

## CHAPTER 87:01

## PUBLIC ENTERPRISES ACT

**An Act to enable the establishment of public enterprises, to regulate the powers and duties of such public enterprises, to promote improved performance in respect of Government's commercial activities and to make provision for connected matters.**

[Act No. 1 of 1990.]

[Date of commencement: 27th June, 1990.]

## PART I

*Preliminary***1. Short title and commencement**

This Act may be cited as the Public Enterprises Act, and shall come into operation on such date as the President may, by Order published in the *Gazette*, appoint.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**Board**” means the Board of Directors of a public enterprise;

“**company**” means a company formed and registered under the Companies Act;

[Cap. 94:01.]

“**Chief Executive**” means the Chief Executive of The Gambia Investment Promotion and Free Zones Agency;

“**corporation**” means a corporation established by statute prior to the coming into force of this Act, and any new corporation established under this Act;

“**management**”, with respect to a public enterprise, means the executive members of the public enterprise;

“**Minister**”, in relation to a public enterprise, means the Minister for the time being responsible for that public enterprise;

“**Ministry**” means the Ministry of Finance and Economic Affairs;

“**President**” means the President of the Republic of The Gambia; and

“**public enterprise**” means a corporation or any company whose equity is wholly owned by Government or partially owned by Government together with another Government institution or wholly owned by a Government institution.

## PART II

### *Principles*

#### **3. Principal objectives of a public enterprise**

The principal objectives of every public enterprise shall be to operate as a successful business, and to this end to—

- (a) be as profitable and efficient as possible;
- (b) operate in accordance with Government’s objectives for that sector; and
- (c) be a good employer.

#### **4. Directors and their role**

(1) The Directors of a public enterprise shall be persons who, in the opinion of those appointing them, will assist the enterprise to achieve its principal objectives.

(2) Subject to Part III of this Act, all decisions relating to the operation of a public enterprise shall be made pursuant to the authority of the Board of the public enterprise, in accordance with its stated objectives.

(3) The Board of a public enterprise shall be accountable to the Government in the manner set out in this Act and in the rules of the enterprise.

#### **5. Management and its role**

The management of a public enterprise shall—

- (a) be responsible for the financial and operational soundness of the enterprise and for the day-to-day execution of the policies of the enterprise; and
- (b) ensure that the assets of the public enterprise are adequately safeguarded and secured and that all assets are used solely for the purposes of the public enterprise.

#### **6. Non-commercial activities undertaken by a public enterprise**

Where the Government wishes a public enterprise to provide any services which may not be in line with the financial objectives of the public enterprise, the

Government and the public enterprise shall enter into an agreement under which the public enterprise shall provide the goods and services in return for the payment of the Government of the whole or part of the cost thereof.

#### **7. Compliance with Government regulations**

The President may make regulations applicable to any public enterprise in respect of the following—

- (a) staff appointments, reviews, transfers and promotions;
- (b) capital investment appraisal;
- (c) procurement; and
- (d) disposal of assets.

#### **8. Investment policy of public enterprises**

A public enterprise shall not make any major investment or contract any loan whether inside or outside The Gambia without prior consultations with the Ministry.

### **PART III**

#### *Performance Contracts*

#### **9. Improved performance of public enterprises**

(1) The Government may enter into contracts with any public enterprise for the purpose of providing a formal statement of the intentions of and obligations of Government and the enterprise in order to encourage maximum performance of the enterprise consistent with its role and objective as a publicly owned company.

(2) All such performance contracts shall be executed by the President on behalf of the Government and by the Managing Director of a public enterprise on behalf of that enterprise.

#### **10. Contents of a performance contract**

A performance contract shall contain such terms and conditions as may be agreed by the parties and shall determine the scope of activities for the public enterprise to which it applies, which shall include the following—

- (a) the scope of the commercial services;
- (b) the non-commercial services which the Government may wish the enterprise to undertake and the terms on which the services may be undertaken;
- (c) an outline of the objectives of the enterprise and the strategies which it is expected to adopt in the furtherance of its objectives;
- (d) the performance targets of the public enterprise;

- (e) an incentive scheme for management performance, including penalties for lack of performance; and
- (f) such other matters as are deemed necessary having regard to the objectives of such public enterprise.

### **11. The approved plan**

(1) The Government and any public enterprise shall, in concluding a performance contract, agree on a plan for such period as they think necessary, which shall set the overall strategy for a period not exceeding three years.

(2) Except as otherwise agreed by the parties in writing, a public enterprise shall not implement, and the Government shall not request the implementation of, any policy or activity not specified in the plan or in the annual budget, as the case may be.

### **12. Annual budget procedures**

(1) Within such period as may be agreed prior to the commencement of each financial year, the enterprise shall submit to the Ministry, an annual budget and a forecast which shall cover a period of three years, based on the agreement in the contract.

(2) The Ministry shall, before the budget is submitted to Government for approval, review such budget to ensure that—

- (a) it advances the objectives of the enterprise;
- (b) it conforms with Government policy; and
- (c) it reflects an adequate level of performance which is achievable.

### **13. ....**

[Deleted: Obsolete.]

## **PART IV**

### *Formation of Corporations*

### **14. Incorporation Order for establishing of corporations**

(1) Where the Government considers it necessary that a corporation should be established for the purpose of—

- (a) setting up and carrying on any undertaking; or
- (b) taking over and carrying on any undertaking from Government,

the President may by Order (hereinafter referred to as the “Incorporation Order”) published in the *Gazette*—

- (i) specify the undertaking (hereinafter referred to as the “specified undertaking”) to which the Order relates,

- (ii) establish a corporation for the purpose of setting up and carrying on or taking over and carrying on, as the case may be, the specified undertaking,
- (iii) assign a corporate name to the corporation,
- (iv) specify the initial capital of the undertaking, which shall not exceed such sum as shall have been approved by the National Assembly,
- (v) state the principal place of business of the corporation,
- (vi) fix the number of members of the Board of Directors of the corporation, the number so fixed being not less than three and not more than eight,
- (vii) appoint as the first members of the Board, any persons who, under this Act, are qualified for being such members, and
- (viii) appoint one of the members of the Board as the first Chairperson of the Board.

(2) On the publication of such Order in the *Gazette*, a corporation (hereinafter referred to as "the corporation") consisting of the persons who are for the time being members thereof by virtue of section 21 of this Act, with the corporate name specified in such Order, and with perpetual succession, shall be deemed to have been established.

(3) The corporation may sue and be sued in its corporate name.

(4) The President shall lay a copy of each Incorporation Order before the National Assembly at its sitting immediately following the making of the Order, for approval.

#### **15. Objects of the corporation**

(1) The purposes constituting the specified undertaking in the Incorporation Order shall be the objects of the corporation.

(2) The President may, with the approval of the National Assembly, alter the objects of the corporation by amending, by Order published in the *Gazette*, the description of the specified undertaking contained in the Incorporation Order.

#### **16. Principal place of business**

The principal place of business of the corporation shall be that specified in the Incorporation Order.

**17. Powers of the corporation**

(1) Subject to Part II of this Act, the corporation shall have the power to acquire and hold and to take or hire or lease, any movable or immovable property and to give or hire or lease or, to sell or otherwise dispose of any of its properties.

(2) The corporation shall have the power to do anything necessary for, or conducive or incidental to the carrying out of its objects, including the power, subject to the provisions of section 8 of this Act, to borrow money for carrying out its objects and to secure the payment of any sum of money by the mortgage of any of its properties:

Provided that the corporation shall not borrow or secure the payment of any sum of money exceeding such amount as may be determined, from time to time, by the Minister without the concurrence of the Minister of Finance and Economic Affairs.

**18. Liability of the corporation limited to its capital**

The liability of the corporation shall be limited to the capital of the corporation.

**19. Seal of the corporation**

(1) The corporation shall have a common seal which shall be in the custody of the Board.

(2) The seal of the corporation may be altered in such manner as may be determined by the Board.

**20. General control of the affairs and the exercise of the powers of the corporation**

Subject to the other provisions of this Act—

- (a) the general control of the affairs of the corporation shall be vested in the Board constituted as hereinafter provided; and
- (b) the Board may exercise the powers of the corporation for the purpose of carrying out the objects of the corporation.

**21. Members of the corporation**

The persons holding office for the time being as members of the Board of the corporation shall be the members of the corporation.

**22. Number of Directors**

The Board shall consist of such number of Directors as is fixed by the Incorporation Order.

**23. Appointment of members of the Board of Directors**

The President shall, after consultation with the Public Service Commission, appoint the Directors from among persons who appear to have had experience deemed beneficial to the objectives of the corporation.

**24. Appointment of Chairperson of the Board of Directors**

The President may, subject to the provisions of paragraph (viii) of subsection (1) of section 14 of this Act, appoint one of the Directors as the Chairperson of the Board.

**25. Managing Director of a corporation**

(1) The President may at any time, appoint one of the Executive Directors as the Managing Director of the corporation after consultation with the Board and the Public Service Commission.

(2) The terms and conditions of the appointment of the Managing Director of the corporation shall be determined by the President after consultation with the Minister.

(3) The Managing Director's term of office, his or her remuneration, his or her resignation or removal from, or vacation of, office, and his or her eligibility for re-appointment on vacation of office shall be in accordance with the terms and conditions of his or her appointment.

**26. Term of office of Non-Executive Directors**

Every non-Executive Director shall hold office for a period of three years, unless he or she earlier vacates, or is removed from, office.

**27. Appointment of Acting Directors**

(1) If any non-Executive Director is temporarily unable to discharge the duties of his or her office on account of ill health, absence from The Gambia, or any other cause, the Minister may appoint some other person to act as a Director in his or her place.

(2) If any Executive Director is unable to discharge the duties of his or her office on account of ill health, absence from The Gambia, or any other cause, the person for the time being in charge of his or her office in the corporation shall act as a Director in his or her place.

**28. Resignation of Directors**

A Director may resign office by letter addressed to the President.