

THE COMPULSORY ACQUISITION (SHARES IN PETROJAM LIMITED) ACT, 2019

(Act / of 2019)

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JAMAICA

No. – 2019

I assent,

[L.S.]

Governor-General.

AN ACT to Provide for the compulsory acquisition of the shares held in Petrojam Limited by persons other than the Petroleum Corporation of Jamaica, and for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Compulsory Acquisition (Shares in Short title. Petrojam Limited) Act, 2019.

Interpretation.

2. In this Act—

“applicable property” means all shares in Petrojam Limited held by persons other than the Petroleum Corporation of Jamaica immediately before the coming into operation of this Act;

“Court” means the Supreme Court of Judicature of Jamaica;

“escrow account” means an interest bearing account at the Bank of Jamaica, caused to be established by the Minister responsible for finance for the purposes of section 3(3);

“interested person” means a person claiming, for the purposes of compensation, an interest in the applicable property compulsorily acquired under this Act;

“joint venture agreement” means the joint venture agreement dated August 14, 2006, between Petrojam Limited, the Petroleum Corporation of Jamaica, and PDV Caribe S.A. (a mercantile society formed under the laws of the Bolivarian Republic of Venezuela and having its principal offices in Caracas, Venezuela);

“KRUP Agreement” means the agreement, in relation to the Kingston Refinery Upgrade Project, dated February 15, 2017, between the Petroleum Corporation of Jamaica and Petroleos de Venezuela S.A., and which expired on February 14, 2018;

“Minister” means the Minister with responsibility for Petrojam Limited;

“published” means published in the *Gazette*;

“share” has the meaning assigned to it by section 2 of the *Companies Act*.

Compulsory acquisition of the applicable property and payment of value into escrow account.

3.—(1) Upon the coming into operation of this Act, ownership of the applicable property shall immediately vest in the Accountant-General absolutely, free of all encumbrances, to be held in trust for the Government.

(2) Where property vests under subsection (1), the Registrar of Companies and all other persons having responsibility for any steps

necessary to register the transfer of the applicable property accordingly shall take the necessary steps to register the transfer.

(3) Upon the coming into operation of this Act, the Minister responsible for finance shall cause the amount of the value of the applicable property, determined in accordance with section 5(2)(a) and (3), to be paid out of—

- (a) the Consolidated Fund or loan funds of the Government; or
- (b) any other source of funds available to the Government and which the Government determines to be appropriate in the circumstances,

into the escrow account.

(4) All money standing to the credit of the escrow account that is not required to be paid to an interested person pursuant to section 4(9) or an order of the Court under section 6 shall be paid into the Consolidated Fund.

4.—(1) Where the applicable property is compulsorily acquired under this Act, compensation for the applicable property shall be paid in accordance with this Act—

- (a) out of the escrow account; and
- (b) where any compensation to be paid under subsection (9), or pursuant to any order of the Court under section 6, exceeds the amount in the escrow account, the excess shall be paid out of the Consolidated Fund, or from any other source of funds available to the Government and which the Government determines to be appropriate in the circumstances.

(2) Compensation under this section to an interested person for the applicable property shall be paid by electronic transfer, in the currency of the United States of America or any other freely convertible currency.

(3) The Minister shall, within thirty days after the date of coming into operation of this Act, cause a notice to be published stating—

- (a) that all claims to compensation for the applicable property may be made to the Minister in accordance with subsection

(4), and specifying the time within which such claims may be made; and

(b) the particulars describing the applicable property.

(4) A claim under subsection (3)(a) shall be made in writing—

(a) stating the nature of the interest in the applicable property and signed by the interested person or that person's agent; and

(b) accompanied by the documents relied on to support the claim, and where for that purpose copies are supplied of original documents those copies shall be duly certified by a Justice of the Peace or Notary Public.

(5) The time specified under subsection (3)(a) shall not be less than thirty days nor more than three months after the date of publication of the notice, and no claim for compensation under this section shall be considered if made after the expiration of the period of three months from the date of publication of the notice, unless the Minister determines that injustice may arise if the claim is not considered.

(6) A person commits an offence if that person—

(a) makes a statement or submits a document, in any claim under subsection (3)(a), that is false in any material particular; or

(b) being directed to provide information under subsection (8), fails without reasonable excuse to provide that information, and shall be liable on conviction before the Court in respect of the offence to a fine or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(7) After the expiration of the period referred to in subsection (5), the Minister shall—

(a) consider each claim made under that subsection and determine the amount of compensation payable to the interested person; and

(b) unless the Minister applies to the Court under section 6, serve a written notice of the determination on the interested person.

(8) For the purposes of subsection (7), the Minister may in writing direct a person to provide in writing, within such time as shall be specified in the direction, such additional information as the Minister may require in order to make the determination.

(9) The written notice under subsection (7) shall specify the amount of compensation determined to be payable to the interested person and—

- (a) specify the value of the applicable property as determined by the valuation referred to in section 5(2)(a) and (3) and, where applicable, the apportionment of the compensation among the interested persons;
- (b) offer to pay the compensation awarded to the interested persons entitled thereto, as specified under paragraph (a);
- (c) specify the time frame within which interested persons shall indicate in writing to the Minister that they accept or reject the offer;
- (d) inform interested persons of the right to apply to the Court—
 - (i) under section 6(1), if they do not accept the offer;
 - (ii) under section 6(2), if they accept the offer; and
- (e) state that the compensation shall be paid by electronic transfer, in the currency of the United States of America or any other freely convertible currency,

and, where an interested person accepts the offer, the Minister shall, unless the Minister determines that a reference to the Court under section 6 is necessary in the circumstances, in writing inform the Minister responsible for finance, who shall cause the compensation to be paid to that person accordingly.

(10) No compensation determined or paid under this Act shall be chargeable with stamp duty or transfer tax.

Rules for
determination
of
compensation.

5.—(1) In assessing compensation, no allowance shall be made on account of—

- (a) the acquisition being compulsory or the degree of necessity or expediency which led to the acquisition;
- (b) any disinclination on the part of any interested person to part with the applicable property;
- (c) any damage sustained by any interested person which, if caused by a person or other entity other than the Government would not render the person or other entity liable to an action or claim;
- (d) any actual or potential increase in the value of the applicable property, that occurs, or may occur, on or after the commencement of this Act (whether or not due to any upgrade, proposed upgrade, or change of use, of the refinery); and
- (e) any offer made by any person to purchase the applicable property.

(2) In assessing compensation, account shall be taken of—

- (a) the fair market value of Petrojam Limited, as determined by the valuation carried out by Muse, Stancil and Company (being an internationally recognised consultant with expertise in the valuation of assets within the energy sector), as expressed in its valuation report dated March 20, 2018, with a valuation date as of April 1, 2018;
- (b) the failure to carry out the refinery upgrade project as defined under the joint venture agreement and the KRUP Agreement; and
- (c) any difficulties arising from sanctions imposed by third party States in respect of, *inter alia*, the government of the Bolivarian Republic of Venezuela, Petroleos de Venezuela S.A. (the parent company of PDV Caribe S.A.), and any person owned or controlled by, or acting for or on behalf of, the government of the Bolivarian Republic of Venezuela.

(3) For the purposes of subsection (2)(a), the fair market value of the applicable property shall be taken to be 49% of the fair market value of Petrojam Limited based on the Income Approach recognised, in the valuation referred to in that subsection, as the most important method of estimating the value of any revenue producing assets that represent the present value of the sum of the projected future cash flows received from the assets and which was the basis of the sale of the shares to PDV Caribe S.A. in 2007.

6.—(1) The Minister, or any interested person who has not accepted the offer of compensation under section 4, may apply to the Court for the determination of any of the following with respect to the applicable property compulsorily acquired under this Act—

Reference to Court.

- (a) the person's interest (if any) in the applicable property;
- (b) the amount of compensation assessed in respect of the applicable property, having regard to sections 4 and 5;
- (c) the compensation (if any) to which the person is entitled.

(2) Any interested person who has accepted the offer of compensation under section 4 may apply to the Court for the enforcement of the payment of compensation.

(3) Where an application is made to the Court under this section, the Court shall thereupon cause to be served upon—

- (a) the interested person; and
- (b) the Attorney-General,

a notice specifying the day on which the Court will consider and determine the matter, and directing their appearance before the Court on that day.

(4) The hearing by the Court on an application under this section shall take place in open court.

(5) The Court may have regard to the provisions of section 4(2) and section 5, in determining compensation under this section.

7.—(1) The Court may appoint two assessors for the purpose of determining any application made to it under section 6 concerning the amount of any compensation.

Appointment of assessors.

(2) A person appointed as an assessor under subsection (1) shall have the duty to attend and serve as an assessor unless excused by a Judge of the Court.

(3) The Court may appoint an assessor to act in place of an assessor who has died, or who becomes incapable of acting, or is excused under subsection (2).

Compensation
not to
exceed
amount
claimed.

8. Where a person makes a claim to compensation pursuant to a notice under section 4(3), the amount awarded to that person by the Court shall not exceed the amount so claimed.

Service of
notices.

9.—(1) Any notice required under this Act to be served on an interested person, other than a notice to be served by a Court, may be served by delivering the notice—

- (a) personally to that person;
- (b) by courier or facsimile to the person's address for service specified in the joint venture agreement; or
- (c) by electronic means to an electronic mailing address provided by the interested person.

(2) A notice served in accordance with subsection (1) shall be deemed to have been received by the interested person on the expiration of—

- (a) five days after dispatch, in the case of delivery by courier; or
- (b) one day after dispatch, in the case of delivery by facsimile or other electronic means.

Obstruction.

10. A person who wilfully obstructs any person in the execution of any act authorised by section 3(2) commits an offence and shall be liable upon conviction therefor before a Court to a fine or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Passed in the House of Representatives this 19th day of February, 2019.

PEARNEL P. CHARLES, CD, MP, JP

Speaker.

Passed in the Honourable Senate this 22nd day of February, 2019.

THOMAS TAVARES-FINSON, CD, QC, JP
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgt. Valerie A Curtis
Clerk to the Houses of Parliament.