechanism to be based on the Scandinavian legal tradition.

## **Notes to the individual provisions of the Bill**

### *To section 1*

To subsection (1)

Like the provision in section 1 of the current Hydropower Act, the provision in section 1 defines the scope of the Bill. The scope of the Act is both prospecting and exploitation as well as the activities performed under a licence. The Act thus covers all of the activities that are performed by or on behalf of the licensee under a licence granted, including also the establishment of necessary infrastructure as well as supporting activities in relation to the actual prospecting or exploitation activities.

To subsection (2)

Like the current Hydropower Act, the Bill is a proposed framework act providing the statutory authority for the Government of Greenland to grant hydropower prospecting and exploitation licences. The provision in section 1(2) determines a number of the overall aspects that must be given weight by the Government of Greenland when laying down the terms of a licence. In a licence, the Government of Greenland may lay down all relevant terms with regard to the exploitation, establishment and operation of buildings, plant and installations, etc. and all related activities. In order to determine in each case which terms are relevant, an assessment of all relevant factors will have to be made. The Bill thus covers all of the activities that are performed under the licence granted, including also the establishment of necessary infrastructure as well as supporting activities in relation to the actual prospecting or exploitation activities.

### *To section 2*

The provision is identical to the current section 3 of the Hydropower Act. The hydropower resources belong to the Self-Government. Under the Bill, the Self-Government thus has the exclusive right to prospect for and exploit hydropower resources for the production of energy, and thereby also the exclusive right to grant licences to others.

The exclusive right only covers prospecting for or exploitation of hydropower resources for the production of energy. The Bill does not govern, for example, the right to carry out scientific and practical surveys of a general and charting-like nature concerning hydrological and glaciological matters.

The provision must be viewed in the context of section 4 of the Bill and is intended to ensure that no one can prospect for or exploit hydropower resources for the production of energy without permission from the Government of Greenland.

*To section 3*

In relation to the provision in section 4 of the current Hydropower Act, approval is no longer required under the Mineral Resources Act for exploitation of hydropower resources for the production of energy in connection with the exploitation of mineral resources. Licensing and regulatory processing are only subject to the Greenland Parliament Act on Exploitation of Hydropower for the Production of Energy.

To subsection (1)

The Government of Greenland is authorised within the framework of the Bill to grant a licence to prospect for or exploit hydropower resources for the production of energy on terms laid down by the Government of Greenland, see sections 4, 5, 7, 8, 9, 10, 11, 12 and 13. Prospecting licences are granted on a non-exclusive basis and without the licensee subsequently being entitled to being granted an exploitation licence. Prospecting licences and exploitation licences for hydropower resources for the production of energy are granted separately.

To subsection (2)

Subsection (2) provides that activities in connection with prospecting and exploitation must be performed in compliance with this Greenland Parliament Act and also the provisions issued hereunder by the Government of Greenland in pursuance of sections 4, 5, 7, 8, 9, 10, 11, 12 and 13. The addition of “provisions” in the wording of subsection (2) makes it clear that activities under a hydropower licence must comply with the provisions of the Act, the provisions of any executive orders issued and the terms laid down in licences.

To subsection (3)

The Government of Greenland may grant two or more licences concurrently with each other if survey results are available which show that a hydropower resource has sufficient inflow of water and is sufficiently large to provide the basis for granting two or more licences for exploitation of the hydropower resource. If an exploitation licence is subsequently granted to other applicants, it is important to safeguard the interests of those who have already been granted a licence. All licences will result in a need for the licences to be coordinated, and it may also require a cooperation agreement to be entered into by the owners in the construction as well as operational phase.

#### *To section 4*

To subsection (1)

Section 4(1) corresponds to section 5(1) of the current Hydropower Act. Prospecting licences must be for a geographically delineated hydropower resource. The onshore area will include the so-called catchment area, which contributes to creating the hydropower resource through draining of meltwater. The term onshore area is used, as opposed to offshore area, and also covers lakes and the ice sheet.

Prospecting activities include preliminary reconnaissance and then surveys of the size and potentials of the hydropower resource. The intention with such surveys etc. is to assess the actual size of the hydropower resources and the technical aspects involved in the construction of a hydropower plant. The results provide the basis for estimating the total construction costs in connection with exploiting the hydropower resource.

To subsection (2)

Subsection (2) provides that prospecting licences may be granted for a period of up to five years. If the licensee wishes to extend the licence period, the licensee must submit an application to this effect and the Government of Greenland may decide to grant an extension. The Bill proposes to only allow prospecting licences to be extended by up to an additional five years so that the licence period may not exceed ten years in total.

An extension of the licence period may be available if there is a need for further surveys and analyses of the hydropower resource, including, for example, for inclusion of a larger water area.

The duration of the licence period is determined based on a case-by-case assessment. When laying down the licence period, aspects such as the need for survey data for public sector planning purposes and the location of other commercial activities must be taken into account.

Furthermore, the Government of Greenland may take into account the scope of existing publicly available prospecting data, the size and accessibility of the geographical onshore area and national and municipal planning. If the onshore area in question is an area for which no relevant data are available for the assessment of a hydropower resource or which is difficult to access, this would be factors in favour of granting a longer period.

To subsection (3)

The Act establishes that the Self-Government has the exclusive right to prospect for and

exploit hydropower resources for the production of energy. On that basis, the Self-Government may decide to grant exclusive licences to other parties, who will then become licensees. In order for the Government of Greenland to safeguard the public interests associated with the exploitation of hydropower resources, it is important that the Government of Greenland has continuous access to all updated data concerning Greenlandic hydropower resources.

A licensee must therefore submit reports and survey results including data from its prospecting activities. Terms governing the frequency of reporting will be proportionate to the scope of the project and the number of prospecting activities.

To subsection (4)

In the same way as before, the data submitted under subsection (3) are confidential for a period of three years after the termination of the licence. Thus, the licensee has a period of three years in which to sell its prospecting results and thus provide a commercial data collection basis for the purpose of selling the results on to companies which are interested in exploiting the hydropower resource in question.

The provision means that the Government of Greenland may publish the prospecting results three years after the end of the prospecting phase. This is due to the fact that it would be a waste of public resources to have to start over again with the collection of scientific data if another applicant wishes to exploit the hydropower resource.

To subsection (5)

The Government of Greenland may lay down provisions on reporting and on confidentiality in this connection in the licences. The Government of Greenland may lay down terms in the licences to govern the frequency of reporting as well as manner and format. According to usual practice with regard to the administration of exploitation licences for non-living resources, a report on the data collected and the prospecting results must typically be submitted once a year.

#### *To section 5*

To subsection (1)

A clear description and delineation of the hydropower resource for which an exploitation licence is granted must be made. The delineation must be made specifically for the individual application submitted and for the individual project. The description and delineation must be based, among other things, on a charting process of the onshore area which provides water to basins and lakes. This will typically depend on the topographical features of an onshore area. Section 5 only governs exploitation licences. The grant of a prospecting licence will no



longer mean that the licensee enjoys priority status with regard to exploitation opportunities for established hydropower resources and, similarly, the terms of exploitation, including the economic terms, will not be laid down on an individual basis until with the grant of the exploitation licence.

To subsection (2)

Under the provision in subsection (2), exploitation licences may be granted on an exclusive basis if so dictated by qualifying circumstances relating to the relevant water resources covered by an exploitation licence. A qualifying circumstance could be the situation where the planned activities under the exploitation licence and the planned energy production require water extraction on such a scale that the licensee needs exclusivity to ensure the necessary inflow of water to the geographical area specified in the licence. Another qualifying circumstance could be the situation where the licensee's planned activities under the exploitation licence include major investments in plant, infrastructure or the like in Greenland. Due to major investments or the like, the licensee may need an exclusive exploitation licence. This would be the case, for example, if some important investors would be reluctant to participate in the funding of the licensee's exploitation project if they cannot obtain assurance that no other parties will be granted an exploitation licence for the area.

To subsection (3)

Under the provision in subsection (3), the licence period may be up to 40 years. The specific duration of the licence period should be based on a case-by-case assessment of the project economy, the risk involved in the project, the repayment time-frame, etc.

From a socio-economic perspective, it may be inexpedient to grant a licence which goes beyond the period of time necessary to secure repayment and return on investment for the investors.

By way of comparison, Norway has granted exploitation licences for hydropower resources for up to 99 years in the past. Today, Norway does not grant any licences to private enterprises, but only to public enterprises for a maximum period of 60 years.

Iceland has granted licences for an indefinite period in the past, but today grants licences usually for a maximum period of 65 years. The possibility of long-term licences would make private hydropower investments more attractive.

When determining the licence period, the Government of Greenland may give weight to the technical and economic life of the plant or activity envisaged to use the energy produced.

The specific decision concerning the licence period will be made based on a number of factors: The licensee must be able to repay and provide a return on the investment. If the hydropower plant is owned by a single company, this company bears a substantial financial risk, which counts in favour of granting a longer licence period.

To subsection (4)

The provision in subsection (4)(i) specifies that exploitation licences will contain terms on water extraction volumes under the licence (exploitation volume).

The provision is intended to ensure that, in future, exploitation licences will generally contain terms on the maximum water extraction volumes permitted under the licence (exploitation volume). An exploitation volume will generally be specified in number of litres or cubic metres of water per year.

The provision will have a particular impact together with section 13(1) of the Bill, which provides that exploitation licences may generally be granted to two or more licensees if so permitted by the potential of the resource in question. This will ensure that the hydropower resources in Greenland are utilised in the best and most expedient manner.

In order to be able to assess how many licensees may exploit the same hydropower resource, it is necessary to lay down terms on the maximum water extraction volumes permitted under the licence (exploitation volume).

The details of exploitation and the related activities will be set out in the exploitation plan to be approved by the Government of Greenland. Reference is made to section 19 of the Bill and the relevant notes. It is thus for the applicant to make the necessary calculations which must be provided in the plan accompanying an application for an exploitation licence under the provision in section 19(1).

The provision in subsection (4)(i) on the determination of a minimum or maximum water extraction volume, read with the provision in (4)(iii) on the determination of terms on a minimum annual energy output, will have special significance since, according to the Bill, an exploitation licence for a hydropower resource is generally not granted on an exclusive basis for a specific hydropower resource. In case the exploitation licence is not granted on an exclusive basis, the hydropower resource must be managed and water extraction must be distributed according to a prioritisation of the exploitation rights existing for this hydropower resource. In this connection, it will subsequently be of significance if the licensee has steadily produced an energy output over a number of years at the level assumed when the terms of the exploitation licence concerning a minimum energy output were laid down.

By laying down terms under subsection (4)(ii) on the lower water extraction elevations in the water reservoir, limitations are placed on the exploitation of the reservoir and a connection is thus made between the volumes of water exploited and the reservoir inflow. This means that if the water reservoir falls below a given water extraction elevation, no hydropower can be produced until water inflow and precipitation have raised the water line to an acceptable water extraction elevation. This way, a scenario where the reservoir is emptied is avoided.

To subsection (5)

By changing the terms laid down under subsection (4), the Government of Greenland must give weight to changes in the size of the water resource as a result of climate or other natural changes. Furthermore, the Government of Greenland may change terms that have already been laid down if the licensee's energy output over a number of years has been lower than the minimum energy output specified in the licence.

#### *To section 6*

To subsection (1)

The provision in section 6(1) is intended to ensure that a licensee under an exploitation licence is not blocking an area without initiating exploitation measures. The licensee under an exploitation licence is thus generally required to initiate exploitation measures without undue delay.

At the beginning of the licence period, there will often be a need for making investigations of the licence area and establishing buildings, plant and installations, etc. As a result, the licensee should therefore generally be allowed reasonable time to make the relevant investigations and establish the relevant buildings, plant and installations, etc. before the licensee is required to initiate exploitation under the licence. The licensee has a period of three years after the grant of an exploitation licence to initiate the construction and a total period of six years after the grant of an exploitation licence to initiate energy production.

To subsection (2)

Terms may thus be laid down in licences to the effect that non-compliance with the time-limits under subsection (1) constitutes breach on the part of the licensee which may give rise to revocation of the licence. Before the Government of Greenland can revoke a licence under the provision, an order must be issued to the licensee, notifying it of the time allowed for rectification, see the notes to section 11(5).

To subsection (3)

If the licensee is not able to comply with a requirement for initiation of exploitation within 6 years of the grant of the exploitation licence, the Government of Greenland may grant an extension of the 3-year period, see subsection (1), 1st sentence. The Government of Greenland is not required to grant such request for an extension. However, the time-limit for initiating exploitation may not exceed a total of six years after the grant of the exploitation licence. The Government of Greenland may require as a special condition for extending the time-limit that the licensee provides documentation showing that it possesses the economic and technical capacity required to initiate operation of the hydropower plant within the extended time-limit.

*To section 7*

To subsection (1)

A licensee must submit reports and survey results including data in connection with its exploitation activities. Under the provision, the licensee must continuously report on the activities performed and their results. The terms on reporting, including, for example, the format, frequency and contents of reporting, will be laid down in the licence. The licence will further specify the terms on confidentiality in connection with reporting and results.

To subsection (2)

It is necessary to lay down rules on confidentiality as certain information may be characterised as trade secrets which may give other parties an unfair advantage if the Government of Greenland becomes obliged to disclose such secrets, for example in connection with a request for access to documents.

The provision is in accordance with the Greenland Parliament Act on Open Administration, which provides in section 3(1) that "the Government of Greenland may lay down rules exempting from the Act specific authorities, fields or types of documents where the provisions of sections 7-14 will generally imply that a request for access to documents may be rejected."

As a general rule, information contained in the relevant reports may be subject to sections 12-14 of the Greenland Parliament Act on Open Administration. The provision on confidentiality has been included in the Bill because of the need for exchanging information with other authorities.

To subsection (3)

The Government of Greenland may lay down specific terms on reporting and on confidentiality in this connection in the exploitation licence. By way of example, this could be provisions on the requirements to the format and contents of the reporting, including, for example, the level of detail and the number of annual reports to be prepared.

*To section 8*

To subsection (1)

The provision in section 8(1) corresponds more or less to the provision in section 8(1) of the current Greenland Parliament Act on Exploitation of Hydropower Resources for the Production of Energy; however, it is proposed to remove “*or a similar type of company*”. The A/S and ApS-type companies represent a known organisational framework and the fact that exploitation licences may only be granted to these known types of companies will facilitate the regulatory processing. Moreover, exploitation licences may be granted to semi-autonomous government-owned public enterprises. With the addition of semi-autonomous government-owned public enterprises, Nukissiorfiit may be granted an exploitation licence under this Greenland Parliament Act. Nukissiorfiit presents financial statements as a commercial legal person with own income and assets. Therefore, it is only natural for Nukissiorfiit to be eligible for an exploitation licence for hydropower under this Greenland Parliament Act. This will also mean that Nukissiorfiit may be granted rights to exploit a specific hydropower resource with related geographically delineated onshore areas and that Nukissiorfiit can enforce and perfect rights granted by registration with the Court of Greenland.

The provision lays down requirements to companies applying for an exploitation licence.

Companies etc. performing prospecting activities are excluded from the scope of the provision, and the registered office of the companies is not required to be located in Greenland in order for the companies to perform prospecting activities. This is to ensure that prospecting activities can be performed by a larger number of companies. In the same way as before, it is also a requirement that the enterprise must have the requisite professional expertise and economic background. This requirement is to ensure that a licensee can live up to the overall purpose of section 1 about appropriate exploitation of the hydropower resources in accordance with good international practice in similar conditions.

To subsection (2)

The provision in section 8(2) corresponds to the provision in section 8(2) of the current Greenland Parliament Act on Exploitation of Hydropower Resources for the Production of Energy; however, it is proposed to remove the requirement for ownership of transmission lines. This way, the licensee and owner of the hydropower plant will have greater latitude in the negotiations with a major electricity buyer, which could be Nukissiorfiit or a major industrial consumer of electricity. That will give the parties more leeway to enter into an agreement about the best solution in the specific situation. However, any approval to install transmission lines will in any case be subject to the Government of Greenland's approval as part of the approval of production and construction plans under the provision in section 19(2) of this Greenland Parliament Act.

*To section 9*

The provision concerns the laying down of provisions and terms for licences to prospect for and licences to exploit hydropower resources for the production of energy. This Greenland Parliament Act repeats the principle of the current Hydropower Act of a framework act that is implemented by the Government of Greenland in the form of provisions (executive orders) and in the form of model licences and specific terms laid down in prospecting and exploitation licences.

The Government of Greenland may lay down provisions (e.g. in executive orders) and terms (e.g. in model licences or specific licences) for licences to prospect for and exploit hydropower resources for the production of energy. The Government of Greenland's right to lay down provisions does not imply a right to amend the terms of licences already granted. If the Government of Greenland lays down new provisions on terms for prospecting or exploitation licences, the provisions will only have effect for future licences.

The wording of the provision – “including” – emphasises that the situations given are not an exhaustive list of all situations in which the Government of Greenland may lay down provisions and licence terms. As under the current Hydropower Act, the Government of Greenland may lay down provisions and licence terms on a number of matters, including for example:

To para. (i)

The Government of Greenland may lay down provisions on requirements to the design of prospecting projects, e.g. that special prospecting methods must be employed. The Government of Greenland may lay down provisions on requirements for the preparation and approval of a time schedule for the initiation and performance of the prospecting activities.

The Government of Greenland may lay down provisions on time-limits, e.g. a specific date for the submission of applications or milestones for specific intermediate goals.

To para. (ii)

The Government of Greenland may lay down terms on the conclusion of agreements on the supply of energy to the public electricity grid or to private buyers, e.g. a mine, in the exploitation licence. The wording of a specific prospecting or exploitation licence will depend on, among other things, nearby urban communities and the possibilities of coordinating with existing energy supply. In the absence of such agreement, the Government of Greenland may order the licensee to supply surplus energy output to the public electricity grid or to private buyers. If the energy from the hydropower plant is used for industrial production, the volume of energy supplied may not exceed the volume needed for public consumption. The amount of energy output to be supplied to the public electricity grid or to private buyers is determined on the basis of an objective estimate of what is necessary in each case. This limitation has been included because the sale of energy to the public sector causes a potential output loss for the related industrial production and may therefore have a considerable adverse effect on the licensee. If the energy produced is used for industrial production and the Government of Greenland orders the licensee to supply energy to the public sector or a company owned in whole or in part by the public sector, the Government of Greenland may lay down terms to the effect that the price of electricity sold must be calculated on the basis of production costs as well as a reasonable profit to the licensee. This pricing structure has been chosen as it balances the public interest in buying the energy produced at a reasonable price with the interests of the industrial electricity producer in the same energy.

To para. (iii)

The Government of Greenland may lay down terms in the exploitation licence on the conclusion of agreements concerning mutual access to reserve output capacity between Nukissiorfiit and private licensees. Such agreements may be entered into for supply security reasons and in order to optimise the energy output.

To para. (iv)

The Government of Greenland may lay down provisions on documentation showing that the company has the organisational, economic and technical capacity required to perform the tasks related to the relevant prospecting or exploitation activities. Under the proposed provision in subsection (1)(iv), the licensee must have the professional expertise and economic background required for the relevant prospecting or exploitation activities. The professional expertise and economic background required in a specific case will depend on the scope, complexity and risk, etc. of the activities. Proportionality must exist between the extent and nature of the activities and the requirements which may be made. The requirements for prospecting activities will naturally be materially different and far less

onerous than the requirements for exploitation activities.

By way of example, requirements may be laid down to the effect that the organisational and technical capacity must be documented as follows:

a) references for previous works b) information about technical consultants c) information about quality control systems d) information about control systems e) information about the professional qualifications of key employees f) information about environmental management systems g) information about human resources h) information about any subcontractors.

Furthermore, requirements, provisions and terms may be laid down in a prospecting or exploitation licence about documentation of the financial and economic background of the relevant prospecting or exploitation activity. Prospecting and exploitation licences are thus subject to the principal condition that the applicant is able to provide the adequate guarantee or security for the performance of the activity contemplated under the licence.

To para. (v)

Provisions and terms may be laid down about a requirement for notifying the Government of Greenland about specific matters. By way of example, this could be a duty to inform the Government of Greenland of any breakdown of plant, changes in the licensee company's organisation or ownership structure as well as other matters of material importance where there is a need for a duty to inform. Furthermore, terms may be laid down about special guarantees which the company should provide. By way of example, this could be guarantees in connection with the transfer of a licence to a new company.

To para. (vi)

The particular focus of the provision is the protection of the environment and safety and clean-up etc. in connection with the closure and termination of exploitation activities in accordance with the factors mentioned in the purpose provision of the Bill, see section 1.

The Government of Greenland may lay down provisions on clean-up and removal of facilities. Furthermore, requirements may be laid down about the method to be used when removing facilities or provisions about reusable materials.

To para. (vii)

The Government of Greenland may lay down provisions about the re-establishment of physical conditions, e.g. the re-establishment of special flora, or about the removal of dams and all related facilities. The Government of Greenland may lay down provisions on systematic monitoring of the nature in the area which may be affected by the exploitation activities. Furthermore, terms may be laid down about financial security, if relevant in the form of a bank guarantee or via a deposit.



To para. (viii)

The Government of Greenland may lay down provisions stipulating that a dispute between the Government of Greenland and the licensee as to whether a term of the licence has been complied with must be brought before a court of arbitration. Terms on arbitration must be included in the model licence as well as in the specific exploitation licence for the project. This will allow licensees to acquaint themselves with the terms on arbitration at an early stage.

*To section 10*

To subsection (1)

The provision corresponds to section 11(4) of the current Hydropower Act. The royalty may be fixed according to different principles. By way of example, the royalty may be based on the size of the specific hydropower resource (volume royalty), e.g. where the licence covers the entire potential. The royalty may also be based on the actual exploitation of the potential (exploitation royalty). This applies in particular to the situations where the licensee's licence only covers a part of the potential. The Government of Greenland may also decide to lay down a provision on the payment of an annual royalty based on the energy output (output royalty). Such provision would be closely connected with the provision in section 5(4), according to which a minimum annual energy output and a minimum water extraction volume are laid down in an exploitation licence.

The wording of the provision – “pay royalties” – in section 10(1) and (2) is also found in the Danish Subsoil Act, which makes it clear that the royalty is not a tax. A similar provision is contained in the provision in section 17 of the Greenland Parliament Act on Mineral Resources and Mineral Resource Activities. Under section 10(1), terms may be laid down in, for example, licences to the effect that the licensee must pay a royalty calculated on the basis of the size of the hydropower resource covered by the licence (volume royalty), the actual exploitation of the hydropower resource (exploitation royalty) or on the basis of the energy output (output royalty). In case any terms on the payment of royalties under section 10(1) or (2) apply, they must be stated in the specific licence to ensure that the licensee is aware of the terms for payment of royalties in advance. Terms on the payment of royalties may not be laid down or amended to the licensee's detriment after a licence has been granted.

To subsection (2)

Under the provision in section 10(2), terms may be laid down providing for the payment of royalties based on the revenue or profit of the company (profit royalty). The royalty may also be fixed on the basis of a combination of the said principles. In case any terms on the payment of royalties under subsection (1) or (2) apply, they must be stated in the specific licence to ensure that the licensee is aware of the terms for payment of royalties in advance.

Terms on the payment of royalties may not be laid down or amended to the licensee's detriment after a licence has been granted.

To subsection (3)

It is a precondition to tax exemption under the provision in section 10(3) that a royalty is fixed in the exploitation licence under the provision in section 10(1) or (2) of the Bill.

The tax exemption applies to activities under the exploitation licence, i.e. the licensee's exploitation of a hydropower resource. The provision specifies that full or partial tax exemption may be granted, including tax exemption for a specified period or concerning specific matters.

To subsection (4)

It is a precondition to the exercise of the authority provided by the provision in subsection (3) that a note to this effect is included in the Finance Act in each individual case before any tax exemption is granted. The provision ensures a statutory as well as a precise legal basis for adjusting the tax liability of the licensee. The number of licences to exploit hydropower resources is expected to be limited, for which reason the authorisation to include a note on the Finance Act is envisaged to be exercised in only very few and specific cases.

#### *To section 11*

To subsections (1) and (2)

The Government of Greenland may lay down provisions and licence terms on the extent to which the licensee must use Greenland workers. The Government of Greenland may lay down provisions to this effect in provisions, model licences and licence terms.

However, the licensee may use non-Greenland workers where a sufficient number of Greenland workers or Greenland workers with the required qualifications are not available. Similarly, non-Greenland enterprises may be used if the Greenland enterprises are not technically or commercially competitive.

To subsection (3)

The Government of Greenland may lay down provisions and licence terms on the extent to which the licensee must use Greenland enterprises and suppliers. The Government of Greenland may lay down provisions to this effect in provisions and licence terms. However, the licensee may use non-Greenland enterprises if the Greenland enterprises are not technically or commercially competitive.

The provision essentially corresponds to section 16(2) of the current Mineral Resources Act.

The use of Greenland enterprises is thus mandatory for the licensee to the extent provided in the licence, unless in special circumstances as mentioned in section 11(3), 2nd sentence.

As a result of the compensation received by Greenland by virtue of the EU fisheries agreement, Greenland does not receive support from the Union under the present OCT framework. If, at some point in time, based on its OCT status, Greenland were to become eligible for Community funding of projects in the mineral resources sector, the participation in tenders and the provision of supplies as regards such projects will have to be open on equal terms to all natural and legal persons who are subject to the TFEU.

Greenland has the status of an overseas country or territory (OCT) in relation to the EU. Thus, except for the special rules on overseas countries and territories associated with the European Union in Articles 198-204 of the TFEU, the EU rules do not apply in Greenland. The OCT rules do not have any specific rules on services. However, according to the rules, the OCT authorities may not discriminate between Member State companies, nationals or enterprises, nor may the OCT authorities afford companies, nationals or enterprises of the Member States treatment that is less favourable than that which they extend to nationals, companies or enterprises of third countries. Furthermore, Article 45(3) of Council decision of 27 November 2001 (2001/822/EC) contains rules to the effect that the OCT authorities may introduce regulations to aid their inhabitants and local activities with a view to promoting or supporting local employment.

The preferential treatment afforded to Greenland contractors and suppliers of goods and services under the provision is thus not contrary to the EU rules.

To subsection (4)

The provision ensures that the Government of Greenland will be able to grant holistic licences by ordering the licensee to conduct investigations of the matters mentioned in the provision. The licensee may also be ordered to contract with other enterprises to conduct these investigations. The investigations constitute the basis for the grant of a licence and its terms. The provision is of particular importance in relation to the laying down of specific licence terms for licensees under subsections (3) and (4) about the extent to which they must use Greenland workers and enterprises.

To subsection (5)

Terms may be laid down in licences specifying, among other things, the types of breach on the part of the licensee which may give rise to revocation of the licence, also taking into account, among other things, the nature and scope of the activity.

The provisions must be stated in the specific licence in order to allow for the adjustment of the provisions to the specific project. The provisions may include rules on orders and the time allowed for rectification before the Government of Greenland may revoke a licence. If, pursuant to section 11(5), the Government of Greenland lays down new provisions on termination and revocation after the grant of licences, the rules will only be effective for future licences.

*To section 12*

To subsections (1) and (2)

The provisions correspond to section 11(3) of the current Hydropower Act. Licensees and other parties falling within the scope of this Greenland Parliament Act must pay any expenses incurred in connection with the case administration and other regulatory processing under this Greenland Parliament Act. The amount payable may be collected as a charge or as reimbursement of expenses. Charges are fixed on the basis of the expenses incurred in connection with the case administration and regulatory processing, including expenses for supervision and external advice and assistance. The Government of Greenland may lay down detailed rules in this regard corresponding to the rules governing the mineral resources area concerning the payment of charges or the reimbursement of expenses.

*To section 13*

To subsection (1)

The provision in subsection (1) is intended to allow two or more licensees to exploit hydropower resources for the production of energy if so permitted by the potential of the relevant water resource in a delineated catchment area. This will ensure that the hydropower resources in Greenland are utilised in the best and most expedient manner and that, where possible, no part of the potential of the hydropower resources is wasted.

To subsection (2)

Section 13(2) to (4) of the Bill contains provisions on coordinated exploitation of water resources and use of facilities. Where two or more water resources are exploited by two or more licensees, but where based on resource, economic or social considerations the exploitation of such water resources should be coordinated, the Government of Greenland may issue an order on coordinated exploitation following negotiations with the licensees. If

the licensees do not enter into an agreement on the terms of such coordinated exploitation, the Government of Greenland may lay down terms to this effect in its order for coordinated exploitation, see section 13(2) of the Bill.

To subsection (3)

Under section 13(2) of the Bill, the Government of Greenland may lay down terms in an order for coordinated exploitation to the effect that a licensee must be entitled, against a reasonable fee, to use a transmission line, pipeline facilities, channels or other facilities operated and used by another licensee in connection with its exploitation, but see section 13(4) of the Bill.

To subsection (4)

Section 13(4) of the Bill refers to a number matters which must be given special consideration by the Government of Greenland when deciding whether to impose an order for coordinated use of facilities under section 13(2) or (3) of the Bill. In connection with any decision by the Government of Greenland to impose an order for coordinated use of facilities under subsection (2) or (3), the Government of Greenland will, among other things, give special consideration to whether the licensee operating the facilities is using and planning to use the full or partial capacity of the facilities in future.

The Government of Greenland will not decide to impose an order for coordinated use of facilities if the licensee operating the facilities is planning to use the full capacity of the facilities in future or if the licensee's planned use of the facilities would otherwise be prevented or be disproportionately costly or burdensome if ordered to engage in coordinated use of the facilities. The licensee must be able to document whether it is likely to be able to use the full capacity of the hydropower plant in future.

#### *To section 14*

To subsection (1)

If relevant, the negotiations may concern the extension of an exploitation licence, see section 14(2). If the facilities are to revert to the Self-Government, the negotiations may concern how the transfer is to take place and on what terms. The negotiations may also concern how the facilities are to be dismantled if the Self-Government is not interested in the facilities reverting to it. The provision on negotiations concerning the time after the exploitation period also applies where no further extension is available for a licence after its expiry.

To subsection (2)

The licensee has no legal claim for being granted an extension of a licence under section

14(2). Extensions may be granted following negotiations between the Government of Greenland and the licensee.

Under section 14(2), the Government of Greenland may provide in the exploitation licence that the licensee is entitled to have the licence extended, subject to the licensee's fulfilment of specific terms. In this case, an extension of the exploitation licence becomes an option for the licensee, which it can choose to exercise.

The terms which the licensee must fulfil in order to become entitled to an extension are stated in the exploitation licence. The terms must be reasonable and objective and may, for example, require the licensee to continuously maintain and reasonably renovate the hydropower plant and all related installations. The terms may also concern continued production at a related industrial plant and continuous maintenance and renovation of these production plants.

In the same way as before, the Government of Greenland may decide not to make such option part of a specific exploitation licence. In that case, the Government of Greenland will still be able to grant an extension of the licence following negotiations, see section 14(2).

To subsection (3)

The Government of Greenland may in special cases grant a licensee an option for an additional extension of an exploitation licence. The duration of an exploitation licence depends on the specific project and its economic circumstances etc. The provision allows for an extended licence period of a total of 80 years.

This will mean that the licensee can have two consecutive extensions of up to 20 years each. It is a precondition to being granted such extension option that the licensee is able to document that the option is absolutely necessary in order to implement the project. An extension may be granted on new terms, including amended terms on the payment of royalties.

To subsection (4)

The period of an exploitation licence may not exceed 80 years.

To subsection (5)

The provision is unchanged and provides that if the negotiations concerning the time after the expiry of an exploitation licence have not been successful, the Government of Greenland may decide that the hydropower plant is to revert to the Self-Government on expiry of the exploitation licence.

*To section 15*

The provisions in Part 5 on reversion correspond to the provisions in Part 5 of the current Hydropower Act.

To subsection (1)

Licence terms may be laid down concerning the reversion of an exploitation licence on expiry and on termination. The licence may include terms concerning the Self-Government's right of reversion in case of revocation of a licence, e.g. as a result of the licensee's breach.

Any reversion of a hydropower plant includes all of the facilities directly related to the hydropower plant, including infrastructure, accommodation facilities, technical facilities and equipment constructed or purchased in relation to the hydropower plant. Infrastructure includes, for example, harbour installations, roads and railway infrastructure constructed for the use of the hydropower plant.

It is noted as regards accommodation facilities that the right of reversion includes accommodation facilities which are used for the immediate operation and servicing of the hydropower plant. The right of reversion does not extend to other accommodation facilities which are used, for example, for the company's management and administrative staff.

The Government of Greenland is under no obligation on the grant or expiry of exploitation licences to decide that a hydropower plant and the related facilities are to revert to the Self-Government. The reason for deciding against reversion could be if, in the assessment of the Government of Greenland, the hydropower resource is no longer to be used for the production of energy. Reversion cannot take place earlier than when the exploitation licence expires, unless otherwise agreed between the Government of Greenland and the licensee under section 14.

Instead of a reversion decision, the Government of Greenland may grant a new exploitation licence of up to 20 years, see the provisions in section 14(2) on extended licence periods. After the expiry of an extension where the Government of Greenland has decided to let the hydropower plant revert to the Self-Government, the Government of Greenland may allow the same licensee to take over the hydropower plant and grant a new exploitation licence, where this is in the interest of the Government of Greenland and the licensee. If the Self-Government sells the hydropower plant, the buyer must at the same time be granted an exploitation licence by the Government of Greenland under section 5. The Government of Greenland is not entitled or required to accord special rights to a previous licensee under an

exploitation licence and owner of the hydropower plant in connection with a sale of a reverted hydropower plant.

To subsection (2)

Subsection (2) is identical to section 15(2) of the current Hydropower Act. Under the provision, any right of reversion provided for on the grant of a licence must be registered by the Government of Greenland with the Court in Greenland. Creditors with a charge over assets which are subject to reversion, e.g. accommodation facilities related to the plant, must accept such reversion of the charged assets and their transfer to the Self-Government. The Self-Government may demand that charges and other encumbrances are deregistered solely on the basis of the reversion, see section 15, without the chargees and other licensees being entitled to any compensation in that respect.

To subsection (3)

Subsection (3) provides that the hydropower plant and all related facilities must as a general rule be fully operational on reversion to the Self-Government on expiry of the licence. The exception is where it is evident that such term would be disproportionately burdensome, for example where the plant has been destroyed by fire and a reconstruction would be unreasonably burdensome to the licensee.

The licensee must perform any such reasonable maintenance and repairs of the hydropower plant as are necessary for the plant to be fully operational on reversion to the Self-Government. The licensee is not required to renovate the plant or carry out improvements based on the best available techniques.

To subsection (4)

Under the provision in subsection (4), the Government of Greenland is entitled to access the hydropower plant and all related facilities in order to prepare for the transfer of the plant and to ensure that the hydropower plant and all related installations are fully operational. The right of access to the hydropower plant and all related facilities applies for three years before the date which the Government of Greenland has announced as the date of reversion.

The wording “without significant inconvenience or expense to the licensee under the exploitation licence” means that the Government of Greenland may only charge the licensee with such expenses as can reasonably be demanded for the hydropower plant to be fully operational. Moreover, the access to the hydropower plant must, where possible, be coordinated with the licensee so as not to interrupt operations. Similarly, any inspection requiring special assistance from the experts of the licensee must, where possible, be timed to take place when the special experts are present at the hydropower plant anyway. Moreover, any transactions required in preparation for the transfer may be effected, provided that such



transactions do not cause any significant interruptions of the day-to-day operations or significant costs.

To subsection (5)

If the Government does not wish to take over the hydropower plant after the expiry of the licence, the licensee under the exploitation licence must discontinue the activities and close down the hydropower plant in accordance with the rules laid down by the Government of Greenland in this regard and the terms laid down in the exploitation licence.

To subsection (6)

The provision provides that the Government of Greenland may lay down provisions on reversion in connection with applications for licences and grants of exploitation licences. The specific terms on reversion and the matters mentioned in subsections (1)-(5) are laid down in licences to exploit hydropower resources. This means, among other things, that the Government of Greenland may lay down more detailed licence terms and provisions on the registration of reversion with the Court in Greenland, on the requirement as to the hydropower plant being fully operational, on the preparation and transfer of the hydropower plant and on the closure thereof.

*To section 16*

The provision is identical to section 16 of the current Hydropower Act and means that as from the time of reversion the Government of Greenland may demand that the rights referred to are registered with the Court in Greenland, without the licensee and any other parties with secured rights, including chargees, being entitled to any compensation in that respect. The provision must be viewed in the context of the right of reversion and ensures that the hydropower plant will be transferred to the Self-Government free and clear of all encumbrances under section 15.

*To section 17*

The provision is identical to section 17 of the Hydropower Act. Following reversion to the Self-Government, see section 15 of the Bill, the Government of Greenland may lease the plant to the previous licensee under the licence or to a third party. If the plant is leased to a lessee, a licence for exploitation of the hydropower resource for the production of energy will have to be granted as well. The licence must be granted within the framework of this Bill. The lease agreement must be for a fixed term. The lease agreement must be granted on terms corresponding to the terms on which exploitation licences are generally granted. The lease agreement may stipulate a fee for leasing the hydropower plant, whereas the fee for the right

to use the hydropower resource must be stipulated in the accompanying exploitation licence. The licensee under the exploitation licence may not sublease the hydropower plant to third parties. This is clear from the requirement about identity between the licensee under the exploitation licence and the owner of the hydropower plant.

*To section 18*

To subsection (1)

The provision specifies that applications for prospecting licences and applications for exploitation licences under section 3 must be submitted to the Government of Greenland.

To subsection (2)

The provision governs the duty to provide information of any applicant for a licence as well as any licensee under a licence. Under subsection (3), the Government of Greenland may lay down rules on the information to be provided and the format and time-limits within which it must be provided. Rules may be laid down which require applicants to provide documentation which sufficiently demonstrates the applicant's ability to implement the project in accordance with the licence applied for.

To subsection (3)

The Government of Greenland may lay down rules to the effect that, for reasons of the applicant's or the licensee's business situation, the information provided is not to be considered as comprised by the rules on access to documents, including the rules to this effect in the Greenland Parliament Act on Open Administration and the Greenland Parliament Act on Case Administration in the Public Sector. Under the Greenland Parliament Act on Open Administration, the Government of Greenland may not without special authority give any assurance that the information provided will be kept confidential (confidentiality assurance). In order for the Government of Greenland to obtain the best informed basis for the regulatory processing, the aim of the provision in subsection (3) has been to provide the Government of Greenland with a right to request various material and confidential information from applicants. If the Government of Greenland cannot give any confidentiality assurance, this may interfere with its possibilities of obtaining information.

In connection with the regulatory processing of an application, the Government of Greenland will often use external consultants with special knowledge. Similarly, information could be exchanged with enterprises owned by the Self-Government which have a consultative role. Under the Open Administration Act, the internal documents of the authority are to a wide extent excluded from public access. Documents exchanged with external consultants during the case administration will lose their status as internal

documents, even though the consultants receive the documents in the course of the case administration. It will thus to a wider extent be possible to request access to the documents. The aim of the proposed provision is thus also to avoid that the documents exchanged with external consultants in the course of the case administration do not lose their status as confidential in pursuance of this Greenland Parliament Act.

*To section 19*

To subsection (1)

According to section 5(4) terms specifying a minimum annual energy output and a minimum water extraction volume must be laid down in an exploitation licence. This is an absolutely key element of the rights under an exploitation licence, and they must be established on the basis of the plan to be prepared under subsection (1) in connection with applications for exploitation licences. In the same way as before, an applicant must be able to demonstrate the existence of the water resource required for the construction and operation of a hydropower plant with a power extraction as assumed and calculated. However, it is not a requirement that the data needed have been obtained through own prospecting activities as they may be obtained through the purchase of data or from publicly available sources.

Under the proposed provision, the Government of Greenland must have approved a plan for the exploitation activities, including production organisation and related facilities, before the exploitation measures or measures relating thereto are initiated. In connection with the approval of exploitation plans, the Government of Greenland must ensure that the measures will be performed in a prudent manner with regard to technical aspects and with regard to safety and health, environmental protection and social sustainability and that such measures are performed with the least possible waste of resources.

A decision to refuse approval may be made if the refusal is justified by objective reasons, including for example matters concerning technical issues, health, safety, environment, utilisation of resources or social sustainability, see also section 1(2).

It is essential as regards the regulatory processing in connection with the approval of plans under the provision that the Government of Greenland is able to make its decision on a sufficiently informed basis for an overall assessment of the activity. This means, among other things, that an environmental impact assessment (EIA) and a social sustainability assessment must be made.

To subsection (2)

The right following from the exploitation licence to extract a minimum volume of water to be able to produce a minimum amount of energy constitutes the licensee's primary

rights. Under the provision in section 19(1), a plan must be prepared for use in connection with an application for the grant of an exploitation licence for the contemplated energy output with calculation of output capacity and estimated water extraction for production purposes. Under the proposed provision, the Government of Greenland must have approved a plan for the exploitation activities, including production organisation and related facilities, before the exploitation measures or measures relating thereto are initiated.

To subsection (3)

In connection with the approval of exploitation plans under section 19(2), the Government of Greenland must ensure that the measures will be performed safely with due regard to safety, health, environment, resource utilisation and social sustainability as well as appropriately and in accordance with generally accepted good international practice in similar conditions, see the provision in section 1(2).

To satisfy the provision in section 9 on the licensee's economic background to engage in the business and activities under the licence, the exploitation plan must include information about the licensee company's financial capacity, including its financial soundness and liquidity, in connection with the exploitation activities and the funding of the exploitation activities.

The general purpose of this part of the provision is to contribute to ensuring that the licensee under an exploitation licence has the financial capacity required to perform the exploitation activities and other activities under the licence. The purpose of the provision is further to contribute to ensuring, among other things, that the licensee is able to obtain adequate funding for the activities under the exploitation licence. The exploitation plan must include information about the possibility of performing the exploitation activities at a profit and an assessment of the environmental and employment impact of the exploitation activities.

A decision to refuse approval may be made if the refusal is justified by objective reasons, including for example matters concerning technical issues, health, safety, environment, utilisation of resources, the financial situation or social sustainability, see also section 1(2).

It is essential as regards the regulatory processing in connection with the approval of plans under the provision that the Government of Greenland is able to make its decision on a sufficiently informed basis for an overall assessment of the activity.

This means, among other things, that an environmental impact assessment (EIA) and a social sustainability assessment must be made. Under the provision in section 11(4), the Government of Greenland may lay down licence terms and provisions to the effect that the

licensee must conduct investigations and assessments of technical, environmental and socio-economic aspects, including social sustainability assessments, and prepare reports thereon. Under the provision in section 11, relevant terms in connection with a decision as to whether to approve exploitation plans may be laid down in a model exploitation licence so as to make an applicant aware of the framework governing the activities applied for.

*To section 20*

To subsection (1)

The purpose of the provision in subsection (1) is to simplify administrative requirements in connection with the performance of prospecting activities by specifying that there are no requirements about area allotment under the provisions of the Greenland Parliament Act on Planning and Area Use. Prospecting activities usually consist of the installation of surveying equipment and field work, including temporary camping on open land. Thus, prospecting activities usually do not involve intensive land use, and surveying equipment etc. is not installed in a manner that can be said to deprive the general public of the area.

To subsection (2)

Under the provision in subsection (2), the Government of Greenland is the issuing authority as regards all area allotments in relation to hydropower plants and all related installations, including dams, channels, tunnels, basins, pipelines, turbines, transmission lines and other related buildings and structures.

The construction of hydropower plants is so closely related to significant social sustainability interests that, under the Greenland Parliament Act on Planning and Area Use, the Government of Greenland may decide to take over as competent area authority from the relevant municipality. In order not to be a burden to the municipal area authority, and in order to avoid any doubt as to competence, it is clarified by the provision that the Government of Greenland is the competent area authority and that it is for the Government of Greenland to issue area allotments in cases concerning hydropower plants falling within the scope of this Greenland Parliament Act.

*To section 21*

The provision specifies that the groups mentioned in paras (i)-(iii) must be consulted.

Affected municipalities must be involved as consultees. The same applies to authorities, which are not directly to issue licences but which may have relevant interests in the onshore area that may be affected by prospecting or exploitation licences. Moreover, a consultation process will have to be conducted in the situations where the Government of Greenland takes measures in relation to reversed hydropower plants which require it to grant an exploitation

licence.

Prospecting activities are not assumed to have any significant environmental impact. Moreover, it follows from the Bill that prospecting licences are granted on a non-exclusive basis, and, as a result, there is no reason to maintain a requirement for consultation, whether in the interest of objectiveness or proportionality.

To subsection (2)

The consultation period must be at least six weeks.

*To section 22*

To subsection (1)

The provision in section 22 on supervision is identical to section 21 of the current Hydropower Act. The provision provides the statutory basis for the Government of Greenland to supervise the licensee's activities under the licence pursuant to this Greenland Parliament Act and rules laid down thereunder and on the powers in that connection. The provision is intended to ensure that a licensee acts in accordance with the rules and terms applying to the relevant licence.

To subsection (2)

The provision in subsection (2) provides the statutory basis for the supervisory authority to perform supervisory inspections without a court order and on presentation of valid proof of identity. The provision is included for supervisory reasons and extends to technical as well as administrative supervision. The supervisory inspections may be unannounced but may also be in the form of regular routine supervisory inspections. Supervisory inspections without a court order must take place in accordance with the provision in section 72 of the Constitution on privacy, which governs the right of public authorities to perform supervisory inspections.

To subsection (3)

If the licensee under a licence fails to comply with an order issued by the Government of Greenland, the Government of Greenland is entitled to have such order complied with at the licensee's expense and risk.

It follows from good administrative practice that before the Government of Greenland has the order carried out at the licensee's expense and risk, the licensee should be allowed time to comply with the order and this time-limit must have been exceeded, and the licensee must have been informed that if the order is not complied with, the authorities will arrange for the necessary measures to be initiated at the licensee's expense and risk. Moreover, it follows from the principle of proportionality that an enforcement action must be

proportionate. This principle of proportionality applies to the practical performance of the self-help action as well as the economic consequences.

*To section 23*

To subsection (1)

As prospecting licences are not granted on an exclusive basis, prospecting licences are not to be registered with the Court in Greenland. With this amendment, the provision corresponds to section 22 of the current Greenland Parliament Act on Exploitation of Hydropower Resources for the Production of Energy.

To subsection (2)

A transfer may be in the form of a direct transfer where the licence as such is transferred from one licensee to a new licensee, or in the form of an indirect transfer where the licence as such is not transferred but where the licensee is the subject of a transfer, e.g. in an acquisition. In connection with the grant of a licence, the Government of Greenland may lay down terms applying to any transfer of the exploitation licence.

The Government of Greenland may grant the licensee a conditional advance approval of a transfer. The intention is to allow for an exploitation licence to be used by the licensee to obtain project funding by offering the licence as security. This way, an investor may obtain assurance that a hydropower project and a related exploitation licence may be transferred to a third party if a new licensee fulfils the requirements under this Greenland Parliament Act and provisions and licence terms laid down hereunder.

To subsection (3)

In connection with a transfer or pledge of a licence to exploit a hydropower resource for the production of energy, the Government of Greenland is the competent authority in relation to this Greenland Parliament Act as well as the Greenland Parliament Act on Planning and Area Use. The provision is thus intended to simplify the transmission process in connection with the transfer of a licence to exploit a hydropower resource for the production of energy.

*To section 24*

To subsection (1)

The licensee is generally liable under the general law of damages for any damage caused in the performance of the activities under the licence.

The provision specifies that terms may be laid down in a licence to the effect that the licensee's liability in damages must be covered by insurance or that other security must be



provided. By way of example, the latter may be in the form of a bank guarantee provided on terms approved by the Government of Greenland. The provision also allows the Government of Greenland to lay down terms on a combination of insurance and other security. Any requirements of insurance cover for liability under other legislation, e.g. legislation on industrial injury, must be observed irrespective of the provision in subsection (2). The provision furthermore allows the Government of Greenland to lay down terms to the effect that the licensee must take out insurance beyond the extent provided for under the law of damages. The provision also allows the Government of Greenland to lay down terms in a licence to the effect that the licensee's fulfilment of specific terms in the licence must be covered by insurance or that other security must be provided.

To subsection (2)

The Government of Greenland may lay down provisions to the effect that the liability of subcontractors and suppliers of goods and services – to the extent that the goods or services provided are used in the business or activities under a licence granted pursuant to this Greenland Parliament Act – must be covered by insurance or that other security must be provided. This may be relevant as the business and activities under a hydropower licence will often be performed by subcontractors of the licensee.

*To section 25*

The provision on the licensee's obligations to ensure that there will be no unauthorised access to the hydropower plant is identical to section 24 of the current Hydropower Act. The provision provides the licensee under a licence with a right and obligation to set up access restrictions, fences and the like so as to prevent unauthorised access to the hydropower plant and the related area. The intention is to provide the licensee under a licence with a right to block off areas which may pose a risk to persons or which should not be open to the public. Under this provision, road barriers, fences around onshore areas, barrages and channels, etc. may be established.

Matters falling within the scope of the provision must be cleared before exploitation measures are initiated. In connection with the setting up of access restrictions, general access to the site, including hunting in onshore areas covered by an exploitation licence, may be restricted at the same time if such access in the relevant areas is associated with a special risk.

*To section 26*

The provision on compulsory sale is identical to section 25 of the current Hydropower Act. According to section 73(1) of the Constitution, compulsory sale is subject to three conditions. Firstly, the compulsory sale must be in the public interest. Secondly, a statutory

basis must exist for the compulsory sale. Thirdly, the compulsory sale is subject to full compensation.

The definition of “public interest” must comply with the constitutional definition of public interest. The provision provides the statutory basis for a compulsory sale in connection with activities performed within the framework of licences granted under this Greenland Parliament Act.

The provision in the Constitution is directly applicable. This means that the courts may award damages to the licensee directly on the basis of the provisions of the Constitution on compulsory sale being subject to full compensation. The compulsory sale must be effected in accordance with the rules in the Greenland Parliament Act on Compulsory Sale, including the rules in the Act for Greenland on the Procedure in connection with the Compulsory Sale of Property.

*To section 27*

With verbal alterations, the provision on sanctions corresponds to the provision in section 26 of the current Greenland Parliament Act on Exploitation of Hydropower Resources for the Production of Energy.

*To section 28*

If a financial benefit has been obtained by a violation of this Greenland Parliament Act or regulations issued hereunder, such benefit may be seized under the provision. Such benefit will be seized in accordance with the provisions of the Criminal Code for Greenland.

To subsection (2)

The provision ensures that any benefit seized will belong to the Greenland Treasury. The provision on seizure is identical to section 27 of the current Hydropower Act.

*To section 29*

To subsections (1) and (2)

This Greenland Parliament Act enters into force on 1 January 2019. Greenland Parliament Act no. 11 of 8 June 2014 is repealed at the same time. Prospecting or exploitation licences for hydropower resources falling within the scope of this Greenland Parliament Act that were already granted when this Act enters into force will remain in full force and effect for the period granted.

To subsection (3)

So far, five licences for the exploitation of hydropower for the production of energy have been granted. No licences have been granted under