

STATE INTERESTS AND GOVERNANCE AUTHORITY ACT, 2019 (ACT 990)

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REPUBLIC OF GHANA

**THE NINE HUNDRED AND NINETY
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
STATE INTERESTS AND GOVERNANCE AUTHORITY
ACT, 2019**

AN ACT to establish the State Interests and Governance Authority, to oversee and administer the State interests in state-owned enterprises, joint venture companies and other State entities and to provide for related matters.

DATE OF ASSENT: 7th June, 2019

PASSED by Parliament and assented to by the President:

Preliminary

Section 1—Application

- (1) This Act applies to specified entities.
- (2) This Act does not abrogate or affect the validity of the functions or operations of any specified entity.
- (3) Subject to subsection (2), where there is a conflict or inconsistency, between any other enactment and this Act, this Act shall prevail.

Establishment of the State Interests and Governance Authority

Section 2—Establishment of the Authority

- (1) There is established by this Act a body corporate with perpetual succession to be known as the State Interests and Governance Authority.
- (2) The Authority may, for the performance of the functions under this Act, acquire and hold property, dispose of property and enter into a contract or any other transaction relating to the objects of the Authority.

(3) Where there is a hindrance to the acquisition of landed property, the immovable property may be acquired for the Authority under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Authority.

Section 3—Objects of the Authority

The objects of the Authority are to

- (a) promote within the framework of Government policy, the efficient or where applicable profitable operations of specified entities;
- (b) ensure that specified entities adhere to good corporate governance practices;
- (c) acquire, receive,[sic] hold and administer or dispose of shares of the State in state-owned enterprises and joint venture companies;
- (d) oversee and administer the interests of the State in specified entities; and
- (e) ensure that
 - (i) State-owned enterprises and joint venture companies introduce effective measures that promote the socio-economic growth of the country including, in particular,[sic] agriculture, industry and services in accordance with their core mandates; and
 - (ii) other State entities introduce measures for efficient regulation and higher standard of excellence.

Section 4—Functions of the Authority

To achieve the objects under section 3, the Authority shall

- (a) in consultation with the respective sector Ministers
 - (i) evaluate the mandates of State-owned enterprises and other State entities and make recommendations to the relevant sector Minister; and
 - (ii) evaluate the strategic plans, and organisational structures of State-owned enterprises and other State entities and make recommendations to the relevant sector Minister;
- (b) ensure adherence to the terms and conditions of the annual performance contracts signed by the Authority with the State-owned enterprises and other specified entities;
- (c) monitor and evaluate the performance of joint venture companies;
- (d) develop a Code of Corporate Governance to guide and promote sound corporate governance practices of specified entities;
- (e) prepare and submit, to the Minister, an annual assessment report on the governance and institutional performance of specified entities;
- (f) assist the Minister responsible for Finance to assess borrowing levels of State-owned enterprises and other State entities in accordance with the Public Financial Management Act, 2016 (Act 921);

- (g) assist the Minister responsible for Finance to make a determination where a request for a government guarantee, financing of capital expenditure or investment plan is submitted by a specified entity;
- (h) ensure that dividends due the State are paid by specified entities;
- (i) advise the sector Minister on policy matters for effective corporate governance of specified entities;
- (j) advise Government on the appointment and removal of Chief Executive Officers or members of the boards or other governing bodies of specified entities; and
- (k) co-ordinate the sale or acquisition of the State interests in specified entities and advise the Minister accordingly;
- (l) assist the Minister responsible for Finance to oversee the sale or acquisition of the State's interests in specified entities; and
- (m) perform any other functions ancillary to the objects of the Authority.

Governance of the Authority

Section 5—Governing body of the Authority

- (1) The governing body of the Authority is a Board consisting of
 - (a) a chairperson;
 - (b) one representative from the Office of the President;
 - (c) one official of the Ministry of Finance not below the rank of a Director, nominated by the Minister responsible for Finance;
 - (d) one chartered accountant of good standing with considerable experience in corporate and commercial industry practice, nominated by the Institute of Chartered Accountants, Ghana;
 - (e) one legal practitioner of good standing of not less than ten years at the Bar, with relevant professional experience in corporate and commercial law practice, nominated by the Ghana Bar Association;
 - (f) the Director-General of the Authority; and
 - (g) three other persons at least two of whom are women, nominated by the President.
- (2) The President shall, in appointing persons under paragraphs (a), (b) and (g) of subsection (1), have regard to their expert knowledge.
- (3) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

Section 6—Functions of the Board

- (1) The Board shall, subject to the provisions of this Act,
 - (a) be responsible for the strategic direction and policies of the Authority;

(b) promote and enforce a Code of Corporate Governance that sets out the principles and standards for good governance of the Authority and specified entities;

(c) ensure accountability of the Authority by defining appropriate procedures for the management of the Authority; and

(d) ensure the proper and effective performance of the functions of the Authority.

(2) The Board shall in the performance of the functions under subsection (1) conduct affairs and practices in accordance with the Public Financial Management Act, 2016 (Act 921) and other relevant enactments.

Section 7—Duties and liabilities of a member of the Board

(1) A member of the Board has the same fiduciary relationship with the Authority and the same duty to act with loyalty and in good faith as a director of a company incorporated under the Companies Act, 1963 (Act 179) or a statutory modification or re-enactment of that Act.

(2) Without limiting subsection (1), a member of the Board

(a) has a duty

(i) to act honestly in the performance of the functions of that member;

(ii) to exercise the degree of care and diligence in the performance of the functions of that member that a person in that position would reasonably be expected to exercise in the circumstances;

(iii) to avoid making improper use of information acquired by virtue of the position of that member so as to benefit that member or to the detriment of the Authority; and

(iv) not to abuse the position of the office; and

(b) shall at all times act in the best interest of the Authority.

(3) A member of the Board who contravenes subsection (1) or (2), commits an offence and is liable on summary conviction to a fine of not less than three thousand penalty units and not more than six thousand penalty units or to a term of imprisonment of not less than five years and not more than ten years or to both.

(4) Without limiting a cause of action under subsection (3), where a member commits a breach of duty under subsection (2)

(a) that member and any other person who knowingly participated in the breach, is liable to compensate the Authority for the loss suffered as a result of the breach;

(b) that member shall account to the Authority for a profit made by that member as a result of the breach; and

(c) a contract or any other transaction entered into between that member and the Authority, in breach of that duty may be rescinded by the Authority.

(5) This section shall apply to all specified entities.

Section 8—Tenure of office of members of the Board

(1) Subject to any other enactment, a member of the Board shall hold office for a period of four years and is eligible for re-appointment, but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Director-General and a person who is a member of the Board by reason of the office of that person.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) The President may by a letter addressed to a member revoke the appointment of that member.

(5) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability may result in the declaration of a vacancy.

(6) Where there is a vacancy

(a) under subsection (3) or subsection (5) of section 9 or subsection (2) of section 10;

(b) as a result of a declaration under subsection (5); or

(c) by reason of the death of a member the Minister shall notify the President of the vacancy and the President shall, subject to subsection (3) of section 5, appoint a person to fill the vacancy.

Section 9—Meetings of the Board

(1) The Board shall meet at least once every quarter for the despatch of business at a time and place determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extraordinary meeting of the Board at a place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is five members of the Board.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board, other than the Director-General, elected by the members present from among their number shall preside.

(5) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(6) Matters before the Board shall be decided by the majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(7) Meetings may be conducted through video conferencing or any other means of technology as may be determined by the Board.

(8) A meeting conducted in accordance with subsection (7) is deemed to be duly conducted.

(9) A person who participates in a meeting conducted under subsection (7) is deemed to be present at the meeting.

(10) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

(11) The minutes of meetings of the Board, kept pursuant to paragraph (b) of subsection (3) of section 21 shall be signed by the chairperson of the meeting at which proceedings took place or at the next succeeding meeting.

(12) The minutes signed by the chairperson under subsection (11) is prima facie evidence of the proceedings of the meeting.

(13) The validity of any proceedings of the Board shall not be affected by a vacancy in the membership of the Board or by a defect in the appointment or qualification of a member.

(14) The Board shall, subject to this section, regulate the procedure for the meetings of the Board.

Section 10—Disclosure of interest

(1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) Where a member contravenes subsection (1), the chairperson shall notify the Minister who shall inform the President in writing to revoke the appointment of that member.

(3) Without limiting any further cause of action that may be instituted against the member, the Board shall recover the benefit derived by a member who contravenes subsection (1) in addition to the revocation of the appointment of the member.

Section 11—Establishment of committees

(1) The Board may establish committees consisting of members of the Board and non-members, to perform a function of the Board.

(2) A committee of the Board shall be chaired by a member of the Board other than the chairperson of the Board.

(3) Section 10 applies to a member of a committee of the Board.

Section 12—Management Committee.

(1) Without limiting subsection (1) of section 11, there is established Management Committee.

(2) The Committee is answerable to the Board for the technical operations of the Authority.

(3) The Committee is composed of the Director-General, the General Managers and heads of the divisions of the Authority as Director-General may determine.

(4) The Committee shall meet at least once a month at a time and place determined by the chairperson.

(5) The Director-General shall chair the meetings of the Management Committee.

Section 13—Allowances

(1) Members of the Board and members of a committee of Board shall be paid allowances approved by the Minister responsible Finance.

(2) Subsection (1) does not apply to members of the Management Committee.

Section 14—Policy directives

The Minister may give directives in writing on matters of Government policy to the Board and the Board shall comply.

Administration of the Authority

Section 15—Divisions of the Authority

(1) The Board may, on the recommendation of the Director-General establish divisions of the Authority that are necessary for the effective performance of the functions of the Authority.

(2) The Board shall assign staff of the Authority to head the divisions of the Authority.

Section 16—Internal Audit Unit

The Authority shall have an Internal Audit Unit in accordance with section 83 of the Public Financial Management Act, 2016 (Act 921).

Section 17—Appointment of Director-General

(1) The Authority shall have a Director-General.

(2) The President shall in accordance with article 195 of the Constitution appoint the Director-General.

(3) A person qualifies for appointment as Director-General if that person has

(a) the relevant academic qualification;

(b) the relevant professional competence; and

(c) not less than fifteen years working experience with a minimum of five years working experience at a senior management level.

(4) The Director-General shall hold office on the terms and conditions as specified in the letter of appointment.

Section 18—Functions of the Director-General

(1) The Director-General

(a) is responsible for the day to day administration of the affairs of the Authority and is answerable to the Board in the performance of functions in this Act; and

(b) shall implement the decisions of the Board.

(2) The Director-General may delegate a function to an officer not below the rank of the head of a division of the Authority but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Section 19—Appointment of General Managers

(1) The President shall, in accordance with article 195 of the Constitution, appoint two General Managers.

(2) A General Manager shall hold office on the terms and conditions as specified in the letter of appointment.

(3) A General Manager shall have the relevant professional competence and experience.

Section 20—Functions of General Manager

(1) A General Manager appointed in accordance with section 19 shall be responsible for one of the following:

(a) Operations; and

(b) Finance and Administration.

(2) A General Manager shall, in addition to subsection (1), perform any other functions assigned [sic] by the Director-General or the Board.

Section 21—Secretary to the Board

(1) The Authority shall have an officer designated as the Secretary to the Board.

(2) A person shall not be designated as Secretary to the Board unless that person

(a) has a professional qualification or a tertiary level qualification that equips that person with the requisite knowledge and experience to perform the functions under subsection (3); or

(b) by virtue of an academic qualification, or as a member of professional body, is considered by the Board as capable (performing the functions of the Secretary.

(3) The Secretary shall subject to the directives of the Board

(a) arrange the business of the Board;

(b) keep the minutes of the meetings and decisions of the Boar in the form required by the Board; and

(c) perform any other functions that the Board or the Director General may direct.

(4) The Secretary is answerable to the Board in the performance of the functions of office.

(5) For the purposes of paragraph (a) of subsection (2), a: "professional qualification" or "tertiary level qualification" is a discipline with an offering in company law and practice.

Section 22—Appointment of other staff

(1) The President may, in accordance with article 195 of the Constitution, appoint for the Authority other employees that are necessary for the proper and efficient performance of the functions of the Authority

(2) The President may, in accordance with clause (2) of artic1 195 of the Constitution, delegate the power of appointment in subsection (1).

(3) The Authority may for the efficient discharge of the function of the Authority engage the services of experts and consultants on the recommendation of the Board.

(4) Other public officers may be transferred or seconded to the Authority, or may otherwise give assistance to the Authority.

Financial Provisions

Section 23—Monitoring fee

(1) For purposes of paragraph (b) of section 4, the Authority shall monitor specified entities to ensure compliance with this Act and Regulations made under this Act.

(2) Each specified entity shall not later than 31st March of each year pay to the Authority monitoring fee in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2018 (Act 983).

Section 24—Funds of the Authority

The funds of the Authority include

- (a) moneys approved by Parliament;
- (b) not more than five percent of dividends received and accruing to State-owned enterprises and joint venture companies on an annual basis as determined by the Minister;
- (c) loans and grants;
- (d) monitoring fees;
- (e) administrative penalties; and
- (f) any other internally generated funds accruing to the Authority.

Section 25—Bank account

The moneys for the Authority shall be paid into a bank account opened for the purpose by the Board with the approval of the Controller and Accountant-General.

Section 26—Expenses of the Authority

The administrative and other expenses of the Authority shall be charged on the funds of the Authority.

Section 27—Accounts and audit

(1) The Authority shall keep books of account and proper records in such form as the Auditor-General shall approve.

(2) The Authority shall submit the accounts of the Authority to the Auditor-General for audit not later than two months after the end of each financial year in accordance with section [sic] 95 of the Public Financial Management Act, 2016 (Act 921).

(3) The Auditor-General shall, within six months after the end of the immediately preceding financial year, audit the accounts of the Authority and forward a copy each of the report to the Minister and the Authority.

(4) The financial year of the Authority is the same as the financial year of Government.

Section 28—Annual reports and other reports

(1) The Board shall within thirty days after the receipt of the audit report, submit to the Minister an annual report covering the activities and operations of the Authority for the year to which the report relates.

(2) The annual report shall include

(a) the report of the Auditor-General; and

(b) any other information that may be required by the Minister in conformity with the Public Financial Management Act, 2016 (Act 921) or that may be relevant to enhance transparency and accountability.

(3) The Minister shall, within thirty days of the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall submit to the Minister any other report which the Minister may request in writing.

Miscellaneous Provisions

Section 29—Register

(1) The Authority shall establish, keep and maintain a register in the form determined by the Board.

(2) The register shall include

(a) a list of specified entities; and

(b) any other information the Board considers appropriate.

(3) The Authority shall keep the register at the office of the Authority.

(4) The register shall be open to the public.

(5) A person may, during business hours and on the payment of the prescribed fee

(a) inspect the register; or

(b) obtain an extract from the register.

(6) The Director-General shall publish annually, the list referred to in paragraph (a) of subsection (2), on the website of the Authority.

Section 30—Annual stakeholder meeting

(1) The Authority shall convene an annual stakeholder meeting to bring stakeholders together to discuss matters of common interest.

(2) For the purpose of subsection (1), "stakeholders" mean the Ministry, sector Ministries, the Office of the President and specified entities.

Section 31—Guidelines

(1) The Authority shall issue guidelines to all specified entities in which Government has majority shares, in respect of their operational procedures, for the purpose of achieving the objects of the Authority.

(2) The Authority shall publish the guidelines on the website of the Authority.

Section 32—Periodic reporting

(1) Each specified entity shall submit to the Authority without delay, information, data, statements and reports required in the form and manner determined by the Authority.

(2) For the purpose of subsection (1), a specified entity shall submit to the Authority, complete and accurate information, data, statements and reports.

Section 33—Administrative penalties

(1) Any member of the Board of a specified entity who fails to comply with guidelines in respect of the operational procedures referred to in subsection (1) of section 31, is liable to pay to the Authority, an administrative penalty of five hundred penalty units.

(2) Any member of the Board of a specified entity who fails to comply with the Code of Corporate Governance is liable to pay to the Authority, an administrative penalty of five hundred penalty units.

(3) The members of the Board of a specified entity who contravene section 32 are liable to pay to the Authority an administrative penalty of five hundred penalty units.

Section 34—Regulations

The Minister may, in consultation with the Minister responsible for Finance, by legislative instrument, make Regulations generally for the effective implementation of this Act.

Section 35—Interpretation

In this Act, unless the context otherwise requires,

"annual performance contract" means a document agreed on by the Minister and a relevant sector Minister specifying key performance indicators and obligations of a State-owned enterprise or other State entity.;

"Authority" means the State Interests and Governance Authority established under section 2;

"Board" means the governing body of the Authority established under section 5;

"Code of Corporate Governance" means the standards of good practice for corporate governance, issued by the Authority for compliance by specified entities;

"Director-General" means the person appointed under section 17;

"General Manager" means a person appointed under section 19;

"joint venture company" means an entity in which Government has majority or minority shares;

"Minister" means the Minister designated by the President to be responsible for the Authority;

"monitoring fee" means the fee payable under section 23;

"other State entity" means an entity

(a) other than a State-owned enterprise or joint venture company in which the State has an interest; and

(b) declared as a specified entity by the Minister in accordance with section 32;

"sector Minister" means the Minister responsible for the respective specified entity;

"specified entities" means a

(a) a State-owned enterprise;

(b) a joint venture company; or

(c) other State entities;

"State interests" means shares, assets, debentures, securities and other similar instruments owned by the State and provided for by law including ownership of other state entities; and

"State-owned enterprise" means an entity whether incorporated or not under the Companies Act, 1963 (Act 179) whose shares are wholly held or controlled by Government.

Section 36—Repeal and savings

(1) The following enactments are repealed:

(a) State Enterprises Commission Act, 1987 (PNDCL 170); and

(b) Divestiture of State Interests (Implementation) Act, 1993 (PNDCL 326).

(2) Despite the repeal of the enactments in subsection (1), any Regulations, orders, rules and instructions made or done under the repealed enactment and in force immediately before the coming into force of this Act shall continue to have effect as if made or done under this Act with the necessary modifications until the Regulations, orders, rules and instructions are revoked, reviewed, cancelled or terminated by Regulations, orders, rules or instructions under this Act.

Section 37—Transitional provisions

(1) The assets, rights and liabilities of

(a) the State Enterprises Commission established under the State Enterprises Commission Act, 1987 (P.N.D.C.L 170);

and

(b) the Divestiture Implementation Committee established under the Divestiture of State Interests (Implementations) Act, 1993 (PNDCL 326).

and in force immediately before the coming into force of this Act, are transferred to the Authority.

(2) A contract subsisting between the

(a) State Enterprises Commission established under the State Enterprises Commission Act, 1987 (P.N.D.C.L. 170), and

(b) Divestiture Implementation Committee established under the Divestiture of State Interests (Implementation) Act 1993 (PNDCL. 326), and another person and in effect immediately before the coming into force of this Act, shall subsist between the Authority under this Act and that other person.

(3) The President shall, in accordance with the advice of the Authority given in consultation with the Public Services Commission and within a period the President shall determine, upon the coming into force of this Act, transfer to the Authority established under section 2 such number, as the President may determine, of personnel employed immediately before the coming in-to force of this Act for the State Enterprises Commission and Divestiture Implementation Committee.

(4) The President may delegate the power under subsection (3) to the Authority or a member of the Authority or to any public officer.

(5) Where a person to whom subsection (3) applies is not transferred under that subsection, the appointing authority shall deal with the appointment as considered fit including the payment of the applicable retirement benefits and severance awards.

(6) A transfer to the Authority shall for the purposes of pension or other retirement benefits, constitute a continuous service in the public service.

(7) The terms and conditions of service of a person transferred to the Authority under subsection (3) shall not be less favourable than those applicable to that person immediately before the coming into force of this Act

Date of Gazette Notification: 10th June. 2019