

## HYDROCARBON OIL REFINERIES ACT

### ARRANGEMENT OF SECTIONS

#### SECTION

1. Refiner's licence.
2. Application for refiner's licence.
3. Grant of application.
4. Refusal to grant application.
5. Revocation of licence.
6. Expiration and renewal of licence.
7. Offences under section 1 of this Act.
8. Making of entries.
9. New or further entries of same premises.
10. Proof as to entries.
11. Offences in connection with entries.
12. Power to enter on premises for inspection purposes.
13. Payment of excise duty.
14. Effect of variation in balances struck or excess, etc., in stock of materials.
15. Power to enter on premises, etc., in case of unlawful refining.
16. Power to seize goods in particular cases.
17. Forfeiture and condemnation of refined hydrocarbon oils seized.
18. Power to levy distress.
19. Excise control facilities.
20. Licensees to keep records.
21. Power to require information from licence-holder.
22. Unlawful assumption of office.
23. Officers to have powers of police officers.
24. Offence of concealing, etc., refined hydrocarbon oil on licensed premises.
25. Condemnation proceedings.
26. Compensation in special cases.
27. Offences by bodies corporate.
28. Regulations.
29. Interpretation.
30. Short title.

#### SCHEDULES

##### FIRST SCHEDULE

*Provisions relating to forfeiture  
Hydrocarbon Oil Refineries Act*

##### SECOND SCHEDULE

*Form of warrant of distress*

## HYDROCARBON OIL REFINERIES ACT

**An Act to make provision for the licensing and control of the refining of  
hydrocarbon oils for purposes of excise and for matters connected therewith.**

[1965 No. 17.]

[11th June, 1965]

[Commencement.]  
[L.N. 71 of 1965.]

### **1. Refiner's licence**

Subject to the provisions of this Act, no person shall refine any hydrocarbon oils save in a refinery and under a licence issued under this Act (hereunder referred to as "a refiner's licence").

### **2. Application for refiner's licence**

An application for a refiner's licence may be made by any person in the prescribed form and manner to the Nigerian Customs Service Board (in this Act referred to as "the Board") in respect of the premises mentioned in that behalf in the application.

### **3. Grant of application**

If the Board, after due enquiry, is satisfied that the premises mentioned in an application and intended to be used by the applicant as a refinery are in such a state and contains such equipment as would enable proper control for excise purposes to be exercised over activities to be carried on therein, the Board shall, on payment of a fee of five hundred naira, issue to the applicant a refiner's licence in the prescribed form in respect of such premises.

### **4. Refusal to grant application**

(1) If the Board, after the enquiry, is not satisfied as required by section 3 of this Act in respect of the premises to which the application relates, the Board may refuse to grant the application, and shall notify the applicant in writing of such refusal.

(2) A notification by the Board under subsection (1) of this section of its refusal to grant an application shall contain particulars of what the Board considers necessary to be done in respect of the premises before the application can be granted.

## **5. Revocation of licence**

(1) If at any time during the currency of a refiner's licence the Board is satisfied that-

- (a) proper control for excise purposes can no longer be exercised over the premises; or
- (a) that the person to whom the licence was granted has ceased to refine hydrocarbon oils on such premises,

the Board may revoke the licence.

(2) The Board shall notify a licence-holder in writing of the revocation of his licence under subsection (1) of this section.

## **6. Expiration and renewal of licence**

(1) A refiner's licence issued under this Act shall, unless previously revoked, remain in force until 31 st December next following the date of issue, and shall then expire.

(2) An application for the renewal of a refiner's licence may be made to the Board in the prescribed form and manner by the person to whom the licence was issued and the provisions of sections 3 and 4 of this Act shall apply to such application as they apply to an application made under section 2 of this Act.

## **7. Offences under section 1 of this Act**

(1) Any person who refines hydrocarbon oils in contravention of the provisions of section 1 of this Act shall be guilty of an offence, and shall be liable-

- (a) on summary conviction, to a fine of not less than four hundred naira or more than two thousand naira or to imprisonment for a term of two years, or to both;
- (b) on conviction on indictment, to a fine of an unlimited amount or to imprisonment for a term not exceeding five years, or to both.

(2) Any hydrocarbon oils in respect of the refining of which a person is convicted of an offence under this section shall be liable to forfeiture.

## **8. Making of entries**

(1) The holder of a refiner's licence shall make entry of any premises or articles to which the licence relates as the excise laws may require, and such entry shall be made in the form and manner and contain the particulars prescribed by the Board, and the premises and articles shall be, and be kept, marked in such manner as the Board may direct.

(2) No such entry as aforesaid shall be valid unless the person by whom it was made-

- (a) had at the time of its making attained the age of twenty-one years; and
- (b) was at that time and is for the time being carrying on the business of refining hydrocarbon oils in the premises in respect of which the entry was made.

(3) Where any person required to make entry is a body corporate-

- (a) the entry shall be signed by a director, general manager, secretary or other similar officer of the body and, except where authority for that person to sign has been given under the seal of the body, shall be made under that seal; and
- (b) both the body corporate and the person by whom the entry is signed shall be liable for all duties charged in respect of the trade to which the entry relates.

(4) If any person making entry of any premises or article contravenes or fails to comply with any direction of the Board given under this section with respect thereto he shall be guilty of an offence punishable on conviction by a fine of four hundred naira.

#### **9. New or further entries of same premises**

(1) The Board may at any time, by notice in writing to the person by whom any existing entry was signed addressed to him at any premises entered by him, require a new entry to be made of any premises or article to which the existing entry relates, and the existing entry shall, without prejudice to any liability incurred, become void at the expiration of fourteen days from the delivery of the notice.

(2) Save as permitted by the Board and subject to such conditions as it may impose, no premises or article of which entry has been made by any person shall, while that entry remains in force, be entered by any other person for any purpose of the excise laws, and any entry made in contravention of this subsection shall be void.

(3) Where the person by whom entry has been made of any premises absconds or quits possession of the premises and discontinues the trade in respect of which the entry was made, and the Board permits a further entry to be made of the premises by some other person, the former entry shall be deemed to have been withdrawn and shall be void.

#### **10. Proof as to entries**

For the purpose of any proceedings before any court, if any question arises as to whether or not entry under the excise laws has been made by any person of any premises or article, or for any purpose, then-

- (a) if a document purporting to be an original made by the person, or of the premises or article, or for the purpose, in question is produced to the court by an officer, that document shall, until the contrary is proved, be sufficient evidence that the entry was so made; and
- (b) if the officer in whose custody any such entry, if made, would be, gives evidence that the original entries produced by him to the court constitute all those in his custody and that no such entry as is in question is among them, it shall be deemed, until the contrary is proved, that no such entry has been made.

#### **11. Offences in connection with entries**

(1) If any person being the holder of refiner's licence issued under this Act uses, for any purpose of his trade, any premises or article required by this Act to be entered for that purpose without entry thereof having been duly made, he shall be guilty of an offence punishable on conviction by a fine of one thousand naira, and any goods found on such premises shall be liable to forfeiture.

(2) If any person who has made entry of any premises or article fraudulently uses those premises or that article for any purpose other than that for which entry thereof was made, he shall be guilty of an offence punishable on conviction by a fine of one thousand naira.

## **12. Power to enter upon premises for inspection purposes**

(1) An officer may at any time enter upon any premises to which a refiner's licence relates for the purposes of inspecting the premises and may examine and take account of any equipment, meters, vessels, utensils, goods or materials used for or in any way connected with the refining of hydrocarbon oils.

(2) Where an officer, after having demanded admission into any such premises as aforesaid, and declared his name and business at the entrance thereto, is not immediately admitted, that officer and any person acting in his aid may break open any door or window of such premises or break through any wall thereof for the purpose of entering the premises.

## **13. Payment of excise duty**

(1) Every holder of a refiner's licence shall pay any duty of excise payable in respect of any hydrocarbon oils refined by him at or within such time, at such place and to such person as the Board may direct, whether or not the payment of that duty has been secured by bond or otherwise.

(2) If any excise duty payable is not paid as aforesaid, it shall be paid on demand made by the Board either to the holder of the refiner's licence personally or by delivering the demand in writing at his place of abode or the premises to which his licence relates, and, if it is not so paid on demand, the licence-holder, unless he can show that the demand was not so made or delivered shall, in addition to the amount of the excise duty, be liable to a penalty equal to twice the amount thereof or six hundred naira whichever is the greater.

## **14. Effect of variation in balances struck or excess, etc., in stock of materials**

(1) If at any time when an account is taken by the proper officer and a balance is struck of the quantity of refined hydrocarbon oils in the possession of the holder of the refiner's licence, that quantity differs from the quantity thereof which ought to be kept in his possession according to any account required by this Act to be kept, the following provisions shall apply-

- (a) if the former quantity exceeds the latter, the excess shall be liable to forfeiture; and
- (b) if the former quantity is less than the latter, the holder of the refiner's licence shall be liable on summary conviction to a fine equal to twice the amount of the excise duty which would be payable on the quantity of refined hydrocarbon oils equal to that on the deficiency or six hundred naira, whichever is the greater.

(2) At any time when an account is taken by the proper officer and a balance is struck of the stock of materials, the following provisions shall apply-

- (a) if any excess is found, or goods not authorised for use as materials are discovered in the stock, such excess or goods shall be liable to forfeiture; and
- (b) if any deficiency is found which cannot be accounted for to the satisfaction of the Board, the quantity or value of materials representing such deficiency shall be deemed to have been used in manufacture and, in any particular case, duty shall be charged on the quantity or value of excisable goods reckoned to have been purchased with such quantity or value of materials.

#### **15. Power to enter on premises, etc., in case of unlawful refining**

If any officer has reasonable grounds to suspect that any refining of hydrocarbon oils contrary to the provisions of this Act is being carried out on any land or premises, he may enter thereon, if need be by force, and dismantle or seize any apparatus and equipment used for or in connection with such unlawful refining.

#### **16. Power to seize goods in particular cases**

Where any refined hydrocarbon oils subject to excise duty become liable to forfeiture under this Act, but such products are not available in sufficient quantity for forfeiture, the Board may seize from the stock of the holder of the refiner's licence, any quantity of such products available or materials capable of conversion into such products of such quantity as would attract up to the same amount of duty as that on the refined hydrocarbon oils liable to forfeiture.

#### **17. Forfeiture and condemnation of refined hydrocarbon oil seized**

(1) Any officer, police officer, or person authorised in that behalf by the Board may at any time seize or detain any refined hydrocarbon oils liable to forfeiture under this Act or which such officer, or person so authorised has reasonable grounds to believe are so liable to forfeiture.

(2) Refined hydrocarbon oils so seized or detained shall forthwith be delivered to the Board; and pending determination by the Board as to forfeiture or disposal, things delivered to the Board shall be dealt with as the Board may direct.

(3) In the application of this section the provisions of the First Schedule to this Act shall have effect for the purposes of forfeiture, and all proceedings for the condemnation of any thing as being forfeited under this Act.

[First Schedule.]

#### **18. Power to levy distress**

(1) Where any excise duty on hydrocarbon oils refined under a refiner's licence remains unpaid after the time within which it is payable, the Board may authorise the levying of a distress-

- (a) upon the goods, chattels and effects of the holder of the licence in respect of the unpaid duty; and
- (b) upon all equipment, plant, tools, ships, vehicles, animals, and other goods and effects whatsoever used in the refining, sale or distribution of refined hydrocarbon oils found in any premises or on any land in the use or possession of the holder of the licence or of any person on his behalf, or in trust for him.

(2) The authority to distrain under this section shall be in the form set out in the Second Schedule to this Act, and shall be a warrant and authority to levy by distress the amount of the unpaid duty.

[Second Schedule.]

(3) For the purpose of levying any distress under this section, any person authorised in writing by the Board may execute a warrant of distress and if necessary break open any building or place in the day-time for the purpose of levying such distress.

(4) A person so authorised under subsection (3) of this section to execute a warrant of distress may call to his assistance any police officer, who shall when required aid and assist in the execution of the warrant of distress and in levying the distress.

(5) Where distraint is made on any goods or things under this section the burden of proof that they are not liable to seizure shall lie upon the person claiming that they are not so liable, and any goods or things seized may, at the cost of the owner thereof, be kept for fourteen days; and if the amount due in respect of duty and the cost and charges of and incidental to the distress are not then paid, the goods or things so seized may be sold.

(6) Out of the proceeds of the sale there shall be paid first the excise duty and thereafter the costs and charges of and incidental to the levying, sale and keeping of the distress; and the residue, if any, shall be paid to the owner of the goods or things distrained, upon demand made by the owner within one year of the date of sale.

(7) In exercising the power of distress conferred by this section, the person to whom authority to levy distress is given may distrain upon all goods or things belonging to the licence-holder wherever such goods or things may be found.

## **19. Excise control facilities**

(1) The holder of a refiner's licence shall provide and maintain at his own expense on the premises to which his licence relates-

- (a) such office, lavatory and sanitary accommodation, with the requisite furniture, lighting and cleaning for the proper officer as the Board may direct;
- (b) such appliances and facilities as may be required to enable the proper officer at any time to examine, or search or to perform any other of his duties at such premises as the Board may direct,

and if the holder of the licence fails to comply with any of the foregoing requirements of this subsection, the Board may revoke or suspend his licence.

(2) The requirements which the Board is authorised to impose on the holder of a refiner's licence by subsection (1) of this section shall include the requirement to provide at his own expense and lease to the Board, on such reasonable terms as the Board may determine, living accommodation which the Board considers suitable for occupation by, and by the household of, any officer charged with duties which, in the opinion of the Board, make it desirable that he should reside on or near the premises for which the refiner's licence is granted; and the provisions of subsection (1) of this section for failure to comply with the requirements thereof shall have effect accordingly.

(3) The proper officer may affix a lock or seal to any fittings on the premises, or on any apparatus or thing whatsoever therein, and for that purpose he may require the holder of the refiner's licence to provide and maintain any such fittings at his own expense.

(4) If the holder of such licence fails to comply with the requirements of subsection (3) of this section, the Board may provide and install the fitting, and any expense incurred shall be paid to the Board on demand by the holder of the licence.

(5) The failure of the holder of the licence to pay any expenses incurred by the Board under subsection (4) of this section shall be an offence for which he shall, in addition to the requirement of the payment of the expense, be liable on summary conviction to a fine of four hundred naira.

(6) If the holder of a refiner's licence or any member of his family or any servant of the holder-

- (a) wilfully destroys or damages a fitting or any lock, key or seal intended for use therewith; or
- (b) improperly obtains access to any place or article secured by any such lock or seal thereon; or
- (c) has any fitting on premises or on any apparatus or thing whatsoever fastened or attached in such fashion that adequate supervision and control by an officer for the purposes of this Act is not practicable,

the holder of the licence, or member of his family, or the servant, as the case may be, shall be guilty of an offence and shall on conviction be liable to a fine of two thousand naira or to a term of imprisonment of two years.

## **20. Licensees to keep records**

(1) Every holder of a refiner's licence shall keep on the premises to which the licence relates such records and make all entries therein relating to the refining of hydrocarbon oils and the storage and delivery of hydrocarbon oils and such other materials as the Board may require.

(2) All entries in the records so kept shall be made legibly in ink and no cancellation or amendment shall be made save in such manner as the Board may, from time to time, direct.

(3) The proper officer may at any time inspect records kept under this section and take copies of any entry.

(4) Failure by the holder of a refiner's licence to comply with the provisions of this section shall be an offence for which the offender shall be liable on summary conviction to a fine of one thousand naira.

## **21. Power to require information from licence-holder**

(1) The holder of a refiner's licence shall-

- (a) produce to the Board for inspection as and when required invoices and other books or documents in his possession relating to hydrocarbon oils refined by him during the preceding period of twelve months or any part thereof;

- (b) supply answers to questions relating to the refining of hydrocarbon oils and related matters as the Board may reasonably require to implement the provisions of this Act;
- (c) produce to the Board such evidence as it may reasonably require in support of any answer so supplied; and
- (d) make returns in such form and at such intervals as the Board may require.

(2) If the holder of a refiner's licence fails without lawful excuse to comply with any of the requirements imposed by the Board under subsection (1) of this section he shall be guilty of an offence and shall be liable on summary conviction to a fine of two hundred naira.

(3) The powers conferred on the Board by subsection (1) of this section, in so far as they relate to the questions regarding the cost of production and the refiner's profits in respect of any hydrocarbon oils refined by him shall be exercisable only by the Board itself.

(4) The Board may require the holder of a refiner's licence to supply to it in every year and at such other times as it may direct a certificate of audit by an accountant approved by the Board as to-

- (a) the correctness of all the books and records required by or under this Act to be kept by the licence-holder; and
- (b) any matter necessary to implement any of the provisions of this Act.

(5) The holder of a refiner's licence who without reasonable excuse fails to supply a certificate of audit when required under subsection (4) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand naira.

(6) In this section "accountant approved by the Board" means an accountant who is a member of one of the professional bodies for the time being declared by the Board, by notice in the Federal *Gazette*, to be approved for such purposes, but does not include any such member if he is the holder of a refiner's licence or is employed by any such holder.

## **22. Unlawful assumption of office**

If for any of the purposes incidental to the control of the refining of hydrocarbon oils under this Act any person, without lawful authority, assumes the name, designation or character of an officer he shall, in addition to any other punishment, be liable on conviction to a fine of not less than four hundred naira or more than one thousand naira, or to imprisonment for a term of two years, or to both.

## **23. Officers to have powers of police officers**

For the avoidance of doubt, officers acting under this Act shall have the same powers, authorities and privileges as are given by law to police officers.

## **24. Offence of concealing, etc., refined hydrocarbon oils on licensed premises**

- (1) If any person-

- (a) conceals any refined hydrocarbon oils on premises on which they were refined in pursuance of a refiner's licence; or

- (b) without the consent of the proper officer, removes any refined hydrocarbon oils from such premises; or
- (c) knowingly possesses, buys or receives any such hydrocarbon oils removed from such premises before duty (if any) thereon has been charged and, as the case may be, paid or secured,

such person shall be guilty of an offence and shall on conviction be liable to a fine of six times the value of the goods or one thousand naira whichever is the greater amount, or to imprisonment for two years, or to both.

(2) Refined hydrocarbon oils in respect of which an offence has been committed under subsection (1) of this section shall be liable to forfeiture.

### **75. Condemnation proceedings**

(1) Where, in any proceedings for the condemnation of any things seized as liable to forfeiture under this Act judgment is given for the claimant, the court before which the case is heard may, if it sees fit, certify that there were reasonable grounds for the seizure.

(2) Where any proceedings, whether civil or criminal, are brought against the Board or any person authorised by or under this Act to seize or detain anything liable to forfeiture on account of the seizure or detention of anything, and judgment is given for the plaintiff or prosecutor, then if-

- (a) a certificate relative to the seizure has been granted under subsection (1) of this section; or
- (b) the court is satisfied that there were reasonable grounds for seizure or detaining that thing under this Act,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment:

Provided that nothing in this subsection or in section 26 of this Act shall affect the right of any person to the return of the thing seized or detained or to compensation in respect of any damage to the thing or in respect of the destruction thereof.

(3) Any certificate under subsection (1) of this section may be proved by the production of either the original certificate or a certified copy thereof purporting to be signed by an officer of the court by which it was granted.

### **26. Compensation in special cases**

(1) Where any refined hydrocarbon oils on the premises of the holder of a refiner's licence are destroyed, stolen or unlawfully removed by or with the assistance or connivance of an officer of the Nigerian Customs Service, and that officer is convicted of the offence the Board shall, if the holder of the refiner's licence was not a party to the offence, pay compensation for any loss caused by any such destruction, theft or removal; and it is hereby declared that in any such case no duty shall be payable on any such refined hydrocarbon oils by the licence-holder and duty (if any) paid thereon by the licence-holder shall be refunded.

(2) Subject to the provisions of subsection (1) of this section, compensation shall not be paid by the Board, and no action shall lie against the Board or any officer for any loss or damage caused to any goods by any officer acting in the execution of his duty except where the loss or damage occurs as the direct result of the unlawful act or negligence of such officer.

## **27. Offences by bodies corporate**

Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **28. Regulations**

(1) The Minister may make such regulations with regard to the conduct of refineries as appear to the Minister to be appropriate for the purpose of ensuring the payment of excise duty on the hydrocarbon oils refined on the premises; and, without prejudice to the generality of the foregoing, such regulations may in particular provide for-

- (a) the inspection by officers of the premises and all activities carried on the premises and the inspection of the meters and other equivalent installations used for the measurement of the quantities of refined hydrocarbon oils produced thereon;
- (b) the notice to be given of any change which it is proposed to make in the premises or the use thereof;
- (c) the regulation of
  - (i) the production, storage and warehousing of hydrocarbon oils;
  - (ii) the removal of hydrocarbon oils to or from the premises used for their production;
  - (iii) the use and storage of hydrocarbon oils in the premises;
- (d) the calculation, securing and collection of the excise duty on hydrocarbon oils;
- (e) the exportation, loading as stores, removal to bonded warehouse, deliveries to approved users in Nigeria without payment of the excise; and
- (f) the form and manner of an application for the grant or renewal of a refiner's licence and the form of such licence.

(2) Every person who acts in contravention of any of the regulations made under this section shall be guilty of an offence.

(3) Every person who is guilty of an offence under this section shall be liable on conviction to a fine of not less than two hundred naira or more than one thousand naira in respect of any particular offence, or to imprisonment for a term of two years, or both such fine and such imprisonment, and for the forfeiture or disposal of anything in respect of which the offence is committed.

## **29. Interpretation**

In this Act, unless the context otherwise requires-

**"excise laws"** means the Customs and Excise Management Act and any other Act relating to the control of excisable goods;

[Cap. C45.]

**"hydrocarbon oils"** means petroleum oils produced from coal, shale, peat, or any other bituminous substance, and all liquid hydrocarbons excluding such hydrocarbons which are solid or semi-solid at a temperature of 60 OF or which are gaseous at a temperature of 60 OF at atmospheric pressure;

**"Minister"** means the Minister responsible for finance;

**"officer"** means any person employed in the Nigerian Customs Service or for the time being performing customs and excise duties;

**"proper officer"** means any officer whose right or duty it is to require the performance of or perform the act referred to;

**"refinery"** means any bonded premises approved by the Board for the treatment of hydrocarbon oils.

## **30. Short title**

This Act may be cited as the Hydrocarbon Oil Refineries Act.

## SCHEDULES

### FIRST SCHEDULE

[Section 17 (3).]

#### *Provisions relating to forfeiture*

##### *Notice of seizure*

**1. (1)** Save where seizure was made in the presence of-

- (a) the person whose offence or suspected offence occasioned the seizure; or
- (b) the owner or any of the owners of the thing seized or any servant or agent of his,

the Board shall give notice of the seizure of any thing as liable to forfeiture and of the grounds thereof to any person who to its knowledge was at the time of the seizure the owner or one of the owners thereof.

**(2)** Notice under paragraph 1 shall be given in writing and shall be deemed to have been duly served on the person concerned-

- (a) if delivered to him personally;

- (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at their registered or principal office;
- (c) where he has no address in Nigeria, or his address is unknown, by publication of notice of seizure in the Federal Gazette.

*Notice of claim*

**2. (1)** Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure, or, if no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Board:

Provided that the Board may, at its discretion, extend the period in which notice of a claim may be given.

(2) The notice shall specify the name and address of the claimant. If a claimant is outside Nigeria the notice shall specify the name and address of a legal practitioner in Nigeria authorised to accept the service of process and to act on behalf of the claimant and where service is effected on such legal practitioner it shall be deemed to be proper service on the claimant.

*Condemnation*

**3.** If on the expiration of the relevant period aforesaid for the giving of notice of claim no such notice has been given to the Board, or if, in the case of any such notice given, any requirement of paragraph 2 of this Schedule is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.

**4.** Where notice of claim is duly given in accordance with the foregoing provisions of this Schedule, the Board shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture, the court shall condemn it as forfeited.

**5.** Where any thing is in accordance with either of the two last foregoing paragraphs condemned or deemed to have been condemned as forfeited then, without prejudice to any delivery by or sale of the thing by the Board under paragraph 12 of this Schedule, the forfeiture shall have effect as from the date when the liability to forfeiture arose.

*Proceedings for condemnation by court*

**6. (1)** Proceedings for condemnation shall be civil proceedings and may be instituted in a court of summary jurisdiction.

(2) Proceedings for the condemnation of any thing instituted in a court of summary jurisdiction may be so instituted in any such court having jurisdiction in the place where-

- (a) any offence in connection with that thing was committed or any proceedings for such an offence are instituted;
- (b) the claimant resides, or if the claimant has specified a legal practitioner under paragraph 2 (2) of this Schedule, in the place where the legal practitioner has his office;
- (c) the thing was found, detained or seized or to which it is first brought after having been found, detained or seized.

**7. (1)** In any proceedings for condemnation, the claimant or his legal practitioner shall make oath that the thing seized was, or was to the best of his knowledge or belief, the property of the claimant at the time of the seizure.

(2) If the requirement of sub-paragraph (1) of this paragraph is not complied with, the court shall give judgment for the Board.

**8.** Where an appeal has been made against the decision of the court in any proceedings for the condemnation of any thing, that thing shall, pending the final determination of the matter, be left with the Board.

*Provisions as to proof*

**9.** In any proceedings arising out of the seizure of anything, the effect, form and manner of the seizure shall be taken to have been as set forth in the process without any further evidence thereof, unless the contrary is proved.

**10.** In any proceedings, the condemnation by a court of anything as forfeited may be proved by the production either of the order or certificate of condemnation or a certified copy thereof purporting to be signed by an officer of the court by which the order or certificate was made or granted.

*Special provisions as to certain claimants*

**11.** For the purposes of a claim to, or proceedings for the condemnation of, any thing, where that thing is at the time of the seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five, the oath required by this Schedule to be taken and anything required by this Schedule or by the rules of the court to be done by, or by any other person authorised by, the claimant or owner may be taken or done by, or by any other person authorised by, the following persons respectively, that is to say-

- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
- (b) where the owners are in partnership, anyone of those owners;
- (c) where the owners are any number of persons exceeding five, not being in partnership, any two of those persons on behalf of themselves and their co-owners.

**12.** Where any thing has been seized as liable to forfeiture the Board may at any time, at its discretion, and notwithstanding that the thing has not yet been condemned or is not yet deemed to have been condemned as forfeited-

- (a) deliver it up to any claimant upon his paying to the Board such sum as the Board thinks proper, being a sum not exceeding that which, in its opinion, represents the value of the thing, including any duty chargeable thereon which has not been paid; or
- (b) if the thing seized is, in the opinion of the Board, of a perishable nature, sell or destroy it.

**13. (1)** Subject to the provisions of this paragraph, if in the case of any thing delivered up, sold or destroyed as aforesaid, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Board shall on demand by the claimant tender to him-

- (a) an amount equal to any sum paid by him under sub-paragraph (a) of paragraph 12 of this Schedule; or
- (b) where the Board has sold the thing, an amount equal to the proceeds of sale; or
- (c) where it has destroyed the thing, an amount equal to the market value of the thing at the time of its seizure.

(2) If any such amount includes any sum on account of duty chargeable on the thing which had not been paid before its seizure, the Board may deduct so much of that amount as represents that duty.

(3) If the claimant accepts any amount tendered to him under this paragraph, he shall not be entitled to maintain any action on account of the seizure, detention, sale or destruction of the thing.

#### SECOND SCHEDULE

[Section 18 (2).]

##### *Form of warrant of distress*

To .....

The Nigerian Customs Service Board, by virtue of the powers conferred on it by section 18 of the Hydrocarbon Oil Refineries Act (Cap. H5), hereby authorises you to collect and recover the

sum of ..... due for excise duty from hydrocarbon oil refinery,

having his premises at ..... and, for the recovery thereof, further authorises that you with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary), which assistance he is hereby required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels or other distrainable things of the said hydrocarbon oil refiner wherever the same may be found and on all equipment, plant, tools, ships, aircraft, vehicles, animals, goods and effects used within Nigeria in the refining, sale or distribution of refined hydrocarbon oils which you may find in any premises or on any land in the use or possession of the said hydrocarbon oil refiner or of any person on his behalf or in trust for him.

And for the purpose of levying such distress you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

Signed for and on behalf of the Nigerian Customs Service Board at .....

this ..... day of ..... 20 .....

*Collector (or as the case may be)*

**HYDROCARBON OIL REFINERIES ACT**

**SUBSIDIARY LEGISLATION**

*No Subsidiary Legislation*

