

THE PUBLIC CORPORATIONS ACT, 1992

ARRANGEMENT OF SECTIONS

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THE UNITED REPUBLIC OF TANZANIA



No. 2 of 1992

I ASSENT,

Mwasa
.....
President
17/2/92
.....

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

(.....)

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY

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|----|---|--------------|
| 1. | This Act may be cited as the Public Corporations Act, 1992; | Short title |
| 2. | This Act shall come into operation on such date as the Minister may, by notice published in the <u>Gazette</u> , appoint. | Commencement |

3. 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 and owns 51% or more of the shares in any public corporation and represents the Government directly or indirectly;
- '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;
- 'Minister' means the Minister for the time being responsible for finance;
- 'Minister responsible for the parent Ministry' in relation to a specified public corporation means the Minister for the time being responsible under the direction of the President for the principal business in which the specified public corporation in question is engaged or, if the President has not for the time being assigned responsibility for the business in question to any Minister, the President;

Interpre-
-tation

"public corporation" means any corporation established under this Act or any other law and in which the Government or its agent owns fifty one percent or more of the shares but does not include an institution of learning, a district development corporation, a research institution or a sports institution;

" specified public corporation" means a public corporation declared under section 14 to be a specified public corporation;

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 Ordinance save where the whole of the share capital of the company is owned by a statutory corporation or two or more statutory corporations.

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PART II

ESTABLISHMENT OF PUBLIC CORPORATIONS

4. (1) The President may by Order published in the Gazette establish a public corporation for *such* functions or purposes as he may specify in the Order.
- (2) Every public Corporation established by an Order made under this section shall -

President
may
establish
a public
corporation

- (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. Every Order made under section 4 establishing a public corporation shall specify, in addition to the functions of the corporation-
- (a) the authorized 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. Where the government is the sole shareholder the Minister responsible for the parent Ministry 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.
- Shares of newly formed former Public Corporation
- Power of the Minister of parent Ministry in relation to a public corporation

PART III

ADMINISTRATION OF PUBLIC CORPORATION

7. Every Public Corporation shall operate its business according to sound commercial principles. Principles of operation
8. (1) There shall be for each public corporation a Board of Directors which shall subject to Section 6 be responsible for its policy, control and management of the affairs of the public corporation. Establishment of Board of Directors
- (2) Without prejudice to the generality of the functions of the Board referred to in subsection (1), the Board of Directors may, upon such terms and conditions as 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 such salaries and upon such terms and conditions as it may deem fit such other officers and employees of the corporation as 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 employees of the public corporation; and

(e) exercise supervision over the management team of the public corporation.

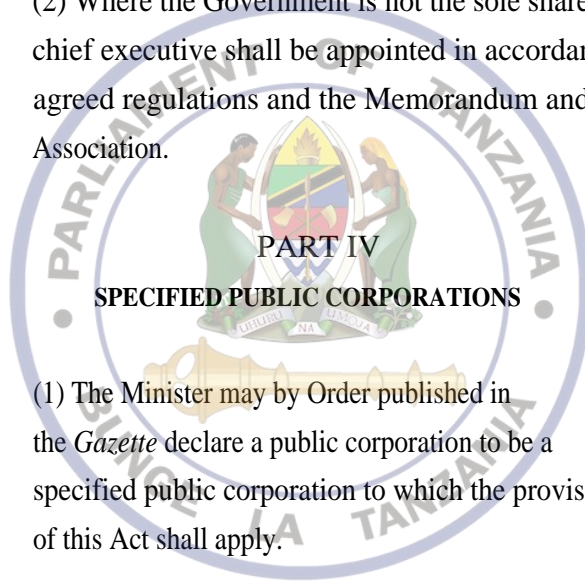
9. (1) Where the Government is the sole shareholder in a public corporation, the Minister responsible for the parent Ministry shall appoint the members to the Board.
- (2) The President shall upon advice by the Minister responsible for the parent Ministry, appoint the Chairman of the Board of Directors.
- (3) Subject to sub section (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 such Public Corporation.
- Appointment ~
of Board
members- of
public
corporations
in which
the govern-
ment is the
sole
shareholder

10. 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.
- Appointment of Board Members of Public Corporation which the government is not the sole shareholder
11. 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, or in public affairs.
- Qualification for appointment to Board Membership
12. (1) No person shall be appointed to be a member of more than three Boards at the same time, unless such member is a member by virtue of his office.
- Limitations of appointment to Board Membership
- (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. (1) Where the Government is the sole shareholder of 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 such public corporation.

Appointment
of chief
executive
of public
corporation

(2) Where the Government is not the sole shareholder, the chief executive shall be appointed in accordance with the agreed regulations and the Memorandum and Articles of Association.



14. (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.

Declaration
of specified
public
corporation

(2) Any Order made under subsection (1) shall specify the effective date in relation to the public corporation so declared and the manner in which the shares shall be allotted or sold.

(3) The Minister may by order published in the *Gazette* amend, vary or replace the order made under Subsection 1.

15. Where the Minister makes an Order under section 14 declaring a public corporation to be a specified public corporation, the existing law or as the case may be, the Memorandum and Articles of Association or any other Charter or instrument of the specified public corporation shall, notwithstanding any provision contained in any written law, be modified and shall be deemed to have been modified and as from the effective date to be in conformity with the provisions of this Act. Modifica.
tion of
existing
law
16. Where an Order is made under this Act declaring a public corporation to be a specified public corporation then, as from the effective date - Effect of
modification
- (a) all rights, powers, privileges, duties or functions vested in or imposed on any other person or body shall, subject to the provisions of the existing law or other instrument establishing the public corporation, vest in the Board of Directors; or
- (b) all references to the management committee in any instrument to which the specified public corporation is a party shall, unless the context requires otherwise, be construed and have effect as references to the Board of Directors.

17. Without prejudice to any written law, the Board of Directors of any specified public corporation may allow any person or a public corporation to invest in the specified public corporation.
- Investing in
a public
corporation

PART V

FINANCIAL PROVISIONS

18. 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 thereto to be kept by the public corporation, and shall further provide for statement of account in such form as the President may direct to be prepared in respect of each financial year of the public corporation in such manner and in such form as the President may direct.
- Accounts of
public
corporations
which
the govern-
mentis
the sole
shareholder

19. -(1) Subject to any written law, the accounts of every public corporation shall -
- Audit

(a) in case of a public corporation in which the Government is the sole shareholder, be audited by the Tanzania Audit Corporation or by such other person as the Minister- may direct,

(b) in 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 is established provides to the contrary or differently the public corporation shall appoint annually an independent Auditor approved by the Minister.

(2) Subject to subsection (1) (a), 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 such Minister shall lay a copy of every such statement of accounts and auditors' report before the National Assembly.

20.

(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 such shares shall vest in the Treasury Registrar without any further assurance.

Transfer of
shares
to Treasury
Registrar and
redemption of
other
shares

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(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.

21. Where a public corporation whose capital structure has been restructured and has an undischarged loan or advance from the Government, the Government may use such loan or advance to acquire shares in that public corporation.
- Conversion of
loans and
advances
into equity

PART VI

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

22. (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 such public corporation or statutory corporation is or has been established, and such corporation is solely owned by the Government, the President may -
- Powers to
reorganize
public
and
statutory
corpora-
tions
- (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 u , on 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 corporation which is solely owned by the Government, as the case may be.

(2) Where the President makes an order under sub section (1) which provides that any existing corporation shall cease to exist he may, by such order, repeal or amend, as he may deem necessary, the written law by which such corporation has been established, and every such order repealing or amending such written law shall have the same effect as if such 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 shall cease to perform any function, it shall be unlawful for such corporation to perform such 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 such order relates shall by virtue of such 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) such employee shall, as from the date of such 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 such employee after such 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 of which he is transferred shall be regarded as continuous with his service immediately preceding such transfer; and

(c) the employment of such employee immediately prior to his transfer and his employment by the corporation to which he is transferred, shall be deemed to be continuous employment by one employer within the meaning of section 8A of the Severance allowance Act, 1962, 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 8A.

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(6) Where the assets of any corporation transferred to any other corporation under the provisions of this section include shares in any company and such corporation was the sole shareholder of such company, every provision in any law or in any Articles of Association or any other charter or instrument of such 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 corporation to which such shares are transferred is the sole shareholder, shall be of no effect in relation to such company and the President may, by order published in the *Gazette* modify in their application to any such company any of the provisions of the Companies Ordinance or of any subsidiary legislation made thereunder or of the Articles of Association or any charter or instrument of the company.

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(7) Where, by an order made under this section the President vests any assets or liabilities of a corporation in any other corporation, he may make provision in respect of the transfer of the assets and liabilities of the corporation to the other corporation under any contract, guarantee, agreement, bond, authority, mortgage, charge, bill of exchange, promissory note, bank draft, bank cheque, letter of credit of any other security or instrument and may provide for the substitution of the other corporation as the part to that security or instrument.

(8) The President may, in any order under this section, make such supplementary, transitional or consequential provisions as he may deem necessary or expedient to give effect to such order.

23. (1) Every public corporation in which the Government is the sole shareholder, shall have such power to borrow money as the President may confer upon it by order 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 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 such times and at such rates as 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,
- Borrowing powers of a public corporation in which the government is the sole shareholder

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 such loan or money, shall be paid into the Consolidated Fund.

(6) The Government may guarantee in such manner and on such conditions as it may think fit the repayment of the principal of and the payment of interest and other charges on any borrowings 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 such 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 such additional powers as may be conferred upon it by the President by an order published in the Gazette.

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| 24. | <p>The powers of the President to make an order under any provision of this Act shall include powers to, make such one or more orders, and either at the same time or from time to time, as the President may deem necessary or expedient.</p> | <p>Powers of
President to
make orders</p> |
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- 25.- (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. Delegation of powers
- (2) The President may, by an order 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.
26. 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) set quantifiable performance targets,
(b) determine the proper distribution of dividends; Contract between Treasury Registrar and public corporation
27. (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 matter pertaining to its functions. Consultancy Services by former holding Corporations

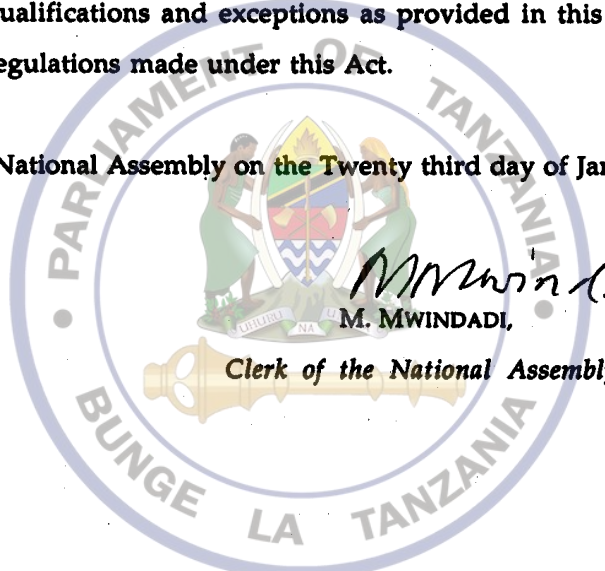
(2) For the proper performance of the functions stipulated in subsection (1), any former holding public corporation shall, subject to any direction of the Board of Directors and after consultation with all formerly associated public corporations, charge fees for the services rendered by the Corporation.

28. The Minister may make regulations for giving Regulations
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 of any regulations made there- under or of any instrument of a , specified public corporation in such manner and to such extent as may be necessary or expedient to bring those provisions into conformity with the provisions of this Act.
29. The Public Corporations Act, 1969, and the Repeal
Parastatal Organisations (Modification of Management Acts 1969
Provisions) Act, 1976, are hereby repealed. No. 17
and
Acts 1976
No. 12
30. For the avoidance of doubt, with effect from Certain
the date of coming into operation of this Act, institutions
every District Development Corporation, established to cease to
under the District Corporations Act, 1973, all non be public
commercial services institutions, sports and culture corporations

- institutions, research institutions and institutions of learning, shall, in pursuance of section 3, cease to be public corporations. Acts, 1973 No. 16
31. Upon dissolution of any holding public corporation its liabilities incurred in relation to any public corporation which was a subsidiary of that holding -corporation shall be transferred to that former subsidiary company or companies in relation to which the liabilities were incurred. Transfer Of liabilities
32. The Treasury Registrar Ordinance is hereby amended in section 6A as follows:
 (a) by adding immediately after paragraph (e) of subsection (2) the following -
 "(f) approve whether a public corporation interested in buying shares from any other public corporation or company may do so."
 (b) by adding immediately after subsection (4) the following -
 "(5) The Treasury Registrar shall, unless the appointment is by virtue of office, ensure that no person shall be appointed to be a member of more than three Boards of Directors at the same time" Amendment Treasury Registrar Ordinance Cap. 418
33. 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 provision of any existing law or of any Articles of Savings

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 competent authority or any provision thereof expires, but shall be read with such modifications, adaptations, qualifications and exceptions as provided in this Act or any regulations made under this Act.

Passed in the National Assembly on the Twenty third day of January, 1992



M. Mwindadi
M. MWINDADI,

Clerk of the National Assembly