

ACT

Supplement to the Sierra Leone Gazette Vol. CXLV, No. 34
dated 26th June, 2012

THE PETROLEUM REGULATORY AGENCY ACT, 2014

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SIGNED this 18th day of June, 2014.

DR. ERNEST BAI KOROMA,
President.

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No. 3



2014

Sierra Leone

THE PETROLEUM REGULATORY ACT, 2014.

Short title.

Being an Act to establish the Sierra Leone Petroleum Regulatory Agency to license and regulate the efficient importation, storage, transportation and distribution of petroleum so as to ensure its regular availability to consumers at reasonable prices and to provide for other related matters.

[] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

Interpretation.

1. In this Act, unless the context otherwise requires—

“Agency” means the Petroleum Regulatory Agency established by section 2;

“Board” means the Board of the Agency referred to in section 3;

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“downstream” means the petroleum sector dealing with refining and processing of petroleum, crude oil and natural gas and the importation, storage, marketing and distribution of products derived from crude oil and natural gas;

“member” means a member of the Board;

“Minister” means the Minister responsible for trade;

“petroleum” has the same meaning assigned to it in the Petroleum Act and includes liquefied petroleum gas, lubricants and similar other petroleum products;

“Secretary” means the Secretary appointed under section 17;

“trader” includes an oil marketing company and any person engaged in the petroleum business other than importer, refiner or exporter.

PART II—ESTABLISHMENT OF PETROLEUM REGULATORY AGENCY

2. (1) There is hereby established a body to be known as the Petroleum Regulatory Agency. Establishment of Petroleum Regulatory Agency.

(2) The Agency shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to this Act, of performing all other acts that bodies corporate may by law perform.

(3) The Agency shall have a common seal, the use of which shall be authenticated by the signature of the Executive Chairperson or other member of the Board authorised either generally or specially by the Board in that behalf.

3. (1) The governing body of the Agency shall be a Board of Directors consisting of— Board of Agency.

(a) a representative each from the Ministry responsible for finance and the Ministry responsible for trade not below the position of Director;

(b) a representative of bodies concerned with consumer protection; and

(c) three other persons with qualifications relevant to the functions of the Agency at least one of whom shall be a woman; and

(d) the Executive Chairperson.

(2) No person shall be appointed Executive Chairperson if that person has any financial interest whether directly or indirectly, in any petroleum business or undertaking.

(3) The members of the Board shall be appointed by the president subject to the approval of Parliament.

(4) The members of the Board shall be appointed from among persons with the professional and other qualifications relevant to the functions of the Agency.

Tenure of office of Board.

4. (1) The Executive Chairperson and the other members of the Board shall hold office for a period of three years and shall be eligible for re-appointment only once.

(2) A person shall cease to be a member of the Board on any of the following grounds:—

- (a) for inability to perform the functions of the office by reason of infirmity of mind or body;
- (b) for proven misconduct;
- (c) if the person becomes bankrupt or insolvent;
- (d) if the person is convicted of an offence involving fraud or dishonesty;
- (e) if the person fails to attend three consecutive meetings of the Board without reasonable cause;
- (f) if the person resigns by written notice to the Minister.

5. (1) Subject to this Act, the Board shall have the control and supervision of the Agency. Functions of Board.

(2) It shall also be the responsibility of the Board to provide such policy guidance and advice as will secure the efficient implementation of the functions of the Agency and enhance the overall performance of the Agency.

6. The Executive Chairperson and the other members of the Board and any person co-opted by the Board under subsection (6) of section 8 shall be paid such remuneration, fees and allowances and shall be reimbursed by the Agency for expenses incurred in connection with the discharge of their functions as the Board may determine, with the approval of the Minister. Remuneration of members of Board.

7. (1) Where the Executive Chairperson or other member of the Board dies, resigns, is removed from office or is absent from Sierra Leone for a continuous period exceeding three months or is by reason of illness unable to perform the functions of the office- Filling of vacancies.

- (a) the members of the Board shall elect one of their number to act as Executive Chairperson until such time as the Executive Chairperson resumes office or another person is appointed, and
- (b) in the case of the other member, the Executive Chairperson shall arrange, subject to this Act, to have another person appointed to the Board.

(2) Where a person is elected as Executive Chairperson or appointed as a member to fill a vacancy, the person shall hold office for the remainder of the term of the previous Executive Chairperson or member and shall, subject to this Act, be eligible for re-appointment.

Meetings
of Board.

8. (1) The Board shall hold its first meeting on a date and at the place that the Minister, after consultation with the Board, may determine and thereafter, the Board shall meet for the dispatch of business at the time and place that the Executive Chairperson may decide but shall meet at least once in every three months.

(2) An extraordinary meeting of the Board shall be held at the request in writing of the Executive Chairperson or of other four members of the Board, with notice of the agenda for that meeting.

(3) At any meeting of the Board where the Executive Chairperson is present, the Executive Chairperson shall preside and, in the Executive Chairperson's absence, the members present may elect one of their number to preside.

(4) The quorum at a meeting of the Board shall be four.

(5) Each member of the Board shall have one vote but in the case of an equality of votes, the Executive Chairperson shall have a casting vote.

(6) The Board may at any time co-opt any person to advise or otherwise assist the Board at any of its meetings but the person co-opted shall not vote on any matter for decision by the Board.

(7) All acts, matters or things authorised or required to be done by the Board shall be decided at a meeting where a quorum is present and the decision is supported by the votes of at least four members.

(8) Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board; but if a member requires that the proposal be placed before a meeting of the Board, this subsection shall not apply to the proposal.

(9) The Board shall cause minutes of all its meetings to be taken by the Secretary and signed by the Chairman and kept in the proper form as a public document.

(10) Subject to this Act, the Board shall regulate its meetings and procedure as it thinks fit.

9. (1) A member of the Board who has an interest, direct or indirect, in any matter to be considered by the Board, shall disclose the nature of the interest to the Board and the disclosure shall be recorded in the minutes of the Board and that member shall not take part in any deliberation or decision of the Board relating to that matter. Disclosure of interest.

(2) A member of the Board who contravenes this section shall be guilty of misconduct and be liable to be removed from the Board.

10. (1) The Agency shall have a Director who shall be appointed by the Board and who shall be Secretary to the Board. Secretary to Board.

(2) The Director shall have senior management experience in the petroleum industry, in addition to any other qualifications as the Board may determine.

Committees. **11.** (1) The Board may, for the discharge of its functions, appoint one or more committees to perform such functions as the Board may determine.

(2) A committee may consist of both members and non-members of the Board as the Board may determine and shall report to the Board at the time that the Board may direct.

PART III –FUNCTIONS OF AGENCY

Functions of Agency. **12.** (1) The object for which the Agency is established is to licence and regulate the importation, refining, storage, transportation and distribution of petroleum and petroleum products so as to ensure their regular supply to users at reasonable standard prices, and the efficient administration and enforcement of the enactments relating to downstream petroleum activities.

(2) Without prejudice to the generality of subsection (1), it shall be the responsibility of the Agency to–

- (a) monitor the procurement, importation, refining, exporting and supply of petroleum so as to guarantee efficient retail pricing;
- (b) ensure effective harmonisation of local pump prices with international trading prices of petroleum in order to prevent extortionate pricing tendencies;

- (c) promote transparent open market guarantees for competitive distribution margins and pump price adjustment mechanisms, as a safeguard or protection to private investment;
- (d) provide a system for effective co-ordination and monitoring of downstream petroleum industry operations, including verification of payment of tax;
- (e) provide effective technical service to the Government and its agencies regarding the downstream petroleum industry;
- (f) establish and maintain a comprehensive downstream petroleum data base;
- (g) establish and manage a strategic petroleum stocks programme for Sierra Leone;
- (h) manage the development of the downstream petroleum subsector from a donor-funded, highly subsidised system to a free-market, devoid of Government's direct involvement and in particular, ensure that the transition is without any social or economic consequences through manipulation by key players in the industry;
- (i) in collaboration with the Ministry responsible for finance and the National Revenue Authority assess and make projections on revenue to be derived from petroleum sales in order to facilitate the budgetary planning, formulation and preparation process, in Ministries, departments and agencies of Government;

- (j) monitor and verify that projected sales revenues and other taxes such as road-user charges are collected on a timely and regular basis as a priority;
- (k) monitor and co-ordinate the pricing formula, taking into consideration all relevant factors, including the international trading prices of petroleum, so as to guarantee fairness to all stakeholders, especially the users or consumers;
- (l) work in consonance with other agencies and stakeholders to ensure conformity of petroleum to the prescribed specifications for the Sierra Leone market;
- (m) license all retail and bulk handling businesses that store and trade in petroleum;
- (n) perform the role of arbitrator in matters relating to the downstream petroleum industry;
- (o) administer and enforce the downstream Petroleum Rules;
- (p) do all such things as are necessary, expedient or conducive to the attainment of the object stated in subsection (1).

Cap. 236.
Laws of Sierra
Leone
Vol. III, Pp
1956-1989.

(3) For the purposes of the review of the pump price of petroleum, both the Agency and the traders may, at any time, initiate negotiations at which all necessary import documents shall, subject to section 13, be made available to the Agency for analysis so as to enable any new pump price to be agreed and put into operation within two weeks from the date of commencement of the negotiations.

13. (1) The Agency shall have power, in performing its functions under this Act— Power to obtain information.

- (a) by notice in writing, to require any trader, refiner or importer to furnish the form and manner and within the time that may be specified in the notice, periodical or other information, estimates or returns concerning the matters that may be so specified in the notice;
- (b) to interview any trader, refiner or importer and require that person to furnish such particulars as the Agency may require;
- (c) by notice in writing, to require any trader, refiner or importer to complete a form contained in the notice with particulars relating to any matter specified in the notice and to return it in the manner and within the time specified.

(3) When a request to furnish information, estimates, returns or particulars under this Act is made, the information, estimates, returns or particulars shall be furnished by a person specifically authorised for the purpose by the importer, refiner or trader.

(4) Subject to this section, every trader, refiner or importer, shall, to the best of the person's knowledge and belief, answer when so required, all questions put orally or in writing by the person, the Executive Chairperson or an officer of the Agency authorised in that behalf, not later than the date specified in the notice.

(5) A trader, refiner or importer who –

- (a) fails to answer a question as required under this Act or furnishes an answer to the question which is false or misleading in any material respect, knowing the answer to be false or misleading; or
- (b) wilfully obstructs the Executive Chairperson or any officer or employee of the Agency in the performance of a function under this Act,

commits an offence and is liable on conviction to a fine not less than fifty million Leones, or to imprisonment for a term not less than twenty four months or to both the fine and imprisonment.

Confidentiality and prohibition of disclosure of information.

14. (1) Notwithstanding any enactment to the contrary, no return or other commercially sensitive information collected by the Agency under section 13 shall, subject to subsections (2) and (3), be disclosed to any unauthorised person.

(2) The return or other information referred to in subsection (1) may, subject to the directions of the Executive Chairperson, be disclosed–

- (a) to any person if required for the performance of that person's functions under this Act;

(b) if required by any enactment or as evidence in any court of law.

(3) Any officer of the Agency who in the course of employment under this Act–

- (a) wilfully discloses any data or information obtained in the course of employment to a person not authorised to receive the information;
- (b) uses information obtained in the course of employment for the purpose of speculating in any stock, bond or other security or any goods or services, before its release is authorised by the Executive Chairperson; or
- (c) otherwise contravenes this section,

commits an offence and is liable on conviction to a fine not less than fifty million Leones or to imprisonment for a term not less than twenty four months or to both the fine and imprisonment.

PART IV–EMPLOYEES OF AGENCY

15. (1) The Agency shall have an Executive Chairperson who shall be appointed by the President on the advice of the Minister, and upon the terms and conditions that may be stipulated in the person's letter of appointment. Appointment of Executive Chairperson.

(2) No person shall be appointed as Executive Chairperson unless the person has proven experience, knowledge and ability in public or business administration and the workings and issues of the petroleum industry, at senior management level.

Functions of Executive Chairperson.

16. (1) The Executive Chairperson shall be head of the Agency and shall be responsible to the Board in the performance of the following functions:—

- (a) to provide overall leadership in the conduct and management of the day-to-day business or activities of the Agency;
- (b) to initiate and maintain high-level contact with interested parties, both local and international, in relevant areas of the petroleum industry;
- (c) to monitor and supervise the preparation of the annual budgets and reports of the Agency for the review and approval of the Board;
- (d) to oversee the work and discipline of the other staff of the Agency, and
- (e) to carry out any other functions that may be assigned by the Board or necessary for the purposes of the Agency.

(2) In the performance of functions under this section, the Executive Chairperson shall be assisted principally by the Director who also serves as secretary to the Board.

Other staff of Agency.

17. (1) The Agency shall have, in addition to the Executive Chairperson, a Director, the Secretary and such other staff, as may be required for the efficient performance of the functions of the Agency.

(2) The Director, and the other staff of the Agency shall be appointed by the Board subject to the terms and conditions that the Board shall determine.

(3) Subject to this Act, the terms and conditions of all persons employed by the Agency, shall be determined by the Board.

(4) The Board may delegate to the Executive Chairperson the power for the appointment of the grade or category of staff as it may determine.

18. Public officers may at the instance of the Executive Chairperson be seconded or otherwise render assistance to the Agency but the Agency may request the withdrawal of any seconded staff who is unable to carry out assigned functions in a manner satisfactory to the Agency.

Secondment of public officers.

19. No officer or employee of the Agency or any person acting on the directions of an officer or employee of the Agency shall be liable in respect of any matter or thing done in good faith under this Act.

Protection of officers and other employees of Agency.

PART V—FINANCIAL PROVISIONS

20. (1) The activities of the Agency shall be financed by a fund consisting of—

Funds of Agency.

- (a) the proceeds of the Petroleum Fund established by section 21;
- (b) loans raised by the Agency with the approval of the Minister responsible for finance;
- (c) grants made to the Agency by any person or authority;
- (d) the proceeds of any investment made by the Agency;
- (e) fees for licences granted by the Agency; and
- (f) any other moneys to which the Agency may otherwise become entitled.

(2) The level of the licence fees referred to in paragraph (e) of subsection (1) shall be determined by the Board with the approval of the Minister.

(3) The funds of the Agency shall be applied only for the purposes of the approved budget of the Agency.

Establishment of Petroleum Fund.

21. (1) There is hereby established a fund to be known as the Petroleum Fund into which shall be paid the proceeds of a levy on every gallon of petrol, diesel or kerosene sold by every petroleum marketing company registered in Sierra Leone.

(2) For the purposes of the payment of the proceeds into the Petroleum Fund, every petroleum marketing company registered in Sierra Leone, shall collect the levy, subject to the written directions of the Agency, for payment into the Petroleum Fund.

(3) The cost of the petroleum levy shall not be passed on to the users or consumers of petroleum.

(4) A petroleum marketing company is an entity engaged in the importation, storage, distribution or sale of petroleum.

Investment of funds.

22. Any moneys of the Agency not immediately required for meeting any obligation or the discharge of any function of the Agency may, with the approval of the Board, be invested to the best advantage of the Agency.

Estimates of income and expenditure of Agency.

23. (1) The Executive Chairperson shall, not later than one month before the end of each financial year, prepare and submit to the Board for its approval, estimates of the income and expenditure of the Agency for the next ensuing financial year and may at any time before the end of each financial year, prepare and submit to the Board for approval any estimates supplementary to the estimates for that financial year.

(2) No expenditure shall be made out of the fund of the Agency unless that expenditure is part of the expenditure approved by the Board under subsection (1).

24. (1) For the purpose of performing its functions and meeting its obligations under this Act, the Agency may, with the approval of the Minister responsible for finance, borrow money or raise capital in any currency and from any source .

Borrowing powers of Agency.

(2) The Agency may charge its assets, undertakings and income with the repayment of any money borrowed together with interest, and may issue bonds or other securities in order to secure repayment of any money so borrowed.

25. The Government may guarantee in such manner and upon such terms as it may think fit, the payment of the interest and principal, or either of them on any loan proposed to be raised by the Agency.

Government to guarantee loans to Agency.

26. (1) The Agency shall keep proper books of account and other records in relation to the activities, property and finances of the Agency in a form approved by the Auditor- General, and shall prepare in respect of each financial year of the Agency a financial statement which shall include—

Accounts and audit of Agency.

- (a) balance sheet accounts;
- (b) income and expenditure accounts;
- (c) source and application of funds; and
- (d) financial estimates, particularly of the amount of petroleum levy to be collected in the ensuing year.

(2) The accounts of the Agency kept under subsection (1) shall, not later than two months after the end of each financial year, be audited by the Auditor-General or an auditor appointed by the Auditor-General.

(3) For the purposes of subsection (2), the Auditor-General or the auditor appointed under subsection (1) shall be entitled to have access to all books of account, vouchers and other financial records of the Agency and to require information and explanation on them as may be necessary.

(4) The Agency shall provide the Auditor-General or the auditor appointed by the Auditor-General with all necessary and appropriate facilities for the examination of the accounts and records of the Agency.

(5) The Auditor-General or the auditor appointed by the Auditor General shall submit to the Agency a report on the audited accounts and the financial statements referred to in subsection (1) and shall, in the report draw attention to—

- (a) any irregularities in the accounts;
- (b) any matters that are likely to adversely affect the operations of the Agency; and
- (c) any other matter which, in the Auditor-General's opinion, ought to be brought to the notice of the Agency.

27. The financial year of the Agency shall be the same as the financial year of the Government.

Financial
year of
Agency.

28. (1) The Agency shall, within three months after the end of the financial year, submit to the Minister a report on the performance of its functions during that year and on its policy and programmes. Annual report.

(2) The annual report shall include the accounts and annual financial statement prepared under section 26 and the report of the audit on the financial statement.

(3) The Minister shall lay copies of the annual report before Parliament within two months after receiving the report.

PART VI—MISCELLANEOUS

29. (1) Subject to subsection (2), all property and assets which immediately before the commencement of this Act were vested in the Government for the use of the Petroleum Unit of the Ministry responsible for trade shall, with effect from the commencement of this Act and without more, vest in the Agency, subject to all interests, liabilities, charges, obligations and trusts affecting the property or assets. Vesting of certain assets and liabilities, subsisting contracts, pending proceedings, etc.

(2) Except as is provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government on account of the Petroleum Unit referred to in subsection (1), immediately before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

30. (1) On the commencement of this Act, the employees of the Petroleum Unit as shall be specified by the Minister in writing shall be transferred to the Agency without prejudice to any entitlement to pension, gratuity or other vested or accrued rights from the previous employment and on the terms and conditions of service no less favourable as were applicable to them in their previous employment. Transfer of certain employees to Agency.

(2) Any person transferred to the Agency under subsection (I) –

- (a) shall be subject to the disciplinary control of the Agency and shall be governed by any code of conduct or discipline made by the Agency under section 32, and the Agency shall have the power to terminate the appointment of any person so transferred who is not able to perform assigned functions to the satisfaction of the Agency;
- (b) may accept to continue in the employment of the Agency, subject to the other terms and conditions of service as may be determined by the Board under section 17.

Amendment
of Cap. 236.

31. Section 4 of the Petroleum Act is amended by the repeal and replacement of subsection (1) thereof by the following:–

- “(1) Any person who is guilty of an offence under any rule made under this Act, shall, on conviction, be liable to a fine not exceeding fifty million Leones or to imprisonment for a term not exceeding twenty four months or to both the fine and imprisonment”.

Regulations.

32. (1) The Agency may, by statutory instrument, make regulations to give effect to this Act.

(2) Regulations made under subsection (I) may include–

- (a) the establishment of codes of conduct and discipline, regulate the appointment, promotion, transfer and dismissal of employees; and
- (b) the imposition of a levy on every gallon of petrol, diesel or kerosene sold by every petroleum marketing company registered in Sierra Leone for payment into the Petroleum Fund in accordance with section 21.

Passed in Parliament this *6th day of June*, in the year of our Lord two thousand and fourteen.

IBRAHIM S. SESAY,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correct printed copy of the said Bill.

IBRAHIM S. SESAY,
Clerk of Parliament.