

HERITAGE AND STABILISATION FUND ACT

CHAPTER 70:09

Act
6 of 2007

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

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HERITAGE AND STABILISATION FUND ACT

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CHAPTER 70:09

HERITAGE AND STABILISATION FUND ACT

6 of 2007. **An Act to provide for the establishment and management of the Heritage and Stabilisation Fund and for matters related thereto.**

Commencement. [15TH MARCH 2007]

Short title. **1.** This Act may be cited as the Heritage and Stabilisation Fund Act.

Interpretation. **2.** In this Act—

Ch. 79:02. “Board” means the Board of Governors established under section 4;
“Central Bank” means the Central Bank of Trinidad and Tobago established under the Central Bank Act;

“crude oil” means petroleum in the liquid state, including condensates and natural gasoline physically separated from a natural gas stream;

“Fund” means the Heritage and Stabilisation Fund established under section 3;

“Minister” means the member of the Cabinet to whom responsibility for finance is assigned and Ministry shall be construed accordingly;

“natural gas” means petroleum in the gaseous state;

“petroleum” means any mixture of naturally occurring hydrocarbons and hydrocarbon compounds;

“petroleum operations” means the operations related to the various phases of the petroleum industry, and includes exploring for, producing, refining, transporting and marketing petroleum or petroleum products or both, and manufacturing and marketing of petrochemicals; but does not include mining operations involving the extraction of petroleum from bituminous shales, tar sands, asphalt or other like deposits;

“petroleum profits tax” means the tax imposed by Part I of the Petroleum Taxes Act;

Ch. 75:04.

“petroleum revenues” means the aggregate of the supplemental petroleum tax, petroleum profits tax and royalties but does not include unemployment levy, the oil impost and signature bonuses;

“production business” means the business of exploration for, and the winning of, petroleum in its natural state from the underground reservoir, and includes—

(a) the physical separation of liquids from a natural gas stream; and

(b) natural gas processing from a natural gas stream, produced by the production business of a person engaged in the separation or processing, but does not include the liquefaction of natural gas;

“royalties” means the royalties paid by virtue of a licence or sub-licence granted or issued under the Petroleum Act;

Ch. 62:01.

“supplemental petroleum tax” means the tax on petroleum operations imposed by Part II of the Petroleum Taxes Act.

3. (1) There is hereby established the Heritage and Stabilisation Fund to be denominated in the currency of the United States of America.

Establishment and purpose of Fund.

(2) The purpose of the Fund is to save and invest surplus petroleum revenues derived from production business in order to—

(a) cushion the impact on or sustain public expenditure capacity during periods of revenue downturn whether caused by a fall in prices of crude oil or natural gas;

(b) generate an alternate stream of income so as to support public expenditure capacity as a result of revenue downturn caused by the depletion of non-renewable petroleum resources; and

- (c) provide a heritage for future generations, of citizens of Trinidad and Tobago, from savings and investment income derived from the excess petroleum revenues.

Appointment, tenure and remuneration of Board.

4. (1) The President on the advice of the Minister shall appoint a Board of Governors for the Fund.

(2) The Board shall comprise of five members, to be selected from among persons of proven competence in matters of finance, investment, economics, business management or law, including an officer of—

- (a) the Central Bank; and
(b) the Ministry.

(3) The President shall appoint a member to be the Chairman of the Board.

(4) Members of the Board shall be appointed for a term of three years and shall be eligible for reappointment.

(5) In addition to the competencies mentioned in subsection (2), each member shall be required to satisfy the criteria for a fit and proper person contemplated in paragraphs (2) and (3) of the Second Schedule of the Financial Institutions Act.

Second Schedule. Ch. 79:09.

(6) The members of the Board shall be paid such remuneration and allowances as may be determined by the Minister.

Meetings and quorum.

5. (1) The Board shall meet at such times and places as may be necessary or expedient for the efficient performance of its functions save that the Board shall meet at least once in every two successive months.

(2) The Chairman may at any time call a special meeting of the Board and shall call the meeting of the Board within seven days of receiving a request in writing addressed to him by three or more members.

(3) The Chairman shall preside over meetings of the Board, but where the Chairman is unable to preside, the members present and forming a quorum may appoint a member to preside over that meeting.

(4) A meeting shall not be held without at least one member appointed in accordance with section 4(2)(a) or (b) being present.

(5) Three members shall constitute a quorum.

(6) The decisions of the Board shall be by a majority of votes of members present and in the event of an equality of votes, the Chairman or in his absence the member presiding, shall have a second or casting vote.

(7) The Board may, subject to the approval of the Minister, make rules to regulate its own procedure for the conduct of its business and these rules shall be subject to negative resolution of Parliament.

6. The Chairman may resign his office by letter addressed to the President and a member may resign his office by letter addressed to the President through the Chairman.

Resignation of members.

7. The President may terminate the appointment of a member where the member—

Termination of appointment.

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) becomes bankrupt;
- (c) discloses information contrary to section 18, or fails to disclose an interest under section 19;
- (d) is absent, except on leave granted by the Board, from three consecutive meetings of the Board; or
- (e) no longer meets the criteria for a fit and proper person within the context of section 4(5).

8. The names of the members of the Board as first constituted and every change in the membership or the termination thereof whether by death, resignation or effluxion of time or for any other reason shall be published in the *Trinidad and Tobago Gazette* and in two daily newspapers circulating in Trinidad and Tobago.

Publication of names of members in the *Gazette*.

Functions of the Board.

9. The Board shall—

- (a) determine by resolution, the governance structure and the operational and investment guidelines of the Fund based on prudential standards used by the Central Bank for investments of a similar nature;
- (b) be responsible for the management of the Fund;
- (c) review from time to time, the performance of the Fund; and
- (d) perform such other related duties as may be necessary to carry out the purposes of the Fund.

Delegation to the Central Bank as Manager of the Fund.

10. (1) The Board shall delegate its responsibility for the management of the Fund to the Central Bank.

(2) The terms and conditions of the delegation of responsibility referred to in subsection (1), shall include the matters set out in the Schedule and shall be published in the *Trinidad and Tobago Gazette* by Notification issued by the Minister.

Schedule.

Interim Revenue Stabilisation Fund to cease to exist. Ch. 69:01.

11. Upon the commencement of this Act, the moneys held in the Interim Revenue Stabilisation Fund established under the Exchequer and Audit Act shall be transferred to the Fund denominated in the currency of the United States of America, whereupon the Interim Revenue Stabilisation Fund shall cease to exist.

Resources of the Fund.

12. The resources of the Fund shall consist of—

- (a) moneys transferred from the Interim Revenue Stabilisation Fund;
- (b) petroleum revenues deposited into the Fund in accordance with section 13; and
- (c) assets acquired and earned from investments.

Deposits to the Fund.

13. (1) Where petroleum revenues collected in each quarter of any financial year—

- (a) exceed the estimated petroleum revenues for that quarter of the financial year by more than ten per cent, the currency of the United States of

America equivalent of the excess revenue shall be withdrawn from the Consolidated Fund and deposited to the Fund in accordance with section 14(1); or

- (b) exceed the estimated petroleum revenues for that quarter of a financial year but do not exceed such estimated revenues by at least ten per cent, the Minister may direct that the currency of the United States of America equivalent of all or part of the excess revenue shall be withdrawn from the Consolidated Fund and deposited to the Fund in accordance with section 14(1).

(2) The deposits referred to in subsection (1) shall be made no later than the end of the month following the quarter in respect of which the deposit was calculated.

(3) For the purposes of this section the estimated petroleum revenues, other than royalties, shall be calculated on the basis of a unit price for petroleum derived from an eleven-year moving average for prices at which crude oil and natural gas were disposed of in a current financial year, such eleven years being five years immediately prior to that current financial year together with the prices projected for the disposal of such crude oil and natural gas for the five years immediately following the current financial year.

(4) For the purposes of this section “quarter” means a three-month period ending December 31, March 31, June 30 and September 30.

14. (1) A minimum of sixty per cent of the aggregate of the excess revenues shall be deposited to the Fund during a financial year.

Allocation of deposits to fund.

(2) All revenues to be deposited into the Fund shall be a charge on the Consolidated Fund.

15. (1) Subject to subsections (2) and (3), where the petroleum revenues collected in any financial year fall below

Withdrawals from the Fund.

the estimated petroleum revenues for that financial year by at least ten per cent, withdrawals may be made from the Fund as follows, whichever is the lesser amount:

- (a) either sixty per cent of the amount of the shortfall of petroleum revenues for that year; or
- (b) twenty-five per cent of the balance standing to the credit of the Fund at the beginning of that year.

(2) The amount withdrawn from the Fund in accordance with subsection (1), shall be deposited into the Consolidated Fund within forty-eight hours of such withdrawal.

(3) Notwithstanding subsection (1), no withdrawal may be made from the Fund in any financial year, where the balance standing to the credit of the Fund would fall below one billion dollars in the currency of the United States of America, if such withdrawal were to be made.

Fund to be a public account. Ch. 1:01.

16. (1) The Fund is a public account for the purposes of section 116 of the Constitution and shall be audited annually by the Auditor General or by an auditor authorised by the Auditor General in writing for that purpose.

(2) On completion of any audit of the Fund, the Auditor General or the auditor referred to in subsection (1), as the case may be, shall immediately draw the attention of the Minister and the Board to any irregularity disclosed by the audit which, in the opinion of the Auditor General or the auditor, is of sufficient importance to justify doing so.

(3) The Auditor General shall send a copy of the audited financial statements and a report on its audit to the Minister immediately following the completion of the audit to ensure compliance with section 21(1).

Income of the Fund exempt from taxation.

17. Notwithstanding any law to the contrary the income of the Fund is not subject to any tax.

Confidentiality.

18. Except where required by a written law or in the course of proceedings in the High Court or the Magistrate's Court, no

member of the Board or any person acting on behalf of the Board shall disclose any document or information pertaining to the operation or management of the Fund.

19. (1) Every member of the Board shall give in writing notice to the Board of all direct or indirect pecuniary interests that they have or acquired in any business or in any body corporate carrying on any business involving the Fund.

Disclosure of interest.

(2) A member of the Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall—

- (a) as soon as possible after the relevant facts come to his knowledge, disclose the nature of his interest before the Board deliberates on the matter; and
- (b) shall not solicit the support of any other member of the Board to obtain an advantage in the matter being considered.

(3) Disclosure by a member of the Board under this section, shall be recorded in the minutes of the meetings of the Board and after such disclosure the member shall not—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(4) A member or person referred to in this section and section 18 who—

- (a) fails to do anything required by this section; or
- (b) unlawfully discloses any document or information pertaining to the operation or management of the Fund or uses any such document or information for his personal benefit or advantage,

commits an offence, and is liable on summary conviction to a fine of five hundred thousand dollars and to two years imprisonment.

Board to report to Minister.

- 20.** The Board shall submit to the Minister—
- (a) a quarterly investment report;
 - (b) an annual investment report; and
 - (c) a report, within one month of a request made by him,

on the operation and performance by the Fund.

Financial statements to be laid in Parliament.

- 21.** (1) Within four months of the end of the financial year, the Minister shall cause the audited financial statements in respect of the Fund to be laid in Parliament.

(2) Financial statements shall be prepared in accordance with generally accepted accounting practices and international accounting standards adopted by the Institute of Chartered Accountants of Trinidad and Tobago.

Review mechanism.

- 22.** The provisions of this Act shall be subject to review by the Minister who shall submit a report to the Parliament every five years.

[Section 10(2)].

SCHEDULE

A. Responsibilities of the Central Bank

The responsibilities of the Central Bank as Manager of the Fund shall include but not be limited to—

- (a) the management of the assets and other resources of the Fund in accordance with the Heritage and Stabilisation Fund Act, 2007 and the prudent investor standard of an investment manager, engaged in the asset management profession;
- (b) the investment of the assets and other resources of the Fund in accordance with the Heritage and Stabilisation Fund Act, 2007 and the operational and investment guidelines developed by the Board;

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- (c) the selection and retention on behalf of the Fund appropriate third-party service providers, such as, Attorneys-at-law, Auditors and Advisors in order to carry out competently, the mandate specified in the instrument of delegation;
- (d) the selection of an appropriate global custodian for the Fund;
- (e) the maintenance of records and documentary support for all investments, receipts, disbursements and other transactions relating to the management of the Fund in accordance with prevailing accounting practice;
- (f) the submission of quarterly reports to the Board on the holdings, performance and risk of the Fund no later than one month after the end of each quarter;
- (g) the submission of an Annual Report of the Fund to the Board no later than two months after the end of the financial year; and
- (h) the Report shall contain audited financial statements and an investment report on the performance of the Fund.

B. Liability of Central Bank

The Central Bank as Manager of the Fund shall not be liable for any error of judgment or for any act or omission or any loss suffered in connection with the matters to which the delegation relates, except for loss resulting from gross negligence or wilful misconduct in the performance of its obligations under the delegation nor for any loss incurred by reason of any act or omission of the custodian, external managers or any third party.

The Government shall indemnify the Central Bank against any and all losses, claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses) arising from its duties and obligations as manager of the Fund except those arising from gross negligence or wilful misconduct on the part of the Central Bank.

C. Fees

There must be specified in the instrument of delegation the annual management fee charged by the Central Bank as Manager of the Fund. That fee is to be a percentage of the market value of the Fund as agreed between the Board and the Central Bank. The management fee is exclusive of any custodian fees, broker fees, current account fees or any other third party fees that may accrue incidental to the management of the Fund.