



THE REPUBLIC OF KENYA

LAWS OF KENYA

PETROLEUM DEVELOPMENT FUND ACT

NO. 4 OF 1991

Revised Edition 2006 [1991]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

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PETROLEUM DEVELOPMENT FUND ACT

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NO. 4 OF 1991

PETROLEUM DEVELOPMENT FUND ACT

[Date of assent: 23rd May, 1991.]

[Date of commencement: 31st May, 1991.]

An Act of Parliament to provide for the establishment of a Petroleum Development Fund and the imposition of a petroleum development levy and for connected purposes

[Act No. 4 of 1991, Act No. 14 of 1991, Act No. 8 of 1996, Act No. 8 of 1997, Act No. 4 of 2004.]

1. Short title and commencement

This Act may be cited as the Petroleum Development Fund Act, 1991 and shall be deemed to have come into operation on the 1st September, 1990.

[Act No. 14 of 1991, Sch.]

2. Interpretation

In this Act, unless the context otherwise requires—

“**Commissioner**” means—

- (a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469); or
- (b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) to another Commissioner, that other Commissioner;

“**financial year**” means the period of twelve months ending on the 30th June in each year;

“**Fund**” means the Petroleum Development Fund established under section 4;

“**officer administering the Fund**” means the Permanent Secretary to the Treasury or any person appointed by him in writing for that purpose.

[Act No. 14 of 1991, Sch., Act No. 4 of 2004, s. 81.]

3. Petroleum development levy

(1) The Minister may make a petroleum development levy order imposing a levy on all petroleum fuels consumed in Kenya to be collected by the Commissioner and the order may provide for the amendment of a previous petroleum development levy order and may make different provisions in relation to different descriptions of fuel.

(2) A petroleum development levy order may contain provision as to the evidence by which a person's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by way of levy shall become due and manner in which it shall be recovered by the Commissioner.

(3) A person who fails to comply with any provision of a petroleum development levy order shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year, or to both.

[Act No. 8 of 1996, s. 57, Act No. 4 of 2004, s. 82.]

3A. Collection of levies from agents

(1) The Commissioner may, by written notice addressed to any person (in this

section called the agent) appoint him to be the agent of another person (in this section called the principal) for the purposes of collecting levies from the principal where the Commissioner is satisfied that the agent—

- (a) owes or is about to pay money to the principal;
- (b) holds money for or on account of the principal;
- (c) holds money on account of some other person for payment to the principal; or
- (d) has authority from some other person to pay money to the principal.

(2) The Commissioner shall, in the notice issued under subsection (1), specify the amount of levies to be collected by the agent, which amount shall not exceed the amount held owing by the agent for or to the principal.

(3) The Commissioner may, by notice in writing, require any person to furnish the Commissioner, within a reasonable time not being less than thirty days from the date of service of the notice, with a return showing details of any moneys which may be held by that person for or on account of a person from whom levies are due.

(4) An agent who claims to be, or to have become, unable to comply with the notice for any reason shall, as soon as may be practicable, notify the Commissioner accordingly in writing stating the reasons for his inability, and the Commissioner may accept and cancel, amend or reject the notification as he may think fit.

(5) Notwithstanding subsection (4), an agent shall be presumed to be holding sufficient money for the payment of the levies specified in the notice unless his notification under subsection (4) is accepted or amended, and in any proceedings for the collection of those levies he shall be estopped from asserting the lack of those moneys.

(6) Where an agent fails to remit any amount of levies specified in the notice, within thirty days of the date of service of the notice on him or of the date on which any moneys came into his hands for, or become due by him to, his principal, whichever is the later, and he has not complied with subsection (4) then the provisions of this Act relating to the collection and recovery of levies shall apply as if they were levies due and payable by him from the date when such levies should have been paid to the Commissioner.

(7) An agent who has made payment of levies under this section shall for all purposes be deemed to have acted therein with the authority of his principal and of all other persons concerned, and shall be indemnified in respect of that payment against any proceedings civil or criminal and all process, judicial or extrajudicial, notwithstanding any provisions to the contrary in any written law, contract or agreement.

(8) A person who, in giving a notification under subsection (4), wilfully makes any false or misleading statement, or wilfully conceals any material fact, shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of not more than three years, or to both.

(9) In this section “**levies**” means petroleum development levies under this Act.

[Act No. 4 of 2004, s. 83.]

3B. Recovery of levies by distress

(1) If a petroleum development levy remains unpaid after the time it was required under this Act to be paid, the Commissioner may authorize distress to be levied upon the goods, chattels and effects of the person who should have paid

the levy wherever those goods, chattels and effects may be found.

(2) The following provisions of the Customs and Excise Act (Cap. 472) shall apply, with necessary modifications, with respect to distress authorized under subsection (1)—

- (a) section 225(2), (3) and (4); and
- (b) the Sixth Schedule.

[Act No. 4 of 2004, s. 83.]

4. The Petroleum Development Fund

(1) There shall be established a fund to be known as the Petroleum Development Fund which shall consist of moneys appropriated by Parliament for that purpose.

(2) The Fund shall be administered by the Permanent Secretary to the Treasury or any person appointed by him in writing for that purpose.

(3) All moneys received in respect of the petroleum development levy shall be paid into the Fund.

(4) There shall be paid out of the Fund such monies as are necessary for the development of common facilities for the distribution or testing of oil products and for matters relating to the development of oil industry as the Minister may direct:

Provided that the funds are not used for purposes in competition with the private sector.

(5) The expenditure from the Fund shall be on the basis and limited to the annual budget which shall be submitted to the Treasury for approval before the beginning of the financial year to which the budget relates.

(6) All receipts, savings and accruals of the Fund and the balance of the Fund at the close of each financial year shall not be paid to the Consolidated Fund, but shall be retained for the purpose for which the Fund is established.

[Act No. 14 of 1991, Sch., Act No. 8 of 1996, s. 58.]

5. Powers and functions of the officer administering the Fund

The officer administering the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) if he thinks fit, impose conditions on the use of any expenditure authorized by him or on his behalf and may impose any reasonable prohibition, restriction or any other requirement on the use of such expenditure;
- (c) cause to be kept all proper books of accounts and other books and records related to the Fund; and
- (d) prepare, sign and transmit to the Controller and Auditor-General an account of the fund in accordance with section 18(2) of the Exchequer and Audit Act (Cap. 412).

[Act No. 14 of 1991, Sch.]

6. Regulations

The Minister may make regulations generally as may appear to him necessary or expedient for the proper carrying out of the intent and provisions of this Act.
