



THE PUBLIC INVESTMENT ACT, 2002

ARRANGEMENT OF SECTION

SECTION

TITLE

PART I

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.

PART II

ESTABLISHMENT OF PUBLIC CORPORATIONS

3. Establishment of Public Corporation.
4. Chief Executive Officer.
5. Board of Directors.
6. Composition and proceedings of the Board.
7. Meeting of the Board.
8. Functions of the Board.
9. Committees of the Board.
10. Remuneration of the Board.
11. Appointment of Staff of Public Corporation.
12. Proceedings of Board not to be invalid by reason of irregularity.
13. Powers of responsible Minister in relation to Board.
14. Funds and Resources of a Public Corporation.
15. Power to borrow.
16. Taxation.



PART III

ESTABLISHMENT OF THE PUBLIC INVESTMENT DEPARTMENT

17. Establishment of Public Investment Department.
18. Appointment of the Commissioner.
19. Functions of the Commissioner.
20. Furnishing information to the Commissioner.
21. Common Seal of the Registrar.
22. Committees.
23. Functions of Registrar.

PART IV

ACCOUNTABILITY OF PUBLIC CORPORATIONS

24. Corporate strategy.
25. Annual Reports of Accounts.
26. Half year Reports.
27. Submission of Reports.
28. Other Information.
29. Audit.
30. Supervision of Public Corporations.

PART V

TEMPORARY MANAGEMENT AND DISSOLUTION OF A PUBLIC CORPORATION

31. Temporary Management.
32. Dissolution.

PART VI

MISCELLANEOUS PROVISIONS

33. Savings.
34. Regulation.
35. Repeal of Decree No. 4 of 1978.



"Chief Executive Officer" means the head of every Public Corporation established under this Act or any other Act;

"Corporate strategy" in relation to a public corporation means the current statement of corporate strategy for that public corporation prepared under section 24 of this Act.

"Government" means the Revolutionary Government of Zanzibar;

"Gazette" means official Government Gazette;

"Minister" means the Minister responsible for finance;

"President" means the President of Zanzibar and Chairman of the Revolutionary Council;

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

"Public Investment" means the assets of the Government involved in the Government projects or private projects which the Government is a shareholder;

"Responsible Minister" means the Minister for the time being responsible for the public corporation;



PART II
ESTABLISHMENT OF PUBLIC CORPORATIONS

Establishment of
Public
Corporation.

3.(1) The President may, by order published in the Gazette, establish any public corporation for the purpose of carrying on any business, trade or undertaking of providing any service and for such other functions as may be specified in such order.

(2) Before an order is made under subsection (1) of this section the responsible minister shall submit to the President a feasibility study, business plan and other relevant information relating to the public corporation to be established.

(3) Any proposals pertaining to Joint Ventures between the Government and Private Companies or individual investors shall be approved by the Revolutionary Council.

(4) The liability of a public corporation shall be limited to the extent of its authorised capital and other assets of that public corporation.

(5) The Government shall not be liable for any transaction, debt or liability contracted by a public corporation, except for an expressed guarantee or acceptance of such liability by the Government.

(6) Every public corporation established under this section shall: -

- (a) have perpetual succession and a common seal;
- (b) in its corporate name be capable of suing and being sued;
- (c) be capable of purchasing and otherwise acquiring, or alienating, any property, movable or immovable;



(d) subject to the provisions of this Act enter into contracts, borrowing and lending money.

(7) Every order of establishing a public corporation shall provide the following:-

- (a) the name and objects of the public corporation;
- (b) the responsible Minister for that public corporation;
- (c) the head office of that public corporation.

Chief Executive Officer.

4.(1) There shall be a Chief Executive Officer of every public corporation who shall be appointed by the President on such terms and conditions as may be determined.

(2) The Chief Executive Officer shall be responsible to the Board:-

- (a) for the proper day to day administration of the public corporation in accordance with the policy laid down by the Board;
- (b) for the enforcement of staff and financial regulations made by the Board;
- (c) for the reporting on the activities of the public corporation at every meeting of the Board and to the Commissioner.

(3) The Board may employ such other officers and other employees of the public corporation as in the opinion of the Board are necessary for the efficient performance of the functions of the Public Corporation under this Act.

Board of Directors.

5.(1) There shall be a Board of Directors for every public corporation incorporated under the provisions of this Act.



- (2) The Board shall be responsible for the policy, control and supervision of the public corporation.
- (3) The Board shall be responsible for appointing the Secretary to the Board among qualified persons with experience and knowledge of law.
- Composition and proceedings of the Board.
- 6.(1) The Board shall consist of:-
- (a) a chairperson, who shall be appointed by the President;
- (b) such other members including the Chief Executive Officer being not less than five nor more than seven members to be appointed by the responsible Minister.
- (2) The Chairperson and members of the Board shall be appointed from amongst persons who have experience of, or shown capacity in or otherwise knowledgeable of the activities to be undertaken by the public corporation.
- (3) The members shall appoint one of their members to be a vice-chairperson of the Board.
- (4) The members, shall hold office for a period of three years but may be re-appointed for such further period as the responsible Minister may determine.
- Meeting of the Board.
7. (1) The Board shall meet for the discharge of business at such times and places as it may decide.
- (2) The Chairperson or, in his absence, the Vice-Chairperson, shall preside at all meetings of the Board which he attends.
- (3) Decision of the Board shall be made by a simple majority of members present and voting, and in the event of



an equality of votes, the chairperson or other person presiding shall have a second or casting vote.

(4) The quorum of any meeting of the Board shall be half of the members, one of whom shall be the Chairperson or, in his absence the Vice-Chairperson.

(5) The Board may at anytime co-opt any person to act as an advisor at its meeting, but such person shall not be entitled to vote at the meetings.

(6) Any member who has any financial or other interest, whether direct or indirect, in any undertaking of the subject matter of any decision before the Board, shall disclose in writing to the Board the nature of his interest and shall not participate in the decision of the Board relating to the matter.

(7) Any member who fails or refuses to disclose his interest under subsection (6) of this section, commits an offence and upon conviction is liable to be removed from the Board and to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(8) Subject to the preceding provisions, the Board shall regulate its own procedure.

Functions of the Board.

8. The Board shall exercise the following functions:-

- (a) to establish a system designated to ensure the proper distribution of dividends to shareholders;
- (b) to grant gratuities, benefits and allowances to the officers and employees of the public corporation;
- (c) to exercise supervision over the management team of the public corporation;



- (d) to do any other functions which, in the opinion of the Board, are necessary for the better performance of the public corporation.

Committees of the Board.

9. The Board may on such terms and conditions as it may determine appoint such committees, as it may consider necessary to perform such functions as the Board may direct.

Remuneration of the Board.

10.(1) The members of the Board shall be paid such allowances as the Board may, with prior consent of the responsible Minister determine.

(2) Every member of the Board is to be paid allowances and remuneration limited to those set out under subsection (3) of this section;

(3) The members of the Board shall be entitled to the following allowances:-

- (i) Sitting allowance;
- (ii) Directors fees (annual fees) and;
- (iii) Subsistence allowance while in the course of duties of the Board.

Appointment of Staff of public corporation.

11.(1) Notwithstanding any law now in force, the staff required for the purpose of a public corporation shall be appointed by the Board.

(2) Promotion and other disciplinary measures relating to the staff of a public corporation shall be in the hands of the Board and shall be exercised in accordance with the staff regulation of a public corporation.

(3) Except on Presidential appointment, no employee or officer of any government department or another public corporation shall be transferred to a public corporation except under the staff regulation of a public corporation.



(4) Notwithstanding any provision under this Section, any staff of a public corporation may be seconded to a government department or another public corporation and vice-versa for such period and on such terms as may be agreed between such authorities.

(5) For avoidance of doubt it is expressly provided that the Board shall have the power to employ, terminate, dismiss and suspend staff of a public corporation in accordance with staff regulation of such public corporation.

Proceedings of Board not to be invalid by reason of irregularity.

12. No act or proceeding of the Board shall be invalid by reason only of the number of members not being complete at the time of such act or proceeding or of any defect in the appointment of any member or the fact by reason that any member was at the time disqualified, or disentitled to act as such.

Powers of responsible Minister in relation to Board.

13. (1) The responsible Minister may give the Board directives of a general character as to the exercise and performance by the Board of their functions in relation to matters appearing to affect the national interest and the Board shall give effect to any such directives.

(2) The Board shall afford to the responsible Minister Facilities for obtaining information with respect to the property and activities of the public corporation and shall furnish him with returns, accounts and other information with respect thereto and afford to him facilities for the verification of information furnished, in such manner and at such times as the responsible Minister may require.

Funds and resources of a public corporations.

14. (1) The funds and resources of a public corporation shall consist of:-

- (a) the paid-up capital;
- (b) such sums as may be provided by the Government by way of loan or equity for the purposes of the public corporation;



- (c) any sums borrowed by the public corporation in accordance with the provisions of this Act;
- (d) any sums which may in any manner become payable to the public corporation as the result of the performance by the public corporation of its functions.

(2) The Government may purchase or sale shares in any Company or Corporation, only with the approval of the Revolutionary Council.

Power to borrow.

15. (1) With the prior approval of the responsible Minister , the Board of every public corporation established under this Act may, from time to time, borrow moneys, for the purposes of operating of the public corporation by way of loan or overdraft, and upon such security and such terms and conditions relating to the repayment of the principal and the payment of the interest as, subject to the directives by the responsible Minister , the Board may deem fit.

(2) The Government may guarantee in such manner and on such condition as it may think fit the repayment of the principal and the payment of interest and other charges on any borrowings of a public corporation made under subsection (1) of this section, and any sums required for the fulfilling of any such guarantee shall be charged on and issued out of the Consolidated Fund.

Taxation.

16. Every public corporation shall remit to the Ministry of Finance such proportion of its net profits.

PART III
ESTABLISHMENT OF THE PUBLIC
INVESTMENT DEPARTMENT

Public Investment Department.

17.(1) There is hereby established a Department to be known as the Public Investment Department within the Ministry for Finance.



Appointment
of the
Commissioner.

18.(1) There shall be a Commissioner who shall be appointed by the President.

(2) The Commissioner shall be the chief executive officer of the Department and subject to the general supervision of the Minister, shall be responsible for the day to day operations of the Department, the management of funds, property and business of the Department and for administration, organisation and control of all officers of the department.

(3) In appointing the Commissioner, regard shall be given to appoint a person with adequate knowledge of and experience in business affairs, legal, management, Public affairs and financial matters.

(4) The Commissioner may, subject to any Law in force or to any direction of the Minister, delegate any of his functions in relation to administration of the Department to any officer subordinate to him.

Functions
of the
Commissioner.

19.(1) The principal functions of the Commissioner shall be: -

- (a) to supervise, monitor and implement of the restructuring process of every public corporation;
- (b) to liase with responsible ministries and other organs of the Government with a view to ensuring that the objectives of the Department are achieved;
- (c) to make such other recommendations as it considers necessary to enable the Department to achieve its objectives under this Act.

(2) Without prejudice to the provision of subsection (1), the Commissioner shall:-



- (a) be responsible to the Minister for ensuring the implementation of Government policies on the reform of the public corporations;
 - (b) develop operating policies, procedures and guidelines for the implementation of the public corporation restructuring reforms decided by the Government;
 - (c) review and make recommendations on specific policies and legislation pertaining to the development of public corporations;
 - (d) liaise as necessary with responsible Ministries in monitoring the performance of public corporations and in participating in the development and supervision of statements of corporate strategy;
- (3) Notwithstanding the generality of subsection (2) of this section the Commissioner shall not enter into any agreement or other transaction relating to the value, sale or disposal of any public corporation shares or assets of a public corporation without consultations in writing with the Minister, the responsible Minister and the Attorney General.
- (4). In order to achieve its objectives and notwithstanding any law or regulation to the contrary, the Commissioner may exercise, perform and discharge all or any of the following powers:-
- (a) to formulate, issue and enforce compliance with such rules, notices, directives and guidelines as it may consider necessary on all matters within the jurisdiction of the Department under this Act; and
 - (b) to do all such other acts as may be incidental or conducive to the attainment of the objectives of the Department or the exercise of its powers under this Act.



Furnishing
information
to the
Commissioner.

20.(1) The Commissioner or any person officially authorized on that behalf may, by notice in writing, require any person or public corporation to furnish to the Commissioner or to the authorized person, within such period as is specified in such notice, such returns or information as specified in such notice.

(2) The Commissioner or any officer or employee of the Department shall not disclose to any person or use any return or information acquired in the process of his work except for the purpose of achieving the objectives of the Department or he is required to do so by a court of law.

Common Seal
Of the Registrar.

21.(1) The common seal of the Registrar shall be kept in the custody of the Commissioner and shall not be affixed to any instrument or document except as authorized by the Commissioner.

(2) All documents other than those required by law to be under seal, made by decisions of the Commissioner may be signed under the hand of the Commissioner.

Committees.

22. The Commissioner may, on such terms and conditions as he may determine, appoint such committees as he may consider necessary to perform such functions or advise the Commissioner on such matters as he may direct.

Functions of
Registrar.

23. (1) The Commissioner shall also be the Registrar of public corporations and shall perform the following duties:-

(a) The Registrar shall maintain a register containing the Following particulars:-

- (i) the name of the public corporation;
- (ii) the objects of the public corporation;
- (iii) the head office and postal address of the public corporation;



- (iv) the names of the Chief Executive Officer;
 - (v) the nominal capital of the public corporation;
 - (vi) the Ministry responsible for the public corporation;
 - (vii) the Chairperson and the members of the Board.
- (b) the Registrar shall devise a form for obtaining the Information required in paragraph (a) of this section;
- (c) custodian of the equity investment on behalf of the Government, all shares, equities and capital together with profit or surplus accruing thereof, therefore to keep records of those shares and capital investment;
- (d) in collaboration with Minister, responsible Ministry the Register shall undertake valuation of new projects submitted by the public corporations for the purpose of funding;
- (e) to analyse and make proposals on long term and annual plans of the public corporations before they are submitted to the Government for approval and integration in the overall national economy plan;
- (f) to advise the Government on the establishment, amalgamation or liquidation of public corporation;
- (g) to advise the Government on the establishment of Joint Ventures between Private Companies or Individual investor with the Government;



(h) to advise the Government on how to assist the public corporation experiencing special problems;

(i) to prepare loan agreements between the Government and statutory public corporation as well as to scrutinise the various agreement, after which in liaison with Attorney General's Chambers and to advise the Government accordingly;

(2) Where the restructuring of a public corporation involves a change in the ownership structure of that public corporation the Commissioner shall first obtain the approval of the Minister before entering into any agreement with any third party in respect of the restructuring of that public corporation.

(3) Where the restructuring of a public corporation does not involve a change in the ownership structure of that corporation, the Commissioner shall have full authority to approve such restructuring on such terms and conditions as it may determine.

PART IV **ACCOUNTABILITY OF PUBLIC CORPORATIONS**

Corporate
strategy.

24. (1) The Minister and responsible Minister as may otherwise determine, every Board shall submit to the Minister, responsible Minister and to the Commissioner 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 Commissioner by the public corporation during the course of those financial years, including the information to be included in each half-yearly report;
- (g) the procedures to be followed before the public corporation subscribes for, purchases, or otherwise acquires shares in any public corporation or company;
- (h) any activities for which the Board seeks compensation from the Government whether or not the Government has agreed to provide such compensation;
- (i) the Board's investment in the public corporation and the manner in which, and the times at which, this value is to be reassessed;
- (j) such other matters as are agreed by the Minister,



responsible Minister, the Commissioner and the Board; and

- (k) direct or approve the adoption, application or amendment of financial regulations so as to ensure the proper accounting of income and expenditures of public corporation.

(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 Commissioner, and shall submit the completed statement of corporate strategy to the Minister, responsible Minister and the Commissioner.

(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 Commissioner of the proposed modification and has considered any comments made thereon by the Minister, responsible Minister and the Commissioner 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 in the manner set out in this Part.

(7) The Commissioner shall issue guidelines to public corporations and responsible Ministries as required on the content and format of statements of corporate strategy.

25.(1) Within six months after the end of each financial year of a public corporation, every Board shall submit to the Minister and responsible Minister:-

Annual reports of accounts.



- (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 such other statements as may be necessary to show the financial position of the public corporation and the financial results of its operation during that financial year; and
- (c) the auditor's report on those financial statements.

(2) Every report under subsection (1)(a) of this section shall:-

- (a) contain such information as 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.

Half year
Reports.

26.(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 Commissioner 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 therein.

Submission of
reports.

27. The responsible Minister shall, soon after receiving the annual reports, lay before the House of Representatives 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.

Other
Information.

28. Every Board shall submit to the Minister, responsible Minister such information relating to the affairs of the public corporation as the Minister, responsible Minister may, from time to time, request.

Audit.

29. The accounts of every public corporation shall, be audited annually by Auditor General or Auditors authorized by him in person or an independent qualified auditor appointed by the Board.

Supervision of
Public
Corporations.

30.(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) of this section the responsible Minister may, in consultation with the Minister and in respect of a particular public corporation:-

- (a) render advice to the Government relating to the restructuring of that public corporation, and the vesting of any business or property in or from any such public corporation;
- (b) review the financial and operational performance of the public corporation with a view to recommending measures aimed at its restructuring or at an improvement of its performance;



- (c) consider, recommend or approve corporate or annual plans or statements of corporate strategy of the public corporation;
- (d) approve, or adjust financial targets and other performance criteria to be pursued by the public corporation;
- (e) evaluate, from time to time, the performance and effectiveness of the chief executive officer, Board or management committee of the public corporation and recommend to Government remedial or improvement measures designed to ensure the proper and efficient utilization of the finances and assets of the public corporation;
- (f) cause a special examination to be made of the expenditure of the funds of any public corporation;
- (g) 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.

PART V
TEMPORARY MANAGEMENT AND DISSOLUTION OF A
PUBLIC CORPORATION

Temporary
Management.

31. The President may order management of a public corporation be made by another firm, management committee or special receiver for a period and on such terms as specified in the order.

Dissolution.

32.(1) Any Public corporation may be dissolved by a dissolution order made by the President.



(2) A dissolution order shall among other thing specify a receiver who shall supervise the discharge of liabilities and recovery of assets.

(3) A receiver appointed under this section shall have all usual powers, duties and obligations of a receiver.

PART VI **MISCELLANEOUS PROVISIONS**

Savings.

33.(1) 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 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.

(2) Notwithstanding any law for the time being in force, the provisions of section 3,9,12, 13, 15, 16, 18, 19, 20, 21 and 24 of this Act shall apply to all public corporations including those established by another Act or incorporated under the Companies Decree, Cap. 153.

Regulation.

34. The Minister may make regulations generally for the better carrying into effect of the purposes stipulated under the provisions of this Act.

Repeal of
Decree No.4
Of 1978.

35.(1) The Public Enterprise Decree No. 4 of 1978 is hereby repealed.



(2) Notwithstanding the repeal of the said Decree, anything done under the said Decree which is in force on the effective date shall be deemed to have been made under the provisions of this Act.

(3) For avoidance of doubt it is hereby expressly provided that all public corporations established under the repealed Decree shall be deemed to be in force.

Passed in the House of Representatives on the 19th day of April, 2002.

K Chamde

{ KHAMIS JUMA CHANDE }
CLERK OF THE HOUSE OF REPRESENTATIVES