

INFORMATION GUIDE

PETROLEUM PRODUCTS REGULATIONS, 2000

**GUIDELINES FOR OPERATORS OF
RETAIL OUTLETS**

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GUIDELINES FOR OPERATORS OF RETAIL OUTLETS

1. WHY DO I NEED A RETAIL LICENCE?

In terms of the new Petroleum Products Regulations, 2000, nobody may operate a retail outlet unless such person has a retail licence.

2. WHAT IS A RETAIL OUTLET?

A retail outlet is any place from where petrol or diesel is sold or is offered for sale to consumers/the public for purposes of use or consumption.

Retail sale is the sale of petrol or diesel at a retail outlet.

3. WHO MAY APPLY FOR A RETAIL LICENCE?

Anybody who wants to operate a retail outlet may apply for a retail licence. To operate a retail outlet means to conduct the activity of an operator in respect of an outlet, and to conduct any activity reasonably required in connection with petrol or diesel incidental thereto, including the obtaining, handling, possession and storage of petrol or diesel.

You are an operator if you are the person who is responsible for the day to day activities of a retail outlet whether or not you are located on the relevant premises during business hours and whether or not you are the owner of the retail outlet and if such activities are for own profit or loss.

4. WHAT KINDS OF RETAIL OUTLETS ARE THERE?

In future there will only be one type of retail service provider and that is a retail outlet. The previous distinction under the RATPLAN regarding COC points, general dealers, waterside facilities, roster sites, service stations and truckstops no longer exists. Any place where petrol or diesel is retailed is a retail outlet and requires a retail licence.

5. WHAT HAPPENS IF I ALREADY OPERATE A RETAIL OUTLET?

If you have been operating a retail outlet before the start of the Regulations and if that retail outlet is recognised under the RATPLAN you will be allowed a six month period to apply for a retail licence. During this six month period you will be deemed to have a licence and all the provisions of the Regulations will apply to you. You must apply for a licence during these six months. If you do not apply during this period and the six months have passed you will not be deemed to have a licence anymore and your retail outlet activities will be illegal and you could be found guilty of an offence. The Minister may extend the period of six months for further periods of six months each if it appears that more time is needed to process all the applications.

If you submit all the information required under the Regulations, the Minister must issue you with a licence. The disqualification grounds set out in paragraph 6 will not apply to applicants who are existing retail outlet operators. But remember these are circumstances, should they happen during the course of you holding a licence, they will disqualify you from holding a licence.

6. WHO ARE DISQUALIFIED AS APPLICANTS FOR A LICENCE?

A licence will not be issued to a new applicant, nor may a new applicant hold a licence, if such an applicant:

- ◆ has during the five years preceding the application for the licence been convicted of an offence under the Act, or is so convicted during the currency of the licence;
- ◆ is not a Namibian citizen or is not lawfully resident in Namibia, or loses Namibian citizenship or the right to be lawfully resident in Namibia;
- ◆ is a body corporate, and is not registered in Namibia or if its registration in Namibia has been cancelled;
- ◆ is or becomes an unrehabilitated insolvent;
- ◆ is or becomes subject to an order of competent court declaring such a person to be mentally ill or disordered (mad).

Note that if you, during the course of your licence, become subject to a disqualification mentioned above you may lose your licence.

7. HOW DO I APPLY FOR A RETAIL LICENCE?

You must complete the prescribed form (that is form PP/1). For your convenience this form is attached to this information guide at the end thereof. Should you wish to so apply, you may do so on the form attached to this guide. Alternatively, this form can be obtained from the Ministry of Mines and Energy, 1 Aviation Road (next to the Safari Hotel/Eros Airport), Sixth Floor, Room 611, 626 or 628. If you are not in Windhoek, you can contact the Ministry at telephone number (061) 284 8111 (and ask to speak to one of the persons mentioned at the end of this information manual) and request that a form be posted or faxed to you. Although it would be preferable to complete the form on an original form, photocopies would be accepted.

An application fee of N\$ 100 must be paid together with the submission of the application form. All fees are payable on the 2nd Floor of the Ministry of Mines and Energy at the Mining Commissioner's Office. A receipt will be issued to you which you must attach to your application as prove that you have paid.

The Regulations also require that certain other information be submitted together with the application form. Please check that all these documents are attached because if they are not then your application cannot be processed until everything has been submitted:

- ◆ Form PP/1 (the formal application) – duly completed (for your convenience one is attached to this guide)
- ◆ A certified copy (you can certify your copy at a police station/your attorney or any other commissioner of oaths) of your identity document and in the case of non-Namibian citizens, any of the following:
 - * a permanent residence permit, or
 - * an employment permit and proof of residence in Namibia, or

* proof of domicile in Namibia.*

- ◆ If you are a body corporate (that is for example a company, close corporation or co-operative), a certified copy of registration.
- ◆ If an environmental assessment study has been conducted, a certified copy of the document setting out the outcome of the study.*
- ◆ If applicable, a written confirmation from the wholesaler from whom you are going to buy petrol and diesel that it agrees to supply petrol and diesel to you and a list of all buildings, structures and plant and any other item or assistance such wholesaler agrees to supply to you in the event of a successful application.
- ◆ A signed declaration by you that there is sufficient capital available for the operation of a retail outlet and a description of the amount and nature of such capital and particulars as regards the terms under which the capital is held or invested.
- ◆ Final design or construction drawings of all buildings, roadworks, structures and plant to be erected on the proposed premises, including the location of the proposed premises, or if not available, preliminary sketches or a general layout plan thereof.*
- ◆ In the case of you being a wholesaler, a written confirmation whether you intend to operate the proposed retail outlet yourself or intend to enter into an agreement with another person in terms of which such other person will operate such retail outlet.

If your application is successful (see paragraph 8 on how your application will be evaluated), a licence will be issued to you in the form of Form PP/2. However, prior to obtaining your licence you must pay the fee for the issue of the licence which is N\$ 250,00.

8. HOW IS MY APPLICATION CONSIDERED?

In deciding whether or not to issue a licence, the Minister will take the following issues into consideration:

- ◆ The protection of employees, and public safety and health.
- ◆ The protection of the environment.
- ◆ Your record of compliance with the Petroleum Products and Energy Act, 1990, the Petroleum Products Regulations and other applicable laws.
- ◆ The suitability of the premises concerned with regard to safety, health, security, hazardous substances, environment and town planning requirements.
- ◆ The need for such facilities to be provided to consumers and that premises and in how far the interest of petroleum product consumers will be served.
- ◆ The social upliftment of previously disadvantaged people in Namibia.
- ◆ The chance that monopolies in the retail industry having a negative impact on the public interest will be created or made worse. Also how it will effect competition in the retail sale of petroleum products.
- ◆ The prevention of vertical integration by wholesalers.
- ◆ The economic viability of the proposed retail outlet in view of its location and capital available.

* Proof of residence or domicile is for example a municipal account in your own name.

* In terms of the new Environmental Legislation which will come in operation later in 2000 or in the beginning of 2001 it may be that you will be required under certain circumstance to do an environmental impact study. Alternatively, you may decide to do one. However, the Regulations do not require you to do an environmental impact study, it is only if one has been done, then it must be submitted.

* Preferably, the most detailed and recent drawings should be submitted. With regard to existing buildings, as-built drawings would be preferable.

- ◆ The number of retail outlets already operated by you.
- ◆ Any recommendation by a person or body to which the matter has been referred.*
- ◆ Any other matter relevant to the orderly provision of petroleum products in Namibia.

Finally, when considering an application the Minister may request the applicant for further information relating to the above issues if the Minister needs such further information in order to make an informed decision.

The Minister may grant and issue a licence or may refuse to issue a licence. It is possible that the Minister may provisionally grant a licence, but need further information before the licence is issued. In such a case the applicant must first provide the Minister with such further information. If the Minister refuses the licence, the Minister must provide written reasons for such refusal.

Keep in mind that if your past conduct provides reasonable grounds for the Minister to believe that you will contravene the law and not conduct activities under the licence in a safe manner, the Minister may refuse to grant a licence.

9. HOW LONG IS MY LICENCE VALID AND DO I NEED TO RENEW IT?

You do not need to renew your licence. It is valid as long as you operate the retail outlet and the licence is not cancelled or suspended. The Regulations make it possible for you to transfer your licence (see paragraph 12 on how this is done).

10. THE LICENCE AND DUPLICATE LICENCES

One original licence will be issued to you. If a licence is lost, stolen or damaged you may apply for a duplicate. There is a form prescribed for such an application and that is form PP/8. On payment of a fee of N\$ 100 a duplicate licence will be issued to you.

11. CONDITIONS APPLICABLE TO A LICENCE

The following general conditions apply to all licences:

- ◆ The licence-holder must at all times comply with the Petroleum Products and Energy Act and the Regulations including laws relating to labour, safety, hazardous substances, security, health and environment.
- ◆ The licence-holder must inform the Minister as soon as practicable of any dangerous situation arising from the conduct of activities authorised under the licence.*
- ◆ The licence-holder must keep such records and submit such information to the Minister as required by or under the Regulations.
- ◆ The licence-holder must comply with all provisions of the Regulations relating to petroleum product spills.
- ◆ The licence-holder may not abandon the licensed premises otherwise than in accordance with these Regulations.
- ◆ Petroleum products sold to consumers must comply with approved specifications made applicable by the Regulations.

* In terms of the Regulations the Minister may refer an application to the Ministry of Environment and Tourism or to any other relevant body or person for a recommendation.

* A dangerous situation is a situation involving petroleum products that is immediately endangering the safety or health of a person, or the safety of a person's property or is creating an immediate risk of significant environmental harm.

- ◆ The licence-holder must at all times hold such permits, licences and certificates relating to the sale of petroleum products and other services provided at the retail outlet, as may be required by any other law.
- ◆ The licence-holder may not obtain petrol or diesel by means of wholesale sale for purposes of retail sale from any person other than a wholesale licence-holder.

On the licence provision is made for certain special conditions which the Minister may make applicable to a licence. Only if these conditions appear on the licence will they be applicable to you. They are:

- ◆ Conditions relating to the reporting of dangerous situations or accidents.
- ◆ Conditions requiring the licence-holder to prepare and submit to the Minister assessments of the safety, health, environment and security risks associated with the activities authorised under the licence.
- ◆ Conditions relating to the safe disposal of petroleum products, including the collection and discarding of used oil.
- ◆ Conditions requiring insurance against, or guarantee for, petroleum product spills which insurance or guarantee cover cost involved in the cleaning up of such spills up to an amount not exceeding N\$ 500 000.

When the Minister has issued your licence you must start with retail sales at your premises within six (6) months. However, if you cannot do so and there are good reasons why you cannot (for example the building of the structures took longer than anticipated) you may write to the Minister and ask for an extension of another six (6) months.

If you have a licence and you stop conducting business of retail sale of petrol and diesel for more than three (3) months without first getting the Minister's approval to so stop, the Minister may cancel your licence.

Finally, you may only sell petrol and diesel in bulk quantities (that is a single quantity of 200 litres or more) if it is directly dispensed into a container (this excludes the tank of a vehicle) which container is used to store the petrol or diesel in. Or alternatively into the tank of a vehicle which vehicle weighs more than 3 500 kilograms for the purpose of propelling such vehicle.

12. CAN I TRANSFER MY LICENCE TO SOMEBODY ELSE?

Yes, the only way you can transfer your licence is by way of an amendment of it in the name of another person (this is for example if you sell the business). An application for such an amendment of the licence must be made prior to the change of operators. The new proposed operator must again submit to the Minister all the information that was originally required from you (see paragraph 7) and also submit form PP/1.

Provision is also made in the Regulations for situations where the wholesaler is the owner of the retail outlet and wants to take over the retail outlet. This can happen in the following circumstances:

- ◆ if the agreement between the wholesale licence-holder and retail licence-holder is terminated due to breach of contract by the retail licence-holder; or
- ◆ if the retail licence-holder surrenders the retail licence without the prior approval of the wholesale licence-holder; or
- ◆ if the retail licence-holder's licence is suspended or cancelled; or

- ◆ if the retail licence ceases to have effect because the retail licence-holder became subject to a disqualification,

but subject thereto that if application for the amendment of the retail licence has not been effected prior to an event set out above, such wholesaler shall immediately after the occurrence thereof apply for the amendment of the relevant retail licence and shall be deemed to be the holder of that retail licence from the date of occurrence of such event until the date of amendment of the retail licence.

13. HOW CAN I LOSE MY LICENCE?

(a) Cessation of retail sale at retail outlet

If you, without the permission of the Minister, stop to provide retail sale of petrol and diesel at the retail outlet for more than three months.

(b) Surrender of licence

If you do not want to operate the retail outlet anymore and do not intend to sell the outlet to somebody else (that is activities under the licence have ceased) the licence must be surrendered in writing to the Minister. Send the licence together with a letter stating that you are surrendering your licence to the Minister.

(c) Cancellation and suspension of licence

If you fail to comply with the Regulations or a condition of your licence, the Minister may cancel, or, suspend for such a period as the Minister may deem appropriate, your licence.

The Minister must, however, first by letter inform you that your licence is going to be cancelled or suspended. In this letter the Minister must state what contravention you committed and must ask you to reply thereto within thirty (30) days.

Before the Minister cancels or suspends your licence, the Minister must look at any steps you have taken to remedy your failure to comply or contravention and to avoid it from being repeated.

(d) Disqualifications

If you become subject to one of the disqualifications set out in paragraph 6 your licence will also cease to have effect.

(e) General notes

Under any of the circumstances set out above your licence ceases to have effect and you cannot legally go on operating your retail outlet. You must send your licence back to the Minister within fourteen (14) days after it ceased to have effect. In the case of a suspension, you do not have to send the licence back, but may not during the period that the licence is suspended legally perform activities for which you need a licence.

14. LICENSED PREMISES

The licensed premises is the premises in respect of which your retail licence is granted and where you conduct your retail activities. This premises would be described and specified on your licence. Remember that if you want to change from premises you must apply for an amendment of your licence (see paragraph 16).

15. INFORMATION WHICH MUST BE GIVEN TO THE MINISTER ON A YEARLY BASIS AND OTHER INFORMATION THE MINISTER MAY ASK

If you have a licence, you must every year not later than 28 February give to the Minister the following information:

- ◆ Confirmation that the retail outlet is still in operation and that you did not, without the permission of the Minister, stopped to conduct retail activities thereon during that year for more than three (3) months.
- ◆ Any change of the information you were required to submit together with form PP/1 but with regard to which it is not necessary to apply for an amendment of your licence.
- ◆ The total throughput of petroleum products specified by product.

The Minister may at any time ask you to give any of the following information:

- (a) any information regarding a dangerous situation and remedial measures taken in respect thereof;
- (b) any information the Minister may request in order to enable the Minister to effectively exercise his or her powers under the Regulations.

16. WHAT IF MY PARTICULARS ON THE LICENCE CHANGE OR I WANT TO CHANGE FROM PREMISES?

(a) Change of information on licence

If any information on your licence changes, you must, prior to such change, apply to the Minister for an amendment of the licence. The amendment of the licence must be completed on Form PP/9 and the appropriate fee must be paid which is N\$ 100. If the Minister finds out that some information on a licence has changed and you failed to inform the Minister thereof, the Minister may self change such information. The new information can then either be written on your licence or the Minister can give to you a notice with the new information.

(b) Change of premises or closing down

In the case of a change of premises, notice must be given to the Minister at least one month before such change. Once the Minister has received your notice, an inspector, or other competent person authorised thereto by the Minister, will inspect the premises in order to see whether the premises has been sufficiently restored with regard to the petroleum activities conducted thereon in order not to pose a threat to the environment or the safety and health of the public.

If the inspector is satisfied regarding above, the inspector will issue a certificate of compliance in the form of a Form PP/7. No fee is payable.

Restore means:

- (a) the return of the premises to its original or its natural state; or
- (b) the rendering of the premises compatible with its intended after-use after cessation of petroleum-related activities thereon,

and includes the removal of buildings, structures, plant and debris, establishment of compatible contours and drainage, replacement of top soil, re-vegetation, slope stabilisation and infilling of excavations.

17. WHERE MUST I PUT MY LICENCE?

You must display your licence in any part of the licensed premises where it will be noticeable.

18. HOW LONG MUST I WAIT FOR THE MINISTER TO MAKE A DECISION?

The Regulations state that the Minister must make decisions within a reasonable time. If the Minister has not answered you within 60 days you may ask the Minister to give you reasons in writing as to why there is such a delay.

19. CERTAIN GENERAL PROHIBITIONS AND DUTIES

The following prohibitions and duties apply to everybody:

- ◆ Nobody may falsely claim to have a licence or certificate.
- ◆ Petrol and diesel may only be sold for cash* or if a pre-payment has been made.
- ◆ Apart from a fork lift, no vehicle may be driven by gas unless the Minister's permission has first been obtained.
- ◆ Petrol may only be sold at the official price.
- ◆ No benefits may be offered in return for the sale of petrol.
- ◆ Nobody may serve themselves by self dispensing petrol or diesel into a vehicle (protection of labour).
- ◆ Nobody may mix or blend a petroleum product so that it does not comply with the approved specifications.
- ◆ Containers used to store petroleum products must be leakproof, spillproof and safe and suitable for storage or conveyance. A container in which a petroleum product was stored may not be used as a water trough or in any way in which it will harm the environment or the safety or health of a person or an animal.
- ◆ There is a general duty on any person who stores, keeps, handles, conveys, uses or disposes a petroleum product to exercise such care so as not to harm the environment or people or animals.
- ◆ In disposing or dumping a petroleum product, a person must do so in a manner that is safe and in line with good petroleum industry practices and other laws relating to the dumping thereof.

20. SPECIFIC DUTIES AND PROHIBITIONS RELATING TO LICENCE- AND CERTIFICATE-HOLDERS

The following duties and prohibitions specifically relate to licence- and certificate-holders:

- ◆ Buildings, roadworks, structures and plant used in connection with petroleum products must be erected and maintained in such manner as to avoid significant environmental harm and/or endangering the safety or health of a person or the safety of a person's property. There are also further duties relating to plant which may not give risk to significant environmental harm and the duties of licence- and certificate-holders in this regard that must be taken notice of.
- ◆ Measuring instruments must be correct and must comply with the Trade Metrology Act, 1973.

21. SPECIFICATIONS

In terms of the Regulations, the Minister intends to make certain SABS (South African Bureau of Standards) specifications applicable to the petroleum industry. A list of these specification will be published in a Government notice. If you wish to obtain the list and do not have the

* Cash is money, cheque, traveller's cheque, postal order, money order, or such other instrument that is payable on demand, may be deposited with a bank and is cleared through the ordinary settlement process of a banking system.

Government notice you can contact the Ministry of Mines and Energy. A copy of the specifications can be inspected at the Ministry of Mines and Energy, alternatively you can buy your own copy from the Ministry of Trade and Industry who currently keeps SABS specifications and sells them.

SABS specification on the following will be made applicable:

- ◆ specifications with regard to the design, construction and maintenance of electrical equipment;
- ◆ specifications with regard to the storage, distribution and handling of petroleum products and the installation of storage tanks and other structures, pipework, pumps and plant;
- ◆ specifications with regard to the composition of petroleum products (leaded and unleaded petrol, diesel, jet fuel and LPG).

If you want to deviate from a specification you can apply to the Minister for permission to do so. The Minister will only give permission if the Minister is satisfied that the deviation will not impact negatively on public safety or the environment. The Minister may make conditions applicable to a deviation.

22. STORAGE TANKS AND INFORMATION TO BE GIVEN YEARLY

In the case of an above-ground storage tank with a capacity of 2 200 litres or more or in the case of a below-ground storage tank with a capacity of 4 500 litres or more, a licence- or certificate-holder must with regard to any replacement, installation or existing storage tank of that capacity provide yearly to the Minister (not later than 28 February of every year) the information required in form PP/10.

23. FIRE PRECAUTIONS

The following fire precautions exist:

- ◆ Licence- and certificate-holders must ensure that buildings, roadworks, structures and plant are designed, constructed, equipped and maintained so as to prevent or minimise the danger of fires and explosions.
- ◆ All personnel involved in petroleum products must act in a cautious manner and comply with the provisions of the Regulations and other laws relating to fires and explosions.
- ◆ Buildings, structures and plant where petroleum products are handled or stored must be suitably signposted.
- ◆ Licence- and certificate-holders must when storing, keeping, handling, conveying, using or disposing of a petroleum product take adequate precautions to prevent the outbreak of fires.
- ◆ Adequate fire-extinguishing appliances maintained in a good working order (and tested at least once a year) and kept in accessible places where petroleum products are kept must be available.
- ◆ Licence-holders must have a written fire emergency plan available on their premises. Such plan must show the location of fire-fighting equipment and include a plan of action for employees. Employees must be trained. The fire-fighting plan must be provided to employees.
- ◆ Nobody may near petroleum products throw, leave or create any open or naked spark, light or flame or any burning or smouldering material that may cause danger or fire explosion.
- ◆ No person may keep a vehicle running while petrol or diesel is being dispensed into the tank of the vehicle.

- ◆ No person may smoke in the forecourt of a retail outlet where petrol or diesel is dispensed.
- ◆ No person may keep a cellular phone active (or any other electronic communication apparatus) within two (2) metres from a dispensing pump or within fifteen (15) metres from a vehicle while a petroleum product is being discharged from that vehicle into an underground storage tank.

24. PETROLEUM PRODUCT SPILLS

In the case of a petroleum product spill, the person in control of activities must take such steps as may be necessary in accordance with good petroleum industry practices to clean up such spill. If it is a major spill, that is a spill of more than 200 litres, the Minister must be informed thereof by completing form PP/11.

If a person fails to clean up a spill, the Minister may order a person to take such steps as the Minister will specify in the notice to clean up the spill within the period specified by the Minister. If a person still fails to clean up a spill the Minister may clean it up and recover via Court procedures the costs thereof.

25. WHAT MAY INSPECTORS DO?

Inspectors are responsible to ensure that the Petroleum Products and Energy Act, 1990, and the regulations thereunder are complied with. An inspector, when exercising a power referred to in this paragraph, must show you his/her certificate of appointment. An inspector must also provide you with a notice in the form of form PP/12 when he/she exercises a power referred to in this paragraph. Unless it is not possible immediately, in which case the form must be provided as soon as possible thereafter. An inspector may also request your assistance and you must provide such assistance as is reasonably required.

(a) Prohibition notices by inspectors

If an inspector thinks that a dangerous situation exists, the inspector may issue a prohibition notice prohibiting the activity giving rise to the dangerous situation until such time as the inspector is satisfied the sufficient measures have been taken to limit the risk. The prohibition notice may state actions to be taken to minimise the risk.

If a person fails to comply with a prohibition notice, the inspector may take such steps as is necessary to minimise the risk. The costs of such steps may be recovered from the person who failed to comply with the inspector's prohibition notice.

(b) Action in emergency situations

If an inspector thinks that a dangerous situation exists and there is not enough time to issue a notice in the form of PP/12, the inspector may after giving notice in writing or verbally, take such action as is necessary to minimise the danger or risk. An inspector may seek assistance if necessary.

Finally, nobody may hinder or obstruct an inspector in the exercise of his/her duties, use foul or abusive language towards an inspector, fail to comply with an instruction from an inspector, refuse information or answers requested by an inspector or falsely pretend to be an inspector.

26. WHAT ARE THE PENALTIES FOR CONTRAVENTION OF OR FAILURE TO COMPLY WITH THE PROVISIONS OF THE PETROLEUM PRODUCTS AND ENERGY ACT OR REGULATIONS?

If a person contravenes or fails to comply with a provision of the Petroleum Products and Energy Act, 1990, or the Regulations the following penalties can be imposed:

- ◆ A fine of not more than N\$ 20 000
- ◆ A term of imprisonment of not more than two years
- ◆ Both a fine and imprisonment
- ◆ Confiscation of goods used to commit the offence
- ◆ Your licence may be suspended or cancelled

27. WHO AT THE MINISTRY OF MINES AND ENERGY COULD BE CONTACTED IN CONNECTION WITH ANY MATTER REGARDING THE NEW LAWS?

The details of the Ministry of Mines and Energy are as follows:

Postal address

The Permanent Secretary
Ministry of Mines and Energy
Private Bag 13297
WINDHOEK

or

Physical address

The Permanent Secretary
Ministry of Mines and Energy
1 Aviation Road
WINDHOEK

Contact Persons at the Directorate: Energy

Position	Name	E-mail
Economist:	Mr Immanuel Nghishoongele	inghishoongele@mme.gov.na
Inspector:	Mr Gottlieb Amanyanganga	gamanyanga@mme.gov.na
Administrative:	Ms Erica Makabanyane	emakabanyane@mme.gov.na
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Telephone Number:

Ministry of Mines and Energy: (061) 284 8111

Facsimile

Ministry of Mines and Energy: (061) 238 643