

CENTRAL ENERGY FUND ACT 38 OF 1977

(Previous short title, 'State Oil Fund Act', substituted by s. 6 of Act 46 of 1985)
[ASSENTED TO 22 MARCH 1977] [DATE OF COMMENCEMENT: 10 JANUARY 1977]

(English text signed by the State President)

as amended by

State Oil Fund Amendment Act 30 of 1979
Second State Oil Fund Amendment Act 74 of 1979
Finance Act 21 of 1980
State Oil Fund Amendment Act 68 of 1980
State Oil Fund Amendment Act 73 of 1984
State Oil Fund Amendment Act 46 of 1985
Coal Amendment Act 70 of 1987
Central Energy Fund Amendment Act 55 of 1988
Energy Amendment Act 72 of 1989
Abolition of the National Energy Council Act 95 of 1991
Coal Act Repeal Act 124 of 1991
Central Energy Fund Amendment Act 29 of 1992
Central Energy Fund Amendment Act 48 of 1994

ACT

To provide for the payment of certain moneys into the Central Energy Fund and for the utilization and investment thereof; for the imposition of a levy on fuel and for the utilization and investment thereof; for the control of the affairs of CEF (Proprietary) Limited by a board of directors; for the keeping of records of all transactions entered into for account of the Central Energy Fund or the Equalization Fund and of certain other transactions; for the investigation, examination and auditing of the books, accounts and statements kept and prepared in connection with the said transactions; and for the submission to Parliament of a report relating to the said investigation, examination and auditing; and to provide for matters connected therewith.

[Long title substituted by s. 2 of Act 30 of 1979 and by s. 5 of Act 46 of 1985.]

1 Payment of certain moneys into Central Energy Fund, utilization and investment thereof, and

management of affairs of CEF (Proprietary) Limited

(1) There shall be paid into the Central Energy Fund, controlled by CEF (Proprietary) Limited, a company incorporated in terms of the Companies Act, 1973 (Act 61 of 1973)-

(a) such moneys as may accrue to the Central Energy Fund by virtue of section 1A (1) (b) or (c);

(b) such moneys as may accrue to the Central Energy Fund by virtue of-

(i) section 11 of the Petroleum Products Act, 1977 (Act 120 of 1977);

or

(ii)

[Sub-para. (ii) deleted by s. 3 (a) of Act 124 of 1991.]

(iii) any other law; and

[Para. (b) substituted by s. 7 (a) of Act 70 of 1987.]

with the concurrence of the Minister of Mineral and Energy Affairs and the Minister of Finance, such other moneys as may accrue to the said Fund from any other source.

[Para. (c) amended by s. 4 of Act 124 of 1991.]

(2) (a) Moneys paid under subsection (1) into the said Central Energy Fund shall be utilized in accordance with directions of the Minister of Mineral and Energy Affairs for the financing or promotion of-

(i) the acquisition of coal, the exploitation of coal deposits, the manufacture of liquid fuel, oil and other products from coal, the marketing of the said products and any matter connected with the said acquisition, exploitation, manufacture and marketing;

(iA) the acquisition, generation, manufacture, marketing or distribution of any other form of energy, and research connected therewith;

(ii) any other object for which that Fund may be applied, and which has been designated or approved by the said Minister with the concurrence of the Minister of Finance.

[Para. (a) amended by s. 7 (b) of Act 70 of 1987 and by s. 3 (b) of Act 124 of 1991.]

(b) Any such moneys which in the opinion of the Minister of Mineral and Energy Affairs-

(i) are not immediately required for a purpose mentioned in paragraph (a),

shall be invested in such manner as the said Minister with the concurrence of the Minister of Finance may determine;

(ii) are not required for any such purpose, shall be paid into the State Revenue Fund.

[Para. (b) amended by s. 4 of Act 124 of 1991.]

(c)

[Para. (c) added by s. 7 (c) of Act 70 of 1987 and deleted by s. 3 (c) of Act 124 of 1991.]

(3) The affairs of CEF (Proprietary) Limited shall be managed and controlled by a board of directors.

(4) The board of directors referred to in subsection (3) shall consist of-

(a) a chairman appointed by the Minister of Mineral and Energy Affairs for a period not exceeding five years, on such conditions, including conditions relating to remuneration and allowances, as the said Minister may, with the concurrence of the Minister of Finance, determine, and who may be reappointed;

[Para. (a) amended by s. 4 of Act 124 of 1991.]

(b) two officers in the Department of Mineral and Energy Affairs appointed by the Minister of Mineral and Energy Affairs, one of whom, in the opinion of the said Minister, possesses expert knowledge of crude oil supply and fuel matters; and

[Para. (b) substituted by s. 1 (a) of Act 55 of 1988 and by s. 9 (1) of Act 95 of 1991, amended by s. 4 of Act 124 of 1991 and substituted by s. 1 of Act 29 of 1992.]

(c) not more than five other directors appointed by the Minister of Mineral and Energy Affairs on such conditions, including conditions relating to remuneration and allowances, as the said Minister may, with the concurrence of the Minister of Finance, determine.

[Para. (c) amended by s. 4 of Act 124 of 1991.]

(5) A director referred to in subsection (4) (c) shall hold office for such period, but not exceeding five years, as the Minister of Mineral and Energy Affairs may determine at the time of his appointment, and shall be eligible for reappointment: Provided that if in his opinion good reasons exist for doing so, the said Minister may at any time terminate the period of office of any such director.

[Sub-s. (5) amended by s. 4 of Act 124 of 1991.]

(6) A member of Parliament, the President's council or a provincial council may not be appointed as a director, and a director shall, on becoming such a member, vacate his office.

(7) Subject to the provisions of subsection (8), the remuneration and allowances of a director, and the cost of transport facilities or other benefits afforded to him in respect of his services as a director, shall be paid out of moneys appropriated by Parliament for such purpose.

(8) A director who is in the full-time service of the State shall not in respect of the services rendered by him as a director of CEF (Proprietary) Limited be paid any remuneration in addition to his salary by virtue of such service, nor shall any such director be paid any travel and subsistence allowances at a rate other than that applicable to him by virtue of such service.

[Sub-s. (8) substituted by s. 1 (b) of Act 55 of 1988 and by s. 9 (1) of Act 95 of 1991.]

(9) A director shall not be personally liable for any loss or damage arising out of, or in connection with, the performance of his duties by virtue of his appointment as a director, unless the loss or damage is due to anything done by the director in bad faith or to gross negligence on his part, or to a failure by him to comply with any provision of this Act.

[S. 1 amended by s. 1 of Act 74 of 1979 and by s. 1 of Act 73 of 1984 and substituted by 1 of Act 46 of 1985.]

1A Levy on fuel and the utilization and investment thereof

(1) The Minister of Mineral and Energy Affairs may with the concurrence of the Minister of Finance-

(a) by notice in the *Gazette* or by notice in writing served on any person, whether personally or by post, impose a levy for the benefit of the Equalization Fund controlled by CEF (Proprietary) Limited, on every litre of petrol, aviation spirit, kerosene, distillate fuel, residual fuel oil, naphtha, base oil, products of base oil or every kilogram of grease or liquefied petroleum gas which is manufactured, distributed or sold by an undertaking at any point in the Republic, or imported by any person into the Republic; or

(b) by like notice impose a levy for the benefit of the Central Energy Fund on every litre of petrol, distillate fuel or residual fuel oil; or

[Para. (b) substituted by s. 2 (a) of Act 55 of 1988.]

(c) by like notice impose a levy referred to in paragraph (a) as well as a levy referred to in paragraph (b).

[Sub-s. (1) substituted by s. 2 (a) of Act 74 of 1979 and by s. 2 (a) of Act 46 of 1985 and amended by s. 4 of Act 124 of 1991.]

(1A) A levy referred to in subsection (1) may differ according to the purpose for which the product in question is used or the place where or the method by which the product in question is sold.

[Sub-s. (1A) inserted by s. 1 (a) of Act 68 of 1980 and substituted by s. 2 (b) of Act 46 of 1985.]

(2) The notice shall state the amount of the levy, the date on which the levy becomes effective, which may be a date preceding the date of the notice, the interest payable in the event of the non-payment of the levy, the person who shall be liable for the payment thereof, the product referred to in subsection (1) in respect of which it shall be payable, the person who shall be responsible for the collection thereof and the times when and the manner in which it shall be paid to a person mentioned in the notice and be handed over by that person to the Fund in question.

[Sub-s. (2) substituted by s. 2 (c) of Act 46 of 1985 and by s. 2 (a) of Act 29 of 1992.]

(3) The notice may exempt, in part or in full, any person from any provision thereof, or may contain a directive that the amount of a levy, where the levy is not imposed by notice in the *Gazette*, or the proceeds of a levy, shall not be disclosed by any person to any unauthorized person, or the notice may contain any appropriate condition: Provided that any such notice shall not contain any exemption from the payment of a levy, except to such extent and on such conditions as the Minister may determine in respect of-

(a) petroleum products manufactured from raw material produced in the Republic;

(b) petroleum products manufactured for use outside the Republic from raw material produced outside the Republic which is required for the manufacture of such petroleum products;

[Para. (b) substituted by s. 1 (b) of Act 68 of 1980.]

(c) petroleum products on which customs or excise duty is payable.

(d) such other petroleum products as the Minister may from time to time

determine;

[Para. (d) added by s. 2 (d) of Act 46 of 1985.]

[Sub-s. (3) amended by s. 2 (b) of Act 74 of 1979.]

(3A) There shall be paid into the Equalization Fund, in addition to the moneys raised by means of a levy-

(a) such moneys as may accrue to such fund by virtue of section 11 of the Petroleum Products Act, 1977 (Act 120 of 1977), or any other law;

(b) with the concurrence of the Minister of Mineral and Energy Affairs and the Minister of Finance, such other moneys as may accrue to such fund from any other source;

[Para. (b) amended by s. 4 of Act 124 of 1991.]

(c) the moneys obtained by CEF (Proprietary) Limited or the SFF Association from the sale of crude oil, petroleum products and products determined by the Minister of Mineral and Energy Affairs, with the concurrence of the Minister of Finance;

[Para. (c) added by s. 2 (b) of Act 73 of 1984, substituted by s. 2 (b) of Act 55 of 1988, amended by s. 4 of Act 124 of 1991 and substituted by s. 2 (b) of Act 29 of 1992.]

(d) moneys received by agreement with the government of a foreign State on behalf of such State.

[Para. (d) added by s. 2 (c) of Act 29 of 1992.]

[Sub-s. (3A) inserted by s. 2 (c) of Act 74 of 1979.]

(4) The moneys paid into the Equalization Fund-

(a) shall be utilized-

(i) for the financing of any increase in the cost of purchasing crude oil or petroleum products;

(ii) for or in connection with the purchase, acquisition, distribution, sale, saving, conservation, storage or utilization of crude oil or petroleum products, or the manufacture of or research in connection with petroleum products, as determined by the Minister of Mineral and Energy Affairs in consultation with the Minister of Finance, and in accordance with directives so determined;

[Sub-para. (ii) amended by s. 4 of Act 124 of 1991.]

(iii) for the acquisition, generation, manufacture, marketing or

distribution of any other form of energy, and research connected therewith;

[Sub-para. (iii) added by s. 7 of Act 72 of 1989.]

(iv) for any other object relating to energy designated and approved by the Minister of Mineral and Energy Affairs with the concurrence of the Minister of Finance.

[Sub-para. (iv) added by s. 7 of Act 72 of 1989 and amended by s. 4 of Act 124 of 1991.]

(b) that are not immediately required for a purpose referred to in paragraph (a), shall be invested in such manner as the Minister of Mineral and Energy Affairs with the concurrence of the Minister of Finance may determine.

[Para. (b) substituted by s. 2 (c) of Act 73 of 1984 and amended by s. 4 of Act 124 of 1991.]

[Sub-s. (4) amended by s. 2 (d) of Act 74 of 1979.]

(5) Notwithstanding the provisions of subsection (4), moneys referred to in subsection (3A) (c) paid into the Equalization Fund, shall, to the amount determined by the Minister of Mineral and Energy Affairs with the concurrence of the Minister of Finance, be paid into the State Revenue Fund.

[Sub-s. (5) added by s. 2 (d) of Act 29 of 1992.]

[S. 1A inserted by s. 1 of Act 30 of 1979.]

1B Offences and penalties

Any person who-

(a) fails to comply with any provision of a notice under section 1A, or of any directive contained in such notice, when he is in terms of such notice or directive required to perform, or to abstain from doing, any act;

(b) without lawful reason refuses or fails to comply with any reasonable demand for information made by a person who is responsible in terms of a notice under section 1A for the collection of any levy, or by an officer in the service of CEF (Proprietary) Limited, the SFF Association or of the Department of Mineral and Energy Affairs;

[Para. (b) substituted by s. 3 of Act 73 of 1984 and by s. 3 of Act 46 of 1985.]

(c) resists or wilfully obstructs any person or officer referred to in paragraph (b) in the performance of his duties or the exercise of his powers under

this Act or a notice thereunder;

(d) discloses to any unauthorized person any information in respect of a levy imposed under section 1A, or who allows the publication of any such information to any unauthorized person,

shall be guilty of an offence and be liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[S. 1B inserted by s. 1 of Act 30 of 1979.]

1C State bound by section 1A

The provisions of section 1A shall bind the State.

[S. 1C inserted by s. 1 of Act 30 of 1979.]

1D Share capital of CEF (Proprietary) Limited and SFF Association

(1) The share capital of CEF (Proprietary) Limited and the share capital of the SFF Association, a company incorporated in terms of the Companies Act, 1973 (Act 61 of 1973), shall consist of those amounts, respectively, which the Minister of Mineral and Energy Affairs shall, with the concurrence of the Minister of Finance, determine from time to time on the recommendation of the board of directors of CEF (Proprietary) Limited, and shall be divided into ordinary shares of one rand each.

[Sub-s. (1) amended by s. 4 of Act 124 of 1991.]

(2) Shares in CEF (Proprietary) Limited shall be taken up by the State only and shares in the SFF Association shall be taken up by CEF (Proprietary) Limited only, and no stamp duty, or fees in respect of any act performed in the Companies Registration Office, shall be payable in connection with a taking up of shares in terms of this subsection.

(3) The State shall take up shares in CEF (Proprietary) Limited to such extent and subject to such conditions, including conditions relating to the issue of any quantity of those shares to the State free of charge, as the Minister of Mineral and Energy Affairs may determine from time to time with the concurrence of the Minister of Finance.

[Sub-s. (3) amended by s. 4 of Act 124 of 1991.]

(4) Subject to the provisions of subsection (3), shares in CEF (Proprietary) Limited shall be paid for from money appropriated by Parliament for that purpose.

(5) Shares in CEF (Proprietary) Limited and shares in the SFF Association shall not be transferable.

[S. 1D inserted by s. 3 of Act 74 of 1979, repealed by s. 3 (1) of Act 21 of 1980 and inserted by s. 4 of Act 46 of 1985.]

1E Accountability in respect of Central Energy Fund and Equalization Fund and auditing of accounts of and reporting on transactions of CEF (Proprietary) Limited and SFF Association

(1) The chairman of the board of directors of CEF (Proprietary) Limited shall be the accounting officer charged with the responsibility of accounting for all money received by CEF (Proprietary) Limited or the SFF Association, and for all payments made by CEF (Proprietary) Limited out of the Central Energy Fund and the Equalization Fund and other payments made by CEF (Proprietary) Limited or the SFF Association.

(2) The accounting officer shall-

(a) keep full and true records of all transactions entered into by CEF (Proprietary) Limited for account of the Central Energy Fund or the Equalization Fund and of all other transactions of CEF (Proprietary) Limited and the SFF Association;

(b) cause the books and accounts relating to the transactions referred to in paragraph *(a)* to be balanced as at the thirty-first day of March in each year;

(c) after the balancing referred to in paragraph *(b)* prepare, in respect of the Central Energy Fund, the Equalization Fund, CEF (Proprietary) Limited and the SFF Association, separate statements of income and expenditure during the preceding financial year and balance sheets showing their assets and liabilities as at the end of that financial year.

(3) The books, accounts, statements and balance sheets referred to in subsection (2), shall be investigated, examined and audited by the Auditor-General.

(4)

[Sub-s. (4) deleted by s. 1 of Act 48 of 1994.]

(5)

[Sub-s. (5) amended by s. 4 of Act 124 of 1991 and deleted by s. 1 of Act 48 of 1994.]

(6) The chairman of the board of directors of CEF (Proprietary) Limited shall furnish the Minister of Mineral and Energy Affairs with such information as the Minister may from time to time call for relating to the activities of CEF (Proprietary) Limited and the SFF Association or relating to the transactions entered into for account of, or the

financial state of, the Central Energy Fund, the Equalization Fund or any other account of
CEF (Proprietary) Limited or the SFF Association.

[Sub-s. (6) amended by s. 4 of Act 124 of 1991.]

[S. 1E inserted by s. 4 of Act 46 of 1985.]

2 Repeal of section 53 of Act 11 of 1977

(1) Section 53 of the Finance and Financial Adjustments Acts Consolidation Act,
1977, is hereby repealed.

(2) Anything done under the provisions repealed by subsection (1) and which
could be done under any provision of this Act, shall be deemed to have been done under
the last-mentioned provision.

3 Short title and commencement

This Act shall be called the Central Energy Fund Act, 1977, and shall be deemed
to have come into operation on 10 January 1977.

[S. 3 substituted by s. 6 of Act 46 of 1985.]

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