

Tanzania

## Public Corporations Act Chapter 257

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# Tanzania

## Public Corporations Act

### Chapter 257

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[G.N. No. 38 of 1992; Acts Nos. 2 of 1992; 14 of 1992; 16 of 1993; 2 of 1998; 17 of 1999]*

**An Act to make better provision for the establishment, management and streamlining of public corporations and to provide for other matters incidental to or connected with those purposes.**

### Part I – Preliminary provisions (ss. 1-3)

#### 1. Short title

This Act may be cited as the Public Corporations Act.

#### 2. \*\*\*

*[Omitted]*

#### 3. Interpretation

In this Act, unless the context requires otherwise—

"**agent**" means an intermediary such as a public corporation, a company or any other body appointed by the Government which owns fifty-one percent or more of the shares in any public corporation and represents the Government directly or indirectly;

"**Board**" means the Board of Directors of a public corporation;

"**Chairman**" means the Chairman of the Commission;

"**Commission**" means the Presidential Parastatal Sector Reform Commission established by [section 21](#);

"**divesture**" means the transfer of the proprietary interest in a specified public corporation from the Government and includes the winding up or dissolution of the specified public corporation;

"**effective date**" means the date from which the provisions of this Act shall apply to any specified public corporation;

"**existing law**" in relation to a specified public corporation means the written law under which the specified public corporation is established as it exists immediately before the effective date, and includes any other written law or provision of a written law which applies to the specified public corporation;

"**General Fund**" means the General Fund of established by [section 33](#);

"**Government minority shares**" means the equity shares or equity stake whether voting or not owned by the Government or its agent;

"**initial document**" means the Memorandum of Understanding or any other similar document detailing the understanding reached during the negotiations with an investor.

"**member**" means a member of the Commission;

"**Minister**" means the Minister responsible for Finance;

"**public corporation**" means any corporation established under this Act or any other law and in which the Government or its agent owns a majority of the shares or is the sole shareholder;

"**responsible Minister**" means the Minister responsible for public corporation or the specified public corporation;

"**restructuring**" in relation to a specified public corporation or specified Government minority shares, means any form of restructuring as a result of which ownership, structure or control of that specified public corporation or specified Government minority shares is altered;

"**Special Fund**" means the special fund established by [section 34](#);

"**specified Government minority shares**" means the shares specified under [section 44](#) to be specified Government minority shares;

"**specified public corporation**" means a public corporation declared under [section 14](#) to be a specified public corporation;

"**statement of corporate strategy**" in relation to a public corporation means the current statement of corporate strategy for that public corporation prepared under [section 14](#);

"**statutory corporation**" means any body corporate (including a public corporation and a corporation sole) established by or under any written law but does not include any company incorporated under the Companies Act<sup>1</sup> where the whole of the share capital of the company is owned by a statutory corporation or two or more statutory corporations.

## Part II – Establishment of public corporations (ss. 4-7)

### 4. President may establish a public corporation

- (1) The President may by Order published in the *Gazette* establish a public corporation for the functions or purposes which he may specify in the Order.
- (2) Every public corporation established by an Order made under this section shall—
  - (a) have perpetual succession and a common seal;
  - (b) in its corporate name be capable of suing and being sued; and
  - (c) subject to the provisions of this Act and of any Order made in that behalf by the President, be capable of purchasing and otherwise acquiring and of alienating any property, movable or immovable.

#### 4A. Existing public corporation

Every public corporation existing on the coming into operation of this Act shall be deemed to be established pursuant to this Act and nothing in this Act or in any regulations made under this Act shall be construed as to affect any provision of any existing law or of any articles of association or any other charter or instrument of a public corporation and those provisions shall continue to have effect after the commencement of this Act.

<sup>1</sup>

## 5. Shares of newly formed public corporation

Every order made under [section 4](#) establishing a public corporation shall specify, in addition to the functions of the corporation—

- (a) the authorised share capital;
- (b) the number of shares the government is going to subscribe; and
- (c) the manner of the allotment of shares, if any.

## 6. Powers of the responsible Minister in relation to a public corporation

Where the government is the sole shareholder the responsible Minister may, in writing under his hand, give the Board of Directors of the public corporation directions of a general or specific character as to the performance of its functions.

### Part III – Administration of public corporations (ss. 8-14)

## 7. Principles of operation

- (1) Every Public Corporation shall operate its business according to sound commercial principles.
- (2) "Sound commercial principles" means the attainment of a real rate of return on capital employed, of at least 5% or such other figure as the Government may from time to time approve and includes the achievement of any standards of service which may be agreed upon between the Government and a public corporation.

## 8. Establishment of Board of Directors

- (1) There shall be for each public corporation a Board of Directors which shall subject to [section 6](#) be responsible for its policy, control, management and commercial results of the affairs of the public corporation.
- (2) Without prejudice to the generality of the functions of the Board referred to in subsection (1), the Board of Directors may, upon the terms and conditions which it may deem fit and for the proper and efficient conduct of the business and activities of the public corporation—
  - (a) establish or cause to be established an efficient scheme of service for the staff of the public corporation;
  - (b) appoint at any salaries and upon any terms and conditions which it may deem fit any other officers and employees of the corporation whom it deems necessary or desirable for the effective discharge of the purposes and functions of the public corporation;
  - (c) establish a system designed to ensure the proper distribution of dividends to shareholders;
  - (d) grant gratuities, benefits and allowances to the officers and public employees of the public corporation; and
  - (e) exercise supervision over the management team of the public corporation.

## 9. Appointment of Board members of public corporations in which the Government is the sole shareholder

- (1) Where the Government is the sole shareholder in a public corporation, the responsible Minister shall appoint the members to the Board.

- (2) The President shall upon advice by the responsible Minister, appoint the Chairman of the Board of Directors.
- (3) Subject to subsection (1) the quorum, proceedings and meetings of the Board of Directors and of the shareholders shall be in accordance with the provisions of the instrument establishing that Public Corporation.

#### **10. Appointment of Board members of public corporations in which the Government is not the sole shareholder**

Where the Government is not the sole shareholder in a public corporation, the appointment, composition, tenure and vacation of office, quorum, proceedings and meetings of the Board of Directors shall be in accordance with the provisions of the instrument establishing the public corporation.

#### **11. Qualifications for appointment to Board membership**

In appointing members of any Board of Directors of a public corporation, the appointing authority shall have regard of the need to appoint persons who in addition to having a sound integrity, are properly qualified and appropriately experienced in relation to the business of the public corporation in question.

#### **12. Limitation of appointment to Board membership**

- (1) No person shall be appointed to be a member of more than three Boards at the same time, unless that member is a member by virtue of his office.
- (2) Every proposed appointment shall be forwarded to the Treasury Registrar for the purpose of giving better effect to the provisions of this section.

#### **13. Appointment of chief executive of a public corporation**

- (1) Where the Government or its agent is the sole shareholder in a public corporation, the Board of Directors shall, with the prior consent of the Minister responsible for the parent Ministry, appoint the chief executive of that public corporation.
- (2) Where the Government or its agent is not the sole shareholder, the chief executive shall be appointed in accordance with the agreed regulations and the Memorandum and Articles of Association.

### **Part IV – Accountability of public corporations (ss. 15-21)**

#### **14. Statement of corporate strategy**

- (1) Except as the Minister and the responsible Minister may otherwise determine every Board of a public corporation shall submit to the Minister, responsible Minister and to the Commission, a draft statement of corporate strategy two months before the commencement of each financial year of the public corporation.
- (2) Each statement of corporate strategy shall review performance against objectives for the two preceding years and specify for the public corporation in respect of the current financial year and for each of the two succeeding financial years, the following information—
  - (a) the objectives of the public corporation;
  - (b) the nature and scope of the activities to be undertaken;
  - (c) the accounting policies of the public corporation;
  - (d) the performance targets and other measures by which the performance of the public corporation may be judged in relation to its objectives;

- (e) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the Government;
  - (f) the kind of information to be provided to the Minister, responsible Minister and the Commission by the public corporation during the course of those financial years, including the information to be included in each half-yearly report;
  - (g) the procedure to be followed before the public corporation subscribes for, purchases, or otherwise acquires shares in any public corporation;
  - (h) any activities for which the Board seeks compensation from the Government whether or not the Government has agreed to provide that compensation;
  - (i) the Board's estimate of the commercial value of the Government's investment in the public corporation and the manner in which, and the times at which, this value is to be reassessed; and
  - (j) any other matters as are agreed by the Minister, responsible Minister, the Commission and the Board.
- (3) The Board shall consider any comments on the draft statement of corporate strategy that are made to it within one month of submission by the Minister, responsible Minister and the Commission, and shall submit the completed statement of corporate strategy to the Minister, responsible Minister and the Commission.
- (4) A statement of corporate strategy for a public corporation may be modified by the Board at any time so long as the Board has first given written notice to the Minister, responsible Minister and the Commission of the proposed modification and has considered any comments made on it by the Minister, responsible Minister and the Commission within one month of the date on which that notice was given.
- (5) All decisions relating to the operation of a public corporation shall be made by or pursuant to the authority of the Board in accordance with its statement of corporate strategy.
- (6) The Board shall be accountable to the Minister, responsible Minister and the Commission in the manner set out in this part.
- (7) The Commission shall issue guidelines to public corporations and responsible Ministries as required on the content and format of statements of corporate strategy.

## 15. Annual report, accounts and dividend

- (1) Within six months after the end of each financial year of a public corporation, every Board shall submit to the Minister, responsible Minister and the Commission—
- (a) a report on the operations of the public corporation during that financial year;
  - (b) audited financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position and any other statements which may be necessary to show the financial position of the public corporation and the financial results of its operation during that financial year; and
  - (c) the auditor's report on those financial statements.
- (2) Every report under subsection (1)(a) of this section shall—
- (a) contain any information which is necessary to enable an informed assessment of the operations of the public corporation including a comparison of the performance of the public corporation with the relevant statement of corporate strategy; and
  - (b) state the dividend payable to the Government by the public corporation for the financial year to which the report relates.

## 16. Half-yearly report

- (1) Within two months after the end of the first half of each financial year of a public corporation every Board shall deliver to the Minister, responsible Minister and the Commission a report on its operations during that half-year.
- (2) Each report required by this section shall include the information required by the statement of corporate strategy to be included in it.

## 17. Information to be laid before the National Assembly

The responsible Minister shall, soon after receiving the reports, lay before the National Assembly the following—

- (a) the statement of corporate strategy for the public corporation for that year and the succeeding two years;
- (b) the annual report and audited financial statements of the public corporation for the preceding financial year; and
- (c) the auditor's report on those financial statements.

## 18. Other information

- (1) Subject to subsection (2) every Board shall supply to the Minister, responsible Minister and the Commission any information relating to the affairs of the public corporation which the Minister, responsible Minister or the Commission may, from time to time, request after consultation with the Board (whether or not the information is of a kind referred to in the statement of corporate strategy).
- (2) No Board shall be obliged by subsection (1) of this section to supply to the Minister, responsible Minister or to the Commission, any information which in the opinion of the Board is prejudicial to the interests of the public corporation, a customer or an employee of the public corporation.
- (3) Subject to subsection (2), where the Board refuses to supply the information required, it shall give reasons in writing for that decision.

## 19. Audit

The accounts of every public corporation shall, except where the law establishing the public corporation provides to the contrary, be audited annually by an independent qualified auditor appointed by the Board.

## 20. Supervision of public corporations

- (1) The responsible Minister shall keep or cause to be kept under review the business and affairs of all public corporations in respect of which the responsible Minister has responsibility.
- (2) Without prejudice to the generality of subsection (1), the responsible Minister may, in consultation with the Commission and in respect of a particular public corporation—
  - (a) render advice to the Government relating to the restructuring of that public corporation, and the vesting of any business or property in or from any that public corporation;
  - (b) review the financial and operational performance of the public corporation with a view to recommending measures aimed at its restructuring or at the improvement of its performance;
  - (c) consider, recommend or approve corporate or annual plans or statements of corporate strategy of the public corporation;

- (d) to approve or adjust financial targets and other performance criteria to be pursued by the public corporation;
- (e) evaluate, from time to time, the performance and effectiveness of the chief executive officer, Board or management committee of the corporation and recommend to Government remedial or improvement measures designed to ensure the proper and efficient utilisation of the finances and assets of the public corporation;
- (f) approve whether the public corporation may purchase or acquire shares from or in another public corporation;
- (g) cause a special examination to be made of the expenditure of the funds of any public corporation;
- (h) cause or facilitate the conduct of inquiries into the conduct and performance of functions by officers having control of or access to the funds employed in the maintenance of the accounts of any public corporation; and
- (i) direct or approve the adoption, application or amendment of financial regulations so as to ensure the proper accounting of income and expenditures of public corporation.

## **Part V – Establishment of the Presidential Parastatal Sector Reform Commission (ss. 22-28)**

### **21. Establishment of the Commission**

- (1) There is hereby established a Commission to be known as the Presidential Parastatal Sector Reform Commission which shall be an autonomous organ of the Government.
- (2) The Commission shall be a body corporate with perpetual succession and common seal and shall be capable in its corporate name of—
  - (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
  - (c) borrowing and lending money;
  - (d) entering into contracts;
  - (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.
- (3) The duration of the Commission shall be extended for a second term of four years from the date of coming into effect of this Act:

Provided that upon the recommendation of the Minister responsible for planning commission accompanied by a performance report of the Commission for the preceding four years, the National Assembly may by resolution extend the term of the Commission for a further period as it shall determine.

### **22. Functions of the Commission**

- (1) The principal functions of the Commission shall be—
  - (a) to prepare and maintain an up to date list of all public corporations and make recommendations to the Minister on which public corporation should be declared to be specified public corporations;

- (b) to formulate and execute detailed plans for the restructuring of all specified public corporations;
  - (c) to supervise, monitor and enforce the restructuring procedures and agreements in relation to specified public corporations;
  - (d) to liaise as necessary with responsible ministries and other organs of the Government with a view to ensuring that the objectives of the Commission are achieved;
  - (e) to initiate, advice on and facilitate the establishment or restructuring of regulatory bodies for the infrastructure and utility sectors;
  - (f) to make any other recommendations which it considers necessary to enable the Commission to achieve its objectives under this Act.
- (2) Without prejudice to subsection (1), during the period of its existence as specified under [section 22](#), the Commission shall—
- (a) be responsible to the President for ensuring the implementation of Government policies on the reform of the public corporations sector;
  - (b) implement the policies and programs of the Government with respect to the reform of the public corporation sector;
  - (c) develop operating policies, procedures and guidelines for the implementation of the public corporation restructuring reforms decided by the Government;
  - (d) review and make recommendations on specific policies and legislation pertaining to the public corporations sector;
  - (e) liaise as necessary with responsible ministries in monitoring the performance of public corporations and in participating in the development and supervision of statements of corporate strategy.
- (3) Notwithstanding the generality of subsection (2), the Commission shall not enter into any agreement or other transaction relating to the value, sale or disposal of any public corporation shares or assets of a public corporation without consultations in writing with the Treasury, the responsible Minister and the Attorney-General:
- Provided that—
- (a) the Commission may proceed with the intended action if after twenty-one days from the date of receipt of the letter of consultation, no reply has been received from any of the three parties;
  - (b) if, having received the views of the parties to be consulted, the Commission intends to take a contrary decision, the Commission shall within twenty-one days and before taking the action, inform the parties and the President in writing, of that intention and the reasons for it; and
  - (c) any decision of the President on any information submitted by the Commission pursuant to paragraph (b) of this proviso shall be final.
- (4) At the expiry of the period of the existence of the Commission, the functions of the Commission specified under subsection (2) of this section and in relation to the accountability of public corporations in accordance with Part IV, shall be performed by the Treasury Registrar.

## 23. Powers of Commission

- (1) In order to achieve its objectives and notwithstanding any law or regulation to the contrary, the Commission may exercise, perform and discharge all or any of the following powers—
  - (a) to employ any officers and employees and engage any consultants and public advisers of such appropriate professional competence or experience in business affairs, legal affairs and financial matters which may be necessary for the purpose of carrying out the work of the Commission;
  - (b) to formulate, issue and enforce compliance with any rules, notices, directives and guidelines which it may consider necessary on all matters within the jurisdiction of the Commission under this Act; and
  - (c) to do all other acts which may be incidental or conducive to the attainment of the objectives of the Commission or the exercise of its powers under this Act.
- (2) The powers of the Commission in relation to Government minority shares shall be limited to divestiture or transfer of those shares as specified in Part VIII of this Act.

## 24. Composition of Commission

- (1) The President shall, upon the advice of the Minister responsible for planning commission, appoint not more than nine and not less than seven members, one of whom shall be appointed as Chairman, to be the members of the Commission.
- (2) In appointing the members of the Commission, regard shall be had to the need to appoint persons with adequate knowledge and experience in business affairs, legal affairs management of government and public affairs and financial matters.
- (3) Members of the Commission shall elect a Vice-Chairman of the Commission from amongst their number.

## 25. Term of office of members

- (1) Any member appointed under [section 24](#) may hold office for any period which the President shall, at the time of appointment, direct and if no such direction is given, for a period of three years from the date of his appointment and shall be eligible for reappointment.
- (2) Any member of the Commission shall cease to hold office if—
  - (a) he delivers to the President a letter of resignation;
  - (b) on the advice of the Commission, the President removes him from office on the grounds of incapacity by mental or physical illness or is otherwise unable or unfit to discharge the functions of a member or is unable to continue as a member;
  - (c) he has been absent from three consecutive meetings of the Commission without leave or good cause;
  - (d) he is adjudged bankrupt or enters into a composition, scheme or arrangement with the creditors;
  - (e) he is sentenced by a court to imprisonment for a term of six months or more;
  - (f) he is convicted of an offence involving dishonesty, fraud or moral turpitude; or
  - (g) he is found to have failed to disclose a relevant interest pursuant to [section 29\(7\)](#).
- (3) In the event of the vacation of office by any member, the Minister responsible for planning commission may appoint another person to hold office for the unexpired period of the term of office of the member who vacated office.

- (4) If any member is temporarily unable to perform his duties, the Minister responsible for planning commission may appoint another person to act in his place during the period of his absence.

## 26. Remuneration of members

The Chairman, who shall work on a full-time basis, and other members of the Commission who shall work on a part-time basis, shall receive the remuneration and allowances out of the General Fund which the Minister may determine.

## 27. Liability of members

The Commission, its members, officers or employees shall not be liable for any thing done in good faith in the performance or intended performance of any duty or in the exercise of any power under this Act.

## Part VI – Operation of Commission (ss. 29-33)

### 28. Meetings

- (1) The Commission shall meet for the discharge of its business at the times and places which it may decide but shall meet at least once in each month.
- (2) The Chairman or, in his absence, the Vice-Chairman, shall preside at all meetings of the Commission which he attends.
- (3) Decisions of the Commission shall be made by a simple majority of members present and voting and in the event of an equality of votes the Chairman or other person presiding shall have a second or casting vote.
- (4) The quorum at any meeting of the Commission shall be four, one of whom shall be the Chairman or, in his absence, the Vice-Chairman.
- (5) The Commission may invite any person to attend at any of its meetings, but that person shall not be entitled to vote at the meeting.
- (6) Any member who has any financial or other interest, whether direct or indirect, in any undertaking which is the subject matter of any decision before the Commission, shall disclose in writing to the Commission the nature of his interest and shall not participate in any discussion or decision of the Commission relating to the matter.
- (7) Any member who fails or refuses to disclose his interest under subsection (6) of this section commits an offence and shall, on conviction, be liable to be removed from the Commission and to a fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding twelve months.
- (8) Subject to the preceding provisions of this section, the Commission shall regulate its own procedure.

### 29. Furnishing information to the Commission

- (1) The Commission or any person officially authorised in that behalf by the Commission may, by notice in writing, require any person to furnish to the Commission or to the authorised person, within the period specified in that notice, any return or information which is specified in that notice.
- (2) The commission or any of its members thereof, or any officer or employee of the Commission or any authorised person, shall not disclose to any person or use any return or information acquired in the process of his work except for the purpose of achieving the objectives of the Commission or if he is required to do so by a court of law.

### 30. Seal and execution of documents

- (1) The common seal of the Commission shall be kept in the custody of the Commission and shall not be affixed to any instrument or document except as authorised by the Commission.
- (2) All documents other than those required by law to be under seal, made by, and all decisions of, the Commission may be signified under the hand of the Chairman or, in the case of a decision taken at a meeting at which the Chairman is not present, the Vice-Chairman.

### 31. Committees

The Commission may, on the terms and conditions which it may determine, appoint any committees which it may consider necessary to perform the functions or advise the Commission on the matters which the Commission may direct.

### 32. Staff

- (1) The Commission may appoint the Secretary to the Commission and any officers and employees whom it considers necessary to achieve its objectives and for the efficient discharge of its responsibilities.
- (2) The officers and employees appointed under subsection (1) shall be remunerated out of the General Fund in any manner and at such rates and shall be subject to the conditions of service as may be determined by the Commission.
- (3) Every officer or employee appointed under subsection (1) shall exercise the powers and functions and perform the duties as may be assigned to him from time to time by the Chairman.
- (4) Any officer or employee of the Commission who is a member of any Board or has an interest in a public corporation or an agent of the Government shall declare his interest and cease to be a member of the Board.

## Part VII – Financial provisions of the Commission (ss. 34-38)

### 33. General Fund

- (1) There is hereby established a fund to be known as the General Fund.
- (2) There shall be paid into the General Fund—
  - (a) all the sums of money as may be paid to the Commission as fees under this Act; and
  - (b) all the sums of money as may be received by the Commission for its operations from the Government or from any other source.
- (3) There shall be paid out of the General Fund all the sums of money required to defray the expenditure incurred by the Commission in the exercise, discharge and performance of its powers and duties.

### 34. Special Fund

- (1) There is hereby established a fund to be known as the Special Fund into which shall be paid all proceeds from the sale or the restructuring of a public corporation or the sale of assets of a public corporation and out of which shall be paid the sums of money which may be required by the Commission for the purposes of effecting such sales or restructuring.
- (2) Moneys which have accumulated in the Special Fund shall be invested or disbursed in such manner as may be determined by the Government through the Minister.

### 35. Accounts and audit

- (1) The Commission shall keep books of account and maintain proper records in relation to them and the books of account and records of the Commission shall be kept in accordance with accounting standards acceptable to the National Board of Accountants and Auditors.
- (2) The books of account of the Commission shall be audited by an independent auditor appointed by the Commission at the times which the Commission may determine but shall be audited at least at the end of each financial year.
- (3) The audited accounts and the auditor's report on those accounts shall be submitted to the Commission not later than three months after the end of the financial year to which they relate.
- (4) It shall be the duty of the Commission as soon as possible but in any case not later than one month after receipt of the report of the auditor under this section to forward the report to the Minister responsible for planning commission.
- (5) A copy of the auditor's report shall also be submitted by the Commission to the Controller and Auditor-General.
- (6) The Commission shall, not later than four months after the end of each financial year, submit to the Minister responsible for planning commission an annual report on the management of the Commission in respect of that financial year, including the balance sheet of the Commission in respect of that year, the audited accounts, and the auditor's report on the accounts, and the Minister responsible for planning commission shall lay the report together with his observations on it before the National Assembly.

### 36. Tax relief

The Commission shall be exempted from the payment of all taxes, rates and duties.

### 37. Fees

The Commission may levy any fees for its services which may be approved by the Minister from time to time.

## Part VIII – Specified public corporations and specified Government minority shares (ss. 39-48)

### 38. Declaration of specified public corporation

- (1) The Minister may upon the recommendation of the Commission, by Order published in the *Gazette* declare a public corporation to be a specified public corporation to which the provisions of this Act shall apply.
- (2) Any Order made under subsection (1) shall specify the effective date on which this Act shall apply to the specified public corporation.
- (3) The Minister may, by Order published in the *Gazette*, amend, vary or replace any Order made under this section.

### 39. Powers of Commission in relation to specified public corporations

- (1) Where a public corporation has been declared a specified public corporation, the Commission shall from the effective date be responsible for the restructuring of that specified public corporation.

- (2) Without limiting the generality of subsection (1) the Commission may, in respect of any specified public corporation—
- (a) cause a detailed financial and operational analysis of the specified public corporation to be carried out;
  - (b) determine the means by which the restructuring of the specified public corporation may be implemented;
  - (c) cause a valuation of the assets of the specified public corporation to be carried out;
  - (d) invite expressions of interest from potential purchasers or lessors of the specified public corporation or of the assets of that public corporation;
  - (e) publish guidelines for bidding and valuation procedures and criteria for the selection of purchasers or lessors;
  - (f) determine the price at which the shares in or the assets of the specified public corporation may be purchased or leased;
  - (g) hold discussions with the members of the Board and officers and employees or their representatives of the specified public corporation with a view to achieving a fair, reasonable and harmonious restructuring of that specified public corporation;
  - (h) determine, in consultation with responsible ministries, fair and reasonable severance, pension and other payment arrangements that may be appropriate following a restructuring of the specified public corporation;
  - (i) negotiate and cause to be executed any agreements which may be necessary with any party for the purchase, lease, management or control of shares in or assets of the specified public corporation;
  - (j) negotiate and cause to be executed any agreements which may be necessary with any party for the purchase, settlement or discharge of the liabilities or any other indebtedness of the specified public corporation;
  - (k) cause proceedings for the recovery of any debt owned to or by a specified public corporation or for the winding up, liquidation or dissolution of the specified public corporation to be initiated; and
  - (l) do all other acts which may be required to effect the restructuring of any specified public corporation.

#### 40. Duty to obtain approval

- (1) Where the restructuring of a specified public corporation involves a change in the ownership structure of that specified public corporation the Commission shall first obtain the approval of the Government before entering into any agreement with any third party in respect of the restructuring of that specified public corporation.
- (2) Where the restructuring of a specified public corporation does not involve a change in the ownership structure of that corporation, the Commission shall have the authority to approve the restructuring on the terms and conditions which it may determine.
- (3) The responsible Minister shall cause to be prepared and submitted to the Government for its approval all the relevant initial documents signed by the Commission and the potential investor within the period not exceeding thirty days, thereafter the Minister responsible for planning commission shall cause to be prepared and submitted to the Government for its approval all the relevant initial documents within fourteen days.

#### 40A. Requirements of a specified public corporation

- (1) A specified public corporation shall—
  - (a) carry out any direction, made by the Commission for preparing the public corporation or specified public corporation for divestiture;
  - (b) keep up to date all business records and books of account;
  - (c) upon specification and within the time frame stipulated in writing by the Commission, transfer to the Commission all documents evidencing ownership of the title, including but not limited to certificates of titles, registration cards for all movable and immovable assets, and any other document as specified by the Commission;
  - (d) prepare two to three year's investment and financing plans and a manpower development plan;
  - (e) prepare statutory accounts and cause them to be audited not later than four months after each financial year and provide authenticated copies thereof to the Commission within one month after completion of the audit;
  - (f) maintain a fixed asset register which shall be reconciled with the financial statement;
  - (g) not perform any action that would result in the assets of the company being dissipated, mortgaged, or collateralised without the express approval of the Commission;
  - (h) not undertake any new capital investment programmes, unless a project appraisal document approved by the Commission, has been prepared showing that—
    - (i) routine plant, equipment and vehicle renewal is required;
    - (ii) rehabilitation expenditure is essential to keep the operations of the specified public corporation running or to improve the marketability of the enterprise;
    - (iii) new capital investment has a pay back period of less than two years; and
    - (iv) the specified public corporation demonstrates that the investment will not result in a deterioration of the company's operations;
  - (i) clear as far as practicable all contractual, legal and other obligations which hinder or may hinder smooth divestiture;
  - (j) not give any person who is not an employee of the Commission information which might give undue advantage to that person or any potential investor;
  - (k) disclose all or any information about the enterprise when required by the Commission;
  - (l) refrain from taking any action or omit to do any act which may cause industrial unrest;
  - (m) not enter into any lease, loan, credit agreement, settlement or compromise arrangement without the approval of the Commission,
  - (n) not institute a suit intended to challenge or stop the Commission from proceeding with the divestiture of any specified public corporation without the approval of the Treasury Registrar.
- (2) Any person or officer of a specified public corporation who knowingly contravenes subsection (1) of this section commits an offence and is liable upon conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years, or to both that fine and imprisonment.

- (3) A specified public corporation shall be exempt from all or any of the provisions of the Rent Restriction Act <sup>2</sup>.

#### 41. Duty to consult and co-operate

- (1) The Commission shall from time to time consult and co-operate as necessary with the Loans and Advances Realisation Trust established under the Loans and Advances Realisation Trust Act <sup>3</sup> on the matters specified in that Act and in this Act.
- (2) The Commission and the responsible Ministry of any public corporation shall consult from time to time and co-operate as necessary with each other in relation to the supervision or restructuring of that public corporation.

#### 42. Duty of Board of specified public corporation

Notwithstanding that a public corporation may be declared a specified public corporation it shall be the duty of the Board of every public corporation—

- (a) to ensure that the public corporation continues to carry out its functions in accordance with its statement of corporate strategy;
- (b) to co-operate with and ensure that the officers and employees of the public corporation co-operate with the Commission in order to facilitate that the restructuring of the public corporation is successfully achieved;
- (c) implement any directive issued by the Commission under the hand of the Chairman so as to facilitate divestiture of a specified public corporation; and
- (d) to ensure no decision is taken affecting the assets, or changing the financial affairs of a specified public corporation materially without obtaining approval of the Commission.

#### 43. Powers of Commission in restructuring specified public corporations

- (1) Notwithstanding any other law to the contrary, with effect from the date of publication of an Order declaring a public corporation to be a specified public corporation the Commission shall—
- (a) without further assurance on appointment, have the power to act as the official receiver of the specified public corporation; and
- (b) have the power and all the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Act <sup>4</sup>.
- (2) Without prejudice to subsection (1) of this section the Commission shall—
- (a) in relation to a specified public corporation which is insolvent—
- (i) have power to liquidate a specified public corporation in accordance with the Companies Act <sup>5</sup>.

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[Cap. 339](#)

3

[Cap. 248](#)

4

[Cap. 25](#)

5

[Cap. 212](#)

- (ii) have power to determine an alternative restructuring option:

Provided that in the event of determining an alternative restructuring option the Commission shall prior to proceeding with that option, inform all the interested parties in writing of the reasons for preferring that alternative option;

- (b) in relation to the debts of private creditors, but after negotiating with these private creditors and with the consent of the Treasury have the power—
  - (i) to write off any debt;
  - (ii) to reschedule the payment of any debt or interest on the debt; and
  - (iii) to suspend the accumulation of interest on any debt for a specified period;
- (c) in relation to Government debts, including debts of a public corporation wholly owned by the Government or its agent but with the consent of the Treasury, have all the powers specified in paragraph (b) of this subsection;
- (d) in relation to public corporations not wholly owned by the Government, the Commission may exercise all the powers conferred by paragraph (b) of this subsection only upon the prior consent of the Treasury and the other shareholders.

#### 44. Specified Government minority shares

- (1) The Minister may, upon the recommendation of the Commission, by Order published in the *Gazette* declare any public Government minority shares in any company to be specified Government minority shares to which the provisions of this Part shall apply.
- (2) The Order under subsection (1) shall specify the effective date on which the provisions of this Part shall apply to the specified Government minority shares.
- (3) The Minister may, by Order published in the *Gazette*, amend or vary any Order made under this section.

#### 45. Powers of the Commission in relation to Government minority shares

- (1) The Commission shall have power and responsibility to effect, supervise and manage the divestiture or transfer of specified Government minority shares.
- (2) The rights and powers of the Treasury Registrar in and over all specified Government minority shares shall vest in the Commission.
- (3) Nothing in subsection (2) shall be construed to give the Commission any power to interfere in the management of the public corporation in which the specified Government minority shares are held or to give any power to the Commission to require an officer of such public corporation to do or to refrain from doing anything in a manner or to an extent beyond the rights and powers of the Government as a minority shareholder or in accordance with an existing shareholders' agreement.

#### 45A. Inoperative agreement

- (1) Where any voluntary or lease agreement entered by a specified public corporation is the subject of any proceedings before a court of law, and the Commission is of the opinion that the agreement was entered in anticipation of divestiture and is not at arms length, the Commission shall immediately issue to the court, notice of intention to submit its opinion and shall, within fourteen days from the date of such notice, submit its opinion before the court which shall thereupon declare the agreement to be inoperative.
- (2) Where a Court receives a notice of the intention of the Commission to submit its opinion, the court shall stay the proceedings concerned to enable the Commission to submit the opinion.

## Part IX – Financial provisions (ss. 49-52)

### 46. Accounts of public corporations in which the Government is the sole shareholder

Where the President establishes any public corporation whereby the Government is the sole shareholder, the President shall provide for proper accounts of the public corporation and other records in relation to it to be kept by the public corporation, and shall further provide for statement of account in the form which the President may direct to be prepared in respect of each financial year of the public corporation in the manner and in the form which the President may direct.

### 47. Audit

- (1) Subject to any written law, the accounts of every public corporation shall—
  - (a) in the case of a public corporation in which the Government is the sole shareholder be audited by the Tanzania Audit Corporation or by any other person whom the Minister may direct;
  - (b) in the case of a public corporation in which the Government is not the sole shareholder, except where the law or other instrument by or under which the public corporation shall appoint annually an independent Auditor approved by the Minister.
- (2) Subject to subsection (1), as soon as the accounts of a public corporation have been audited, the Board of Directors or the person entrusted with the management of the corporation shall send a copy of the statement of accounts together with a copy of any report made by the auditors to the Minister responsible for the parent ministry, and the Minister shall lay a copy of that statement of accounts and auditors' report before the National Assembly.

### 48. Transfer of shares to Treasury Registrar and redemption of other shares

- (1) All the shares subscribed by the Government in any public corporation through another public corporation which was a holding corporation before the effective date shall, after the effective date, be transferred to the Treasury Registrar by the said former holding public corporation and those shares shall vest in the Treasury Registrar without any further assurance.
- (2) Every public corporation intending to buy shares in a public corporation or company may do so from its own resources and after getting the approval of the Treasury Registrar.

### 49. Conversion of loans and advances into equity

Where a public corporation whose capital structure has been restructured has an undischarged loan or advance from the Government, the Government may use that loan or advance to acquire shares in that public corporation.

## Part X – Miscellaneous and transitional provisions (ss. 53-65)

### 50. Power to reorganise public and statutory corporations

- (1) Where the President has established or establishes a public corporation, or any statutory corporation has been established, for the performance of any functions and the President is satisfied that there exists any other public corporation or statutory corporation (hereinafter referred to as "the existing corporation") for the performance of all or any of the functions for which that

public corporation or statutory corporation is or has been established, and the public corporations are solely owned by the Government, the President may—

- (a) by order published in the *Gazette* provide that the existing corporation shall cease to exist or shall cease to perform all or any of the functions which are conferred upon the public corporation or the statutory corporation, as the case may be;
  - (b) by order transfer assets or liabilities of the existing corporation to the public corporation or the statutory corporation, as the case may be;
  - (c) by order transfer any person who is an employee of the existing corporation to the service of the public corporation or the statutory public corporation (which is solely owned by the Government), as the case may be.
- (2) Where the President makes an order under subsection (1) which provides that any existing public corporation shall cease to exist he may, by that order, repeal or amend, as he may deem necessary, the written law by which that public corporation has been established, and every order repealing or amending that written law shall have the same effect as if the repeal or amendment, as the case may be, were effected by this Act.
- (3) Where the President provides that an existing public corporation or statutory corporation in which the Government is the sole shareholder cease to perform any function, it shall be unlawful for the corporation to perform that function.
- (4) Where, by an order made under this section, the President vests any assets or liabilities of an existing public corporation or statutory corporation in which the Government is the sole shareholder in any public corporation or statutory corporation in which the Government is the sole shareholder, the assets or liabilities to which that order relates shall by virtue of the order and without further assurance, vest in the public corporation or statutory corporation specified in that order.
- (5) Where, by an order made under this section, the President transfers any employee of the public corporation to the service of any other corporation—
- (a) that employee shall, as from the date of the transfer, be deemed to be an employee of the public corporation or statutory corporation in which the government is the sole shareholder to which he is transferred;
  - (b) the terms and conditions of service applicable to that employee after the transfer shall be not less favourable than those which were applicable to him immediately before the transfer, and for the purposes of determining any right to gratuity or any other superannuation benefit the service to which he is transferred shall be regarded as continuous with his service immediately preceding the transfer; and
  - (c) the employment of that employee immediately prior to his transfer and his employment by the public corporation to which he is transferred, shall be deemed to be continuous employment by one employer within the meaning of section 9 of the Severance Allowance Act <sup>6</sup>, and that Act shall apply to the parties in the same manner as it applies to the cases set out in subsection (1) of the said section 9.
- (6) Where the assets of any public corporation transferred to any other public corporation under the provisions of this section include shares in any company and the public corporation was the sole shareholder of that company, every provision in any law or in any Articles of Association or any other charter or instrument of the company providing for any consequence to follow, or requiring any act or thing to be done, or entitling any person to do any act or thing or to take any action whatsoever by reason of the fact that the public corporation to which the shares are transferred is the sole shareholder, shall be of no effect in relation to that company and the President may, by order published in the *Gazette*, modify in their application to that company any of the provisions of

the Companies Act <sup>7</sup> or of any subsidiary legislation made under it or of the Articles of Association or any charter or instrument of the company.

- (7) Where, by an order made under this section the President vests any assets or liabilities of a public corporation in any other public corporation he may make provision in respect of the transfer of the assets and liabilities of the public corporation to the other public corporation under any contract, guarantee, agreement, bond, authority, mortgage, charge, bill of exchange, promissory note, bank draft, bank cheque, letter of credit or any other security or instrument and may provide for the substitution of the other public corporation as the party to that security or instrument.
- (8) The President may, in any order under this section, make any supplementary, transitional or consequential provisions which he may deem necessary or expedient to give effect to that order.

#### **51. Borrowing powers of a public corporation in which the Government is the sole shareholder**

- (1) Every public corporation in which the Government is the sole shareholder, shall have the power to borrow money which the President may confer upon it by order published in the *Gazette*.
- (2) Where any moneys are paid to a public corporation referred to in subsection (1) as part of its funds out of moneys provided by Parliament for the purpose, the President may require the public corporation to pay interest upon the moneys, to the Government and, where the President so requires, the public corporation shall pay interest upon the moneys at the times and at the rates which the President may determine.
- (3) The President may waive the payment of interest under subsection (2) of this section for any period which he thinks fit.
- (4) The Government may, with the approval signified by resolution of the National Assembly raise moneys, either within or outside the United Republic, specifically for the purposes of a public corporation and all moneys so raised shall be charged and issued out of the Consolidated Fund, and when paid to the public corporation shall form part of the funds of that public corporation.
- (5) All sums received by the Government from a public corporation in repayment of any loan made to it by the Government or of any moneys raised by the Government under subsection (4) of this section, or in payment of any interest on any loan or money, shall be paid into the Consolidated Fund.
- (6) The Government may guarantee in the manner and on the conditions which it may think fit the repayment of the principal of and the payment of interest and other charges on any borrowing of a public corporation under and in accordance with an order made under subsection (1) of this section and any sums required for fulfilling of any guarantee shall be charged on and paid out of the Consolidated Fund.
- (7) In addition to the powers conferred upon a public corporation by this section the public corporation shall have additional powers which may be conferred upon it by the President by an order published in the *Gazette*.

#### **52. Powers of President to make orders**

The powers of the President to make an order under any provision of this Act shall include powers to make any one or more orders, either at the same time or from time to time, as the President may deem necessary or expedient.

#### **53. Delegation of powers**

- (1) The President shall not delegate any of his powers under this Act to any person except in accordance with the provisions of this section.

- (2) The President may, by an order published in the *Gazette*, delegate all or any of his powers under this Act, other than his power under [section 4](#) to establish a public corporation, to a Minister or public officer and empower a Minister to make regulations regulating any matter in relation to any public corporation.

#### **54. Contract between Treasury Registrar and public corporation**

Every public corporation which holds a position of monopoly in its business in the country shall conclude an agreement with the Treasury Registrar with a view to—

- (a) setting quantifiable performance targets;
- (b) determining the proper distribution of dividends.

#### **55. Consultancy services by former holding corporations**

- (1) Any public corporation which was a holding public corporation in relation to any other public corporation before the effective date shall, with effect from the effective date, cease to be a holding corporation in respect of that public corporation but may, with effect from that date, provide consultancy services to the other public corporations and to other persons in matters pertaining to its functions.
- (2) For the proper performance of the functions stipulated in subsection (1), any former holding public corporation shall, subject to any direction of the Board of Directors and after consultation with all formerly associated public corporations, charge fees for the services rendered by the public corporation.

#### **56. Regulations**

The Minister may make regulations for giving effect or enabling effect to be given to the purposes and provisions of this Act and in particular without prejudice to the generality of the foregoing, may by regulations modify in their application to a specified public corporation any regulations made under it or any instrument of a specified public corporation in any manner and to any extent which may be necessary or expedient to bring those provisions into conformity with the provisions of this Act.

#### **57. \*\*\***

*[Repeals Acts Nos. 17 of 1969 and 12 of 1976]*

#### **57A. Dissolution or winding up of public corporation**

- (1) The Minister regulations may make regulations providing for the dissolution of a public corporation the circumstances of its dissolution and procedure for doing so.
- (2) In prescribing the procedure referred to in subsection (1) the Minister may provide different procedures for public corporations or statutory corporation wholly owned by the Government and those in which it, is merely a majority shareholder for the time being; and such procedure shall be compulsory in relation to public corporation.

#### **58. Certain institutions to cease to be public corporations**

For the avoidance of doubt, with effect from the date of coming into operation of this Act, every District Development Corporation, established under the District Corporations Act <sup>8</sup>, all non-commercial services institutions, sports and culture institutions, research institutions and institutions of learning, shall, in pursuance of [section 3](#), cease to be public corporations.

**59. Transfer of liabilities**

Upon dissolution of any holding public corporation its liabilities incurred in relation to any company which was a subsidiary of that holding public corporation shall be transferred to that former subsidiary company or companies in relation to which the liabilities were incurred.

**60. Amendment of [Cap. 370](#)**

*[Amends the Treasury Registrar (Powers and Functions) Act.]*

**61. Savings**

Save to the extent expressly provided in this Act or in any regulations made under this Act, nothing in this Act or in any regulations made under this Act shall be construed as to affect any provisions of any existing law or of any Articles of Association or any other charter or instrument of a specified public corporation, and those provisions shall continue to have effect after the commencement of this Act in relation to the specified public corporation, except in so far as they are thereafter amended, modified, repealed or revoked by a competent authority or any provision thereof expires, but shall be read with such modifications, adoptions, qualifications and exceptions as provided in this Act or any regulations made under this Act.