

CHAPTER 328

THE OIL AND GAS REVENUES MANAGEMENT ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 328

THE OIL AND GAS REVENUE MANAGEMENT ACT

An Act to provide for the establishment and management of the Oil and Gas Fund, to provide for the framework for fiscal rules and management of oil and gas revenues and to provide for other related matters.

[25th September, 2015]

[GN No. 457 of 2015]

Act No.
22 of 2015

PART I

PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Oil and Gas Revenues Management Act.

Application **2.**—(1) This Act shall apply—
 (a) to Mainland Tanzania in relation to management of oil and gas revenues derived from exploration, development and production of oil and gas activities; and
 (b) to Mainland Tanzania and Tanzania Zanzibar in relation to management of oil and gas revenues derived from exploration, development and production of oil and gas activities undertaken under joint petroleum operations or petroleum activities in specific areas or overlapping blocks in accordance with the law governing petroleum upstream operations, midstream and downstream petroleum activities.
 (2) Oil and gas revenues derived from oil and gas operations or activities undertaken within Tanzania Zanzibar shall be governed and administered in accordance with the laws of Tanzania Zanzibar.

- Interpretation **3.** In this Act unless the context otherwise requires-
- Cap. 197 “additional profit tax” means a tax imposed on additional gains due to higher price or lower cost of production;
- “Bank” means the Bank of Tanzania established by the Bank of Tanzania Act;
- “Board” means the Investment Advisory Board established under section 12;
- “contractor” means a company or group of companies that have entered into a production sharing agreement with the Government;
- “fiscal rules” means the fiscal rules stipulated by section 16;
- “Fund” means the Oil and Gas Fund established under section 8 of this Act;
- “Government profit share” means the remaining balance of profit gas or profit oil payable to the Government after deducting contractor’s profits of oil or gas;
- “Minister” means the Minister responsible for finance;
- “oil and gas revenues” include-
- (a) royalty in cash payable by a licensed producer or its subsidiaries or a company under a Production Sharing Agreement;
 - (b) Government profit share;
 - (c) taxes payable by licensed upstream, midstream and downstream operators;
 - (d) Government participating interest;
 - (e) dividends from the National Oil Company for Government’s equity interest;
 - (f) returns on investment income derived from the Fund;
 - (g) signature bonus, training fees and surface rentals paid by licensed producers; or
 - (h) any other revenue determined by the Minister to constitute gas revenue, derived from upstream, midstream and downstream operations;
- “participating interest” means the interest held in petroleum operations by a party to Production Sharing Agreement; and

“surface rental” means fees or charges payable by a contractor for conducting oil and gas activities over a licenced area.

PART II

ADMINISTRATIVE PROVISIONS

Functions of
Minister

- 4.** The functions of the Minister shall be to-
- (a) manage oil and gas revenue in accordance with this Act;
 - (b) formulate and supervise all policy matters relating to the Fund; and
 - (c) formulate and monitor broad investment strategies and operation guidelines for Revenue Saving Account of the Fund.

Functions of
Bank

- 5.** The Bank shall, in respect of the management of the Fund-
- (a) open accounts of the Fund;
 - (b) act as an agent of the Government in carrying out, on daily basis, the investment strategies and operational guidelines;
 - (c) set and implement benchmarks and risk limits for investment strategies; and
 - (d) report performance of the Fund to the Minister.

PART III

COLLECTION AND AUDITING OF OIL AND GAS REVENUES

Collection of oil
and gas revenues

- 6.-(1)** The Tanzania Revenue Authority and the National Oil Company shall be collectors of oil and gas revenues due to the Government.
- (2) The oil and gas revenues derived from-
- (a) taxes and levies shall be assessed, collected and accounted for by the Tanzania Revenue Authority;
 - (b) non-tax oil and gas revenues shall be collected and accounted for by the National Oil Company.

(3) Subject to section 8, surface rentals or annual block fees, signature bonuses and training fees shall be retained by the National Oil Company for purposes of enhancing development of oil and gas subsector.

(4) Notwithstanding subsection (1), the Minister may, by notice published in the Gazette, appoint another Government entity to collect oil and gas revenues in place of the National Oil Company in the event any of the following occurs:

- (a) the National Oil Company floats or issues its shares to the public or to any other private entity or person;
- (b) the National Oil Company is in the continuous state of insolvency or is under state of bankruptcy; or
- (c) there is change of policy on oil and gas revenue collection.

Auditing
of reserves,
exploration, and
costs

7.-(1) The regulator shall conduct audit of cost recovery on exploration, development, production and sale of oil and gas to determine Government profit share and royalty.

(2) For purposes of this section “regulator” means the Petroleum Upstream Regulator Authority established pursuant to the Petroleum Act.

Cap. 392

PART IV

ESTABLISHMENT, SOURCES AND MANAGEMENT OF THE FUND

Oil and Gas Fund

8.-(1) There shall be the Oil and Gas Fund.

(2) The Fund shall consist of the Revenue Holding Account and the Revenue Saving Account.

(3) The objectives of the Fund shall be to ensure that-

- (a) fiscal and macroeconomic stability is maintained;
- (b) the financing of investment in oil and gas is guaranteed;
- (c) social and economic development is enhanced; and
- (d) resource for future generations is safeguarded.

Sources of Fund

9. Sources of the Oil and Gas Fund shall be-

- (a) royalties;
- (b) Government profit share;
- (c) dividends on Government participation in oil and gas operations;
- (d) corporate income tax on exploration, production and development of oil and gas resources; and
- (e) return on investment of the Fund.

Management of Fund

10.—(1) The Paymaster General shall be the accounting officer of the Fund.

(2) The Bank shall be the operational manager of the Fund.

(3) The Revenue Holding Account shall receive all revenues of the Fund.

(4) The Revenue Saving Account shall receive revenue from Revenue Holding Account.

(5) The revenue deposited in the Revenue Saving Account shall be as stipulated under this Act.

Restrictions on use of revenues of Fund

11. The amount of money deposited in the Fund shall not be used—

- (a) for providing credit to the Government, public enterprises, private sector entities or any other person or entity;
- (b) as collateral or guarantees, commitments or other liabilities of any other entity; and
- (c) for rent seeking or be the subject of corrupt practices, embezzlement or theft.

Portfolio Investment Advisory Board

12.—(1) There is established a Portfolio Investment Advisory Board.

(2) The Board shall be comprised of five persons who possess knowledge, skills and experiences in fields of financial investment, portfolio management or investment law.

(3) The Chairman and other four members shall be appointed by the President.

(4) The provisions of the Schedule shall apply to the Board in the conduct of its business.

Functions of
Board

13.—(1) The functions of the Board shall be to—

- (a) advise the Minister on portfolio investment strategy of the Revenue Saving Account of the Fund; and
- (b) report periodically to the Minister responsible for finance on the governance and overall performance of the Revenue Saving Account of the Fund.

(2) Any advice by the Investment Advisory Board on investment strategy of the Revenue Saving Account of the Fund shall take into account—

- (a) overall objective for the benefit of current and future generations;
- (b) current economic conditions, opportunities and constraints in the investment markets and constraints under which the Bank and other relevant institutions operate; and
- (c) the need to ensure sufficient funds are available when the need for transfer to meet unanticipated oil and gas revenue shortfall arises.

(3) Where the Minister declines to take the advice of the Board he shall refer the matter to the President for determination.

Secretariat of
Board

14. There shall be a Secretariat of the Board constituted by the Bank.

Oversight of and
reporting on
Fund

15.—(1) The Board shall submit to the Minister quarterly reports on the performance assessment of the Fund.

(2) The Governor shall report quarterly to the Minister on the governance and overall performance of the Revenue Holding Account and Revenue Saving Account of the Fund.

(3) The Controller and Auditor-General shall make quarterly audit of the reports submitted under subsections (1) and (2).

PART V

FISCAL RULES

Objectives and principles of fiscal rules

16.—(1) Management of expenditure of designated oil and gas revenue of the Fund shall be done in conformity with the fiscal rules as provided for under this Act.

(2) The following shall be the objectives of the fiscal rules:

- (a) financing of the Government budget;
- (b) financing of the National Oil Company investment;
- (c) fiscal stabilisation; and
- (d) saving for the future generations.

(3) The fiscal rules shall be based on the following principles:

- (a) safeguard of the economy against inherent volatility of the oil and gas revenue;
- (b) presence of uncertainty of the timing and size of the revenue flow;
- (c) adherence to fiscal convergence criterion for the East Africa Monetary Union;
- (d) maintenance of expenditure growth that is consistent with the absorption capacity of the economy;
- (e) avoidance of borrowing where Government holds financial savings;
- (f) diversification and unlocking of the economy for sustainable development;
- (g) ensuring collection efforts of revenue from non oil and gas sources are not neglected; and
- (h) safeguard interests of future generation through expenditure on alternative investments, including human capital development and financial savings.

(4) Any change to the fiscal rules shall require support of not less than two thirds of the total number of Members of Parliament.

(5) Any change of the rates stipulated in the fiscal rules may be made after every five years commencing from 1st July, 2015.

(6) Subject to subsection (4), the fiscal rules may only be amended, altered or otherwise changed once after every five years.

Fiscal rules

17.-(1) The following shall be the fiscal rules applicable under this Act:

- (a) exclusion of designated oil and gas revenue from the domestic revenue source in estimating fiscal deficit from the year 2016/17 onwards (that means, treating the designated oil and gas revenue as part of financing);
- (b) maintenance of fiscal deficit excluding designated oil and gas revenue at 3% of the GDP when such revenue attains a level of at least 3 % of the GDP;
- (c) operation of the Fund shall be in the manner that-
 - (i) all designated revenue are deposited into Revenue Holding Account where-
 - (aa) in any fiscal year, at most an amount equal to 3% of the GDP is transferred to the Consolidated Fund for budgetary use, and at least 60% of such transfer is dedicated to funding strategic development expenditure including human capital development, particularly in the area of science and technology;
 - (bb) any amount of money, in Revenue Holding Account which is in excess of 3% of the GDP is automatically transferred to the Revenue Saving Account;
 - (ii) in the event the designated oil and gas revenue falls short of 3% of the GDP in any particular fiscal year, money sufficient to offset the shortfall in the budget should be drawn from the Revenue Saving Account and deposited to the Consolidated Fund, and in the event Revenue Saving Account has no sufficient money to offset the shortfall, the Government may borrow to offset the shortfall.

- (d) maintenance of an orderly and reasonable growth of expenditure, where-
 - (i) annual growth of recurrent expenditure is not in excess of annual growth of the nominal GDP;
 - (ii) total Government expenditure in a year is not in excess of 40% of the GDP;
- (e) availability of fund for investment by National Oil Company, where-
 - (i) recurrent expenditure is financed through the budgetary process;
 - (ii) surface rentals, signature bonuses and training fees are retained by the National Oil Company under normal supervision of the Treasury Registrar;
 - (iii) money equivalent to 0.1% of the GDP is ring-fenced annually into the Revenue Saving Account of the Fund National Oil Company strategic investment to be spent through the normal budgetary process, so that-
 - (aa) in the event the Revenue Saving Account has no sufficient fund to that level, direct budgetary allocation is made to the Revenue Saving Account for that purpose, provided that the strategic investment projects are approved;
 - (bb) in the event the National Oil Company has special needs for investment that requires money over 0.1% of the GDP, such money is made from the Fund available through the normal budgetary process, provided that:
 - (aaa) the Revenue Saving Account has money from the Revenue Holding Account;
 - (bbb) the amount does not exceed 1% of GDP; and
 - (ccc) the request is proposed by the Minister responsible for energy and approved by the Minister for finance before submission to the National Assembly.

(2) Notwithstanding the provisions of subsection (1), in the event-

- (a) of an occurrence of a major disaster or war, Government may temporarily suspend the fiscal rules to allow organising of emergency funding commensurate to the emergence need and report the expenditure in full details in the next session of the National Assembly; or
- (b) Government plans a major strategic investment that requires suspension of any part of the fiscal rules, a proposal for suspension shall require support of not less than two thirds of all members of the National Assembly.

(3) Local government authorities to which oil and gas activities are undertaken shall receive revenue from service levy of the oil and gas as shall be approved by the National Assembly.

(4) The Minister for finance in consultation with the Minister responsible for local government shall, by regulations, establish fiscal rules for local governments to guide expenditure and saving.

(5) For purposes of subsection (2), “major disaster” means any natural or man-made act which has a global, national or regional impact such as environmental catastrophe, wide spread epidemic diseases or any other such act.

Transparency and
accountability of
revenues

18.—(1) Collection and deposit of oil and gas revenues into the Fund shall be done in a transparent and accountable manner.

(2) Disbursement of funds from the Fund shall be made in a transparent and accountable way.

(3) For the purposes of subsections (1) and (2) the laws for the time being governing collection disbursement and audit of Government funds shall apply in relation to the Fund and exercise of powers vested in the Minister, Governor of the Bank and any such Government officer charged with any function or duty under this Act.

(4) For the purposes of transparency and accountability, the records of oil and gas revenues and expenditure in whatever form, shall simultaneously be published by the Minister in the *Gazette*.

(5) The information required to be made public shall also be published online on the website of the Government and Ministry of finance.

(6) The record of oil and gas revenue and expenditure shall be the subject of Parliamentary oversight.

(7) The Bank shall report on the operational performance of the Fund and publish an audited report in the official *Gazette* and website of the Bank.

PART VI FINANCIAL PROVISIONS

Annual budget of
Board

19.—(1) Before the end of each financial year, the Board shall prepare budget for receipts and expenditures.

(2) The Board shall submit to the Minister budgets estimates of annual budget for scrutiny and approval.

(3) Upon approval the Minister shall incorporate the budget estimates of the Board into the general budget estimates of the Ministry of finance.

Accounting and
audit of the Fund

20.—(1) The Bank shall keep and maintain the proper books of accounts with respect to-

- (a) sums of moneys received and expended;
- (b) assets and liabilities of the Fund; and
- (c) income and expenditure statement of the Fund.

(2) Within three months of the close of every financial year, the Controller and Auditor-General shall audit the accounts of the Fund.

(3) Every income and expenditure accounts and audited balance sheet shall be placed before a meeting of the Bank and, if adopted, it shall be endorsed with a certificate to that effect.

(4) The Minister may, where the report submitted has anomalies, direct the Bank to correct or furnish adequate explanation and the Bank shall give effect to such directions.

(5) The Minister shall, after receiving the report, lay before the National Assembly the audited accounts of the Fund together with the auditor's report.

PART VII GENERAL PROVISIONS

General offences **21.**—(1) A person who misappropriates the proceeds of the Fund commits an offence and, on conviction, shall be liable to a fine of not less than the amount that the person has misappropriated or to imprisonment for a term of not less than thirty years or to both.

(2) A person who—

- (a) defrauds, attempts to defraud or conspires with another person to defraud the Government in relation to the proceeds of the Fund;
- (b) attempts to use or conspires with another person to use information on the Fund or documents relating to the Fund for personal benefit or advantage of another person,

commits an offence and on conviction, shall be liable to a fine of not less than the amount the person has defrauded or to imprisonment for a term of not less than thirty years or to both.

(3) In addition to the penalty imposed under paragraph (a), the court may make an order for forfeiture of assets or freezing bank accounts in relation to the offence which was committed.

(4) An offence committed under this Act shall be deemed to be an economic offence triable in accordance with the Economic and Organised Crimes Control Act.

Cap. 200

Inconsistence
with other laws

22. Where there is inconsistency between this Act and any other written law relating to management of oil and gas revenues to

which this Act applies, the provisions of this Act shall prevail over to the extent of such inconsistency.

Minister to make regulations

23.—(1) The Minister may make regulations for better implementation of the provisions of this Act.

(2) Without prejudice to subsection (1), the Minister shall, in consultation with the Minister responsible for oil and gas, make regulations in relation to collections and accountability of oil and gas revenue collectible by the National Oil Company and the Tanzania Revenue Authority.

SCHEDULE

(Made under section 12(4))

TENURE AND PROCEDURES OF THE PORTFOLIO INVESTMENT ADVISORY BOARD

Appointment of Vice-Chairman

1. The members shall elect from amongst their number a Vice-Chairman.

Tenure of office

2.—(1) The Chairman or member of the Board shall, unless his appointment is terminated or ceases in any other way to be a member, hold office for a period of three years and may be eligible for re-appointment for one more term.

(2) A member of the Investment Advisory Board shall cease to be a member if the member—

- (a) dies or resigns for any reason;
- (b) is convicted of a criminal offence for a term of or beyond six months;
- (c) becomes mentally ill; or
- (d) is disqualified to practice under this Act.

(3) A member of the Board may at any time resign from office in writing addressed to the President.

(4) The President may, by letter addressed to a member, revoke the appointment of such member.

Meetings

3.—(1) The Board shall ordinarily meet at least once in every three months at such times and places as it deems necessary for transaction of its business.

(2) In the absence of the Chairman and Vice-Chairman, members present shall appoint a member from amongst themselves to preside over the meeting.

	(3) A member who is absent from two consecutive meetings of the Board without sufficient cause shall cease to be a member of the Board and his vacancy shall be immediately replaced.
Co-opted member	4.-(1) The Board may co-opt any person who is not a member to provide technical expertise but such person shall not have a power to vote. (2) A member or co-opted member of the Board who has an interest in a matter for consideration by the Board shall disclose the nature of that interest to the Board and excuse himself from participating in the deliberation relating to the matter in which such member has interest.
Quorum	5.-(1) The quorum at any meeting of the Board shall be three members in office. (2) Matters proposed at a meeting of the Board shall be decided by a majority of the votes of the members present. (3) The validity of any act or proceedings of a properly constituted Board meeting shall not be affected by reason of absence of any member or by the defect subsequently raised by the absent member.
Minutes of Board	6. The Board shall cause to be recorded and kept minutes of all business conducted or transacted at the meeting and the minutes of each meeting of the Board shall be read and confirmed or amended at the next meeting of the Board and signed by the person presiding and the secretary to the meeting.
allowances	7. Members of the Board shall be paid allowances as determined by the Minister.
Proceedings	8. Subject to this Schedule, the Board shall regulate its own proceedings.