

THE PETROLEUM ACT, 2008

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No. 4 OF 2008

I ASSENT,

President

06 June, 2008

An Act to make provisions for importation, exportation, transportation, transformation, storage and wholesale and retail distribution of petroleum and petroleum products in a liberalized market and to provide for related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Petroleum Act, 2008 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Short
title

2.-(1) This Act shall apply to Mainland Tanzania relation to the importation, exportation, transformation, transportation, storage, distribution, wholesale trade and retail sale of petroleum and petroleum products and related activities.

Applica-
tion

(2) The provisions of this Act shall also apply to all persons dealing in petroleum and petroleum products, subject to specific exemptions which may be granted to military and other entities for reasons of national security.

(3) This Act shall not apply to the exploration, development and production of petroleum as well as to transportation, storage and transformation of such petroleum within the limits of the development area within the territory of the United Republic.

Interpre- tation	<p>3. In this Act, unless the context requires otherwise—</p> <p>“approval” means a petroleum construction approval issued under section 13;</p> <p>“Authority” means the Energy and Water Utilities Regulatory Authority also known by its acronym “EWURA” as established under section 4 of the Energy and Water Utilities Regulatory Authority Act;</p> <p>“CRPO” means the Central Registry of Petroleum Operations;</p> <p>“economic regulation” means an intervention to modify, as and when deemed appropriate, the economic behaviour of a regulated supplier aimed at narrowing choices in certain areas including prices, rate of return and methods of procurement;</p> <p>“licence” means a petroleum operating licence issued under this Act and the term “licensee” shall be construed accordingly;</p> <p>“Ministry” means the Ministry responsible for petroleum matters and the term “Minister” shall be construed accordingly;</p> <p>“NPIS” means the National Petroleum Information System established under Section 22;</p> <p>“pipeline” means a pipe or system of pipes that is used or is to be used for the transportation of petroleum and includes associated works and apparatus;</p> <p>“petroleum” means petroleum crude and any liquid or gas made from petroleum crude, coal, schist, shale, tree, peat or any produce of petroleum crude and includes condensate;</p> <p>“petroleum installations” means petroleum pipelines, petroleum refinery, processing plants, petroleum storage depots, bulk liquified petroleum gas facility, retail stations and industries that which use petroleum as feedstock ;</p> <p>“petroleum products” means organic compounds, pure or blended, which are derived from the refining or processing of petroleum crude oils, biofuels or synthetic fuels and includes—</p> <ol style="list-style-type: none">asphalts, bitumens, petroleum coke and other residual products;bunkers or heavy residual fuel oils for combustion engines or industrial heat processes, such as burners for boilers or heating furnaces;commercial gases – methane, ethane, propane, butane and other similar petroleum gases, biogas or mixtures of these gases, whether in gaseous or liquefied state;
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- (d) gasoil or automotive diesel, biodiesel, industrial marine diesels or synthetic diesel;
- (e) gasolines petrol or naphtha or bioethanal products;
- (f) kerosenes or other similar oils for illumination or combustion applications;
- (g) lubricating oils, base oils or refined and blended finished oils;
- (h) turbo fuels for jet propulsion engines;
- (i) other products or by-products of petroleum crude processing having a Flash Point lower than 120 degrees Celsius, as determined in a Pensky-Martens closed test apparatus;

"petroleum supply operations" means all operations and activities for or in connection with the importation, landing, loading, transformation, transportation, storage, distribution, wholesale or retail trade of petroleum and petroleum products, including the operations of industrial consumers who buy their products directly from wholesalers;

"recognised consumer organisation" means an organisations which is registered and officially recognised by the Fair Competition Commissioner as consumer organisation in accordance with the Fair Competition Act;

"refinery" means a distillation plant for refining petroleum crude to yield petroleum products and liquid petroleum gas;

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"specifications" has the meaning assigned to it under section 2 of the Tanzania Bureau of Standards Act;

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"standard" has the meaning assigned to it under section 2 of the Tanzania Bureau of Standards Act;

"supply chain" means all activities, operations, installations, equipment and other facilities directly or indirectly related to the petroleum supply operations;

"TBS" means Tanzania Bureau of Standards.

PART II

ADMINISTRATION AND REGULATION

4. The Minister shall, in the discharge of supervisory role under this Act –

Minister's
supervis-
ory pow-
ers

- (a) advise the Government on petroleum supply policy matters and supply strategies;
- (b) coordinate all legislative and regulatory proposals relating to petroleum supply;

- (c) in consultation with Tanzania Bureau of Standards and by order in the *Gazette*, approve the official denomination, technical specifications, standards and quality control norms for all petroleum products imported into or produced in Tanzania;
- (d) in consultation with Tanzania Bureau of Standards and by order in the *Gazette*, approve the application of technical specifications, standards and quality control norms for the protection of public health and safety, the environment and ensure the safety of operations in the supply chain;
- (e) prepare a Petroleum Emergency Supply Plan and ensure sufficient strategic reserves of petroleum and petroleum products as required by the market;
- (f) cause to be conducted studies necessary for administrative and management purposes in respect of the petroleum supply; and perform other functions assigned to him by this Act.

Functions
of the
Authority

5.—(1) The Authority shall perform technical, economic and safety regulatory functions in respect of the petroleum supply.

(2) Without prejudice to the functions conferred upon the Authority under subsection (1), the Authority may—

- (a) issue, renew, suspend or cancel construction approvals and operational licences;
- (b) monitor petroleum quality and standards;
- (c) initiate and conduct investigations in relation to technical, economic and safety issues in the delivery of service to consumers;
- (d) give any necessary directions to any person granted a licence or approval under this Act;
- (e) charge and collect fees and levies for petroleum sector charged in accordance with the Energy and Water Utilities Regulatory Authority Act;
- (f) approve applications for tariffs and prices;
- (g) prescribe code of conduct in respect of persons providing services under this Act;
- (h) prescribe and cause to be published in the *Gazette* and in at least one Kiswahili and one English newspaper technical, economic and safety standards of services;

Cap. 414

- (i) monitor environmental and safety impacts in the provision of petroleum services under this Act; and
- (j) perform other functions which are incidental or ancillary to the functions specified under this section.

(3) For the purposes of subsection (2), the Authority may make rules prescribing the manner in which any of such matters shall be implemented or undertaken.

6. A person who contravenes an order issued, direction or condition given by the Authority in relation to performance of its regulatory functions commits an offence and upon conviction shall be liable to a fine of not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

Offence
for con-
trave-
ning
Autho-
rity's
direction

PART III PETROLEUM OPERATING LICENCES

7. A person shall not perform petroleum supply operations without having obtained a licence in accordance with the provisions of this Act.

Obliga-
tion to
obtain a
licence

8.-(1) A person shall, for purposes of obtaining a licence for one or more activities in the supply chain, apply for an operational licence, to the Authority.

Applica-
tion for
a licence

(2) The procedure for filing, evaluating and approving the applications and the documents as submitted by the applicant shall be as prescribed by regulations.

(3) During the process of application, evaluation and approval, all applicants shall be treated equally without any discrimination or preferences, and the Authority may not require or impose any terms or conditions which are not specified or authorised by this Act.

(4) Prior to the issuance of a licence under this section, the applicant shall comply with all necessary environmental requirements as provided for under the Environmental Management Act.

Cap. 191

Approval
of appli-
ca-tion

9.-(1) The Authority shall, after due evaluation of the application and in a prescribed form, issue a licence which may be attached with such conditions as the Authority may find necessary.

(2) The Authority shall, when considering application for a licence take into account-

- (a) the contribution of the proposed activities to meeting the future petroleum supply needs of customers;
- (b) the consistency of the proposed activities with the Tanzanian Energy Plan and Strategies;
- (c) the contribution of the proposed activities to competitive conditions in the petroleum supply industry;
- (d) the social and environmental impacts of the proposed activities;
- (e) the impact that the proposed activities may have on health and safety of employees and the public;
- (f) the legal, technical, economic and financial capacity of the applicant to conduct the proposed activities;
- (g) the costs of the activities and the effect on petroleum prices to customers;
- (h) any representations and objections to the proposed activities made by the public; and
- (i) other public interests which may be affected by the proposed activities.

(3) Where the Authority refuses to approve a licence under subsection (1) it shall, in writing, inform the applicant reasons for the refusal.

(4) The Authority shall, within forty days from a date of receipt of application, notify the applicant of the approval or refusal of the application.

Duration
of
licence

10.-(1) A licence shall be valid until the completion of the works and its final acceptance by the Authority.

(2) A licence shall have duration of five to twenty years, depending on the type of activity covered, and may be renewed.

(3) The applicant shall, upon renewal of a licence, pay a prescribed fee to the Authority.

11.—(1) A licence shall not be assigned to or transferred from the holder to another person without an approval by the Authority for that purpose.

Transferring of licence

(2) Without prejudice to subsection (1) a change of ownership of a firm in relation to which licence has been issued shall require approval of the Authority.

12. A licence may be—

- (a) suspended by the Authority in case of violations of provisions of the Act relating to protection of occupational health, public safety and the environment or for any other reasons provided for under this Act; or
- (b) revoked by the Authority or be automatically terminated if a holder fails to remedy or desist from an act constituting violation within a prescribed time.

Suspension, revocation or termination of licence

PART IV

APPROVAL OF WORKS FOR THE CONSTRUCTION OF PETROLEUM INSTALLATIONS

13.—(1) Any person intending to construct a petroleum installation or petroleum carriage facility shall, apply in writing to the Authority for an approval.

Application for construction approval

(2) An application under subsection (1) shall—

- (a) state the name and address of the owner of the proposed pipeline, refinery, bulk liquefied petroleum gas facility;
- (b) be accompanied by three copies of plans and specifications for the proposed pipeline or refinery facilities;
- (c) in the case of a pipeline—
 - (i) specify the points between which the proposed pipeline is intended to run and the full delineation of its “right of way”
 - (ii) state what is to be transported by the proposed pipeline; in the case of a refinery, petroleum storage depots or pro-

processing plants facility, specify the location, type and capacity; and

(d) contain such other details as may be prescribed by the Authority.

(3) The Authority shall consider every application received under this section and if satisfied and by notice in the *Gazette*, issue an approval for a licence as applied for.

(4) The approval shall be subject to such conditions, as may be prescribed by the Authority.

(5) Where the Authority refuses to grant an approval under this section, it shall notify the applicant and state reasons for such refusal.

Approval
of appli-
ca-tions

14.-(1) The Authority shall, after due evaluation of the application and in a prescribed form, issue an approval which may be attached with such conditions as may be necessary.

(2) Where the Authority refuses to issue an approval under subsection (1) it shall, in writing, inform the applicant reasons for such refusal.

(3) The Authority shall, within forty days from the date of receipt of application, notify the applicant of the approval or refusal of application.

Expiry
of con-
struc-
tion
approval

15. Where, after an approval to construct petroleum installation has been granted, the execution of the works, has not commenced within twelve months from the date on which the approval was granted or at the expiry of any extended period which the Authority may allow, the approval shall cease to have effect.

Obliga-
tions to
construct
pipelines
within
storage
depots,
pipeline
facilities
or refin-
ery

16.-(1) In the case of any emergency works for the construction of a pipeline, the execution thereof may, subject to any relevant law, be effected without any authorization by the Authority, provided that as soon as practicable after the works has been executed, the owner of the pipeline shall inform the Authority in writing of the works attaching

copies of detailed drawings of such works and the route intended to be taken by the pipeline and its "right of way".

(2) No approval shall be required for the construction of pipelines within a petroleum installation, unless the installation is pipeline.

17.-(1) The Authority shall, before granting approval under section 14, consider—

Condi-
tions for
granting
approval

- (a) the relevant Government policies;
- (b) the technical and financial capability of the applicant; and
- (c) any public interest that in the Authority's opinion, may be affected by the granting or the refusal of the approval being sought.

(2) The approval may contain—

- (a) such terms and conditions as the Authority deems appropriate;
- (b) the name of a person who is authorized to execute the works; location; and
- (c) any conditions to be satisfied before any works authorized by the approval.

(3) Subject to subsection (2), no person shall, before the conditions are satisfied, use any works for which the execution was authorized by the Authority except to the extent specified in a notice given by the Authority.

(4) A notice given by the Authority stating that the conditions specified in the approval under paragraph (e) of subsection (2) have been satisfied shall be conclusive evidence for the purposes of this Act that conditions have been fulfilled.

18.-(1) The Authority may, by notice in the *Gazette*, withdraw or suspend an approval under this Part if any term or condition thereof has not been complied with.

Revoca-
tion or
suspen-
sion of
an
approval

(2) Where the Authority intends to withdraw, suspend or amend an approval under this section shall, at least twenty-one days before the date of the intended revocation or suspension notify the holder of such intention specifying the reasons thereof.

(3) Notwithstanding the provisions of subsections (1) and (2), the Authority may, by notice in the *Gazette*, withdraw or suspend an approval under this Part on the application or with the consent of the holder of such approval.

(4) The Authority may, by notice in the *Gazette*, reinstate an approval withdrawn or suspended under subsection (1) if satisfied that the reasons for the revocation or suspension are no longer existing.

PART V

OBLIGATIONS OF A HOLDER OF AN APPROVAL OR LICENCE

Compliance with laws, regulations, standards and specifications

19. All participants in the supply chain and persons working under their direction as well as the installations and equipment used, shall comply with all relevant laws, standards and technical specifications relating to protection of occupational health, public safety and the environment.

Inspection and information

20.-(1) A holder of an approval or licence shall submit or make available for inspection reports and records, and furnish such necessary information as may be required for the purpose of carrying out the provisions of this Act.

(2) The holder shall maintain an address in Mainland Tanzania to which communications may be sent and furnish the same to the Authority.

(3) For the purpose of carrying out inspections or other monitoring and enforcement actions, the Authority may at any time, enter upon any area, premises or working place where construction works or petroleum supply operations are being performed by a licensee.

National Petroleum Information System

21.-(1) There shall be established a National Petroleum Information System (NPIS) which shall be organised and maintained by the Authority.

(2) The NPIS shall consist of an integrated and centralised information system using modern data processing technology and covering all petroleum supply operations and installations, the principal market

principal market activities and statistics of the country as well as international reference data for the purpose of –

- (a) serving as a strategic planning tool for the Government and other interested parties; and
- (b) informing periodically the public about the status of the petroleum products market.

22.-(1) All licensees shall submit to the Authority periodic reports and other information for the NPIS as may be prescribed.

Reports and information to be submitted

(2) All information contained in the NPIS shall be available for inspection by public with the exception of information, which has been qualified as confidential in order to protect proprietary market data or for other reasons as may be determined by the Authority.

23. The Authority shall establish and maintain a Central Registry of Petroleum Operations (CRPO) which shall form part of the NPIS containing–

Central Registry of Petroleum Operations

- (a) information on petroleum supply and use by type, quantity and region;
- (b) information on petroleum importation by type, quantity and source; and
- (c) information on petroleum exportation by type, quantity and destination;
- (d) information on refinery products by type, quantity and source;
- (e) information relating to petroleum or petroleum products in transit; and
- (f) a record of all applications, grants, variations, assignments transfers and suspensions;
- (g) revocations of approval and licences; and
- (h) all relevant information on the holders and their operations and installations.

PART VI

ASSURANCE OF FAIR COMPETITION

24.-(1) Subject to the provisions of the Energy and Water Utilities Regulatory Authority Act, all petroleum operations shall be subject to the provisions of the Fair Competition Act in relation to –

Prohibition against activities contrary to princi-

ples of
fair com-
peti-tion
Cap.414

- (a) the formation of cartels;
- (b) barriers to entry and exit;
- (c) abuse of dominant position and market power;
- (d) formation of mergers and acquisitions for anti-competitive purposes;
- (e) attempts to control prices;
- (f) the creation of artificial shortages of products or services; and
- (g) other restrictive trade practices as defined in that Act, with intention to contravene the principles of fair competition or impeding the functioning of a free market for petroleum products within the country.

Cap.285

(2) Subject to the provisions of the Fair Competition Act, all participants in the supply chain shall sell products and offer services to all interested persons without undue delay and without any form of discrimination by means of quality, quantity, price and any other form of discrimination.

(3) The Fair Competition Commission shall monitor conditions of the market and trade practices of participants in the supply chain.

Condi-
tions for
unused
capacities
of third
party
facilities

25. In order to foster a competitive petroleum products market for future participants in the supply chain, the conditions hereunder shall apply-

- (a) a licensee who is the operator or owner of a facility with unused capacity shall apply to the Authority for approval of tariff for the use of such capacity and other reasonable terms and conditions for the use of the facility.
- (b) a licensee may offer access of unused capacity to other users on terms and conditions as may be approved by the Authority; and
- (c) users of unused capacity shall hold a licence required for the respective operation and provide proof of his capability to pay the tariff and fulfill other financial and technical conditions as agreed upon with the owner or operator of the facility.

PART VII

PUBLIC HEALTH AND SAFETY AND PROTECTION
OF THE ENVIRONMENT

26.-(1) The Authority shall, in consultation with the TBS, develop and carry out a program of gradual adoption and adaptation of the prevailing international standards, technical specifications and codes of practice in order to upgrade the infrastructure of the supply chain, the quality of petroleum products and the services provided by the participants to the standards of the international petroleum industry.

Adoption
and adap-
tation of
international
standards
and speci-
fications

(2) The standards, specifications and codes as established by the organizations recognized by the international petroleum industry in matters of public health and safety and protection of the environment shall be adopted and declared as compulsory standards in accordance with the provisions of the Tanzania Bureau of Standards Act.

Cap.130

(3) The Minister may, after consultation with the Authority, approve temporary application of certain international standards, specifications or codes of practice if the relevant international standards, specifications or codes of practice have not been formally adopted according to subsection (1).

27.-(1) The Authority shall, in co-ordination with the competent environmental authorities, establish the classification of petroleum supply operations or projects within the supply chain which shall require environmental impact studies as a condition for issuing an approval or a licence issued under this Act.

Environ-
mental
Impact
Assess-
ment

(2) In the event that an Environmental Impact Assessment is required or conditions are to be met in accordance with the Environmental Management Act, an applicant of an approval or licence shall fulfill such requirements or conditions.

Cap. 191

28.-(1) A custodian of the product where there is a major petroleum or petroleum product spill, shall report the incident to the Authority within twenty four hours after the spillage of the products.

Petroleum
and
petroleum
products
spill

Cap. 191 (2) The holder or owner of the product shall urgently take all appropriate steps to clean-up the petroleum product spill, and pay for the costs in accordance with the Environmental Management Act.

(3) Where the holder or person referred to under subsection (2) fails to comply to the satisfaction of the Authority within the time specified in the notice or within such further period as the Authority may allow, the Authority may, in writing, cause such steps to be taken as may be necessary to clean up the spill and recover the costs incurred in accordance with the relevant laws.

(4) This section shall apply to an incident—

(a) constituting or arising from, whether wholly or in part, a petroleum product spill or involving the risk of a petroleum product spill; or

(b) arising from the cleaning-up or restoring of relevant premises.

(5) Where a Government institution or a local authority incurs costs or expenses as a result of the occurrence of an incident to which this section applies, any such costs or expenses reasonably incurred by the relevant authority shall be recovered as a Government debt in accordance with the relevant laws.

(6) The costs or expenses may be recovered—

(a) in the case of costs or expenses incurred by a local authority; or

(b) in the case of costs or expenses incurred by the Government institution concerned.

(7) The costs or expenses incurred may be recovered from:

(a) in the case of an incident referred to in paragraph (a) of subsection (4)—

(i) the person who was the owner of the petroleum product at the time of the incident;

(ii) the person who was in control or possession of the petroleum product at the time of the incident; or

- (iii) the person who caused the incident;
- (b) in the case of an incident referred to in paragraph (b) of subsection (4)–
 - (i) the relevant licence or approval holder;
 - (ii) the owner of the relevant premises, buildings, structures or plant where such spill originated; or
 - (iii) the person who caused the incident.
- (8) Notwithstanding any provision of this subsection, costs and expenses shall not be recovered against a person who proves:–
 - (a) that the incident was due to some causes beyond the person's control or to the act or default of another person;
 - (b) that such person could not by the exercise of reasonable diligence have prevented the occurrence of the incident; or
 - (c) that the incident is not attributable to an act or omission of a person who was an employee or agent of that person at the time when the incident occurred.
- (9) For the purpose of this section "major petroleum or petroleum product spill" means a petroleum or petroleum product spill of more than two hundred litres per spill.

29.-(1) The Minister may, for purposes of responding to accidents, natural disasters or other interruptions or distortions of the petroleum product supply, cause a Petroleum Emergency Supply Plan to be prepared in close co-operation with other competent Government authorities and the participants in the supply chain.

National
Petroleum
Emergency
Supply
Plan

(2) In the case of emergency for reasons referred to in subsection (1), the Minister may, temporarily intervene in the supply chain or implement other measures or restrictions provided for in the Petroleum Emergency Supply Plan.

(3) Measures under subsection (1) may also be taken in the event that participants in the supply chain are seriously endangering the functioning of the competitive supply system by trying to establish monopolies or to control segments of the market.

(4) The details of the elaboration, content and implementation of the Plan shall be made in the regulations.

Mainten-
ance of
mini-
mum
stock
restrate-
gic
reserve

30.-(1) The Minister may for the purposes of ensuring reliability of supply of petroleum and petroleum products in the country cause strategic reserves of petroleum products to be maintained in sufficient quantities and at a location that the Minister deems proper.

(2) For purposes of reliability and continuity of the petroleum supply within the country, the Minister, may after consultation with the Authority and by order in the *Gazette*, direct all licensees, including industrial consumers buying directly from wholesale distributors, to maintain at their own expense minimum security stocks of petroleum or of all or certain petroleum products in their custody.

(3) Without prejudice to subsections (1) and (2) the Tanzania Development Corporation shall at all times keep and maintain national strategic reserve of petroleum and petroleum products.

PART VIII

PETROLEUM PRODUCTS PRICES

Monito-
ring of
petro-
leum and
petro-
leum
product
prices
Caps.
414
and 285

31. The prices for petroleum and petroleum products throughout the supply chain shall be governed by the rules of supply and demand subject to the provisions of the Energy and Water Utilities Regulatory Authority Act and the Fair Competition Act.

Imposi-
tion of
petroleum
fee

32.-(1) There shall be a fee to be known as the petroleum fee.

(2) The petroleum fee shall be charged on such petroleum products as shall be prescribed in the regulations by the Minister upon consultation with the Minister responsible for finance.

(3) The fee shall be collected by the Tanzania Revenue Authority or such other institution as may be prescribed by the Minister and

deposited in the Energy Account in the Ministry established for the purpose of energy development.

PART IX PETROLEUM SUPPLY OPERATIONS

Importation

33.-(1) No person shall import petroleum or petroleum products unless the importation is conducted through efficient procurement.

Efficient
procu-
rement

(2) The efficient procurement referred to in subsection (1) shall include such conditions or requirements as the Minister may prescribe.

34. Petroleum and petroleum products imported pursuant to this Act shall comply with such specifications as the Minister may, by regulations, prescribe.

Petroleum
and
petro-
leum
products
specifi-
cations

35. The Authority shall establish procedures for off-loading of petroleum and petroleum products by taking into consideration -

Off-load-
ing

- (a) sensitivity of product;
- (b) national stock position; and
- (c) non-discrimination amongst licensees.

36. Any person who contravenes any provision under this Sub-Part commits an offence and shall be liable on conviction to a fine not less than one million shillings or twenty percent of the value of the total consignment whichever amount is greater or to imprisonment for a term not exceeding two years or to both.

Penalty

(b) Transportation

37. No vehicle, vessels or facility shall transport petroleum or petroleum products unless such vehicle, vessels or facility complies with the specifications made by the Minister.

Vehicle's
or ves-
sel's
specifica-
tions

Petroleum and petroleum products to be used for intended purposes

38.-(1) Any petroleum or petroleum product intended for export or designated for specific project shall be directed or used for such purposes.

(2) For the purposes of subsection (1) the term –

- (a) “export” means the taking of petroleum or petroleum products outside boundaries of the United Republic and includes the taking of such petroleum or petroleum product from one point to another within the United Republic; and
- (b) “designated specific project” means projects undertaken within the United Republic in respect of which there is agreement for exemption or remission of taxes or toll.

Penalty

39. Any person who contravenes sections 39 and 40 commits an offence and shall be liable on conviction to a fine of not less than two million shillings for every day during which the contravention occurs or continues and the court may order forfeiture of the petroleum or petroleum premises, vessel or vehicle used in the contravention of the offence to the Government or otherwise dealt with in such other manner as the court may deem proper.

Ships to take precautions

40.-(1) Any ship carrying petroleum or petroleum product within a port shall observe such precautions as may be required.

(2) Any owner or master of the ship who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million shillings or imprisonment for a term not exceeding two years.

(c) Transformation

Refining of petroleum

41. No petroleum shall be distributed unless it has been transformed in accordance with the specification made by the Minister.

Blending of biofuel

42.-(1) The Minister may, by regulations, make specification of petroleum products for the blending of biofuel and synthetic fuels and lubricants.

(2) Any person who contravenes the specifications referred to under subsection (1) commits an offence, and shall be liable on conviction to a fine of not less than ten million shillings or twenty percent of the value of the total consignment, whichever amount is greater or imprisonment for a term not less than five years or to both.

(d) Storage

43.-(1) Every person storing petroleum or petroleum products shall ensure that the petroleum or petroleum products, as the case may be is stored in accordance with the licence issued by the Authority.

Storage of petroleum or petroleum products

(2) Any unused capacity may be open to other licencees in the manner stipulated under this Act.

(3) Any person who contravenes the specifications referred to under subsection (1), commits an offence and shall be liable on conviction to a fine of not exceeding five million shillings for every day during which the contravention occurs or continues and the court may order forfeiture of the petroleum, premises, vessels or vehicle used to the Government or otherwise deal with in such other manner as it thinks proper.

(e) Distribution

44.-(1) A person may distribute petroleum or petroleum products only if such petroleum or petroleum products conforms with the quality, safety and environmental specification set by the Minister.

Petroleum and petroleum products to conform with quality, safety and environmental specification

(2) Subject to subsection (1), any person who—

- (a) tempers with the quality of petroleum or petroleum products;
- (b) conducts petroleum or petroleum products business without safety equipment; or
- (c) sells petroleum or petroleum products in unauthorized premises;

commits an offence and shall be liable on conviction to a fine of not exceeding ten million shillings or to imprisonment for a term of five years or to both.

Recovering of

Recover-
ing of
petroleum
and
petroleum
products

45. Notwithstanding any provision of this part, the Minister may, in consultation with the Authority make regulations prescribing the method whereby petroleum or petroleum products unfit for use can be recovered.

PART X

OFFENCES AND PENALTIES

Offences

46. Any person who—

- (a) refuses, delays or fails to produce any documents or other information relating to petroleum supply operations and installations which he may be required to produce under this Act;
- (b) knowingly furnishes documents or other information which are false or misleading in any material aspect, whether upon demand or otherwise;
- (c) publishes or otherwise discloses any information in contravention of any provision of this Act;
- (d) resists, hinders or obstructs an inspector or other officer of the Authority or any other person who acts on behalf of the Authority, to enter or inspect any premises or to stop and search any vehicle or to examine any books, accounts or other records or to otherwise comply with his duties and rights under this Act;
- (d) refuses, delays or fails to comply with any order, prohibition, direction, demand, requirement or notice lawfully made, served, published or otherwise given under this Act, commits an offence.

General
penalties

47.—(1) Any person who commits an offence for which no specific penalty is prescribed shall on conviction be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both.

(2) Upon a second or subsequent conviction of any offence under this Act that person shall be liable to a fine of not less than seven million shillings or to imprisonment for a term of not less than three years or to both.

48.—(1) Where a person charged with an offence under this Act is a body corporate, every person who, at the time of commission of the offence was a director, manager or as the case may be an officer of such body corporate, may be charged jointly in the same proceedings with the body corporate.

Joint liability

(2) Any partner in any firm shall be answerable and jointly and severally liable for the acts or omissions of any other partner in the same firm in so far as they concern the firm.

(3) Any employer who employs in or for his operation or place of business an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such employees in so far as they concern the business of the employer.

49. Any consumer of petroleum products or any recognised consumer organisation may initiate action against any licensee for offences under this Act, if that consumer had previously filed a complaint with the Authority and is aggrieved by the decision of the Authority in response to such complaint.

Initiation of actions by consumers

50.—(1) Where any person has committed any offence under this Part other than an offence under this Act the Authority may, subject to such directions as the Minister may give on that behalf, at any time prior to the commencement of the hearing by any court of any charge in relation to the offence committed, compound such offence and order such person to pay such sum of money, not exceeding one half of the amount of the fine to which such person would have been liable if he had been convicted of such offence.

Compounding of offences by Authority

(2) The Authority shall not exercise powers under this section unless the person concerned admits in writing that he has committed the offence for which he is charged.

(3) Where the Authority compounds an offence under this section, then the order referred to in subsection (1) of this section shall—

- (a) be reduced in writing and there shall be attached to it the written admission and request referred to in subsection (2) and copy of such order shall be given, if he so requests, to the person who committed the offence;

- (b) specify the offence committed, the sum of money ordered to be paid, and the date or dates on which payment is to be made;
- (c) be final and shall not, subject to the provisions of subsection (3), be subject to any appeal;
- (d) not be invalid by reason only of non-compliance with any direction given by the Minister; and
- (e) be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(3) Where any person is aggrieved by any order made under subsection (1), he may, within thirty days of such order being made, appeal against such order to the High Court, and the provisions of the Criminal Procedure Act shall apply in the same manner to every such appeal as if it were an appeal against a sentence passed by a district court in the exercise of its original criminal jurisdiction.

(4) Where the Authority compounds any offence under this section, the person concerned shall not be liable to any prosecution in respect of such offence and, if any such prosecution is brought in the court, it shall be a good defence for such person to prove that such offence has been compounded under this section.

PART XI

DISPUTES SETTLEMENT

Settle-
ment of
disputes

51.—(1) A dispute arising between licensees in petroleum supply industry or between licensees and the Authority or any other Government authority relating to application of this Act may be brought before the Fair Competition Commission for mediation.

(2) A dispute arising between the licensees in petroleum supply industry and the Authority regarding application of this Act may be brought before the Fair Competition Tribunal for determination.

52.—(1) Any person who is aggrieved by the decision of the Authority, may appeal to the Fair Competition Tribunal in accordance with the provisions of Part XIII of the Fair Competition Act.

Appeal
to the
Fair
Competition
Tribunal

(2) Notwithstanding the right of appeal conferred by subsection (1), any person aggrieved by an act of the Authority shall not have the obligation to refer the dispute to the Fair Competition Commission for mediation as a condition for being heard by the Fair Competition Tribunal.

PART XII

MISCELLANEOUS PROVISIONS

53.—(1) The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act.

Regulations

(2) Regulations under this section shall be published in the *Gazette*.

54. The Minister may, in consultation with the Minister responsible for food and the Minister responsible for land, make regulations prescribing the use of food crops and the use of land for production of bio-fuel.

55.—(1) The Petroleum (Conservation) Act is hereby repealed.

Repeal
Cap. 392

(2) Notwithstanding the repeal of the Petroleum (Conservation) Act, all subsidiary legislation, rules or exemptions made or given or deemed to have been given or made under that Act shall be deemed to have been made or given under this Act, and shall remain in force until revoked by subsidiary legislation made under this Act or until otherwise expire or cease to have effect.

56.—(1) Where any lawful act or thing required or permitted to be done by or under this Act was done before the effective date of this Act, it shall be deemed to have been done under or by virtue of this Act.

Transitional
provisions,
and savings

(2) The current participants in the supply chain shall, whether licensed or not under the Petroleum Rules, or any other applicable legislation, and within a year adjust their operations and facilities in order to comply with the provisions of this Act.

(3) Subject to subsection (2) after the expiration of the period, each participant in the supply chain shall apply for the licence and permit in accordance with this Act.

Passed in the National Assembly on the 9th April, 2008



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Acting Clerk of the National Assembly