

**SISTEMA DE INFORMACION
ENERGETICA LEGAL**

Norma:	THE PETROLEUM REFINING INDUSTRY (ENCOURAGEMENT) ACT
Número:	Law 24 of 1961
Fecha de Emisión:	14th March, 1962
País:	Jamaica

PETROLEUM REFINING INDUSTRY
(ENCOURAGEMENT)

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THE PETROLEUM REFINING INDUSTRY
(ENCOURAGEMENT) ACT

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SCHEDULE

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THE PETROLEUM REFINING INDUSTRY
(ENCOURAGEMENT) ACT

Law
20 of 1961.
Act
12 of 1985
Sch.,
16 of 1991
S. 64.

[14th March, 1962.]

1. This Act may be cited as the Petroleum Refining Industry (Encouragement) Act. Short title.

PART I. *General*

2. In this Act unless the context otherwise requires— Interpreta-
tion.
“annual allowances”, “approved rate”, “initial allowances”, “investment allowances” and “year of assessment” shall have the same meaning respectively as in the Income Tax Act;

“company” means—

(a) any company incorporated or registered under any law in force in the Island;

(b) any company which, though incorporated or registered outside the Island, carries on business or has an office or place of business therein;

“construction day” means the day determined under section 4 as being the day on or before which it is intended to commence to construct the petroleum refinery to which the application relates;

“customs laws” shall have the same meaning as in the Customs Act;

“operational date” means the date declared pursuant to subsection (2) of section 3;

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“petroleum refinery” or “refinery” means the site and buildings and other structures thereon described as constituting a petroleum refinery;

“recognized refiner of oil” means a company recognized by the Minister under section 3 for the purpose of operating a petroleum refinery;

“relevant refinery” used in relation to any recognized refiner of oil means the petroleum refinery in relation to which a company has been approved under section 3 to be a recognized refiner of oil.

Approval
of company
as recog-
nized
refiner
of oil.

3.—(1) The Minister may on an application made pursuant to section 4, by order, approve a company which is operating or proposes to operate a petroleum refinery as a recognized refiner of oil for the purposes of this Act if he is satisfied—

- (a) that the operation of the refinery is or will be of benefit to the Island, both economic and non-economic considerations being taken into account;
- (b) that the company—
 - (i) is adequately financed;
 - (ii) has adequately trained personnel in its employ or is able to obtain the services of such personnel;
 - (iii) has access to the necessary technical information;
 - (iv) is able to obtain adequate raw materials; and
 - (v) possesses or will possess the necessary petroleum refinery.

(2) The making of any such order shall be subject to such terms and conditions as the Minister may think fit and every order made under subsection (1) shall—

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- (a) specify the site of the refinery in respect of which the concessions specified in Parts II, III, and IV may be granted;
- (b) specify the relevant statutory period for the purposes of sections 5 and 6; and
- (c) declare a date to be the date (in this Act referred to as the "operational date") on which as respects the relevant refinery commercial operations are deemed to begin for the purposes of this Act.

(3) On the application of a recognized refiner of oil, the Minister may, upon such conditions as he may think fit, amend an order made under subsection (1) in respect of the site of the petroleum refinery specified therein, if the Minister is satisfied that it is necessary in order to promote the operation of the refinery by the recognized refiner of oil that the site of the refinery in respect of which the order was made shall be varied; and such amendment shall specify the site of the refinery in respect of which the concessions provided in Parts II, III and IV may be granted after the amendment has been made.

(4) On the application of a recognized refiner of oil or where commercial operations have begun prior to the operational date specified in the order on his own initiative the Minister may, in his discretion, and upon such conditions as he thinks fit, amend the order made under this section in respect of the operational date specified therein; and thereupon the provisions of this Act shall, subject to any conditions specified in relation to such amendment, have effect as if for the operational date declared pursuant to subsection (2) there were substituted the operational date as amended.

(5) Subject to subsections (3) and (4) any order made under subsection (1) shall, unless previously revoked in

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accordance with the provisions of this Act, remain in force for such period as may be specified in the order.

Applica-
tion for
approval.

4.—(1) An application for the approval of a company as a recognized refiner of oil shall be addressed to the Minister.

(2) Every application under subsection (1) shall be in writing and shall—

- (a) specify the site on which there is or it is proposed to establish the petroleum refinery in respect of which the application is made;
- (b) in the case of a petroleum refinery to be established, specify a provisional construction day which shall not be later than twelve months after the date of the granting of the application;
- (c) specify the class or classes of petroleum products manufactured or intended to be manufactured at the refinery;
- (d) propose a date which the Minister may consider in determining the date to be declared as the operational date in the relevant order to be made under section 3; and
- (e) contain such other particulars and be in such form as may be prescribed.

(3) At any time after the granting of its application and before the day specified in such application as the provisional construction day, the recognized refiner of oil may apply to the Minister for the declaration of some other day whether earlier than or subsequent to the provisional construction day, as may be agreed upon between the refiner and the Minister, to be the construction day, and the Minister shall act accordingly.

Where no application is made in accordance with this subsection or where an application is made but no agree-

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ment is reached between the refiner and the Minister the provisional construction day shall be deemed to be the construction day.

**PART II. *Concessions in respect of customs duty and
general consumption tax***

16/1991
S. 64.

5.—(1) Every recognized refiner of oil or any person authorized by the refiner in writing so to do (hereinafter referred to as an “approved agent”) shall be entitled to import into Jamaica, during the relevant statutory period, any of the articles specified in the Schedule free of customs duty and general consumption tax if the refiner or approved agent, as the case may be, satisfies the Commissioner of Customs and Excise that such articles are imported for the construction, operation, alteration, reconstruction, extension or repair of the relevant refinery or for equipping such refinery.

Relief from customs duty and general consumption tax.
16/1991
S. 64.

Schedule.
16/1991
S. 64.
12/1985
Sch.

(2) For the purposes of this section and of section 6 the relevant statutory period in relation to any petroleum refinery shall be the period stated as such in the order under section 3 approving a company as a recognized refinery or for equipping such refinery.

6.—(1) Every recognized refiner of oil may during the relevant statutory period import into Jamaica for use in the manufacture of petroleum products at the relevant refinery free from customs duty and general consumption tax any specified raw material.

Relief from customs duty and general consumption tax in respect of specified raw material.
16/1991
S. 64.

(2) In this section “specified raw material” means crude petroleum, feed stocks, blends, additives, chemicals, catalysts and other substances used in the manufacture, processing, blending and packaging operations of the relevant refinery.

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Special provisions relating to articles imported free.
12/1985 Sch.
16/1991 S. 64.

7.—(1) Every recognized refiner of oil or approved agent who imports into Jamaica any article free of customs duty and general consumption tax under the provisions of section 5 or section 6, as the case may be, shall, upon being required so to do by the Commissioner of Customs and Excise—

12/1985 Sch.

(a) keep such record in such form and containing such particulars as may be required by the Commissioner of Customs and Excise of the articles so imported;

12/1985 Sch.

(b) cause such articles to be marked with such mark and in such manner as may be required by the Commissioner of Customs and Excise; and

12/1985 Sch.

(c) permit the Commissioner of Customs and Excise or any person authorized by him in writing so to do at all reasonable times to inspect such record and to have access to any refinery, warehouse or other premises under the control of the refiner or approved agent, as the case may be, for the purposes of examining any such articles which the Commissioner of Customs and Excise may believe to be therein or of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

(2) Every recognized refiner of oil who contravenes the provisions of subsection (1) and every director, manager, agent, officer and servant of the company who is knowingly a party to the contravention shall be guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to a fine not exceeding one thousand dollars and, in default of payment, every such director, manager, agent, officer or servant shall be liable to be imprisoned for a term not exceeding twelve months.

(3) Every approved agent who contravenes the provisions of subsection (1) shall be guilty of an offence and

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on summary conviction before a Resident Magistrate shall be liable to a fine not exceeding one thousand dollars and in default of payment shall be liable to be imprisoned for a term not exceeding twelve months.

8.—(1) No article imported into Jamaica by any recognized refiner of oil or approved agent, free of customs duty and general consumption tax under the provisions of this Act shall be sold, given away or otherwise disposed of or used for purposes other than those specified in subsection (1) of section 5 or in subsection (1) of section 6 by the refiner or approved agent, as the case may be, except—

Restriction upon disposition of articles imported free.
16/1991
S. 64.

- (a) in the case of an assignment of the petroleum refinery for the purposes of which such article was imported into Jamaica to the assignee of such refinery; or
- (b) upon such refiner or approved agent paying or giving security to the satisfaction of the Commissioner of Customs and Excise for the payment of an amount equivalent to the amount of customs duty and general consumption tax which would have been payable upon the importation of such article but for the provisions of this Act, if the value of such article at the time it is sold, given away or otherwise disposed of or used for purposes other than those specified in subsection (1) of section 5 or in subsection (1) of section 6, as the case may be, were substituted for its value at the time of importation; or
- (c) after the expiration of five years from the date of importation into Jamaica of such article.

12/1985
Sch.

16/1991
S. 64.

(2) Every recognized refiner of oil who contravenes the provisions of subsection (1) and every director, manager, agent, officer and servant of the company who is know-

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ingly a party to the contravention shall be liable to a penalty of three times the value of the article in respect of the disposal or use of which the contravention occurred or two hundred dollars whichever is greater and in default of payment, every such director, manager, agent, officer or servant shall be liable to be imprisoned for a term not exceeding twelve months.

(3) Every approved agent who contravenes the provisions of subsection (1) shall be liable to a penalty of three times the value of the article in respect of the disposal or use of which the contravention occurred or two hundred dollars whichever is greater and in default of payment to be imprisoned for any term not exceeding twelve months.

PART III. *Concessions in respect of income tax*

Definition
and appli-
cation.

9.—(1) In this Part unless the context otherwise requires, “income tax” means the tax payable by companies under the Income Tax Act.

(2) Nothing in this Act shall affect any liability to income tax incurred by a recognized refiner of oil in respect of profits made prior to the commencement of the tax exemption period specified in section 10.

(3) Notwithstanding anything in this Act relating to income tax a recognized refiner of oil shall not be entitled to initial or investment allowances in respect of assets acquired prior to or during the tax exemption period specified in section 10.

(4) The provisions of section 99 of the Income Tax Act, shall apply to any false statement made or any false return delivered or any false accounts kept or prepared with reference to any of the concessions granted by this Part as if such false return had been delivered or such false accounts had been kept or prepared with reference

to income tax or profits or gains chargeable under the Income Tax Act.

10.—(1) Subject to the provisions of this Act a recognized refiner of oil shall be entitled to the following reliefs from income tax, as respects the relevant refinery that is to say—

Relief from
income tax.

- (a) relief from income tax for a period (in this Act referred to as the “tax exemption period”) from the operational date until the expiration of the period of seven years next after the first day of January in the calendar year following the operational date in respect of profits or gains obtained from the operation of the refinery;
- (b) after the expiration of the tax exemption period specified in paragraph (a) a recognized refiner of oil may for the purpose of the assessment of income tax in respect of the next succeeding six years of assessment carry forward net losses (leaving out of account depreciation, wear and tear or initial or investment allowances) which were incurred during the tax exemption period aforesaid taking the operations of the refinery during that period as a whole;
- (c) for the purpose of assessment of income tax any expenditure made by the refiner on or after the date on which the relevant order was made under subsection (1) of section 3 approving the company as a recognized refiner of oil but prior to the operational date, for the purpose of training persons for service in the refinery, shall be deemed to be a loss suffered by the refiner during the year commencing on the first day of January immediately following the operational date;

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(d) prior to and during the tax exemption period annual allowances shall not be made, but after the expiration of that period annual allowances may be made at the approved rate upon the original cost of the assets as respects assets purchased and used prior to the date of the expiration of the tax exemption period.

(2) For the avoidance of doubt it is hereby declared that the provisions of subsection (1) of section 40 of the Income Tax Act, relating to the deduction of income tax from payments made to non-residents, shall not apply to payments (not being interest of money) made by a recognized refiner of oil to any associated company in respect of technical, financial, accounting, research, management and other similar services rendered by such company in the operation of the relevant refinery.

(3) In this section—

“associated company” refers to a company which either controls the recognized refiner of oil or is under common control with such refiner;

“control” has the meaning assigned to it in subsection (1) of section 2 of the Income Tax Act;

“original cost” means the net figure after deducting from the cost price any sale, insurance, salvage or compensation moneys, or any grants, subsidies or other payments received from third parties on account of such price.

Dividends.

11.—(1) During the tax exemption period a recognized refiner of oil shall place in a separate account all profits or gains which have been relieved of income tax in accordance with the provisions of section 10, and, if the refiner intends to pay a dividend to shareholders out of

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the said profits or gains, such dividend shall be paid out of such account.

(2) Unless, pursuant to section 37 of the Income Tax Act, the Commissioner of Taxpayer Audit and Assessment otherwise authorizes, income tax shall be deducted by a recognized refiner of oil which pays any dividend pursuant to subsection (1) as if such dividend had been paid out of profits or gains within the meaning of the provisions of the law relating to income tax as regards the deduction of tax by a company on the payment of a dividend by that company.

L.N.
165/1999.

(3) A recognized refiner of oil making deductions of income tax pursuant to subsection (2) shall be deemed to be collecting income tax on behalf of the Commissioner of Inland Revenue and shall pay to the Commissioner of Inland Revenue or to such person as he may direct the amounts so deducted.

12/1985
Sch.

(4) Save as is otherwise provided in this Part the provisions of the law relating to income tax with respect to the deduction of income tax from dividends and the refund of income tax to shareholders shall apply to dividends paid by a recognized refiner of oil pursuant to subsection (1).

(5) A shareholder to whom a dividend is paid pursuant to subsection (1) whether such payment is made during the tax exemption period or after the expiration thereof shall be exempt from income tax in respect thereof if such shareholder is not resident in the Island and is not liable to income tax as respects that dividend in the country of residence.

For the purposes of this subsection where the shareholder is a company incorporated or registered outside the Island, the company shall not be deemed to be resident in the Island by reason only of the fact that it carries on business or has an office or place of business therein.

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Commissioner
of Taxpayer
Audit and
Assessment
empowered to
issue
certificates
regarding
concessions
granted under
the Act.

L.N.
165/1999.

12. Notwithstanding the provisions of section 4 of the Income Tax Act, it shall be lawful for the Commissioner of Taxpayer Audit and Assessment to certify in such form as may be prescribed the concessions granted to a recognized refiner of oil under the provisions of this Act in order that such certificate may be produced by such refiner to the fiscal authorities of any other country in which such refiner may be liable to taxation.

PART IV. *Other concessions*

Assistance to
recognized
refiner of oil.

13.—(1) Subject to the provisions of this Act and to the satisfaction of such requirements as to proof or otherwise as may be prescribed there shall, out of moneys provided for the purpose in the Estimates of the Island, be paid to a recognized refiner of oil in respect of petroleum products manufactured and sold by such refiner for consumption in the Island on or after the operational date, assistance at the prescribed rates.

(2) All claims for the payment of assistance shall be made to, and determined by, the Minister in accordance with regulations made under this Act, and any decision of the Minister given in respect to, or in connection with, any such claim shall be final and conclusive.

(3) If it is found at any time that any recognized refiner of oil has obtained any payment by way of assistance to which, or to part of which, such refiner was not lawfully entitled, the amount of that payment or of that part of the payment may, without prejudice to the

criminal liability, if any, of such refiner, be recovered in a Resident Magistrate's Court by the Attorney-General as a civil debt.

14. If it appears to the Minister that a recognized refiner of oil has contravened any provisions of this Act or of any regulations made thereunder he may withhold payment of any assistance payable to such refiner until he is satisfied that the provisions have been complied with, or where compliance with the provisions will not make good any default or deficiency arising by way of the contravention, that the default or deficiency has been or will be made good as far as possible.

Power of
Minister to
withhold
assistance.

PART V. *Miscellaneous*

15. Nothing in this Act shall exempt a recognized refiner of oil from making any return to the Commissioner of Inland Revenue or from complying with the law relating to income tax in any other respect so as to establish the liability, if any, of such refiner to income tax nor from complying with the law relating to the collection of customs duties so as to establish the liability, if any, of the refiner to customs duties.

Savings.

L.N.
165/1999.

16.—(1) Subject to the provisions of subsection (3), no petroleum refinery in respect of which concessions under Part II have been granted, whether such refinery is still being used for the manufacture of petroleum products or not, shall, without the prior approval of the Minister, be used at any time within ten years from the date declared by an order made under section 3 to be the operational date as respects such refinery, for any other purposes than those

Restriction
on use of
petroleum
refinery.

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of the manufacture of petroleum products by a recognized refiner of oil:

Provided that the Minister may, as a condition for the grant of his consent, require that all the sums, or as he may think fit, any part of such sums which but for the provisions of Part II would have been payable as customs duty on the importation of any articles used in the construction, operation, alteration, reconstruction, extension or equipping of such refinery shall be paid to the Commissioner of Customs and Excise.

12/1985
Sch.

(2) Any person using, or permitting another person to use, any such refinery in contravention of the provisions of subsection (1) shall be guilty of an offence and on summary conviction before a Resident Magistrate shall be liable to a fine not exceeding two hundred dollars and in default of payment to imprisonment for a term not exceeding six months and in the case of a continuing offence to a further fine of one hundred dollars in respect of each day during which the offence continues.

(3) The provisions of this section shall not apply to any refinery which has ceased to be used for the manufacture of petroleum products by a recognized refiner of oil if the sums which but for the provisions of section 5 would have been payable as customs duty on the importation of any articles for the construction, operation, alteration, reconstruction, extension or repair of the refinery or for equipping such premises have been paid.

17. Where any recognized refiner of oil—

(a) fails or neglects—

- (i) to commence to construct the refinery in relation to which he is a recognized refiner

Power to
revoke
order
approving
company
as a
recognized
refiner
of oil.

of oil, on or before the construction day;
or

- (ii) to commence to manufacture petroleum products in marketable quantities at such refinery on or before the operational date;
or

(b) in fact fails to fulfil any of the criteria set out in paragraph (b) of subsection (1) of section 3, the Minister, if satisfied that having regard to the circumstances of the case it is expedient so to do, may revoke the relevant order which was made under subsection (1) of section 3 and thereupon the provisions of this Act shall cease to apply to the company concerned in respect of that refinery but without prejudice to any liability which was incurred by such company under the provisions of this Act prior to the revocation of the order.

18.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act.

Regulations.

(2) In particular and without prejudice to the generality of the provisions of subsection (1) the Minister may make regulations in regard to—

- (a) any matters required by this Act to be prescribed;
(b) the adjustment of profits and gains, including the adjustment of allowances and carrying forward of losses, when a company was at the time that it became a recognized refiner of oil already engaged in business;
(c) any other matter or thing, whether similar to the foregoing or not, in respect of which it may be expedient to make regulations for the purpose of carrying this Act into effect.

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(3) All regulations made by the Minister under this section shall be subject to negative resolution of the House of Representatives.

Power to
add to or
remove
from
Schedule.

19. The Minister may by order from time to time add to or remove from the Schedule any article.

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19

SCHEDULE (Sections 5 (1) and 19)

Materials, machinery and equipment with their accessories and spare parts necessary for the construction, operation, alteration, reconstruction, extension or repair of the refinery or for equipping such refinery including—

- (i) tugs and barges;
- (ii) pipelines and other transmission and transportation facilities;
- (iii) motor vehicles not intended to be and in no circumstances used upon a public road save with the permission in writing of the Minister responsible for works and not required to be licensed under the Road Traffic Act.

[The inclusion of this page is authorized by L.N. 68/1978]

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