

No. 22 of 2006

Fifth Session Eighth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to provide for the establishment and management
of the Heritage and Stabilisation Fund and for matters
related thereto

THE HERITAGE AND STABILISATION FUND
(NO. 2) BILL, 2006

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The main purpose of this Bill is to provide for the establishment and management of the Heritage and Stabilisation Fund.

Clause 1 of the Bill would provide for the short title, while clause 2 would provide for the interpretation of certain words and expressions.

Clause 3 would provide for the establishment and purpose of the Fund.

Clause 4 would provide for the management of the Fund by a five-member Board of Governors, appointed by the President on the advice of the Minister of Finance. Members of the Board shall hold office for three years and are eligible for reappointment.

Clauses 5, 6 and 7 would provide for routine matters pertaining to meetings of the Board, termination of appointments and publication of membership in the *Gazette*.

Clause 8 would provide for the functions of the Board including that of determining the investment guidelines for the management of the Fund, while clause 9 would empower the Board to delegate to an Investment Entity responsibility for the day-to-day management of the Fund.

Clause 10 would provide for the transfer of moneys held in the Interim Stabilisation Fund to the Heritage and Stabilisation Fund.

Clause 11 would provide for the types of assets to be contained in the Fund, while clause 12 would provide that the Fund would have one portfolio—the Financial Investment Portfolio.

Clauses 13,14 and 15 would set out the circumstances in which deposits into and withdrawals from the Fund would be made.

Clause 16 would provide for the Fund to be a public account.

Clause 17 would exempt the income of the Fund from any taxation notwithstanding any other law.

Clause 18 would impose an obligation for confidentiality on members of the Board.

Clause 19 would provide for Members of the Board to disclose any interest they may have that may conflict with their duties and responsibilities.

Clause 20 would require the Board to submit reports on the performance of the Fund to the Minister.

Clause 21 would require financial statements to be laid in Parliament within four months of the end of each financial year.

Clause 22 would provide for the Act to be reviewed at intervals of five years.

BILL

AN ACT to provide for the establishment and management of the Heritage and Stabilisation Fund and for matters related thereto

[, 2006]

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:—
Short title	1. This Act may be cited as the Heritage and Stabilisation Fund (No. 2) Act, 2006.
Interpretation	2. In this Act—
Chap. 79:02	<p>“Board” means the Board of Governors established under section 4;</p> <p>“Central Bank” means the Central Bank of Trinidad and Tobago established under the Central Bank Act;</p> <p>“crude oil” means petroleum in the liquid state, including condensates and natural gasoline physically separated from a natural gas stream;</p> <p>“Fund” means the Heritage and Stabilisation Fund established under section 3;</p> <p>“Minister” means the member of the Cabinet to whom responsibility for finance is assigned and Ministry shall be construed accordingly;</p> <p>“natural gas” means petroleum in the gaseous state;</p> <p>“petroleum” means any mixture of naturally occurring hydrocarbons and hydrocarbon compounds;</p> <p>“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;</p>

“petroleum profits tax” means the tax imposed by Part I of the Petroleum Taxes Act; Chap. 75:04

“petroleum taxation 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; Chap. 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 savings for future generations.

Appointment, tenure
and remuneration of
Board

4. (1) The President on the advice of the Minister shall appoint a Board of Governors to manage 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, as follows:

- (a) two members, one each nominated by the Central Bank or the Ministry or both from either of these institutions; and
- (b) three other members.

(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 respect of each member of the Board, the President shall appoint an alternate member, nominated by the persons making the original nomination, who may act in the stead of the respective member at any meeting of the Board.

(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 of his alternate to preside over that meeting.

(4) A meeting shall not be held without a representative of the Central Bank or the Ministry of Finance.

(5) Three members or their alternates shall constitute a quorum.

(6) The decisions of the Board shall be by a majority of votes of members present.

(7) Alternate members shall have and exercise the same powers and enjoy the same privileges as the members in whose place they are acting.

(8) The Board may, subject to the approval of the Minister, make rules to regulate its own procedure for the conduct of its business.

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

- (a) becomes of unsound mind or is incapable of carrying out his duties;
- (b) becomes bankrupt;
- (c) is guilty of misconduct in relation to his duties; or
- (d) is absent, except on leave granted by the Board, from three consecutive meetings of the Board.

Publication of names
of members in the
Gazette

7. The names of the members of the Board as first constituted and every change in the membership thereafter, shall be published in the *Trinidad and Tobago Gazette* and in two daily newspapers circulating in Trinidad and Tobago.

Functions of the
Board

8. The Board shall—

- (a) determine by resolution, the governance structure and the operational and investment guidelines of the Fund;
- (b) be responsible for the day-to-day 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.

Delegation to an
investment entity

9. (1) The Board shall delegate to an investment entity recommended by the Central Bank, responsibility for the day-to-day management of the Fund.

(2) The terms and conditions of the delegation shall be approved by the Minister and shall include the matters set out in the Schedule.

Schedule

(3) The name of the investment entity and the terms and conditions of the delegation shall be published in the *Trinidad and Tobago Gazette* by Notice issued by the Minister.

Interim Stabilisation
Fund to cease to exist

Chap. 69:01.

10. Upon the commencement of this Act, the moneys held in the Interim 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 Stabilisation Fund shall cease to exist.

- 11.** The resources of the Fund shall consist of— Resources of the Fund
- (a) moneys transferred from the Interim Stabilisation Fund;
 - (b) surplus petroleum revenues, derived from production business, that consist of—
 - (i) supplemental petroleum tax and petroleum profits tax, payable under the Petroleum Taxes Act; and
 - (ii) royalties payable under the Petroleum Act; and
 - (c) assets acquired and earned from investments.

12. (1) The investment assets of the Fund shall be held The Financial Investment Portfolio in one portfolio to be known as the Financial Investment Portfolio.

(2) The cash resources of the Fund shall be held in one account to be known as the Financial Investment Account, the resources of which shall be invested in a wide spectrum of high-quality international investment instruments including highly-liquid fixed income securities as well as in bonds and equities.

- 13.** (1) Where petroleum revenues collected in each Deposits to the Fund 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 deposited to the Fund; or
 - (b) exceed the estimated petroleum revenues for that quarter of a financial year but do not exceed them 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 be deposited to the Fund.

(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 and section 15 “quarter” means a three-month period ending December 31, March 31, June 30 and September 30.

Allocation of annual deposits to fund

14. (1) A minimum of sixty per cent of the aggregate of the surplus petroleum revenues deposited to the Fund during a financial year shall be credited to the Financial Investment Account.

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

Withdrawals from the Fund

15. Where petroleum revenues collected in any financial year fall below 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 quarter; or
- (b) twenty-five per cent of the balance standing to the credit of the Fund at the beginning of that quarter year.

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 authorized by the Auditor General in writing for that purpose. Fund to be a public account
Chap. 1:01

(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).

17. Notwithstanding any law to the contrary the income of the Fund is not subject to any tax. Income of the Fund
exempt from taxation

18. (1) 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. Confidentiality

(2) A person referred to in subsection (1) who unlawfully discloses any document or information or uses any such information for his personal benefit or advantage, is guilty of an offence and liable on summary conviction to a fine of five hundred thousand dollars and two years imprisonment.

19. (1) Every member of the Board shall give in writing— Disclosure of interest

- (a) 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; and

(b) an undertaking that they will not engage, directly or indirectly, in any business or professional activity which would conflict with the performance of their duties as a member of the Board.

(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 subsection (1), shall be recorded in the minutes of the meeting 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.

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 principles.

22. The provisions of this Act shall be subject to a Review mechanism review every five years.

SCHEDULE

(section 9)

A. Responsibilities of Investment Entity

The responsibilities of the Investment Entity shall include but not be limited to—

- (a) the management of the assets of the Fund in accordance with the Heritage and Stabilisation Fund Act, 2006 and the prudent person standard of an investment manager, engaged in the asset management profession;
- (b) the investment of the assets of the Fund in accordance with the Heritage and Stabilisation Fund Act, 2006 and the operational and investment guidelines developed by the Board;
- (c) the selection and retention on behalf of the Fund appropriate third-party service providers, e.g., Attorneys-at-law, Auditors and Advisors in order to carry out competently, the mandate specified in the instrument of delegation;
- (d) the appointment of an appropriate global custodian for the Fund, such custodian to be approved by the Board;
- (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;

17

Passed in the Senate this day of , 2006.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 22 of 2006

FIFTH SESSION
EIGHTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to provide for the establishment and management of the Heritage and Stablisation Fund and for matters related thereto

Received and read the

First time.....

Second time.....

Third time.....