



THE ESSO UNDERTAKINGS (VESTING) ACT, 1976.



CONTENTS

1. Short title, extent and commencement
2. Definitions
3. Act to override other laws
4. Vesting of Esso undertakings
5. Vesting in a Government Company
6. Contracts
7. Lease
8. Re-organization of Government Company
9. Payment
10. Provisions relating to officers and other employees of Esso undertakings
11. Provident Fund
12. Delivery of possession of vested property
13. Penalty
14. Offences by companies
15. Protection of action taken in good faith
16. Cognizance of offences
17. Savings

18. Removal of doubts
19. Power to make rules
20. Power to remove difficulties
21. *Repeal*



THE PAKISTAN CODE

THE ESSO UNDERTAKINGS (VESTING) ACT, 1976.

¹Act No. LXXIX OF 1976

[27th December, 1976]

An Act to provide for vesting in the Federal Government of certain undertakings of Esso Eastern Inc. in Pakistan.

WHEREAS it is expedient to provide for vesting in the Federal Government of certain undertakings of Esso Eastern Inc. in Pakistan and for matters connected therewith or ancillary thereto;

AND WHEREAS Esso Eastern Inc., a foreign company, has approached the Federal Government for vesting of certain of its undertakings in Pakistan in the Federal Government;

AND WHEREAS the scope of such vesting and the amount and manner of the payment to be made to Esso Eastern Inc. for such undertakings has been agreed upon between the Federal Government and Esso Eastern Inc.;

It is hereby enacted as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Esso Undertakings (Vesting) Act, 1976.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) “commencing day” means the day on which this Act comes into force;
- (b) “Government company” means a company directly or indirectly owned or controlled by the Federal Government in which the Esso undertakings are vested by notification under sub-section (1) of section 5;
- (c) “Esso” means Esso Eastern Inc., incorporated under the laws of the State of Delaware in the United States of America, having its principal office at 2401 South Gessner, City of Houston, State of Texas, in the United States of America, and having a branch in Pakistan;
- (d) “Esso undertakings” means the business in Pakistan of Esso of purchasing, storing, distributing, blending, marketing and selling of refined petroleum products, of lubricants and of chemical products, and includes—

¹For Statement of Objects and Reasons, see Gaz., of P., 1976, Ext., Pt. III, p. 1218.

- (i) all assets, rights, powers, authorities and privileges and all property, movable and immovable, book-debts, cash balances, reserves, provisions and investments pertaining to such business, and all other rights and interests in or arising out of such property, in Pakistan, as were, immediately before the commencing day, in the ownership, possession, power or control of Esso;
- (ii) all books of accounts, registers, records and all other documents of Whatever nature pertaining to such business in Pakistan, as were, immediately before the commencing day, in the possession, power or control of Esso;
- (iii) all debts, liabilities and obligations of whatever kind in Pakistan pertaining to such business, as were immediately before the commencing day, subsisting against Esso;
- (iv) all liabilities and entitlements of Esso undertakings for amounts payable to and recoverable from any other businesses or undertakings of Esso in Pakistan which, immediately before the commencing day, were subsisting on the basis of moneys pertaining to or arising out of any other businesses or undertakings of Esso in Pakistan which were utilized for the purposes of Esso undertakings being treated as liabilities and moneys pertaining to or arising out of Esso undertakings which were utilized for the purposes of any other businesses or undertakings of Esso in Pakistan being treated as entitlements;
- (v) all liabilities and entitlements of the Esso branch in Pakistan for amounts payable to and receivable from the principal office of Esso in the United States of America which, immediately before the commencing day, were subsisting on account of products and services pertaining to Esso undertakings;
- (vi) all liabilities and obligations of Esso for the payment of pensions to such of its former employees, or their personal representatives, who were, immediately before the commencing day, entitled to receive pensions on account of the past service of such former employees with Esso in Pakistan;
- (vii) all contracts and agreements pertaining to Esso undertakings, including the Sale and Purchase Agreement dated the first day of January, 1976, between Pakistan Refinery and Esso and the Agreements between Burmah Shell Oil Storage and Distributing Company of Pakistan Limited, Standard-Vacuum Oil Company and Caltex Oil (Pakistan) Limited relating to the Joint Hydrant System at the Karachi Airport;
- (viii) the profit or loss arising out of any Esso undertakings during the period between the first day of January, 1976, and the close of business on the day immediately preceding the commencing day;

- (ix) all liabilities of Esso for taxes and surcharges thereon leviable on or in relation to the income, profits or gains of Esso arising out of any Esso undertakings up to and inclusive of the year of account ending the thirty-first day of December, 1975;
- (x) all entitlements of Esso to credit or refund of taxes or any payments made for or in respect of any assessment or liability under the Income-tax Act, 1922 (XI of 1922), relating to any income, profits or gains of Esso arising out of any Esso undertakings up to and inclusive of the year of account ending the thirty-first day of December, 1975;

but does not include—

- (1) the business of Esso in Pakistan relating to natural gas and crude oil;
 - (2) the corporate name, trading styles and trade and service names, marks and other insignia used by Esso, any trade marks registered by Esso in Pakistan, or any right of Esso to use any trade mark registered in Pakistan by Exxon Corporation, a corporation incorporated in the State of New Jersey, United States of America, and having its principal office in New York, State of New York, United States of America;
 - (3) any patent or design registered in Pakistan in the name of Esso or any affiliate of Esso;
 - (4) any confidential and proprietary information and material or information and material pertaining to trade secrets belonging to Esso or procured by Esso for use in connection with Esso undertaking;
 - (5) the business and any assets of Esso situated in the territories which immediately before the sixteenth day of December, 1971, constituted the Province of East Pakistan, and any claims by or against Esso and any receivables and payables of Esso pertaining to any business at any time carried on by Esso in such territories;
 - (6) the Agreement dated the fifteenth day of September, 1976, between the President of Pakistan and Esso;
 - (7) the policies of insurance issued in Pakistan by New Hampshire Insurance Company of Manchester, New Hampshire, U.S.A., in favour of Esso;
 - (8) the benefits of any policies of insurance available to Esso in connection with the supply in Pakistan of aviation fuels and lubricants to international airlines; or
 - (9) any contracts entered into by Esso for the delivery of aviation fuels and lubricants outside Pakistan to aircraft operated by the Pakistan International Airlines Corporation;
- (e) “Pak-Stanvac Petroleum Project” means the joint exploration and production arrangements created by the Memorandum of Agreement between Esso under its former name of Standard-Vaccum Oil Company and the Governor-General of Pakistan, dated the 24th September, 1954, as amended; and

- (f) “Pakistan Refinery” means Pakistan Refinery Limited, a company incorporated in Pakistan under the Companies Act, 1913 (VII of 1913) and having its registered office at Korangi Creek Road, Karachi.

3. Act to override other laws.— This Act shall have effect notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act and notwithstanding any decree or order of any court, tribunal, commission or other authority.

4. Vesting of Esso undertakings.—(1) As from the commencing day, the Esso undertakings, and all rights, titles and interests therein, shall stand transferred to and vest in the Federal Government.

(2) All deeds, bonds, contracts, agreements, powers-of-attorney, grants of legal representation and other instruments of whatever nature in relation to Esso undertaking subsisting and having effect immediately before the commencing day to which Esso is a party or which are in favour of Esso shall be of full force and effect against or in favour of the Federal Government and may be enforced and acted upon as fully and effectively as if references in such deeds, bonds, contracts, agreements, powers, grants and instruments to Esso were references to the Federal Government.

(3) All suits, appeals and other legal proceedings instituted by or against Esso for the purpose of, or in relation to, Esso undertakings, and pending immediately before the commencing day, shall be deemed to be suits, appeals and legal proceedings by or against the Federal Government and the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the vesting of Esso undertakings, or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Federal Government.

(4) where any property is held by Esso for the purpose of or in relation to Esso undertakings under any lease or licence or under any right of tenancy or occupancy, the Federal Government shall be deemed to have become the lessee, licensee, occupant or tenant, as the case may be, in respect of such property as if the lease, licence, right of occupancy or tenancy had been granted to the Federal Government and thereupon all rights under such lease, licence, occupancy or tenancy, including any right of renewal thereof, shall be deemed to have vested in the Federal Government.

(5) The profit or loss arising during the period between the first day of January, 1976, until the close of business on the day immediately preceding the commencing day out of any business comprised in Esso undertakings shall be deemed to be the profit or loss of the Federal Government and such profit or loss shall not be treated as accruing or arising or as having been received, whether actually or not, by Esso for any purpose including, the computation of Esso's taxable income for the year 1976 or any other period for purposes of assessment of taxes and surcharges thereon levied on or in relation to income, profits or gains.

5. Vesting in a Government company.—(1) The Federal Government may, by notification in the official Gazette, direct that the Esso undertakings shall stand transferred to and vest in the Government company on such day, not being a day earlier than the commencing day, as may be specified in the notification.

(2) Where Esso undertakings vest in the Government company under sub-section (1), the Government company shall, on and from the day of such vesting, be deemed to have become the owner, tenant, occupant, lessee or licence, as the case may be, in relation to Esso undertakings, and all the rights and liabilities of the Federal Government in relation to Esso undertakings shall, on and from the day of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) Where Esso undertakings vest in the Government company, under sub-section (1), all officers and employees transferred to the Federal Government under sub-section (1) of section 10 shall, on and from the day of such vesting, stand transferred to the Government company, and the provisions of sub-sections (2), (3), (4) and (5) of section 4, sections 6 and 7, sub-section (5) of section 10 and sections 11, 12, 13, 15 and 17 shall apply to the Government company as they apply to the Federal Government and, in the application of the said sections for the purposes of this section, a reference to the Federal Government shall be construed as a reference to the Government company.

6. Contracts.—(1) Every contract referred to in sub-clause (vii) of clause (d) of section 2 and entered into by Esso for any service, sale or supply in Pakistan or abroad and in force immediately before the commencing day shall, unless terminated under sub-section (2) within one year from the commencing day, continue to be of full force and effect against or in favour of the Federal Government.

(2) The Federal Government may, if it is satisfied that any contract referred to in sub-section (1) is unduly onerous or is detrimental to the interests of the Federal Government, by order in writing, either terminate such contract or make such alterations or modifications therein as it may think fit:

Provided that the Federal Government shall not terminate any contract or make any alteration or modification therein except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording its reasons for such termination, alteration or modification, as the case may be.

7. Lease.— On the expiry of the term of any lease, licence or tenancy referred to in sub-section (4) of section 4, such lease, licence or tenancy shall, if so desired by the Federal Government, be renewed on the same terms and conditions on which the lease, licence or tenancy was held by Esso immediately before the commencing day.

8. Re-organization of Government company.—(1) If the Esso undertakings are vested in a Government company under sub-section (1) of section 5, the Federal Government may direct the Board of Management constituted under the Marketing of Petroleum Products (Federal Control) Act, 1974 (XVII of 1974), to draw up a plan for the re-organization of the company with a view to increasing its efficiency and rationalising its operations, hereafter in this section referred to as the re-organization plan.

(2) The re-organization plan may include provision for amalgamation of the Government company with any one or more managed companies under the Marketing of Petroleum Products (Federal Control) Act, 1974 (XVII of 1974), and may provide for a scheme for the re-construction of the Government company or such company or companies or amalgamation of the Government company with any one or more such company or companies and such scheme may provide for

all or any of the matters contained in section 153 or section 153B of the Companies Act, 1913 (VII of 1913), or for alteration of share capital or loan structure and alteration of existing, or adoption of fresh, memorandum or articles of association of such companies.

(3) The re-organization plan shall be submitted to the Federal Government for approval and shall be simultaneously published in the official Gazette accompanied by a certified statement showing the value of the holdings of the shares of the Federal Government in the companies covered by the plan on the date of the submission of the plan, and, from the date of such submission, dealings in shares of the companies covered by the plan in any of the stock exchanges shall remain suspended until the Federal Government has approved the re-organization plan.

(4) The re-organization plan shall be implemented and shall take effect in such manner and at such time and with such modification as may be approved by the Federal Government.

9. Payment.—The Federal Government shall pay Esso for Esso undertakings on the commencing day the sum set forth in the Agreement dated the fifteenth day of September, 1976, between the President of Pakistan and Esso, and such payment shall be made in the currencies and in the manner provided in the said Agreement.

10. Provisions relating to officers and other employees of Esso undertakings.— (1) Except as otherwise agreed between the Federal Government and Esso, every whole time officer or other employee of Esso who was, immediately before the commencing day, employed by Esso in Pakistan in connection with Esso undertakings, and every such whole time officer or other employee of Esso in Pakistan who was, immediately before the commencing day, temporarily holding any assignment outside Pakistan, shall, on the commencing day, become an officer or other employee, as the case may be, of the Federal Government and shall hold office on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if this Act had not come into force and shall continue to do so unless and until his employment by the Federal Government is terminated or until his remuneration and conditions of service are altered by the Federal Government.

(2) Any officer or employee who becomes an officer or employee of the Government company under sub-section (3) of section 5 may be transferred by the Federal Government to any other corporation, company or industrial unit controlled by it, and shall hold office therein on such terms and conditions as are not less favourable than those to which he was entitled immediately before such transfer.

(3) Any officer or employee who becomes an officer or employee of the Government company under sub-section (3) of section 5 or is transferred under sub-section (2) shall not be entitled to any compensation or to the designation which he was holding immediately before the commencing day or on the date of such transfer, as the case may be, and no claim for such compensation or designation shall be entertained by any court, tribunal or other authority.

(4) Notwithstanding anything contained in any agreement or any law for the time being in force, and notwithstanding any decree, order, award or direction of any court, tribunal, arbitrator, commission or other authority, the transfer of the services of any officer or other employee under sub-section (1) shall not entitle any such officer or other employee to any payment, whether by

way of separation benefits, compensation, gratuity or otherwise, by reason only of his ceasing to be an employee of Esso, and no proceedings for the declaration, recognition, quantification or enforcement of any such entitlement or payment, whether filed before, on or after the commencing day, shall be adjudicated upon or otherwise entertained by any court, tribunal, arbitrator, commission or other authority.

(5) Where any officers or employees have become officers or employees of the Federal Government under sub-section (1), the Federal Government may, for the purpose of rationalising the pay scales of such officers or employees or for any other good and adequate reason, alter the terms and conditions of service of such officers or employees as to their remuneration in such manner as it thinks fit; and if the alteration thus made is not accepted in writing by the officer or employee concerned within such period as may be specified, which period shall not be less than thirty days, he shall be deemed to have resigned from service on the expiry of such period, and notwithstanding anything contained in any other law, or in any agreement or in any decree, order, award, or directions of any Court, arbitrator, Commission or other authority, or in any conditions of service, he shall only be entitled to benefits payable on resignation and not termination of employment.

(6) Where any question arises as to whether any person was immediately before the commencing day a permanent officer or other employee of Esso for the purpose of or in relation to Esso undertakings, the question shall be referred to the Federal Government whose decision thereon shall be final.

11. Provident Fund.—(1) The moneys and investments in the provident fund established by Esso for the benefit of the persons employed by it in Pakistan shall, on the commencing day, stand transferred to and vest in the Federal Government free from any trust that may have been constituted by Esso in respect thereof, and the trustees of the provident fund shall, as from the commencing day, stand discharged from the trust, except as respects things done or omitted to be done before the commencing day.

(2) The Federal Government shall cause the firm of chartered accountants in Pakistan agreed with Esso to determine as of the day immediately preceding the commencing day the contributions to the provident fund of such officers and other employees of Esso as are excepted under sub-section (1) of section 10 by agreement between the Federal Government and Esso and the contributions of Esso to the provident fund in respect of such officers and employees, and the interest due on all such contributions, and within thirty days of the commencing day the Federal Government shall—

- (a) pay to the new trustees of the provident fund to be appointed by Esso the amount of all such contributions and interest; and
- (b) pay and transfer the balance of the moneys and investment then remaining to the trustees of the trust or trusts referred to in sub-section (3).

(3) The Federal Government shall, as soon as may be after the commencing day, constitute, in respect of the balance of moneys and investments referred to in clause (b) of sub-section (2) one or more trusts having such objects as in the circumstances may be practicable so, however, that the rights and interests of the beneficiaries under the trust created by Esso are not in any way prejudiced or diminished:

Provided that the Federal Government may not constitute any new trust if a suitable trust already exists for the benefit of the officers and employees for whose benefit a trust is to be created and may transfer the balance of the said moneys and investments to the existing trust.

(4) The Federal Government may, by order, vest in the trustees of the trust or trusts referred to in sub-section (3) all collateral securities assigned to the trustees of the provident fund mentioned in sub-section (1) by officers or employees whose services stand transferred to the Federal Government under subsection (1) of section 10.

12. Delivery of possession of vested property.—(1) Where any property or other assets stand transferred to and vested in the Federal Government under this Act, every person in whose possession, custody or control any such property or assets (including books, documents, or other papers relating to Esso undertakings) may be, shall be liable to account for such property or assets and shall deliver the same to the Federal Government upon demand.

(2) Without prejudice to the provisions of sub-section (1), the Federal Government may take all such steps as may be necessary to take possession or assume control of the properties, assets, books, documents and other papers referred to in that sub-section.

13. Penalty. Any person who—

- (a) wrongfully obtains possession of, or retains, or having in his possession, custody or control, wrongfully withholds, any property or other assets transferred to and vested in the Federal Government under this Act; or
- (b) having in his possession, custody or control any book, register, document or other papers relating to Esso undertakings, wilfully withholds or fails to furnish or deliver the same to the Federal Government,

shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty-thousand rupees, or with both.

14. Offences by companies.— Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of its business, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

15. Protection of action taken in good faith.— No suit prosecution or other legal proceeding shall lie against the Federal Government or any person for anything which is in good faith done or intended to be done under this Act.

16. Cognizance of offences.— Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no court shall take cognizance of any offence under this Act except on a complaint in writing made by or under the authority of the Federal Government.

17. Savings.—(1) Nothing contained in this Act shall affect any undertaking or business of Esso in connection with the exploration of petroleum, the production, refining, treating and transportation of natural gas and crude oil, and the purchase, distribution, marketing and selling of natural gas and crude oil.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), nothing contained in this Act shall affect—

- (a) any share held by Esso in the equity capital of the Pakistan Refinery, or any deed, bond, agreement other than the Agreements referred to in sub-clause (vii) of clause (d) of section 2, power-of-attorney, proxy, grant of legal representation or other instrument of whatever nature pertaining to the Pakistan Refinery, including specifically but without limitation the agreement entitled “Refinery Agreement” between the President of Pakistan, the Burmah Oil Company Limited, California Texas Oil Corporation, the Shell Petroleum Company Limited and Esso under its former name of Standard-Vacuum Oil Company, as supplemented by the Refinery letter Agreements Nos. 1, 2 and 3 and by the Tanker Letter Agreement, all dated the 28th November, 1959, and by the Ministry of Industries and Natural Resources, Government of Pakistan, letter No. P-III-1 (49)61, dated the 9th November, 1962, and the agreement between the Government of Pakistan and the parties to the Refinery Agreement, including the Pakistan Refinery, dated the 21st November, 1975;
- (b) any part of the interest held by Esso in the Pak-Stanvac Petroleum Project, in any licence or lease issued pursuant thereto or in any asset belonging to or held for the benefit of the participants in the Pak-Stanvac Petroleum Project;
- (c) the assets identified in the second Schedule to the Agreement referred to in section 9;
- (d) any contracts, agreements, assets, rights, powers, authorities and privileges, or any property movable or immovable, book-debts, cash balances, reserves, provisions or investments pertaining to any undertaking or business mentioned in sub-section (1), or any other rights and interest in or arising out of such property, as are in the ownership, possession, power or control of Esso;
- (e) any books of account, registers, records or any other documents of whatever nature pertaining to any undertaking or business mentioned in sub-section (1);
- (f) any liability of Esso for taxes and duties payable in relation to production, sale, import, export or other dealings pertaining to any undertaking or business mentioned in sub-section (1), or any entitlement of Esso to credit for or refund of payments made for or in respect of any such liability;
- (g) any liability of Esso for payment of annuities pensions, gratuities or other separation benefits to such officers and employees of Esso as are excepted under sub-section (1) of section 10 by agreement between the Federal

Government and Esso, or any liability or entitlement of Esso for sums payable to or receivable from such officers and employees;

- (h) any other liability, indebtedness or obligation of Esso of whatever kind pertaining to any undertaking or business mentioned in sub-section (1);
- (i) the claim or entitlement, if any, of Esso to payment out of the moneys declared and paid to the Administrator under the Abandoned Properties and Management Act, 1975 (XX of 1975), by the trustees of the provident fund established by Esso for the benefit of its employees;
- (j) any suit, application or other legal proceeding instituted against Esso relating to the inland mechanically propelled vessel M.V Esso Ark registered in the territories which immediately before the sixteenth day of December, 1971, constituted the Province of East Pakistan;
- (k) any provisions or allocations of money made in the accounts of the Esso branch in Pakistan for liabilities accrued or accruing in respect of any period preceding the commencing day on account of—
 - (i) any liability indebtedness or obligations of the kind mentioned in clause (f), (g), or (h) or sub-clause (5) of clause (d) of section 2; or
 - (ii) any profits arising from any undertakings or business mentioned in sub-section (1).

(3) The payment of the amount determined in accordance with section 9 to Esso for Esso undertakings shall not release the Federal Government from payment to Esso, or release Esso from payment to the Federal Government, of the net amount of the accounts pertaining to Esso undertakings—

- (i) for sums payable to and receivable from the Esso branch in Pakistan from and to Esso abroad and Esso affiliates (that is Exxon Corporation or any company of which Exxon Corporation controls directly or indirectly, fifty per cent or more of the voting shares) with respect to products and services; and
- (ii) for sums payable to and receivable from Esso undertakings from and to the other business and undertakings of Esso in Pakistan with respect to the moneys pertaining to or arising out of the one being utilized for the purposes of the other.

18. Removal of doubts.—(1) For the removal of doubts, it is hereby declared that the provisions of section 4 shall apply to the extent to which any property appertains to the Esso undertakings and to the rights, powers, debts, liabilities and obligations of Esso comprised in Esso undertakings referred to in clause (d) of section 2, and to contracts, agreements and other instruments made by Esso in Pakistan in relation to Esso undertakings, and to legal proceedings relating to those matters pending in any court or tribunal in Pakistan.

(2) If any question arises, otherwise than as between the Federal Government or the Government company and Esso or between Esso and any other persons, as to whether any property in Pakistan appertains, on the commencing day, to Esso undertakings, or whether any leases, licences, rights, powers, debts, liabilities or obligations were vested under this Act or whether any contract, agreement or other instrument was made by Esso for the purposes of Esso undertakings, or whether any documents relate to those purposes, the question shall be referred to the Federal Government which shall, after giving an opportunity of being heard to the persons interested in the matter, decide it in such manner as it may think fit.

19. Power to make rules.—The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

20. Power to remove difficulties.— If any difficulty arises in giving effect to the provisions or carrying out the purposes of this Act, the Federal Government may make such orders as it may consider necessary to remove the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the commencement of this Act.

21. [Repeal.]— *Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and Sch., II.*
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