



ST. HELENA

(Chapter No. not allocated yet)

BULK FUEL AGENCY ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

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This version contains a consolidation of the following laws—

	Page
BULK FUEL AGENCY ORDINANCE	2
Ordinance of 2003 ... in force on 6 June 2003	
Amended by Ord. 6 of 2016	

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

BULK FUEL AGENCY ORDINANCE

ARRANGEMENT OF PROVISIONS

Section

- 1 Short Title
- 2 Interpretation
- 3 Establishment of the Bulk Fuel Agency
- 4 Board of Directors
- 5 Function of the Agency
- 6 Powers of the Agency
- 7 Borrowing powers of the Agency
- 8 Government may Guarantee Borrowing by Agency
- 9 Accounts and Audit
- 10 Annual Report
- 11 Policy
- 12 Meetings of the Board
- 13 Disclosure of Interests by Directors
- 14 Board's power to enter into a management contract
- 15 Remuneration of Directors
- 16 Protection of Agency and Board
- 17 Trade (Licensing) Ordinance Cap. 116 not to apply to Agency
- 18 Offences
- 19 Indemnity for members and others acting *bona fide*
- 20 Regulations
- 21 Transfer of Property etc used by the Bulk Fuel Committee

BULK FUEL AGENCY ORDINANCE*(Ordinances 4 of 2003 and 6 of 2016)*

AN ORDINANCE TO ESTABLISH A BULK FUEL AGENCY.

Commencement*[6 June 2003]***Short title**

1. The Ordinance may be cited as the Bulk Fuel Agency Ordinance, 2003.

Interpretation

2. In this Ordinance unless the context otherwise requires—
“Agency” means the Bulk Fuel Agency established by section 3;
“Board” means the Board of Directors referred to in section 4;
“Bulk Fuel Installation” means all that property, both real and personal, being used at the Bulk Fuel Installation at Rupert's Valley (including stock and accounts receivable);
“Chairman” means the person appointed to be Chairman of the Board under section 4(2);

This e-version of the text is not authoritative for use in court.

“**Governor**” means, subject to sections 7(1) and 21, the Governor-in-Council;

“**petroleum products**”², without derogation from the generality of the term, means gas oil (diesel), gasoline (petrol) and kerosene (jet fuel);

“**the managers**” means the managers appointed by the Board under a management contract to operate and manage the Bulk Fuel Installation for and on behalf of the Agency.

Establishment of the Bulk Fuel Agency

- 3. (1)** There is established a body corporate to be called the Bulk Fuel Agency.
- (2)** The Agency:
 - (a)* may have a seal; and
 - (b)* may own and deal in real and personal property; and
 - (c)* is capable of suing and being sued; and
 - (d)* may enter into contracts.

Board of Directors

4. (1) There shall be a Board of Directors of the Agency who, subject to the provisions of this Ordinance, shall be responsible to devise and execute the policy of the Agency and to administer its affairs and business.

(2) The Governor shall appoint the Board by notice in the *Gazette*, which shall consist of a Chairman and five other persons. The Chairman and one other person shall at all times be senior officials of the St. Helena Government and the remaining persons shall be persons with appropriate experience in commerce and industry, provided that the following persons shall not be eligible to be appointed members of the Board—

- (a)* the Financial Secretary of the St. Helena Government; and
- (b)* an elected member of the Legislative Council.

(3) Each member of the Board shall be appointed for a term not exceeding 3 years. A member of the Board shall be eligible for re-appointment when his or her term of office expires.

(4) A member of the Board may at any time resign his office in writing signed by him and sent to the Chairman and the Governor.

(5) The Governor may at any time by notice in the *Gazette* revoke the appointment of a member of the Board on the grounds of disability, neglect of duty or misconduct.

(6) A member of the Board shall cease to hold office as provided in subsection (4) or (5) of this section, or if—

- (a)* he is absent from 3 consecutive meetings of the Board without the leave of the Chairman; or
- (b)* he becomes a member of the Legislative Council; or
- (c)* he is adjudged bankrupt or enters into a composition or arrangement with his creditors; or
- (d)* he is removed for a cause.

(7) If at any time a vacancy arises for a member of the Board, the Governor may appoint a suitable person to fill such vacancy. A person appointed under such circumstances shall hold office for the remainder of the term of appointment of the other members of the Board.

² Definition of “petroleum” amended by Ord. 6 of 2016

Function of the Agency

5. It shall be the function of the Agency to own and operate a bulk fuel installation in St Helena.

Powers of the Agency

6. (1) The Agency shall have all the powers necessary to enable it to carry out its function.

(2) In particular the Agency has the power—

(a) to procure, purchase and store petroleum products; and

(b) to sell by wholesale petroleum products; and

(c) to—

(i) acquire, manage and dispose of land; and

(ii) lay out, construct and maintain buildings; and

(iii) carry out any other building and engineering operations; and

(iv) provide and maintain services,

as appear to it to be necessary or desirable for the purpose of carrying out its function; and

(d) to carry on any business incidental or conducive to the management of a bulk fuel installation; and

(e) to arrange for the creation and management of such investment portfolios as may comprise the Asset Replacement Fund described under section 9, according to policies established by the Financial Secretary with the approval of the Governor.

(3) Subject to subsection (4) the Agency may do anything and enter into any transaction which, in its opinion, is necessary to ensure the proper performance of its function and in so doing may, in accordance with the provisions of section 14 below, enter into a management contract with appropriate managers for the management of the Bulk Fuel Installation.

(4) Nothing in this section authorises the Agency to enter into any financial commitment that is not within the Agency's own financial resources without having first obtained the approval of the Governor.

Borrowing powers of the Agency

7. (1) The Agency shall not borrow money unless authorised by the Governor following a Resolution of the Legislative Council and with the approval of a Secretary of State.

(2) Approval given under subsection (1) may—

(a) be general or limited to a particular transaction; and

(b) be conditional or unconditional.

(3) For the purposes of this section, and for the avoidance of doubt, the term 'borrow' does not include trading on credit.

Government may guarantee borrowing by the Agency

8. (1) The Financial Secretary on behalf of the Government may, with the approval of the Governor and a Secretary of State, guarantee the payment of principal and interest of any authorised borrowing by the Agency.

(2) Notwithstanding subsection (1), no guarantee involving a financial liability shall be binding on Government unless it is issued in writing by a person authorised to do so and it is authorised by the Secretary of State and a resolution of Legislative Council.

Financial Statements and Audit

9. (1) The Agency shall, in a manner approved by the Financial Secretary, keep financial statements of its transactions in accordance with the principles of good commercial practice.

(2) The Agency shall have its financial statements audited annually by the Chief Auditor or by a person approved by the Chief Auditor.

(3) The Agency shall take over and maintain the Asset Replacement Fund for the replacement of the assets of the Agency, and shall transfer funds to the fund each year not less than the value of the historical cost depreciation on the fixed assets of the Agency.

(4) The Asset Replacement Fund shall only be used for investment in fixed assets for use of the Agency in the pursuance of its function. A decision of the Board shall be required to use any part of the Asset Replacement Fund.

Annual Report

10. (1) The Agency shall within 9 months after the 31st day of March in any year submit to the Governor—

(a) a report, in a form approved by the Financial Secretary, on its activities during the year preceding that 31st March; and

(b) financial statements of the Agency audited in accordance with section 9(2).

(2) The Financial Secretary shall lay a copy of the documents referred to in subsection (1) on the table of the Legislative Council at the next sitting of the Council after receiving them.

Policy

11. (1) The Governor may give the Board directions as to the general policy it is to follow in managing the affairs of the Agency.

(2) The Board shall comply with any directions given to it under subsection (1).

(3) The Agency shall give the Governor any returns, accounts and other information he requires with respect to the Agency's activities.

(4) In managing the affairs of the Agency the Board must act in accordance with the principles of good commercial practice.

Meetings of the Board

12. (1) Meetings of the Board shall be called by the Chairman.

(2) Meetings shall be held at least once in every month.

(3) The Chairman shall call a meeting of the Board if he receives a written request to do so signed by at least two Directors.

(4) A written request under subsection (3) shall state the business to be transacted at the meeting.

(5) At a meeting of the Board—

(a) the Chairman shall preside but if he is absent a Director elected by the other Directors present shall preside; and

- (b) three Directors one of whom shall be a Government official on the Board shall form a quorum; and
 - (c) questions shall be determined by vote with the person presiding having an original vote and if the votes are equal a casting vote; and
 - (d) minutes of the proceedings shall be kept; and
 - (e) the Board is otherwise entitled to regulate its own proceedings.
- (6) Copies of the minutes of the proceedings of meetings of the Board shall be sent to the Governor as soon as practicable after the conclusion of each meeting.

Disclosure of interests by Directors

13. (1) A Director who, whether directly or indirectly, has an interest in a matter before the Board or a contract or proposed contract with the Agency shall declare the nature of his interest at the first meeting of the Board at which it is possible for him to do so.

(2) A Director shall not be present at a meeting of the Board when any contract or proposed contract with the Agency in which he has an interest, whether directly or indirectly, is being considered.

(3) A Director who fails to comply with subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding £10,000.

Agency's power to enter into a management contract

14. (1) The Agency may, subject to the provisions of this Ordinance, enter into a management contract with suitable managers for the management of the business and operations of the Bulk Fuel Installation.

(2) For the avoidance of uncertainty, a management contract under subsection (1) may contain all or any of the powers of the Agency set out in section 6(2) (a), (b), (c) and (d) above.

(3) The managers shall engage such employees as they think necessary for the purposes of ensuring the continued safe and efficient operation of the Bulk Fuel Installation.

(4) Subject as aforesaid, the terms and conditions of employment shall be as determined by the managers in consultation with the Board.

Remuneration of Directors

15. (1) The Agency shall pay from its funds to the Directors any remuneration, fees or allowances that the Governor may determine.

(2) Different remunerations, fees or allowances may be determined for different Directors.

Protection of Agency and Board

16. Nothing done by the Agency or by the Board shall be invalid because at the time it was done—

- (a) a vacancy existed in the membership of the Board; or
- (b) a Director contravened or was contravening section 13.

Trade (Licensing) Ordinance Cap. 116 not to apply to Agency

17. The Trade (Licensing) Ordinance Cap. 116 shall not apply to the Agency.

Offences

18. Any member of the Board or any officer or auditor who, knowing it to be false in any material particular—

(a) verifies any statement, account or report of the Agency; or

(b) causes to be delivered or transmitted any such statement, account or report,

shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding £5,000, or to imprisonment for a term not exceeding two years.

Indemnity for members and others acting *bona fide*

19. No matter or thing done and no contract entered into by the Agency and no matter or thing done by any member of the Board or officer or other person acting under the direction of the Board shall, if the matter or thing done or the contract entered into was *bona fide* for the purpose of carrying out the objects of this Ordinance, subject them or any of them personally to any action, liability, claim or demand whatsoever; and any expense incurred by the Board member, officer or any person acting under the direction of the Board shall be borne and repaid out of the funds of the Agency.

Regulations

20. The Governor may make regulations for the further and better execution of this Ordinance and, without prejudice to the generality of this power, such regulations may provide for:

(a) the wholesale selling price of petroleum products;

(b) fire and safety provisions and inspections of the bulk fuel installation;

(c) the fees to be charged in respect of anything required or permitted to be done under this Ordinance;

(d) anything which by this Ordinance is required or permitted to be done.

Transfer of Bulk Fuel Installation property

21. (1) On such day as the Governor appoints by notice in the Gazette—

(a) all property of the Crown, both real and personal, being used at the Bulk Fuel Installation (including stock and accounts receivable) shall vest in and become the property of the Agency by virtue of this section without further transfer or assurance; and

(b) any funds standing to the credit of the Bulk Fuel Installation in any public account immediately before the day so appointed vests in the Agency by virtue of this section and becomes the funds of the Agency without further appropriation; and

(c) any liability of the Government or Crown resulting from the activities of the Bulk Fuel Installation existing immediately before the day so appointed becomes a liability of the Agency by virtue of this section without further assignment, consent or notice and accordingly—

(i) may be enforced against the Agency; and

(ii) ceases to be a liability of the Government or Crown that can be enforced against the Government or Crown.

(2) Any dispute as to—

(a) the property vested in the Agency by virtue of subsection (1)(a); or

- (b) the funds to be taken to be funds of the Agency by virtue of subsection (1)(b); or
 - (c) the liabilities transferred to the Agency by virtue of subsection (1)(c),
- shall be determined by the Governor whose decision shall be final.