



JAMAICA

No. 16 -2006

I assent,

[L.S.]

KENNETH O. HALL,
Governor-General.

21st day of December, 2006.

AN ACT to Amend the Petroleum Act.

[22nd day of 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.

Insertion of
new Part IIIA
in principal
Act.

2. The principal Act is amended by inserting next after Part III the following as PART IIIA—

“

PART IIIA.

The Petrocaribe Development Fund

Interpretation. 17A. In this Part—

“Board” means the Board of Management of the Fund, established under section 17D;

“Fund” means the Petrocaribe Development Fund established under section 17B;

“Minister” unless the context otherwise requires means the Minister responsible for finance;

“PDVSA” means *Petróleos de Venezuela S.A.*, the entity in Venezuela that supplies oil and petroleum products to Jamaica under the Petrocaribe Agreement;

“Petrocaribe Agreement” means the Energy Cooperation Agreement Petrocaribe between the Government of the Bolivarian Republic of Venezuela and the Government of Jamaica signed in Montego Bay, Jamaica on August 23, 2005 and any agreement in succession thereto.

Establishment
of the Petro-
caribe
Development
Fund.

17B.—(1) There is hereby established for the purposes of this Part, a body to be known as the Petrocaribe Development Fund which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

Second
Schedule.

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

Functions of
the Fund.

17C. The Fund shall perform the functions
of—

- (a) receiving—
 - (i) loan proceeds accruing to Jamaica under the Petrocaribe Agreement;
 - (ii) loan repayments from borrowers from the Fund; and
 - (iii) other proceeds which might accrue from the investments of the Fund;
- (b) financing projects and programmes in accordance with section 17H;
- (c) settling debt service obligations of Jamaica for the purchase of oil and petroleum products under the Petrocaribe Agreement or any other bilateral agreement or arrangement between Jamaica and the Bolivarian Republic of Venezuela.

Establishment
of Board of
Management.

17D.—(1) There shall be established for the purposes of this Part, a Board of Management of the Fund which shall, subject to the provisions of this Act, be responsible for—

- (a) the general management of the resources of the Fund within the guidelines established by the Minister;
- (b) the policy and general administration of the affairs of the Fund;
- (c) recommending to the Minister such projects and programmes to be financed from the Fund, the purposes of which fall within section 17H;

- (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 proceeds 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—

