



THE ESSO UNDERTAKINGS (VESTING) ACT, 1976



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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;

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

- (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—
- (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;
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- (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, licensee, 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.