

JAMAICA

No. 16 -2006

I assent,

[L.S.]

(Sgd.) Prof. K.O. Hall
Governor-General.

21st December, 2006

AN ACT to Amend the Petroleum Act.

[*22nd December, 2006*]

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 Petroleum (Amendment) Act, 2006, and shall be read and construed as one with the Petroleum Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

- (d) investing the moneys of the Fund;
- (e) meeting the financial obligations of Jamaica under the Petrocaribe Agreement;
- (f) monitoring the implementation of projects financed by the Fund;
- (g) doing or causing to be done such other things as are necessary or expedient for or in connection with the proper performance of the functions of the Fund.

Third
Schedule.

(2) The provisions of the Third Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

Policy
directions.

17E. The Minister shall give to the Board such directions of a general character as to the policy to be followed by the Board in the performance of its functions as he may consider necessary for the achievement of the following objectives—

- (a) developing the procedures necessary for—
 - (i) the operation of the Fund;
 - (ii) accessing resources from the Fund;
- (b) developing the terms and conditions for loans to be provided through the Fund;
- (c) ensuring the sustainability of the Fund by matching withdrawals against inflows to ensure that debt obligations under the Petrocaribe Agreement can be met from its resources when such debts become due; and

- (d) developing investment guidelines for the resources of the Fund.

Payment into Fund.

17F.—(1) There shall be paid into the Fund—

- (a) such moneys as may from time to time be placed at its disposal for the purposes of this Act by Parliament;
- (b) moneys collected by way of loan proceeds accruing to Jamaica under the Petrocaribe Agreement;
- (c) all amounts which accrue from interest, loan repayments and other accretions to the Fund;
- (d) the amounts due to the Fund whether, as determined by the Minister, in—
 - (i) the currency of the United States of America; or
 - (ii) the equivalent amount in Jamaican currency converted at the current rate of exchange;

- (e) any other sum lawfully paid into, or credited to, the Fund.

(2) In this section “current rate of exchange” means the spot market weighted average selling rate of exchange for United States dollars published by the Bank of Jamaica on the relevant day.

Issuance of Promissory Notes.

17G.—(1) The Minister shall authorize the Corporation, the Fund or any other body authorized by the Minister to issue Promissory Notes to the Government of the Bolivarian Republic of Venezuela to secure the sums loaned to Jamaica under the Petrocaribe Agreement.

(2) Copies of Notes issued pursuant to subsection (1) shall be delivered to the Financial Secretary.

Application
of revenue.

17H.—(1) The financial resources of the Fund shall be applied for the purposes authorized by this Act and, without prejudice to the generality of the foregoing, such financial resources shall, so far as practicable, be used—

- (a) to upgrade the social and physical infrastructure of Jamaica;
- (b) to implement projects which impact on the development of the human resources of Jamaica;
- (c) for the refinancing of Government of Jamaica domestic debt;
- (d) for projects relating to energy that are aimed at reducing the reliance of Jamaica on oil, and which promote the development of alternative sources of energy;
- (e) for projects designed to stimulate economic expansion directly, through modernization and retooling of sectors which either earn or save foreign currency;
- (f) for the administration and management of the Fund;
- (g) for the grant of loans—
 - (i) subject to subsection (2), to public bodies that are self-financing; and

(ii) subject to subsection (4), to the Ministry responsible for finance and planning in order to finance projects undertaken by Government ministries, agencies and departments whose expenditures are financed by appropriations through the Budget; or

(h) for other related purposes, on such terms and conditions as may be prescribed.

(2) A loan may be granted to a public body referred to in subsection (1)(g) upon application in writing by that body to the Fund and such application shall be supported in writing by the Ministry assigned responsibility for that body.

(3) The grant of such a loan shall be evidenced by an agreement in writing between the body referred to in subsection (1)(g) and the Fund.

(4) Projects referred to in subsection (1)(g)(ii) may qualify for financing from the Fund if they have the potential to generate savings or expand revenue inflows to the Government.

(5) In this section “public body” means a statutory body or authority or a government company.

Power to invest moneys.

17I. All moneys of the Fund not immediately required to be expended in meeting any of its obligations or discharging any of its functions

may, with due regard to the level of inflows and debt service requirements, be invested in such interest bearing securities in local and foreign currency as may be approved either generally or specifically by the Minister.

Accounts and
audit.

17J.—(1) The Fund shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which complies with generally accepted accounting principles.

(2) The accounts of the Fund shall be audited annually by auditors appointed by the Fund.

(3) As soon as the accounts of the Fund have been audited, the Board shall send its audited financial statements to the Minister, together with a copy of any report thereon made by the auditors.

Annual
Report.

17K.—(1) The Board shall, within four months after the end of each financial year, cause to be made and shall submit to the Minister a report—

- (a) dealing generally with the proceedings and activities of the Fund during the preceding financial year; and
- (b) containing—
 - (i) a full statement showing the assets and liabilities of the Fund; and
 - (ii) the operational plans within which the Fund proposes to carry out its functions.

(2) The Minister shall cause a copy of the report, together with the audited annual financial statements to be laid on the Table of the House of Representatives and of the Senate.

Exemption from income tax.

17L. The income of the Fund shall be exempt from the payment of income tax.”.

3. Section 26 of the principal Act is amended by deleting subsection (2) and substituting therefor the following—

Amendment of section 26 of principal Act.

“ (2) Regulations under this section may provide in respect of a breach of any of the provisions thereof that the offender shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment .”.

4. Section 27 of the principal Act is amended—

Amendment of section 27 of principal Act.

- (a) by renumbering the section as subsection (1);
- (b) in subsection (1) as renumbered, by deleting the words "one thousand" and substituting therefor the words "one million";
- (c) by inserting next after subsection (1) the following as subsection (2)—

“ (2) The Minister may, by order, subject to affirmative resolution, amend the penalties specified in this Act.”.

5. The principal Act is amended by inserting next after section 27 the following as sections 27A and 27B—

Insertion of new sections 27A and 27B in principal Act.

“Seizure of petroleum prior to conviction.

27A. Where a constable has reasonable cause to suspect that petroleum resources are being or have been explored in contravention of this Act or any agreement or arrangement provided for under this Act, the constable may seize the petroleum and it shall be dealt with pursuant to section 27B or otherwise according to law.

Additional
penalties.

27B.—(1) Where any petroleum is seized pursuant to section 27A and any person is convicted in relation thereto of an offence under this Act or any regulations made hereunder, the Court may, in addition to imposing a fine, make an order—

- (a) for the sale or other disposal of the petroleum seized;
- (b) for the payment by that person to the Crown of an amount equal to the proceeds of the sale of petroleum so seized; or
- (c) upon the Court's assessment of the quantity of petroleum seized and the market value at the well-head, for the payment by the person to the Crown of—
 - (i) an amount equivalent to such market value assessed; or
 - (ii) such part of the market value assessed as the Court, having regard to all the circumstances, thinks fit.

(2) Where the Court is satisfied that an order made under subsection (1)(a) cannot, for any reason, be enforced, the Court may, upon the application of the person by whom the proceedings were brought, set aside the order and make either of the orders referred to in paragraphs (b) and (c) of that subsection.

(3) The Court may, before making an order under this section, require notice to be given to, and hear, such persons as the Court thinks fit."

6. The principal Act is amended by—

Other amendments to principal Act.

- (a) renumbering the Schedule by deleting the heading thereto and substituting therefor the words "First Schedule"; and
- (b) inserting next after the First Schedule as renumbered, the following as the Second and Third Schedules—

" SECOND SCHEDULE (Section 17B(2))

The Petrocaribe Development Fund

Seal and execution of documents.

1.—(1) The seal of the Fund shall be kept in the custody of the chairman or of any officer of the Fund authorized by the Board in that behalf, and shall be affixed to instruments pursuant to a resolution of the Board in the presence of the chairman or any other member duly authorized to act in that behalf, and the secretary.

(2) The seal of the Fund shall be authenticated by the signature of the secretary or any other member of the Board duly authorized to act in that behalf.

Appointment and employment of officers.

2.—(1) Subject to sub-paragraph (2), the Fund shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit such officers and employees as it thinks necessary for the proper carrying out of the provisions of this Act.

(2) The Fund shall act in accordance with such guidelines in relation to emoluments payable to the staff of public bodies, as are issued from time to time by the Minister responsible for the public service.

Documents to be signified.

3. All documents, other than those required by law to be under seal, made by, and all decisions of, the Fund may be signified under the hand of the chairman or any member of the Board authorized to act in that behalf or an officer of the Fund so authorized.

Expenses of Fund.

4. The expenses of the Fund (including the remuneration of the staff thereof and members of the Board) shall be defrayed out of the financial resources of the Fund.

THIRD SCHEDULE (Section 17D(2))

*The Board of Management of the Fund*Constitution
of the Board.

1. The Board shall consist of such number of members being not less than five nor more than nine as the Minister may from time to time appoint including—

- (a) the following persons who shall be *ex-officio* members—
 - (i) the Permanent Secretary of the Office of the Prime Minister or his nominee;
 - (ii) the Secretary to the Cabinet or his nominee;
 - (iii) the Permanent Secretary of the Ministry with responsibility for energy or his nominee;
 - (iv) the Chief Executive Officer of the Corporation;
 - (v) the Financial Secretary;
 - (vi) the Director General of the Planning Institute of Jamaica;
- (b) such other persons who appear to the Minister to have ability and experience in matters relating to the activities of the Fund (hereinafter referred to as "selected members").

Chairman and
deputy
Chairman.

2.—(1) The Minister shall appoint—

- (a) the Financial Secretary to be chairman of the Board; and
- (b) a deputy chairman from among the other members.

(2) In the case of the absence or inability to act of the chairman, the deputy chairman shall exercise the functions of the chairman.

(3) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman, the remaining members shall elect one of their number to act as chairman of that meeting.

Term of
Office.

3. Subject to the provisions of this Schedule, a selected member of the Board shall hold office for a period not exceeding three years and each such member shall be eligible for re-appointment.

Acting
appointments.

4. The Minister may appoint any person to act in the place of any member of the Board in the case of the absence or inability to act of such member.

Resignation.

5. A selected member of the Board may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

Revocation
of
appointments.

6. The Minister may at any time revoke the appointment of a selected member if he considers it expedient so to do.

Gazetting of
appointments.

7. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

Leave of
absence.

8.—(1) The Minister may, on the application of any selected member of the Board, grant leave of absence to such member.

(2) The appointment of a selected member shall be regarded as terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of the Board.

Procedure
and meetings.

9.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business (but at least six meetings shall be held within each financial year) and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The chairman may at any time call a special meeting of the Board to be held within seven days of a written request for the purpose addressed to him by any two members of the Board.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman in accordance with paragraph 2(3) shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected as aforesaid to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall be one-half the number of the membership.

(5) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.

(6) Minutes in proper form of each meeting of the Board shall be kept.

(7) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

Disclosure of interest. 10. A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Board shall—

- (a) disclose the nature of his interest at a meeting of the Board; and
- (b) not take part in any deliberation or decision of the Board with respect to that matter.

Appointment of committees. 11.—(1) The Board may appoint such committees as it thinks fit, consisting wholly or partly of members of the Board and may delegate to such committees such of the Board's functions as it thinks fit.

(2) A delegation under subparagraph (1) shall not prevent the exercise by the Board of any function so delegated.

Remuneration of directors. 12. There shall be paid to the chairman and each member of the Board such remuneration, if any (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

Protection of office. 13. No act done or proceeding taken under this Act by the Board shall be questioned on the ground of—

- (a) the existence of any vacancy in the chairmanship of, or any defect in the constitution of, the Board; or
- (b) any omission, defect or irregularity not affecting the merits of the case.

Protection of members of Board. 14.—(1) No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of the operation of the Board.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this paragraph, the Fund shall be liable to the extent that it would be if that member were an employee or agent of the Fund.

Office of
member not
public office.

15. The office of a selected member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.”.

Passed in the House of Representatives this 28th day of November, 2006.

MICHAEL PEART
Speaker.

Passed in the Honourable Senate this 14th day of December, 2006.

SYRINGA MARSHALL-BURNETT, C.D, J.P.
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.

Clerk to the Houses of Parliament.