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PETROLEUM EQUALISATION FUND (MANAGEMENT BOARD, ETC.) ACT

ARRANGEMENT OF SECTIONS

SECTION

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SCHEDULE

Composition, etc., of the Petroleum Equalisation Fund Management Board

An Act to establish the Petroleum Equalisation Fund which is to be applied for the reimbursement of petroleum marketing companies for any losses suffered by them arising from the sale of petroleum products at uniform prices throughout Nigeria and a Management Board to manage the affairs of the Fund.

[1975 No. 9.]

[15th October, 1975]

[Commencement.]

1. Establishment of the Fund

There is hereby established a Fund to be known as the Petroleum Equalisation Fund (in this Act referred to as "the Fund") into which shall be paid-

- (a) any net surplus revenue recovered from oil marketing companies pursuant to this Act; and
- (b) such sums as may be provided for that purpose by the Federal Government.

2. Utilisation of the Fund

The Fund shall be utilised for the reimbursement of oil marketing companies for any loss sustained by them solely and exclusively as a result of the sale by them of petroleum products at uniform prices throughout Nigeria being prices fixed by the Minister pursuant to section 6 (1) of the Petroleum Act.

[Cap. P10.]

3. Establishment, etc., of Petroleum Equalisation Fund Management Board

(1) There shall be, for the purpose of administering the Fund in accordance with the provisions of this Act, a body to be known as the Petroleum Equalisation Fund Management Board (in this Act referred to as "the Board").

(2) The Board shall be a body corporate with perpetual succession and a common seal.

(3) The Board may-

- (a) sue and be sued in its corporate name;
- (b) hold and acquire property whether movable or immovable.

(4) The provisions of the Schedule to this Act shall have effect with respect to the composition of the Board and the other matters contained therein.

[Schedule.]

4. Secretary

(1) The Board shall, from time to time, appoint a fit person to be called the secretary of the Petroleum Equalisation Fund Management Board.

(2) The secretary shall be the chief administrative officer of the Board and, subject to the directions of the Board, shall be responsible for-

(a) determining, at such intervals as the Board may direct, the net surplus revenue recoverable from any oil marketing company and accruing to that company from the sale by it of petroleum products at such uniform prices as may be fixed by the Minister pursuant to section 6 (1) of the Petroleum Act;

[Cap. P10.]

(b) determining the amount of reimbursement due to any oil marketing company which has suffered a loss as a result of the operation of the enactment as aforesaid;

(c) the payment of all disbursements authorised under or by virtue of this Act;

(d) accounting for all moneys collected, paid or otherwise expended under this Act;

(e) carrying out such other duties as may, from time to time, be specified by the Board.

(3) The Board may also, from time to time, appoint as employees of the Board such number of persons as may be necessary for the administration of this Act, who shall be subject to the general control of the secretary and who shall perform such duties as the secretary may direct.

5. Calculation of surplus revenue recoverable

The net surplus revenue recoverable from an oil marketing company under this Act shall be calculated by reference to the volume of the affected products sold on zonal basis and to the amount by which the uniform prices at which the products were sold exceeded, or were less than, the prices of those products prevailing immediately before the fixing of the uniform prices of the products.

6. Prescribed dates for payment and penalty for non-payment

(1) The Board shall, from time to time, by notice served by registered post on the oil marketing company concerned, specify the date on which any net surplus revenue due from that oil marketing company shall be paid to the Board.

(2) If any sum is not paid within 21 days of the specified date, a sum equal to ten *per centum* of the amount unpaid shall be added for each month or part of a month after the date on which payment should have been made.

(3) The Board may, if it thinks fit, remit in whole or in part any penalty imposed under this section.

7. Accounts and audit

(1) The Board shall keep proper accounts and proper records in relation thereto and shall prepare in respect of each financial year a statement of accounts in such form as the Minister may direct.

(2) The Board shall not later than six months from the end of the financial year to which the accounts relate cause the accounts to be audited by auditors appointed by the Board, with the approval of the Minister.

(3) The auditors shall on the completion of the audit of the accounts of each financial year prepare and submit to the Board a report setting out their observations and recommendations on all aspects of the accounts of the Board; and the Board shall forward a copy of the report to the Minister.

8. Proceedings to recover unpaid net surplus revenue

(1) Notwithstanding any other provision of this Act, any net surplus revenue payable by an oil marketing company pursuant to this Act shall be recoverable by action as a debt owing to the Board at any time within six years from the date when payment of the sum became due.

(2) Any action for the recovery of any sum under this section may be instituted on behalf of the Board by the secretary or by any employee of the Board and where the action is instituted in a magistrate's court any person authorised by this subsection may appear and conduct the case.

(3) For the purposes of this section, the expression "net surplus revenue" includes any penalty payable or imposed for non-payment or for late payment, as the case may be.

9. Certificate as evidence

A copy of an entry in the accounts of the Board or other extract from the records of the Board shall, when certified by the secretary, be received in all courts as *prima facie* evidence of the truth of the contents thereof and, as the case may be, of the debt to the Board of any oil marketing company.

10. Returns

The secretary may, with the approval of the Board, require any oil marketing company to furnish such returns and keep such records and produce them for examination by, or on behalf of, the secretary as appear to the secretary to be necessary for the carrying out of his functions under this Act.

11. Offences and penalties

(1) Any person who fails to comply with any requirement made by the secretary under section 10 of this Act, shall be guilty of an offence and liable on conviction to a fine of ₦50,000.

(2) Any person who-

(a) knowingly or recklessly furnishes in pursuance of any requirement made under section 10 of this Act, any return or other information which is false in any material particular; or

(b) wilfully makes a false entry in any record required to be produced under that section with intent to deceive, or makes use of any such entry which he knows to be false,

shall be guilty of an offence and liable on conviction to a fine of ₦50,000 or to imprisonment for a term of five years.

(3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate (or any person purporting to act in any such capacity) he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

12. Regulations

The Minister may, with the approval of the President, make regulations generally for the purposes of this Act.

13. Interpretation

In this Act, unless the context otherwise requires-

"Board" means the Petroleum Equalisation Fund Management Board established by section 3 of this Act;

"chairman" means the chairman of the Board;

"Fund" means the Petroleum Equalisation Fund established by section 1 of this Act;

"Minister" means the Minister of Petroleum Resources;

"petroleum products" includes motor spirits, gas oil, diesel oil, automotive gas oil, fuel oil, aviation fuel, kerosene, liquefied petroleum gases and any lubricating oil or grease or other lubricant;

"secretary" means the secretary of the Board appointed pursuant to section 4 of this Act.

14. Short title

This Act may be cited as the Petroleum Equalisation Fund (Management Board, etc.) Act.

SCHEDULE

[Section 3 (4).]

Composition, etc., of the Petroleum Equalisation Fund Management Board

1. The Board shall consist of the following members, that is to say-

(a) a representative of the Ministry of Petroleum Resources, who shall be the chairman;

(b) a representative of the Federal Ministry of Finance;

(c) a representative of the Federal Ministry of Commerce; and

(d) three representatives of the petroleum marketing companies who shall be appointed by the Minister.

2. If, for any reason, the chairman is unable to be present at any meeting of the Board, he shall nominate another person from his Ministry to act as chairman for the purpose of that meeting and the person so nominated shall have the same powers as the chairman.

3. The Minister shall convene the first meeting of the Board and, subject thereto, the Board shall meet on such other occasions as it may deem necessary.

4. A member of the Board appointed pursuant to sub-paragraph (d) of paragraph 1 of this Schedule-

(a) shall hold office for two years and shall be eligible for re-appointment;

(b) may at any time, by notice addressed to the Minister, resign his office;

(c) may be removed from office by the Minister if the Minister is of the opinion that the member is for any reason unfit to continue in office or is incapable of performing his duties

(d) shall be paid out of moneys at the disposal of the Board such remuneration and allowances as the Minister with the approval of the President may determine.

5. (1) Subject to this Act and to section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the chairman to have a second or casting vote) the Board may make standing orders regulating its proceedings.

[Cap. 123.]

(2) The quorum for any meeting of the Board shall be four.

(3) The validity of any proceedings of the Board shall not be affected-

(a) by any vacancy in the membership of the Board; or

(b) by any defect in the appointment of a member; or

(c) by reason of the fact that any person not entitled to do so took part in the proceedings.

6. Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed on behalf of the Board by any person generally or specifically authorised by it for that purpose.

7. The fixing of the seal of the Board shall be authenticated by the signature of the chairman (or some other member authorised by the Board to act in that behalf) and the signature of the secretary.

8. Any document purporting to be duly executed under the seal or on behalf of the Board shall be received in evidence and presumed to be so executed unless the contrary is proved.

9. Any member of the Board who has a personal interest in any matter to be considered by the Board or in any contract or arrangement entered into or proposed to be entered into by the Board shall forthwith disclose his interest to the Board and shall not vote on any question relating to such matter, contract or arrangement.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation