REPUBLIC OF KENYA

GOVERNANCE FRAMEWORK FOR PROCEDURE OF DEPLOYMENT OF PETROLEUM DEVELOPMENT FUND (PDF) IN THE STABILISATION OF PETROLEUM PUMP PRICES

Date: 26th June 2024

GOVERNANCE FRAMEWORK FOR PROCEDURE OF DEPLOYMENT OF PETROLEUM DEVELOPMENT FUND (PDF) IN THE STABILISATION OF PETROLEUM PUMP PRICES

1. The Petroleum Development Fund (PDF) is established under the Petroleum Development Fund Act of 1991 (Revised 2006), which was enacted to provide for the establishment of a Petroleum Development Fund and the imposition of the Petroleum Development Levy (PDL) to feed into the Fund.

2. The PDF Act provides that there shall be paid out of the Fund such monies as are necessary for the development of common user facilities for the distribution or testing of oil products and for matters relating to the development of oil industry as the Minister may direct, provided that the funds are not used for purposes in competition with the private sector.

3. Pursuant to the provisions of the PDF Act, the Administrator of the PDF is the Principal Secretary to The National Treasury (TNT), or any person appointed by him in writing for that purpose, in recognition of the critical role of the Administrator of the PDF, concurrence of the Administrator of the Fund shall be sought in writing prior to the issuance of a decision that will occasion withdrawal of funds from the PDF for stabilizing fuel prices and related matters.

4. The officer administering the PDF shall—

   a) supervise and control the administration of the PDF;

   b) if he thinks fit, impose conditions on the use of any expenditure authorized by him or on his behalf and may impose any reasonable prohibition, restriction or any other requirement on the use of such expenditure;

   c) cause to be kept all proper books of accounts and other books and records related to the Fund; and,
   d) prepare, sign and transmit to the Controller and Auditor-General an account of the Fund in accordance with section 18(2) of the Exchequer and Audit Act (Cap. 412).

5. The PDF Act further stipulates that the expenditure from the PDF shall be on the basis and limited to the annual budget which shall be submitted to TNT for approval before the beginning of the financial year to which the budget relates. Pursuant to this, the Minister shall submit to the TNT for approval the list of development projects planned to be financed during the fiscal year.

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6. In the event budgeted resources in the PDF are not sufficient to finance the stabilization of prices, TNT shall submit a Supplementary budget to regularize any payment for fuel stabilisation over and beyond the budgeted resources for the PDF, provided TNT authority shall be issued in writing prior to the issuance of such a decision that will occasion a need for a Supplementary Budget for purposes of stabilizing fuel prices and related activities.

7. Section 3(1) of the PDF Act, stipulates that the Minister (Cabinet Secretary in charge of Petroleum) may make a Petroleum Development Levy Order imposing a levy on all petroleum fuels consumed in Kenya to be collected by the Commissioner (Customs) and the Order may provide for the amendment of a previous one (PDL Order) and may make different provisions in relation to different descriptions of fuel.

8. The Petroleum Development Levy Order of 1992 which imposed a levy of Ksh.400 per 1,000 Litres on all petroleum fuels imported in the country, has previously been the main legislation enabling the collection of the PDL.

9. On 10th July 2020, the PDL Order (1992) was revoked by the PDL Order 2020 (LN 124 of 2020). The new order imposed a levy of Ksh.5,400 per 1,000 Litres on Petrol, Diesel, Jet Fuel while that of kerosene was maintained at Ksh.400 per 1,000 Litres.

10. The PDL Order of 2020 provides that

    a) the PDL Levy shall be "used for matters relating to the development of the oil industry including stabilization of local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold as determined by EPRA"; and,

    b) Cabinet Secretary may by writing to the administrator, request for a draw down from the Petroleum Development Fund to stabilize local petroleum pump prices where he deems it necessary.

Petroleum Pump Pricing

11. Petroleum Pricing in the country is undertaken in accordance with the Petroleum (Petroleum Pricing) Regulations, 2022, Legal Notice No. 192 of 2022 (LN 192/22). The computation of petroleum pump prices takes into account the following key cost components:

    a) The landed cost which is the weighted average cost (per product) of imported Super Petrol, Diesel and Kerosene. Landed costs includes the

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Free on Board (FOB) cost of petroleum in the international market, Freight and Premium (F&P), financing costs (Letter of Credit), war risk, insurance, ocean loss, Certificate of Conformity (COC), inspection charges, analysis and recertification charges and local handling charges (Port charges);

b) Storage and distribution costs;

c) Gross Margins; and,

d) Applicable taxes and Levies.

Procedure of Deployment of Petroleum Development Fund (PDF) in the Stabilisation of Petroleum Pump Prices.

12. The procedure for deployment of PDF in the Stabilisation of Petroleum Pump Prices is as follows:

a) The Energy & Petroleum Regulatory Authority (EPRA) shall compute the actual petroleum pump prices in line with the Petroleum (Petroleum Pricing) Regulations, 2022 by 11th day of the month;

Upon computation of the actual prices, EPRA shall advise Cabinet Secretary for Petroleum on the projected petroleum pump prices for the next pricing cycle by 12th day of the month;

b) The Cabinet Secretary for Petroleum shall where applicable stabilize the Petroleum pump prices as provided under the Petroleum Development Fund Act, 1991 as read with the Petroleum Development Levy Order, 2020;

c) In the event that the required stabilization amount exceeds the amount in the Petroleum Development Fund (PDF) account, the Cabinet Secretary shall stabilize petroleum pump prices within the cumulative amount in the PDF account and request in writing for any additional amount thereby from the National Treasury;

d) The National Treasury shall confirm in writing to the Cabinet Secretary for Petroleum of the availability of any additional amounts required for the purpose of stabilizing petroleum pump prices in case the amount in the PDF account is deficient;

e) Where the National Treasury confirms availability of additional funds over and above the amount in the PDF account, it shall submit a

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Supplementary budget to Parliament within three (3) months from the introduction of unfunded fuel stabilization; and,

f) EPRA shall on 14th day of the month publish the stabilized petroleum pump prices in accordance with the Petroleum (Petroleum Pricing) Regulations, 2022 and as guided by this Framework.

Commitment to legal reforms

In order to further strengthen, the governance framework for fuel stabilization mechanisms, the Government shall commission review of the governance framework with a view to identify necessary reforms required in the governance and management of PDL law to ensure that its objective as captured in law is met.. The report is expected to be published by end of January 2025. Further, we commit to implement the recommendations of the Internal Review.

Dr Chris Kiptoo, CBS
Principal Secretary,
The National Treasury

Sign: ______________ 26/6/24

Mohamed Liban
Principal Secretary,
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Daniel Kiptoo Bargoria, MBS, OGW
Director General
Energy & Petroleum Regulatory Authority

Sign: ______________ 26/06/2024