



Number 26 of 2001

**IRISH NATIONAL PETROLEUM CORPORATION
LIMITED ACT, 2001**

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[No. 26.]

*Irish National Petroleum
Corporation Limited Act, 2001.*

[2001.]

ACTS REFERRED TO

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**IRISH NATIONAL PETROLEUM CORPORATION
LIMITED ACT, 2001**

AN ACT TO PROVIDE FOR THE SALE OF THE SHARES OF THE MINISTER FOR PUBLIC ENTERPRISE IN THE IRISH NATIONAL PETROLEUM CORPORATION LIMITED AND THE DISPOSAL OF CERTAIN ASSETS AND LIABILITIES OF THAT CORPORATION, INCLUDING THE SALE OF CERTAIN OF ITS SUBSIDIARIES AND TO PROVIDE THAT THE MINISTER MAY GUARANTEE CERTAIN OBLIGATIONS OF THE CORPORATION, PURSUANT TO THE SALE AND PURCHASE AGREEMENT AND TO PROVIDE FOR RELATED MATTERS.

[9th July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“Agency” means the National Oil Reserves Agency Limited;

“Bantry Offshore Jetty” means that part of the premises demised by the Indenture of Surrender and Lease of Foreshore dated 7 February 2000, and made between the Minister for the Marine and Natural Resources of the one part and Bantry Terminals Limited of the other part and known as the “Main Jetty” and which, for identification purposes only, is more particularly delineated on the deposited map and coloured red thereon;

“Corporation” means the Irish National Petroleum Corporation Limited;

“deposited map” means the map deposited by the Minister in the Ordnance Survey Office, Dublin, on 21 June 2001, which is sealed with the Official Seal of the Minister and signed by the Minister and has at the top of it the words and figures “Deposited for the purposes of any Act of the Oireachtas passed in the year 2001, to provide for the sale of the shares of the Minister for Public Enterprise in the Irish National Petroleum Corporation Limited and the disposal of certain assets and liabilities of that Corporation, including the sale of certain of its subsidiaries and to provide for related matters”;

“Minister” means the Minister for Public Enterprise;

“purchaser” shall be construed in accordance with *section 6*;

“shares” means shares in the Corporation;

S.1 “subsidiary” means a subsidiary of the Corporation (being a subsidiary within the meaning of section 155 of the Companies Act, 1963);

“trust” shall be construed in accordance with *section 5*.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended, by or under any subsequent enactment including this Act.

Disposal of shares in Corporation.

2.—(1) The Minister may hold for so long as the Minister thinks fit any shares in the Corporation taken up or acquired by the Minister either before or after the commencement of this section.

(2) The Minister may—

- (a) subject to the prior approval of the Minister for Finance and to *subsection (3)*, sell, exchange, transfer or otherwise dispose of all or any of the shares held by the Minister in the Corporation in such manner and upon and subject to such terms and conditions (including representations, warranties and indemnities) as the Minister may determine, and
 - (b) for the purposes of *paragraph (a)*, enter into agreements and arrangements.
- (3) (a) Where a disposal would result in moneys being received which are required to be paid or disposed of in accordance with *section 3*, the Minister shall, subject to *paragraph (b)*, obtain the approval of Dáil Éireann before making the disposal under this section.
- (b) *Paragraph (a)* does not apply to dividends or to the disposal and issue of shares in connection with a trust.

Payments into Exchequer.

3.—Moneys received by the Minister in respect of the shares, including—

- (a) dividends, and
- (b) moneys received in respect of the disposal of shares by the Minister,

shall be paid into or disposed of for the benefit of the Exchequer.

Exercise by Minister of functions exercisable by shareholders.

4.—The Minister may exercise, in respect of shares held by the Minister in the Corporation, all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his or her attorney.

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5.—(1) The Corporation may establish one or more than one employee share ownership trust (a “trust”) to which section 519 of the Taxes Consolidation Act, 1997, relates, being a trust to acquire and hold shares, or shares in a holding company, for the benefit of employees of the Corporation or of a subsidiary.

Disposal and issue of shares in connection with trust.

(2) For the purposes of *subsection (1)*, the Corporation may—

(a) issue such number of new shares of such class or classes and upon and subject to such terms and conditions as it may determine, and

(b) attach to any new shares any preferential, deferred, qualified or special rights, privileges, conditions or restrictions,

in accordance with the Companies Acts, 1963 to 1999.

(3) The Minister may, with the consent of the Minister for Finance, for the purposes of a trust and in such manner and upon and subject to such terms and conditions as the Minister may determine, sell or otherwise transfer to employees of the Corporation or a subsidiary, or to the trustees of a trust, shares held by him or her in the Corporation.

(4) Section 60 of the Companies Act, 1963, shall not apply to the provision, whether directly or indirectly, by—

(a) the Corporation or a subsidiary, or

(b) a holding company or another subsidiary of a holding company,

of money or financial assistance (including a loan or guarantee or the provision of security or otherwise) at any time in connection with the acquisition (whether by purchase or exchange) of or subscription for shares, or shares in a holding company, being an acquisition of or subscription for such shares in accordance with a trust or the transfer to a trust of such shares, irrespective of whether or not all or a portion of such shares are pledged as security or otherwise to any third party.

(5) Moneys received by the Minister in respect of the disposal of shares under this section by the Minister shall be paid into or disposed of for the benefit of the Exchequer.

6.—The Minister may, with the consent of the Minister for Finance, in such form and manner and on such terms and conditions as he or she may determine, authorise—

Disposal of assets and liabilities.

(a) the disposal by the Corporation of some or all of—

(i) its assets, including its shares in Bantry Terminals Limited or Irish Refining plc or in both, but excluding its shares in the Agency, and

(ii) its liabilities,

to a person (“the purchaser”),

and

S.6 (b) the making of payments by the Corporation in relation to the establishment and funding of a trust.

Transfer of assets relating to Agency.

7.—(1) Notwithstanding any provision in the memorandum or articles of association of the Agency or any enactment to the contrary, the Minister may, with the prior approval of the Minister for Finance, by order direct the Corporation to transfer any or all of its assets or liabilities or both, including petroleum, to the Minister or other public authority on such terms and conditions as the Minister thinks fit and, where appropriate, more than one such transfer may be so ordered.

(2) Notwithstanding any provision in the memorandum or articles of association of the Corporation or any enactment to the contrary, the Minister may, with the prior approval of the Minister for Finance, by order direct the Corporation to transfer all or any of its assets or liabilities or both, including all or any of the shares owned by the Corporation in the Agency, to the Minister or other public authority on such terms and conditions as the Minister thinks fit and, where appropriate, more than one such transfer may be so ordered.

(3) Amounts (if any) paid by the Minister in respect of a transfer directed under *subsection (1)* or *(2)* shall be repaid to the Central Fund out of moneys provided by the Oireachtas.

(4) Stamp duty shall not be chargeable on any instrument under which stocks or marketable securities of the Agency are transferred to the Minister or other public authority.

(5) In this section “other public authority” means—

- (a) a Minister of the Government other than the Minister,
- (b) a body established by or under statute, other than a company incorporated under the Companies Acts, 1963 to 1999,
- (c) a company incorporated under the Companies Acts, 1963 to 1999, in which all the shares are held by or on behalf of, or by directors appointed by, a Minister of the Government, or
- (d) a company to which *paragraph (c)* does not relate in which all the shares are held directly or indirectly by one or more of the following:
 - (i) one or more than one Minister of the Government,
 - (ii) one or more than one body to which *paragraph (b)* relates,
 - (iii) one or more than one company to which *paragraph (c)* relates.

Provision of guarantee.

8.—(1) Subject to *subsection (2)*, the Minister may, with the consent of the Minister for Finance, guarantee, in such form and manner, for such time and on such terms and conditions as he or she thinks fit, obligations of the Corporation pursuant to the sale and purchase agreement entered into with the purchaser in connection with the disposal referred to in *section 6* and may, for that purpose, enter into any relevant agreement or arrangement.

(2) (a) Subject to *paragraph (b)*, the amount or aggregate amount S.8 of any guarantee under *subsection (1)* shall not exceed US\$75,000,000.

(b) *Paragraph (a)* does not apply to any obligations of the Corporation pursuant to the sale and purchase agreement entered into between the Corporation and the purchaser in relation to the Bantry Offshore Jetty.

(3) The Minister shall, as soon as may be after the expiration of every financial year, lay before each House of the Oireachtas a statement setting out with respect to any such guarantee referred to in *subsection (1)* that is in force upon such expiration—

(a) in the case where any payment has been made by the Minister under the guarantee during that year, the amount of the payment, and

(b) the amount covered by the guarantee which was outstanding at the end of the year.

(4) Any amounts paid by the Minister under the provisions of the guarantee referred to in *subsection (1)* shall be repaid to the Central Fund out of moneys provided by the Oireachtas.

(5) (a) Notwithstanding the provision of moneys under *subsection (4)* to repay an amount to the Central Fund, the Corporation shall remain liable to the Minister in respect of the amount to be repaid to the Central Fund and that amount, together with any specified interest thereon from—

(i) the date payment was requested by the Minister from the Corporation, or

(ii) such date as the Minister and the Corporation agree to,

and, subject always to the provisions of the guarantee concerned, shall be repaid to the Minister by the Corporation at such times and in such instalments as the Minister appoints.

(b) If the Corporation fails to repay an amount (including any specified interest) in accordance with *paragraph (a)*, then—

(i) it shall be recoverable by the Minister as a simple contract debt in any court of competent jurisdiction, and

(ii) on a winding-up of the Corporation it shall, notwithstanding anything contained in any agreement or any enactment, rank equally with the debts of all other unsecured creditors of the Corporation.

(c) *Paragraph (b)(i)* is without prejudice to any other method of recovery.

(d) In this subsection “specified interest” means—

(i) a rate of interest equivalent to the fixed rates of interest penalty payable pursuant to section 4(2) of the Prompt Payment of Accounts Act, 1997, or

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S.8 (ii) if the Minister specifies a lower rate of interest, that rate.

(6) Moneys repaid by the Corporation to the Minister, or recovered from the Corporation by the Minister, under this section shall be paid into or disposed of for the benefit of the Exchequer.

(7) All moneys from time to time required by the Minister to meet sums that may become payable by him or her under this section shall be advanced out of the Central Fund or the growing produce thereof.

Alteration of memorandum and articles of association of Corporation and Agency.

9.—The Corporation and the Agency shall each take such steps under the Companies Acts, 1963 to 1999, as may be necessary to alter its memorandum and articles of association from time to time to make them consistent with this Act.

Deposited map.

10.—(1) The deposited map shall be retained in the Ordnance Survey Office, Dublin.

(2) The deposited map shall be open for inspection free of charge in the Ordnance Survey Office, Dublin, by any person at any time during which it is open for the transaction of public business.

(3) The Director of the Ordnance Survey shall—

(a) prepare and supply to any person requesting it a copy of the deposited map or any particular part of it, and

(b) charge for any such copy such sum as the Director may determine.

(4) (a) *Prima facie* evidence of the deposited map or any specified part of it may be given in any court or any legal proceedings by the production of a copy of it purporting to be certified to be a copy by an officer of the Ordnance Survey authorised in that behalf by the Director of the Ordnance Survey.

(b) It shall not be necessary to prove the signature of the officer referred to in *paragraph (a)* or that he or she was in fact such officer or was so authorised for the purposes of this subsection.

Revocations.

11.—Each statutory instrument mentioned in *column (2)* of the Schedule to this Act is revoked to the extent specified in *column (3)* of the Schedule opposite the mention of the instrument.

Expenses.

12.—The expenses incurred by the Minister, to such extent as may be sanctioned by the Minister for Finance, and the expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

Short title and commencement.

13.—(1) This Act may be cited as the Irish National Petroleum Corporation Limited Act, 2001.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor, either generally or with reference to a particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

[2001.]

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SCHEDULE

Section 11.

REVOCATIONS

Statutory Instruments Revoked

Number and Year (1)	Title of Instrument (2)	Extent of Revocation (3)
No. 32 of 1997	Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations, 1997	In the Second Schedule, at reference numbers 102 and 103 the matter in columns (2) to (4).
No. 448 of 2000	Petroleum Oils (Regulation for Control of Acquisition, Supply, Distribution, or Marketing) (Continuance) Order, 2001	The whole instrument.