



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE PRIVATIZATION ACT

CHAPTER 485B

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CHAPTER 485B

PRIVATIZATION ACT

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CHAPTER 485B

PRIVATIZATION ACT

[Date of assent: 13th October, 2005.]

[Date of commencement: 1st January, 2008.]

An Act of Parliament to provide for the privatization of public assets and operations, including State corporations, by requiring the formulation and implementation of a privatization programme by a Privatization Commission to be established by this Act and for related purposes

[Act No. 2 of 2005, Legal Notice 397 of 2007, Act No. 15 of 2013, Act No. 7 of 2017, Act No. 18 of 2018.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Privatization Act.

2. Definitions

(1) In this Act, unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for finance;

"Commission" means the Privatization Commission established under section 3;

"County Government" means the county government established by Article 176(1) of the Constitution;

"Executive Director" means the Executive Director of the Commission appointed under section 10;

"privatization" means a transaction or transactions that result in a transfer, other than to a public entity, of the assets of a public entity including the shares in a state corporation but excludes sale of new shares to existing shareholders through a rights issue or any balance sheet reorganization which may lead to dilution of the percentage of shares held by a public entity;

"privatization programme" means the programme provided for under section 17;

"privatization proposal" means a proposal provided for under section 23;

"public entity" includes a Government department, a State corporation or a Local Authority;

"shares" means the shares in the share capital of a State corporation and includes share options;

"State corporation" means a State corporation as defined in the State Corporations Act (Cap. 446);

"Tribunal" means the Privatization Appeals Tribunal established under section 44 of this Act.

(2) For greater certainty, the assets of a fund established by law and held by or vested in a public entity are assets of the public entity for the purposes of this Act.

[Act No. 15 of 2013, s. 76(a), Act No. 7 of 2017, s. 2.]

PART II – THE PRIVATIZATION COMMISSION

3. Establishment of the Commission

The Privatization Commission is hereby established as a body corporate.

4. Functions of the Commission

The Commission shall—

- (a) formulate, manage and implement the privatization programme;
- (b) make and implement specific proposals for privatization in accordance with the privatization programme;
- (c) carry out such other functions as are provided for under this Act; and
- (d) carry out such other functions as the Commission considers advisable to advance the privatization programme.

5. Composition of Commission

(1) The Commission shall comprise the following members—

- (a) a Chairperson appointed by the President;
- (b) the Attorney-General;
- (c) the Principal Secretary to the National Treasury;
- (d) seven members, not being public officers, appointed by the Cabinet Secretary through a competitive process and approved by the National Assembly, by virtue of their expertise in such matters as will ensure that the Commission achieves its objectives; and
- (e) the Executive Director.

(2) No person shall be appointed as Chairperson unless he is a person of high integrity and has a university degree and at least ten years of high level experience in either the public or private sector.

[Act No. 7 of 2017, s. 3.]

6. Term of Office

(1) The Chairperson or a member of the Commission appointed under paragraph (d) of section 5(1) shall hold Office for a period of three years and shall be eligible for reappointment for one more term.

(2) A member appointed under section 5(1)(d) shall be eligible for reappointment as provided for under subsection (1) subject to favourable performance evaluation.

[Act No. 7 of 2017, s. 4.]

7. Resignation

(1) The Chairperson may resign by written resignation addressed to the President.

(2) A member appointed under paragraph (d) of section 5(1) may resign by written resignation addressed to the Cabinet Secretary.

8. Removal

(1) The President may remove the Chairperson, and the Cabinet Secretary may remove a member appointed under paragraph (d) of section 5(1), on a ground set out in subsection (2).

(2) The grounds referred to in subsection (1) are if the Chairperson or member

- (a) is absent without reasonable excuse from three consecutive meetings of the Commission of which he has had notice;
- (b) becomes an undischarged bankrupt;
- (c) is convicted of a criminal offence;
- (d) is incapacitated by reason of prolonged physical or mental illness from performing his duties as the Chairperson or member; or
- (e) is otherwise unable or unfit to discharge the functions of his Office.

9. Remuneration of members

The Commission shall pay the members of the Commission such remuneration and allowances as are determined by the Cabinet Secretary in consultation with the State Corporations Advisory Committee established under the State Corporations Act (Cap. 446).

10. Appointment of Executive Director

(1) The Cabinet Secretary shall, through a competitive process, appoint an executive director of the Commission who shall be the chief executive officer of the Commission and who shall, in addition, perform such duties as the Commission shall assign to his Office.

(2) No person shall be appointed as Executive Director unless he possesses experience and expertise in either financial management, banking or economics and in addition has experience and expertise in matters of public policy.

11. Appointment of employees

(1) The Commission shall appoint such other employees, subordinate to the Executive Director, as it considers necessary to assist the Executive Director in discharging his duties and responsibilities.

(2) The Commission may delegate to the Executive Director the appointment of employees of the Commission of such ranks as the Commission shall specify.

12. Terms and conditions of service of employees

The Cabinet Secretary shall determine, in consultation with the State Corporations Advisory Committee established under the State Corporations Act (Cap. 446), the terms and conditions of service of the employees of the Commission, including the Executive Director.

13. Conduct of business, etc.

The business and affairs of the Commission shall be conducted in accordance with the First Schedule but, subject to the Schedule, the Commission may regulate its own procedures.

14. Funding of Commission

The Commission shall be funded from the following—

- (a) such amounts as are appropriated by Parliament; and
- (b) such grants and donations as the Cabinet Secretary may approve.

15. Audit

The Commission shall be audited in accordance with the Public Audit Act (Cap. 412B)

16. Annual report

(1) The Commission shall cause an annual report to be prepared for each financial year.

(2) Without limiting what may be included in the annual report, the annual report shall include—

- (a) the audited financial statements of the Commission;
- (b) where a State corporation was privatized during the year, a statement of the assets and liabilities of the State corporation and the proceeds from the privatization; and
- (c) such information as the Cabinet Secretary may direct.

(3) The Cabinet Secretary shall lay the annual report before the National Assembly not later than seven days after the National Assembly first meets after the Cabinet Secretary has received the report.

PART III – THE PRIVATIZATION PROGRAMME**17. Establishment of privatization programme**

(1) There shall be a privatization programme.

(2) The privatization programme shall be formulated by the Commission and approved by the Cabinet.

(3) The privatization programme shall be published in the *Gazette*.

(4) The privatization programme may be amended and subsections (2) and (3) shall apply with respect to any such amendments.

18. Benefits of privatization programme

(1) In formulating the privatization programme the Commission shall have regard to the desired benefits of the programme as described in subsection (2).

(2) The desired benefits of the privatization programme referred to in subsection (1) are the following—

- (a) the improvement of infrastructure and the delivery of public services by the involvement of private capital and expertise;
- (b) the reduction of the demand for government resources;
- (c) the generation of additional government revenues by receiving compensation for privatizations;
- (d) the improvement of the regulation of the economy by reducing conflicts between the public sector's regulatory and commercial functions;
- (e) the improvement of the efficiency of the Kenyan economy by making it more responsive to market forces;
- (f) the broadening of the base of ownership in the Kenyan economy; and
- (g) the enhancement and development of the capital markets.

19. Commission may review assets, etc., of public entities

(1) The Commission may review the assets and operations of a public entity for the purposes of determining whether to include a privatization relating to the public entity in the privatization programme.

(2) A review described in subsection (1) may be made at the request of the Cabinet Secretary responsible for the public entity or on the Commission's own initiative.

20. Prescribed non-privatization transactions to be included

The Cabinet Secretary may, with the approval of the Cabinet, make regulations requiring the Commission to include, in the privatization programme, a transaction that is not a privatization and this Act shall apply with respect to such a transaction as though it were a privatization.

21. Only Commission to implement programme

The Commission shall have the exclusive authority to manage and implement the privatization programme.

22. Privatizations outside programme

(1) A privatisation that is not included in the privatization programme may be implemented and managed by the responsible public entity, subject to subsection (2).

(2) A privatization that is within one of the following classes shall not be implemented unless it is included in the privatization programme—

- (a) the transfer of a public entity's interests in a State corporation or other corporation;
- (b) any other privatization prescribed by regulation.

[Act No. 15 of 2013, s. 76(b).]

PART IV – PRIVATIZATION PROCESS**23. Privatization proposals by Commission**

(1) For each privatization included in the privatization programme the Commission shall make a specific proposal for privatization to the Cabinet Secretary.

(2) The Cabinet Secretary shall present the privatization proposals specified in subsection (1) to the Cabinet for approval.

(3) The Cabinet Secretary shall submit a report in form of a Sessional Paper on a privatization proposal approved by the Cabinet to the National Assembly for consideration.

(4) Upon laying before the National Assembly, a report under subsection (3) shall stand referred to the relevant committee.

(5) The Cabinet Secretary shall compile and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarizing the status of implementation of each proposal approved under subsection (2) in that year.

(6) Upon laying before the National Assembly, the report under sub section (5) shall be referred to the relevant committee.

[Act No. 7 of 2017, s. 5, Act No. 18 of 2018, Sch.]

24. Contents of privatization proposal

Without limiting what else may be included, a privatization proposal shall set out the following—

- (a) for the assets being proposed for privatization—
 - (i) the purpose of the establishment or existence of the assets;
 - (ii) the extent to which the purpose has been met by the assets or operations including any inadequacies in meeting that purpose;
 - (iii) the rights or other entitlements and resources that have been provided to meet the purpose;
 - (iv) recommendations for continuing to meet the purpose; and
 - (v) if the asset is a State corporation, the financial position of the State corporation;
- (b) the recommended method of privatization;
- (c) the estimated costs of implementing the proposed privatization;
- (d) recommendations for dealing with the employees directly affected by the proposed privatization, including dealing with any benefits they might be owed;
- (e) the benefits to be gained from the proposed privatization;
- (f) a work plan for the proposed privatization;
- (g) information regarding any written law, the repeal, amendment or enactment of which will be necessary for the proposed privatization to be carried out; and
- (h) proposals on how Kenyans are to be encouraged to participate in the transaction.

[Act No. 15 of 2013, s. 76(c).]

25. Methods of privatization

Subject to sections 28 and 29, the method of privatization may be any of the following—

- (a) public offering of shares;
- (b) *deleted by Act No. 15 of 2013, s. 76;*
- (c) negotiated sales resulting from the exercise of pre-emptive rights;
- (d) sale of assets, including liquidation;
- (e) any other method approved by the Cabinet in the approval of a specific privatization proposal.

[Act No. 15 of 2013, s. 76(d).]

26. Commission to implement proposed privatization

(1) The Commission shall implement each privatization proposal approved by the Cabinet.

(2) The Commission may vary the timing of the steps or activities provided for in the work plan.

27. Steering committees

(1) For each privatization, there shall be a steering committee to implement the privatization on behalf of the Commission subject to any directions of the Commission.

(2) A steering committee shall comprise the following members—

- (a) the members of the Commission described in paragraphs (b) and (c) of section 5(1);
- (b) the Principal Secretary of the Ministry with responsibility over the asset or service being privatized; and
- (c) such members of the Commission as the Commission specifies.

28. Privatization to be competitive to obtain fair price

The Commission shall conduct a privatization in an open and competitive way, subject to any pre-existing legal rights, with a view to ensuring that the compensation received represents the fair value of what is privatized.

29. Eligible investors in privatization

(1) Both Kenyans and non-Kenyans are eligible to participate in any privatization.

(2) Notwithstanding the provisions of subsection (1), the Cabinet Secretary may direct the Commission to—

- (a) limit participation in any privatization to Kenyans; or
- (b) ensure that there is a specified minimum level of participation by Kenyans in any privatization.

(3) For greater certainty, subsection (1) does not affect the application of any other law that may impose restrictions on non-Kenyans.

(4) Assets, operational control or operations being transferred in a privatization may not be transferred to a public entity.

(5) Subsection (4) does not prevent a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under public control from purchasing shares for the benefit of its contributors.

30. Publication of notice of proposed privatization

(1) After a privatization proposal is approved by the Cabinet the Commission shall publish a notice of the proposed privatization.

(2) The notice shall be published in at least two newspapers with a national circulation and the notice shall be published at least twice with there being at least seven days between the first and last publication.

(3) Without limiting what else may be included in the notice, the notice shall set out the following—

- (a) a description of what is to be privatized; and
- (b) a description of the method of privatization including, if applicable, any deadlines and closing dates.

31. Valuation required for each privatization

(1) For each privatization, a valuation shall be performed to assist the Commission in implementing the privatization proposal.

(2) The valuation shall be performed by a qualified person or persons appointed by the Commission.

32. Information to Commission about asset, etc., to be privatized

(1) If the privatization programme provides for the privatization of assets or operations, the public entity with control over those assets or operations shall provide the Commission with such information as the Commission requests.

(2) If the public entity referred to in subsection (1) is a Government department, the Principal Secretary with responsibility for that department shall be responsible for ensuring that the information required under subsection (1) is provided.

(3) If the public entity referred to in subsection (1) is a local authority, the Principal Secretary of the Ministry with responsibility for Local Government shall be responsible for ensuring that the information required under subsection (1) is provided.

(4) If the public entity referred to in subsection (1) is a State corporation, the board of directors of the State corporation shall be responsible for ensuring that the information required under subsection (1) is provided.

33. Restrictions, etc., on State corporations scheduled for privatization

(1) This section applies with respect to a State corporation if—

- (a) the privatization programme provides for the privatization of the State corporation or assets or operations of the State corporation; and
- (b) all the shareholders of the State corporation, if any, are public entities.

(2) This section begins to apply to a State corporation upon the publication, under section 17, of the privatization programme or, if the privatization of the State corporation is provided for under an amendment to the privatization programme, upon the publication, under section 17, of that amendment.

(3) A State corporation to which this section applies shall carry out any directions of the Commission with respect to the preparation of the State corporation or its assets for privatization or with respect to the implementation of the privatization and, without limiting the generality of the foregoing, such directions may include—

- (a) directions that the State corporation pay such costs specified by the Commission as are incidental to the privatization of the State corporation, including costs incurred by the Commission;
- (b) directions that the State corporation disclose, to the Commission, to the general public or to identified persons, as specified by the Commission, such information as the Commission specifies, subject to subsection (4)(d); or
- (c) if an audit of the accounts of the State corporation is overdue, directions that the State corporation prepare the necessary accounts within the time limit specified by the Commission and co-operate fully with the auditors.

(4) A State corporation to which this section applies shall not—

- (a) allow the assets of the State corporation to be dissipated;
- (b) undertake any new capital investment unless documentation for the investment is prepared for the Commission and the Commission is satisfied that—

- (i) the investment is necessary to maintain the operations of the State corporation; and
 - (ii) the investment will have a positive effect on the net worth of the State corporation within a period of two years or such shorter period as the Commission specifies;
 - (c) incur any liabilities, other than in the ordinary course of business, without the prior written approval of the Commission; or
 - (d) disclose information, other than publicly, if there is a reasonable risk that the disclosure would give an advantage to a person who might compete in the privatization.
- (5) A State corporation to which this section applies shall—
- (a) keep up to date business records and books of accounts;
 - (b) maintain an up to date register of fixed assets; and
 - (c) document all legal and other obligations of the State corporation.
- (6) The Executive Director or his nominees may attend any meeting of the board of directors of a State corporation to which this section applies or of any committee of the board of directors.

34. No credit, etc., on sale of shares

If shares are sold as part of a privatization, neither the Government nor the public entity that sells the shares shall extend credit or provide financing for the purchase of the shares.

35. Regulation of monopolies

If a privatization would otherwise result in an unregulated monopoly the Commission shall ensure that the agreement to give effect to the privatization provides for the regulation, under the agreement, of the monopoly.

36. Notice of proposed transfer

When, for a privatization, it is determined to whom the assets, operational control or operations are to be transferred and on what terms, the Commission shall publish a notice in the *Gazette* of what has been determined.

37. Objections and appeals procedure

The Second Schedule shall apply with respect to objections and appeals relating to what has been determined, as published under section 36 and any other objections and appeals relating to implementation of the privatization programme.

[Act No. 7 of 2017, s. 6.]

38. Limits on when agreement may be signed

(1) An agreement to give effect to a privatization shall not be signed until the time limit for filing an objection under the Second Schedule has elapsed.

(2) If an objection has been filed with the Commission, an agreement to give effect to the privatization shall not be signed until the Commission has made a decision with respect to the objection and—

- (a) the time for filing a notice of appeal has expired without such a notice being filed; or
- (b) the Tribunal has disposed of any appeal.

39. Countersigning of agreement

(1) An agreement to give effect to a privatization shall not bind a public entity unless it is signed or countersigned by the Principal Secretary to the National Treasury.

(2) This section does not apply with respect to an agreement to sell an asset as part of a liquidation if the sale price of the asset is less than the amount prescribed by regulation or, if no such amount is prescribed, ten million shillings.

40. Special rule for public offering of shares

Sections 36, 37, 38 and 39 shall not apply with respect to a privatization if the method of privatization is a public offering of shares.

41. Publication of notice after agreement made

(1) After an agreement to give effect to a privatization becomes binding on the appropriate public entity, the Commission shall promptly publish a notice of the privatization in the *Gazette*.

(2) The notice shall set out the following—

- (a) a description of the assets being privatized;
- (b) a description in summary form of the transaction used to give effect to the privatization;
- (c) the names and addresses of the persons to whom the assets, operational control or operations are being transferred; and
- (d) such other information as the Commission considers appropriate.

(3) If the transaction to be used to give effect to the privatization is a public offering of shares, subsection (2)(c) shall not apply.

[Act No. 15 of 2013, s. 76(e).]

42. Commission records

(1) The Commission shall keep and maintain proper records for each privatization.

(2) The Cabinet Secretary may make regulations governing the records required under subsection (1).

43. Part only applies to privatizations in programme

This Part applies only with respect to a privatization that is included in the privatization programme.

PART V – PRIVATIZATION APPEALS TRIBUNAL**44. Establishment and composition of Tribunal**

(1) The Privatization Appeals Tribunal is hereby established.

(2) The Tribunal shall consist of the following members—

- (a) a Chairperson, appointed by the President, who shall be qualified to be appointed as a Judge of the High Court; and
- (b) two other members, appointed by the Cabinet Secretary, each of whom shall be a person with knowledge or experience in privatizations or management.

(3) A person is not qualified to be appointed as a member of the Tribunal if the person is an employee or member of the Commission or a member of the public service.

(4) A member shall hold office—

- (a) in the case of the Chairperson, for a period of five years; and
- (b) in the case of another member, for a period of three years.

(5) A member of the Tribunal may be reappointed but may not serve more than two terms.

(6) A member of the Tribunal may resign by written resignation addressed to—

- (a) in the case of the Chairperson, the President; and
- (b) in the case of another member, the Cabinet Secretary.

(7) The President may remove the Chairperson, and the Cabinet Secretary may remove any of the members of the Tribunal, on the following grounds—

- (a) the Chairperson or member becomes an undischarged bankrupt;
- (b) the Chairperson or member is convicted of a criminal offence;
- (c) the Chairperson or member is incapacitated by reason of prolonged physical or mental illness from performing his duties; or
- (d) the member is otherwise unable or unfit to discharge the functions of his Office.

45. Secretary

The Attorney-General shall designate a public officer to be the secretary to the Tribunal.

46. Allowances and expenses

(1) The members of the Tribunal shall be paid such allowances and expenses as are determined by the Cabinet Secretary.

(2) The expenses of the Tribunal, including the allowances and expenses of the members of the Tribunal, shall be paid by the Government.

PART VI – MISCELLANEOUS

47. Use of privatization proceeds

(1) The proceeds from the sale of direct Government equity holding shall be paid into the Consolidated Fund.

(2) The proceeds from the sale of a State corporation's equity holding shall be deposited in a special interest bearing account established specifically for that State corporation in order to protect the erosion of the balance sheet of the State corporation.

(3) Subject to the approval of the Cabinet Secretary, the privatization proceeds referred to in subsection (2) shall be used—

- (a) to liquidate the debts of the State corporation;
- (b) to pay the costs of financial and organizational restructuring of the State corporation;
- (c) to pay for capital investments by the State corporation.

(4) Any surplus under subsection (3) shall be paid into the Consolidated Fund.

48. Commission to keep information confidential

The Commission shall keep information acquired by it confidential and shall disclose such information only to the extent it considers necessary for the proper performance of its functions.

49. Offences – improper disclosure of information

(1) No member, employee or agent of the Commission shall disclose information acquired under this Act except—

- (a) in the course of his duties under this Act; or
- (b) with the written consent of the Commission.

(2) No person who receives information in contravention of subsection (1) shall disclose or publish the information.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

50. Offences – lying to or misleading officials

(1) No person shall knowingly lie to or mislead a person carrying out a duty or function under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

51. Regulations

The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act.

52. Transitional provisions

The provisions of the Third Schedule shall apply.

FIRST SCHEDULE

[s. 13]

BUSINESS AND AFFAIRS OF THE COMMISSION**1. Definitions**

In this Schedule—

"immediate family member" in relation to a person means the person's spouse, child, parent, brother, sister, grandchild or grandparent.

2. Meetings of the Commission

- (1) Meetings of the Commission shall be held at such time and places as the Commission or the Chairperson from time to time appoints.
- (2) The Commission shall meet at least four times in every calendar year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.
- (3) The quorum for the conduct of business at a meeting of the Commission shall be eight members of the Commission.

- (4) A meeting of the Commission shall be presided over by—
 - (a) the Chairperson; or
 - (b) in the absence of the Chairperson, such member as the members present may elect for the purpose of that meeting.
- (5) In the event of an equality of votes on a question before the Commission, the person presiding at the meeting shall have the casting vote in addition to his deliberative vote.

3. Alternates for certain members

A member described in section 5(1) of the Act, may designate a representative to attend a meeting of the Commission or of a committee of the Commission in the member's absence.

4. Executive Director is Secretary

- (1) The Executive Director shall be the Secretary to the Commission.
- (2) The Executive Director or such other employee of the Commission as the Executive Director may designate shall attend each meeting of the Commission or a committee of the Commission.

5. Minutes

The Executive Director shall ensure that minutes are kept of every meeting of the Commission and of the committees of the Commission.

6. Commission to appoint committees, *etc.*

- (1) The Commission may for the purpose of performing its functions under this Act establish committees and delegate to any such committee such of its functions as it considers advisable.
- (2) The Commission may appoint persons who are not members of the Commission as members of a committee established under subparagraph (1).

7. Attendance at meeting of non-members

- (1) This paragraph applies with respect to meetings of the Commission and meetings of committees of the Commission.
- (2) The Commission may invite a person to attend a meeting.
- (3) If a State corporation, asset or service is to be discussed at a meeting, the Commission shall invite the Principal Secretary of the Ministry with responsibility for the State corporation, Asset or Service, or the Principal Secretary's nominee, to attend the meeting.
- (4) The Cabinet Secretary may nominate a public servant to attend a meeting.
- (5) A person invited or nominated under this paragraph may participate in the meeting, subject to paragraph 8, but shall not have a vote.

8. Disclosure of interest, Commission meetings

If a person is present at a meeting of the Commission or of any committee of the Commission and the person or his immediate family member or his professional or business partners, are directly or indirectly interested in a private or professional capacity in a matter that is the subject of consideration at the meeting, the person shall as soon as is practicable after the commencement of the meeting disclose such interest and shall not, unless the Commission or the committee otherwise

directs, take part in any consideration or discussion of, or vote on, any question touching on such matter.

9. Disclosure of interest, generally

- (1) A member of the Commission, an employee of the Commission or a consultant to the Commission who is, or whose immediate family member is, directly or indirectly interested in a private, professional or official capacity in any matter relating to the privatization programme shall disclose such interest.
- (2) A disclosure of interest by an employee or consultant shall be made to the Executive Director who shall take such action as he considers appropriate and submit a report thereon to the Commission.
- (3) A disclosure of interest by the Executive Director or a member of the Commission shall be made to the Commission which shall take such action as it considers appropriate.

10. Oath of secrecy

The following shall, upon assumption of his office, take such oath of secrecy as may be prescribed by regulation—

- (a) a member of the Commission;
- (b) a member of a committee of the Commission;
- (c) an employee of the Commission; and
- (d) a consultant in the service of the Commission.

SECOND SCHEDULE

[s. 37]

PROCEDURE FOR OBJECTIONS AND APPEALS

1. Definitions

In this Schedule—

"working day" means a day other than a Saturday, Sunday or public holiday.

2. Objection

- (1) A person may file, with the Commission, an objection to what has been determined, as published under section 36 or any other objection relating to implementation of the privatization programme.
- (2) An objection to what has been determined and published under section 36 may not be filed later than five working days after the publication.
- (3) The Commission shall make a decision with respect to the objection to what has been determined and published under section 36 or any other objection relating to implementation of the privatization programme and give a copy of its decision to the objector within five working days after receiving that objection.
- (4) The Commission's decision shall set out the reasons for the decision.

[Act No. 7 of 2017, s. 7.]

3. Appeal to Tribunal

- (1) A person who filed an objection may appeal the Commission's decision to the Appeal Tribunal by filing a notice of appeal with the secretary of the Appeal Tribunal.
- (2) A person who has filed an objection may not make an appeal later than seven working days after the delivery to that person of a copy of the Commission's decision under paragraph 2(3).
- (3) Without limiting what else may be included in the notice of appeal, the notice shall include—
 - (a) the appellant's initial objection;
 - (b) the Commission's decision; and
 - (c) the grounds of the appeal.
- (4) Within the time period specified in subparagraph (2), the appellant shall serve a copy of the notice of appeal on the Commission.
- (5) The Commission shall file a response to the notice of appeal with the Tribunal within five working days after being served with the notice of appeal.
- (6) The Tribunal shall begin hearing the appeal within ten working days after the notice of appeal was filed and shall conclude the hearings within ten days.
- (7) The Tribunal shall make its decision and give a copy of it to the parties within ten working days after the hearing is concluded.
- (8) On an appeal, the Tribunal may do any one or more of the following—
 - (a) annul anything done in the privatization process, including annul the privatization process in its entirety;
 - (b) give directions with respect to anything to be done or redone in the privatization process;
 - (c) order the payment of costs as between the parties to the appeal.

4. Appeal to Court

A party to the appeal to the Tribunal may appeal the Tribunal's decision to the High Court within ten working days after the delivery to the party of a copy of the decision from the Tribunal.

5. Rules and other procedural powers

- (1) The Cabinet Secretary may make rules governing the procedure of the Tribunal.
 - (2) Subject to this Act and the rules made by the Cabinet Secretary, the Tribunal may govern its own procedure.
 - (3) The Tribunal shall have the same powers as the court to make orders to secure the attendance of persons, for the production of documents or for the investigation and punishment of contempt.
 - (4) The Tribunal may require a party to provide security for costs as a condition of participating in an appeal.
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THIRD SCHEDULE

[s. 52]

TRANSITIONAL PROVISIONS

1. Ongoing privatizations – exclusive to Commission

- (1) Upon the coming into operation of this Act, the Commission shall take over the implementation and management of any ongoing process leading to a privatization in a class set out in section 22(2).
- (2) Upon the coming into operation of this Act, no ongoing process leading to a privatization may be reversed or otherwise materially altered to the detriment of any party.

2. Ongoing privatizations – included in programme

Upon the publication of the privatization programme under section 17(3), the Commission shall take over the implementation and management of any ongoing process leading to a privatization included in the privatization programme.

3. Application of Act to continued privatizations

This Act shall apply, with necessary modifications and such modifications as may be prescribed by regulation, to the implementation and management of a process by the Commission under paragraphs 1 or 2.

4. Transfer of assets, *etc.*, to Commission

- (1) Upon the establishment of the Commission, the assets, liabilities, rights and obligations of the Executive Secretariat and Technical Unit of the Public Enterprise Reform Programme shall become assets, liabilities, rights and obligations of the Commission.
 - (2) For greater certainty, subparagraph (1) applies with respect to employment contracts with the Executive Secretariat and Technical Unit of the Public Enterprise Reform Programme.
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