

CHAPTER 245

THE EXECUTIVE AGENCIES ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 245

THE EXECUTIVE AGENCIES ACT

An Act to make provisions enabling the establishment and operation of semi-autonomous Executive Agencies within the ambit of Government Ministries for the purpose of providing public services in selected areas in a more efficient and effective manner and for related matters.

[11th December, 1997]

[GN. No. 83 of 2003]

Acts Nos.

30 of 1997

18 of 2002

13 of 2009

3 of 2011

4 of 2013

2 of 2014

1 of 2020

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Executive Agencies Act.

Interpretation

Acts Nos.

18 of 2002 s. 20

13 of 2009 s. 2

2. In this Act, unless the context requires otherwise-

“appropriate authority” means the consent of the Chief Secretary to establish an executive agency;

“chief executive” means the chief executive, however designated, of an executive agency;

“department” in relation to a Ministry of the Government, includes any division or unit, by whatever name called, of that Ministry;

“Executive Agency” or “Agency” means an Executive Agency established under this Act;

“financial year” means, in respect of the first accounting period of an Executive Agency, a period starting from the date of the establishment of the Executive Agency concerned and ending on the 30th June of the following

- year, and for any subsequent accounting period, the period of twelve months ending on the 30th June;
- “Minister” in relation to an Executive Agency, means the Minister responsible for the department in respect of which that Agency is established;
- “Ministerial Advisory Board” means an Advisory Board constituted under section 6;
- “Permanent Secretary” in relation to an Executive Agency, means the Permanent Secretary of the Ministry under which the Agency is established; and
- “special fund” means a special fund established by an order made under section 17 of the Public Finance Act in respect of an Executive Agency.

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PART II

POWER TO ESTABLISH EXECUTIVE AGENCIES, THEIR FUNCTIONS AND OPERATIONAL PRINCIPLES

Power of Ministers to establish Executive Agencies Acts Nos. 18 of 2002 s. 21 13 of 2009 s. 3 1 of 2020 s. 19

3.–(1) Where a Minister is of the opinion that, having regard to the provisions of this Act, it is appropriate to establish an Executive Agency for the purpose of carrying out the functions of a department of his Ministry he may, after obtaining appropriate authority, and by order published in the *Gazette*, establish such an Agency.

(2) Before a Minister establishes an Executive Agency, he shall take into account whether the establishment of the Agency will achieve the following objectives-

- (a) to improve the delivery of public service;
- (b) to create an environment conducive to efficient and effective management;
- (c) to improve the quality of the services hitherto provided by the department concerned; and
- (d) to promote the potential for the continuous improvement of the services provided by the proposed Executive Agency.

- (3) An order made under subsection (1) shall specify-
- (a) the department in relation to which the Agency is established, and may be made in respect of more than one department of the same ministry or, with the approval of another Minister concerned, be made so as to include a department of another ministry having similar functions;
 - (b) in the Framework Document, the functions, aims, roles, objectives, authoritative and performance standards; and
 - (c) any other particulars as approved by the Chief Secretary which is permitted under any other written laws.

(4) Where, at any time after the establishment of an Executive Agency, the matters in respect of which it is established are assigned to another Ministry, the responsibility for the Agency under this Act shall, by virtue of this subsection, vest in that other Ministry.

(5) Without prejudice to any other provisions of this Act, a Minister may, with the approval of the Minister responsible for the public service, establish an Executive Agency under an Order containing such modifications to the provisions of this Act relating to the structural organisation of Executive Agencies as will facilitate the more effective discharge of its functions.

(6) Notwithstanding any other written laws, an Executive Agency shall-

- (a) be capable of entering into contracts in its own name;
- (b) be capable of suing and being sued in its own name only in contract; and in that respect all laws applicable to legal proceedings other than Government Proceedings Act, shall apply to legal proceedings to which the Agency is a party;
- (c) in all matters relating to contract, not be competent to sue or be sued in its own name, however, any legal proceedings which, but for this paragraph, would have been instituted by or against the executive agency, may

PART III

ROLE OF PERMANENT SECRETARIES

Role of
Permanent
Secretaries
Acts Nos.
18 of 2002 s. 22
13 of 2009 s. 4

5.–(1) The Permanent Secretary of a Ministry under which an Executive Agency is established shall be responsible for overseeing implementation of ministerial policies of the Agency and, for that purpose, may give directions of general nature to the Chief Executive but shall not direct, or participate in, the day-to-day management of the Agency's affairs.

(2) Except as provided under section 11(2), the Minister shall be responsible for the discipline and control of the Chief Executive.

PART IV

MINISTERIAL ADVISORY BOARDS

Ministerial
Advisory Boards
Acts Nos.
18 of 2002 s. 23
13 of 2009 s. 5
3 of 2011 s. 36

6.–(1) Each of Executive Agency shall have a Ministerial Advisory Board to be composed of a Chairman and other members being not more than five.

(2) The Chairman of the Ministerial Advisory Board shall be appointed from outside the Ministry under which the Agency is established.

(3) A principal officer from the Ministry under which the agency is established shall be a member of the Board.

(4) The Minister shall appoint the Chairman and other members of the Ministerial Board among persons who are well versed with the functions of the Agency or matters of similar nature.

(5) The Chief Executive under which the Agency is established shall be the Secretary to the Board.

(6) Notwithstanding any provisions of this section-

- (a) a Chief Executive Officer from the Ministry establishing an agency;
- (b) any persons holding political post; or
- (c) a director or a head of any department under which an agency is established,

shall not be members of the Ministerial Advisory Board.

(7) In appointing the members of an Advisory Board, the Minister shall have due regard to the need to include in its membership persons who are not in the public service, and persons who are representative of the interests of the Agency's customers.

(8) A member of an Advisory Board, other than an *ex officio* member, shall hold office for a period not exceeding three years or for such shorter period as may be specified in his instrument of appointment.

(9) The Chief Executive shall attend all meetings of the Board and may participate in its deliberations, except in matters affecting his own interests, but he shall have no right to vote.

Functions of
Ministerial
Advisory Board
Acts Nos.
18 of 2002 s. 24
13 of 2009 s. 6

7. The functions of a Ministerial Advisory Board shall be to advise the Minister on-

- (a) the development and maintenance of a strategic framework;
- (b) the objectives of the Agency;
- (c) the acceptability of the Chief Executive's plans and associated budgets;
- (d) the setting of priorities and annual performance targets for the Agency;
- (e) the Agency's annual reports and accounts;
- (f) the evaluation of the Agency's performance;
- (g) salaries, wages and allowances of the employees of the Agency; and
- (h) any other matter in the promotion and furtherance of the objectives and functions of this Act.

Meetings and
procedure of
Advisory Boards

8. An Advisory Board shall hold its meetings as often as the Chairman may determine, but not less than twice in each financial year, and without prejudice to the power of the Minister responsible for the public service to make rules for the conduct of its meetings, it shall determine its own procedure.

PART V

CHIEF EXECUTIVE AND EMPLOYEES

Appointment of
Chief Executive
Acts Nos.
18 of 2002 s. 25
13 of 2009 s. 7

9.-(1) The Minister shall, upon advice of the Public Service Recruitments Secretariat, appoint a Chief Executive of an Executive Agency among persons with necessary qualifications, experience and competence to manage effectively and efficiently the affairs of the Agency in accordance with modern management standards.

(2) Subject to subsection (1), the Public Service Recruitment Secretariat shall conduct the process of appointing or replacing the Chief Executive in accordance with the provisions of the Public Service Act.

(3) Without prejudice to the provisions of subsection (2), in such process, the Government shall be represented by-

- (a) one person from the Ministry responsible for public service; and
- (b) one person from the Ministry under which the Agency is established.

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Tenure of office of
Chief Executive
Act No.
13 of 2009 s. 8

10.-(1) The Chief Executive shall hold office for a period of five years or for any other period not exceeding five years as may be specified in an instrument of his appointment and shall be eligible for re-appointment.

(2) Without prejudice to any other written law, where the Chief Executive intends to continue with his post after the expiry of the period provided for under subsection(1), he shall apply for the post and compete with other applicants for the post.

[s. 9A]

Termination of
appointment
Act No.
13 of 2009 s. 8

11.-(1) The Minister may, upon the recommendation of the Permanent Secretary, terminate the appointment of the Chief Executive for-

- (a) misconduct;
- (b) failure or inability to perform the functions of this office arising from infirmity of body or mind; or
- (c) incompetence.

- (2) Where the Chief Executive is aggrieved by the decision of-
- (a) the Permanent Secretary, made under section 5(2) in respect of any disciplinary action against him; or
 - (b) the Minister, made under subsection (1) to terminate his appointment, he may, within thirty days, appeal to-
 - (i) the Minister, in case of the decision of Permanent Secretary; or
 - (ii) the President through the Chief Secretary in case of the decision of the Minister.

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(3) The provisions of Public Service Act shall apply in the process of terminating the Chief Executive.

[s. 9B]

Functions of
Chief Executive
Act No.
13 of 2009 s. 8
Cap. 348

12.-(1) The Chief Executive shall be the Accounting Officer of the Agency with financial responsibilities as may be provided for in its Framework Document and the order establishing the special fund for the agency under the Public Finance Act.

(2) In performing his functions under subsection (1), the Chief Executive shall abide to the Annual Performance Agreement concluded between him and the Permanent Secretary.

[s. 9C]

Appointment of
employees
Act No.
13 of 2009 s. 9

13.-(1) The Chief Executive shall appoint such number of employees as he may consider necessary or desirable for the efficient and effective discharge of the functions of the Agency and on such terms and conditions of service as he may determine in accordance with any directions issued by the Ministry responsible for the public service.

(2) With effect from the date on which an order under section 3 establishing an Executive Agency comes into force, a person who, on that date holds a public office in a department in relation to which the Agency is established shall, except as may otherwise be determined by the Chief Executive in respect of any such person, become an employee of the Agency; but the provisions of this subsection shall not be construed to affect the appointment to the public service of any person who, by

virtue of this subsection, does not become an employee of the Agency nor his eligibility to continue to hold that office.

(3) The Chief Executive of the Agency shall be responsible for the day to day operations of the Agency, the proper management of its funds, property and business and for the personnel management, organisation, control and discipline of the employees of the Agency.

(4) An employee of an Executive Agency who is aggrieved by the decision of the Chief Executive under subsection (3) in respect of any disciplinary action against him or the termination of his appointment may, in accordance with such procedure as may be prescribed, appeal to the Permanent Secretary against the decision.

(5) Where the employee under subsection (4) is aggrieved by the decision of the Chief Executive, he may appeal to the Public Service Commission.

(6) The President shall be the final appellate authority in the matter under subsection (5).

[s. 10]

Exemption from personal liability

14. An employee of an Executive Agency shall not, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done or made in good faith in the performance of his functions.

[s. 11]

PART VI

FINANCIAL AND RELATED MATTERS

15.—(1) The funds of an Executive Agency shall consist of—

- (a) moneys received by the Agency for goods or services provided under the authority of this Act;
- (b) subject to subsection (2), such moneys as may be voted by Parliament for the purposes of the Agency; and
- (c) any other moneys legally acquired for the purposes of promotion and furtherance of the objectives and functions of the Agency.

Funds of Executive Agency Acts Nos.
18 of 2002 s. 26
13 of 2009 s. 10
4 of 2013 s. 8

(2) An executive Agency shall-

- (a) perform its functions in accordance with modern commercial principles and shall ensure that, as far as possible, its revenue is sufficient to meet its expenditure properly chargeable to revenue; and
- (b) charge and collect fees or commissions for the provision of any goods or services to enable it to meet its expenditure in accordance with its strategic framework.

(3) All receipts, earnings and accruals of the special fund shall become the property of the Agency.

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(4) Pursuant to section 12 of the Public Finance Act, every Agency shall remit ten percent of its annual gross revenue to the Consolidated Fund.

[s. 12]

Borrowing,
etc., subject to
Minister's
approval
Act No.
18 of 2002 s. 27

16. An Executive Agency may borrow money or acquire or dispose of immovable property only with the approval of the Minister responsible for finance and upon such terms and conditions as the Minister may approve, either generally or in any particular case.

[s. 13]

Estimates of
income and
expenditure and
financial
control
Acts Nos.
18 of 2002 s. 29
2 of 2014 s. 28

17.-(1) The Chief Executive shall prepare and, not less than three months before the end of each financial year, submit to the Permanent Secretary for his approval, strategic and business plans that include the estimates of income and expenditure for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the Permanent Secretary for approval any estimates supplementary to the estimates of a current year.

(2) Subject to subsection (1), the Permanent Secretary shall, after receipt of the strategic and business plans that include the estimates of income and expenditure for the next ensuing year, submit to the Paymaster General for scrutiny and approval thereafter submit the same to the Minister.

(3) The Minister shall, upon consultation with the Minister responsible for finance and after receipt of the strategic and business plans that include the estimates of income and expenditure referred to in subsection (2), lay the same before the National Assembly.

(4) The Chief Executive shall ensure that all payments out of the Agency's funds are correctly made and properly authorised and adequate control is maintained over its property and over the incurring of liabilities by the Agency.

[s. 14]

Accounts and
audit

18.-(1) An Executive Agency shall keep books of account and maintain proper records of its operations in accordance with commercial accounting standards.

(2) The accounts of an Executive Agency shall be audited by the Controller and Auditor-General or such other person registered as an auditor under the Accountants and Auditors (Registration) Act appointed for the purpose by the Controller and Auditor-General on such terms and conditions as the Controller and Auditor-General may determine.

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[s. 15]

Annual reports
and performance
agreements
Act No.
18 of 2002 s. 30

19.-(1) The Chief Executive of an Executive Agency shall, within two months after has received the audited account and auditor's report on these accounts, submit to the Minister and the Permanent Secretary an annual report in respect of that year containing-

- (a) a copy of the audited accounts of the Agency, together with the auditor's report on those accounts;
- (b) a report on performance against key targets and any other related information;
- (c) a report on the operations of the Agency during that financial year; and
- (d) such other information as the Permanent Secretary may require.

(2) The annual report referred to in subsection (1) shall also contain the Annual Performance Agreement between the Permanent Secretary and the Chief Executive.

(3) The Minister shall cause a copy of the annual report of an Executive Agency to be laid before the National Assembly, within two months or at the next meeting of the National Assembly, after he has received the report.

[s. 16]

PART VII MISCELLANEOUS PROVISIONS

Vesting of
property
Act No.
18 of 2002 s. 31

20. All movable and immovable property, shall, except any such property as the Minister may determine, which is vested in the Government for the use of the department in relation to which an Executive Agency is established, on the date of commencement of an order made under section 3(3) and without further assurance, vest in the Agency subject to all interests, liabilities, charges, obligations and trusts affecting that property.

[s. 17]

Regulations

21. The Minister responsible for the public service may make regulations for the carrying out of the purposes of this Act.

[s. 18]