

CHAPTER 257

THE PUBLIC CORPORATIONS ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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- “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;
- “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;
- “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 50;
- “specified Government minority shares” means the shares specified under section 47 to be specified Government minority shares;
- “specified public corporation” means a public corporation declared under section 40 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 15;

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“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 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

President
may establish
public
corporation
Act No.
10 of 2013 s.54

4.–(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) A 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.

(3) Notwithstanding the preceding provisions of this section, the public corporation established under this Act shall have a duty of notifying the Attorney General of any impending suit or intention to institute a suit or matter for or against the public corporation.

(4) The Attorney General shall, have the right to intervene in any suit or matter instituted by or against the public corporation.

(5) Where the Attorney General intervenes in any matter in pursuance to subsection (3), the provisions of the Government Proceeding Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

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Existing public corporation
Act No.
16 of 1993 s.3

5. A 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.

[s. 4A]

Shares of newly formed public corporation

6. An 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.

[s. 5]

Powers of responsible Minister in relation to public corporation
Act No.
16 of 1993 s.3

7. 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.

[s. 6]

PART III

ADMINISTRATION OF PUBLIC CORPORATIONS

Principles of operation
Act No.
16 of 1993 s.4

8.-(1) A 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 approve and includes the achievement of any standards of service which may be agreed upon between the Government and a public corporation.

[s. 7]

Establishment of
Board of
Directors
Act No.
16 of 1993 s.4

9.—(1) There shall be, for each public corporation, a Board of Directors which shall, subject to section 7 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 public 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.

[s. 8]

Appointment of
Board members
of public
corporations
in which
Government is
sole share holder
Act.No.
16 of 1993 s.4

10.—(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.

[s. 9]

Appointment of Board members of public corporations in which Government is not sole shareholder

11. 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.

[s. 10]

Qualifications for appointment to Board membership Act No. 16 of 1993 s.4

12. In appointing members of any Board of Directors of a public corporation, the appointing authority shall have regard to 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.

[s. 11]

Limitation of appointment to Board membership

13.—(1) A person shall not 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.

[s. 12]

Appointment of Chief Executive of public corporation Act No. 16 of 1993 s.4

14.—(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.

[s. 13]

PART IV

ACCOUNTABILITY OF PUBLIC CORPORATIONS¹

Statement of
corporate strategy
Acts Nos.
16 of 1993 s.5
26 of 2007 s.8
11 of 2010 s.21

15.—(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 the Treasury Registrar 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 Treasury Registrar 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;

¹ The whole Part IV was repealed and replaced by Act No. 16 of 1993 s. 5.

- (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 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 Treasury Registrar and shall submit the completed statement of corporate strategy to the Minister, responsible Minister and the Treasury Registrar.

(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 Treasury Registrar of the proposed modification and has considered any comments made on it by the Minister, responsible Minister and the Treasury Registrar 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 Treasury Registrar in the manner set out in this Part.

[s. 14]

Annual report,
accounts and
dividend
Acts Nos.

16 of 1993 s.5
26 of 2007 s.8
11 of 2010 s.21

16.—(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 Treasury Registrar—

- (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) A 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.

[s. 15]

Half yearly
report
Acts Nos.
16 of 1993 s.5
26 of 2007 s.8
11 of 2010 s.21

17.-(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 Treasury Registrar 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.

[s. 16]

Information
to be laid
before National
Assembly
Act No.
16 of 1993 s.5

18. 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.

[s. 17]

Other
information
Acts Nos.
16 of 1993 s.5
26 of 2007 s.8
11 of 2010 s.21

19.—(1) Subject to subsection (2) every Board shall supply to the Minister, responsible Minister and the Treasury Registrar any information relating to the affairs of the public corporation which the Minister, responsible Minister or the Treasury Registrar 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) A Board shall not be obliged by subsection (1) to supply to the Minister, responsible Minister or the Treasury Registrar 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.

[s. 18]

Audit
Act. No.
16 of 1993 s.5

20. 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.

[s. 19]

Supervision
of public
corporations
Acts Nos.
16 of 1993 s.5
26 of 2007 s.8
11 of 2010 s.21

21.—(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 respect of a particular public corporation, upon recommendation of the Treasury Registrar—

- (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 recommend 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, the performance and effectiveness of the chief executive officer, Board or management committee of the public 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 on 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 the public corporation.

[s. 20]

Power of Treasury
Registrar
Act No.
11 of 2010 s.21
Cap. 370

22.–(1) For the purpose of securing the proper management of the properties and other investments vested in him under the Treasury Registrar (Powers and Functions) Act, the Treasury Registrar shall closely monitor the supervision and control of the financial affairs of all public and statutory corporation and may, in particular-

- (a) cause a special examination to be made of the expenditure of the funds of any public or statutory corporation;

- (b) require any corporation to make specific adjustments of expenditure;
- (c) cause or facilitate the conduct of inquiries into the conduct and performance of functions by officers having control of, or access to the funds or employed in the maintenance of the accounts of any public or statutory corporation;
- (d) direct or approve the adoption, application or amendment of financial regulations so as to ensure the proper accounting of incomes and expenditure of public or statutory corporation;
- (e) recommend to the Minister measures designed to-
 - (i) minimise unproductive expenditure of funds of public and statutory corporations; and
 - (ii) averting loss of funds resulting from negligence, lack of care, theft, dishonest or otherwise.

(2) Absence of provisions in any law establishing a statutory corporation that requires the statutory corporation to comply with the provisions of this section shall not be a defence for the statutory corporation not to comply with any directive or requirement made pursuant to this section.

[s. 20A]

PART V

ESTABLISHMENT OF THE PRESIDENTIAL PARASTATAL SECTOR REFORM COMMISSION

Repealed

23–29. [Repealed by Act No. 26 of 2007, s. 8(f).]

[ss. 21-27]

PART VI

OPERATION OF COMMISSION

Repealed

30–34. [Repealed by Act No. 26 of 2007, s. 8(f).]

[ss. 28-32]

PART VII

FINANCIAL PROVISIONS OF THE COMMISSION

Repealed **35–39.** [Repealed by Act No. 26 of 2007, s. 8(f).]
[ss. 33-37]

PART VIII

SPECIFIED PUBLIC CORPORATIONS AND SPECIFIED GOVERNMENT MINORITY SHARES

Declaration of
specified public
corporation
Acts Nos.
16 of 1993 s.5
26 of 2007 s.8

40.–(1) The Minister may, 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) An 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.

[s. 38]

Powers of
Treasury
Registrar in
relation to
specified public
corporations
Acts Nos.
16 of 1993 s.5
26 of 2007 s.8
GN. No.
203 of 2014

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

(2) Without limiting the generality of subsection (1), the Treasury Registrar 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.

[s. 39]

Duty to obtain approval
Acts Nos.
16 of 1993 s.5
17 of 1999 s.9
26 of 2007 s.8
GN. No.
203 of 2014

42.—(1) Where the restructuring of a specified public corporation involves a change in the ownership structure of that specified public corporation, the Treasury Registrar 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 Treasury Registrar 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 Treasury Registrar and the potential investor within the period not exceeding thirty days, thereafter the Minister shall cause to be prepared and submitted to the Government for its approval all the relevant initial documents within fourteen days.

[s. 40]

Requirements of specified public corporation
Acts Nos.
17 of 1999 s.10
26 of 2007 s.8
GN. No.
203 of 2014

43.—(1) A specified public corporation shall-

- (a) carry out any direction, made by the responsible Minister 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 responsible Minister, transfer to the Treasury Registrar all documents evidencing ownership of the title, including certificates of titles, registration cards for all movable and immovable assets, and any other document as specified by the responsible Minister;
- (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 Treasury Registrar 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 Treasury Registrar;
- (h) not undertake any new capital investment programmes, unless a project appraisal document approved by the Treasury Registrar, 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 Treasury Registrar 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 Treasury Registrar;
- (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 Treasury Registrar;
- (n) not institute a suit intended to challenge or stop the Treasury Registrar from proceeding with the divestiture of any specified public corporation without the approval of the Treasury Registrar.

(2) A person or officer of a specified public corporation who knowingly contravenes subsection (1), commits an offence and on conviction shall be liable to a fine not exceeding one million shillings or to a term of imprisonment not exceeding five years or to both.

(3) A specified public corporation shall be exempt from all or any of the provisions of the Land Act.

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[s. 40A]

Repealed

44. [Repealed by Act No. 26 of 2007, s. 8(k)]

[s. 41]

Duty of Board of specified public corporations
Acts Nos.
16 of 1993 s.5
17 of 1999 s.1
26 of 2007 s.8
GN. No.
203 of 2014

45. Notwithstanding that a public corporation may be declared a specified public corporation it shall be the duty of the Board of every public corporation to-

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

[s. 42]

Powers of
Treasury
Registrar in
restructuring
specified public
corporation
Acts Nos.
16 of 1993 s.5
17 of 1999, s.11
26 of 2007 s.8
GN. No.
203 of 2014
Cap. 25

Cap. 212

46.—(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 Treasury Registrar 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.

(2) Without prejudice to subsection (1), the Treasury Registrar 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; and
 - (ii) have power to determine an alternative restructuring option:

Provided that, in the event of determining an alternative restructuring option the Treasury Registrar 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 to-
 - (i) write-off any debt;
 - (ii) reschedule the payment of any debt or interest on the debt; and
 - (iii) 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 Treasury Registrar may exercise all the powers conferred by paragraph (b) of this

subsection only upon the prior consent of the Treasury and the other shareholders.

[s. 43]

Specified
Government
minority shares
Acts Nos.
16 of 1993 s.5
17 of 1999 s.13
26 of 2007 s.8
GN. No.
203 of 2014

47.—(1) The Minister may, upon the recommendation of the Treasury Registrar, 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.

[s. 44]

Repealed

48. [Repealed by Act No. 26 of 2007, s. 8(o)]

[s. 45]

Inoperative
agreement
Acts Nos.
17 of 1999 s.14
26 of 2007 s.8
GN. No.
203 of 2014

49.—(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 Treasury Registrar is of the opinion that the agreement was entered in anticipation of divestiture and is not at arms length, the Treasury Registrar 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 Treasury Registrar to submit its opinion, the Court shall stay the proceedings concerned to enable the Treasury Registrar to submit the opinion.

[s. 45A]

Special Fund
Act No.
26 of 2007 s.8

50.—(1) There is hereby established a fund to be known as the Special Fund into which shall be paid all proceeds from the sale of a public corporation and out of which shall be paid

the sum of money which may be required 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 Minister.

(3) The Minister shall cause to be kept and maintained books of accounts and proper records of the Special Fund in accordance with internationally acceptable accountable standards.

(4) The books of account of the special Fund shall be audited by the Controller and Auditor-General.

(5) The Minister shall, as soon as possible, but in any case not later than one month after receipt of the report of the Controller and Auditor-General, lay the report before the National Assembly.

[s. 45B]

PART IX FINANCIAL PROVISIONS

Accounts
of public
corporations
in which
Government is
sole shareholder

51. 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.

[s. 46]

Audit

52.—(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 Controller and Auditor-General or by any other person whom the Minister may direct; or

(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 responsible Minister and the Minister shall lay a copy of that statement of accounts and auditors' report before the National Assembly.

[s. 47]

Transfer of shares to Treasury Registrar and redemption of other shares

53.—(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) A 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.

[s. 48]

Conversion of loans and advances into equity

54. 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.

[s. 49]

PART X
MISCELLANEOUS AND
TRANSITIONAL PROVISIONS

Power to
reorganise public
and statutory
corporations

55.—(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;
- (b) by order transfer assets or liabilities of the existing corporation to the public corporation or the statutory corporation; or
- (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.

(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 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 the Employment and Labour Relations Act, and that Act shall apply to the parties in the same manner as it applies to the cases set out in the said Act.

(6) Where the assets of any public corporation transferred to any other public corporation under the provisions of this section include shares any company and the public corporation was the sole shareholder of that company, every provision in

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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 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 part 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.

[s. 50]

Borrowing
powers of public
corporation
in which
Government is
sole share holder

56.—(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) 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) 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) 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*.

[s. 51]

Powers of
President to make
orders

57. 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.

[s. 52]

Delegations of powers

58.—(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.

[s. 53]

Contract between Treasury Registrar and public corporation

59. 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; and
- (b) determining the proper distribution of dividends.

[s. 54]

Consultancy services by former holding corporations

60.—(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.

[s. 55]

Regulations

61. 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.

[s. 56]

Repeal
Acts Nos.
17 of 1969
12 of 1976

62. [Repeals the Public Corporations Act and the Parastatal Organisations (Modification of Management Provisions) Act.]

[s. 57]

Dissolution
or winding-
up of public
corporation
Act No.
2 of 1998 Sch.

63.–(1) The Minister 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 share holder for the time being and such procedure shall be compulsory in relation to public corporation.

[s. 57A]

Certain
institutions to
cease to be public
corporations
Cap. 382

64. 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, 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.

[s. 58]

Transfer of
liabilities

65. 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.

[s. 59]

Omitted **66.** [Omitted.] [s. 60]

Savings **67.** 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. [s. 61]

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