

ACT 232

STATUTORY CORPORATIONS ACT, 1964

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SCHEDULE

ACT 232

STATUTORY CORPORATIONS ACT, 1964¹

AN ACT to amend and consolidate the law relating to statutory corporations and to provide for related matters.

1. The Act was assented to on 6th April, 1964.

*Establishment***1. Establishment of statutory corporations**

(1) The President may, by legislative instrument, provide for the establishment as a body corporate,

- (a) of an existing organisation or body, which is not already a body corporate, or
- (b) of a new organisation or body.

(2) For the purposes of subsection (1), an existing organisation or body shall not be so established unless

- (a) it was originally constituted by or under the authority of a Minister, or
- (b) is required to act in accordance with directions given by a Minister or is otherwise under the control of the Government.²

2. Matters for which an instrument may provide

(1) An instrument made under section 1 may make provision for incidental or supplementary matters as appear to the President to be necessary or expedient for or in connection with the establishment and functioning of the corporation.

(2) The incidental or supplementary matters referred to in subsection (1) include

- (a) the name of the corporation and the composition and functions of the corporation and its governing body;
- (b) the staff of the corporation, including the transfer to the corporation of public officers, their remuneration, pensions and allowances;
- (c) the application or continued application in respect of a person employed by the corporation of an enactment relating to pensions, with or without modifications;
- (d) the provision of finance for the corporation, including the provision out of moneys provided by Parliament or charged on the Consolidated Fund, subject to article 181 of the Constitution;
- (e) the exemption of the property and activities of the corporation from a tax, rate or duty, subject to article 174 of the Constitution and to the prior approval of the Minister responsible for administering the enactment which authorises the tax, rate or duty;
- (f) the application of an enactment relating to the compulsory acquisition of land or any other property, with or without modifications; and
- (g) the making of By-laws or any other instruments by the corporation to regulate matters falling within the scope of its functions.

2. Article 295 defines a "public corporation" as a corporation or any other body of persons established by an Act of Parliament or set up out of funds provided by Parliament or other public funds.

(3) Where provision is made in an instrument for the transfer of public officers to a corporation, the employment of the public officers by the corporation is an approved employment for the purposes of an enactment relating to the transfer of public officers from the Public Services.

(4) Where an existing organisation or body is established as a corporation by an instrument made under section 1, then, without prejudice to the generality of subsection (1) the instrument may provide for the transfer to the corporation of the assets and liabilities of the existing organisation or body.

3. General powers of a corporation

A corporation established under this Act

- (a) shall have perpetual succession and a common seal,
- (b) may sue and be sued in its corporate name, and
- (c) subject to the instrument by which it was established, may for a purpose which, in the opinion of its governing body, is necessary or expedient for or in connection with the proper performance of the functions of the corporation, acquire and hold moveable or immoveable property, sell, lease, mortgage or otherwise alienate or dispose of the property, and to enter into any other transaction.

4. Dissolution of a corporation

The President may, by legislative instrument, dissolve a corporation established or continued in existence under this Act or a corporation established by an instrument made under the Statutory Corporations Act, 1961 (Act 41), and may make the provision which appears to be necessary or expedient for winding-up the affairs of the corporation.

5. Existing corporations

(1) A corporation established by an Act and a corporation established by an instrument made under the Statutory Corporations Act, 1961 (Act 41), which is in existence immediately before the coming into operation of this Act, shall on and after the relevant date continue in existence as a corporation established by an instrument made under section 1 of this Act; and accordingly an Act or instrument by which that corporation is established shall on the relevant date be deemed to be repealed or revoked.

(2) For the purpose of continuing a corporation in existence the President may, by legislative instrument, make the provisions that appear necessary or expedient for that purpose and an instrument made for that purpose shall be deemed to be an instrument made under section 1.

(3) For the purposes of this section, a corporation is continued in existence, although the name or the composition of the corporation is changed, if the object and functions of the corporation as continued remain substantially the same as the objects and functions of the corporation as originally established.

(4) In this section, the expression “**the relevant date**” means the date of the coming into operation of a legislative instrument made for the purpose mentioned in subsection (2).

6. Marketing corporations

(1) Where a corporation established or continued in existence under this Act, has as one of its objects the regulation of the marketing or export of any foodstuff, product or article, the President may, without prejudice to section 1 or section 5, in the instrument establishing or continuing in existence the corporation,

- (a) provide for the manner in which the price of the foodstuff, product or article is to be determined;
- (b) provide that a person shall not sell or buy that foodstuff or article except in accordance with the terms of the instrument; and
- (c) make any other provisions as appear necessary or expedient for the purpose of enabling the corporation effectively to perform its functions in connection with the regulation of the marketing or export; and for that purpose to make provisions affecting persons generally or a class or description of persons specified in the instrument.

(2) An instrument made under subsection (1) may create offences for the contravention of any of its provisions and may provide a penalty for the offences but the penalty for any of those offences shall not exceed a fine of two hundred and fifty penalty units or a term of imprisonment not exceeding one year, or to both the fine and the imprisonment.

7. Restriction of execution

(1) In an action, a suit or any other proceeding against a statutory corporation, whether established by or under this Act or by or under any other enactment, an execution or attachment or a process in the nature of execution or attachment shall not be issued against that statutory corporation without the fiat of the Attorney-General.

(2) An application for the Attorney-General’s fiat under this section shall be in writing accompanied by a copy of the relevant judgment and any other information requested by the Attorney-General.

(3) Where the Attorney-General grants the fiat a copy of the fiat shall be filed in the Court in relation to whose judgment the fiat was sought and a copy shall be served on the person on whose behalf the application for the fiat was made.

(4) As far as practicable, an application for a fiat under this section shall be dealt with by the Attorney-General within one month after receipt of the application.

(5) Where the Attorney-General refuses to grant the fiat under this section the money which may by the judgment in question be awarded against the statutory corporation shall be paid by the corporation from its funds.²

2. Inserted by the Statutory Corporations (Amendment) Decree, 1972 (N.R.C.D. 120) as section 6A.

8. Miscellaneous provisions relating to accounts and audit

(1) This section applies to a statutory corporation whose accounts are required by law to be audited by the Auditor-General whether the corporation was established under this Act or by or under any other enactment.

(2) Unless the enactment by or under which the corporation was established or under which the corporation exists expressly states otherwise, a statutory corporation shall prepare and submit to the Auditor-General for the purposes of audit its draft accounts not later than three months after the expiry of the financial year of the corporation to which it relates.

(3) The Auditor-General shall notify the Minister responsible for the corporation, the Minister responsible for Finance, the board or the governing body of the corporation as well as the managing director or other chief executive of the corporation, of a failure by a corporation to comply with subsection (2).

(4) Where a statutory corporation fails to submit a draft of its accounts within the period prescribed by subsection (2), the Minister responsible for the corporation or the Minister responsible for Finance acting in consultation with the Minister responsible for the corporation may, in writing, direct that the emoluments or a part of the emoluments of

- (a) all or any of the officers responsible for the preparation and submission of the draft accounts, or
- (b) of any other officer in respect of whom the Minister giving the direction is satisfied that is responsible for or has materially contributed to the failure of the corporation to comply with the subsection (2),

should be withheld until the time that the draft accounts are duly submitted to the Auditor-General or an earlier time specified by the Minister and the direction shall be complied with.

(5) The liability of a person to be dealt with under subsection (4) is without prejudice to any other liability of that person whether criminal or civil.

(6) Except where the Minister responsible for Finance otherwise directs, a person shall not employ a person who is or was the accountant of a statutory corporation or who is or was in any way responsible for the keeping or preparation and submission of the accounts of a statutory corporation for the purpose of audit by the Auditor-General, unless there is produced to the Minister a certificate issued by the corporation to the effect that the person to be employed has, to the satisfaction of the corporation, done what was required to be done with respect to the preparation and submission for audit by the Auditor-General of the accounts of the corporation.

(7) A person who

- (a) contravenes a direction given under subsection (4), or
- (b) contravenes a provision of subsection (6),

commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.³

*Conversion*⁴

9. Conversion of specified statutory corporations

A company shall be formed and registered under the Companies Act, 1963 (Act 179) after the coming into force of this Act, for the purpose of vesting in the company the assets, properties, rights, liabilities and obligations to which any of the statutory corporations specified in the Schedule⁵ was entitled or subject to immediately before the registration.

10. Vesting of assets

(1) Where a company is formed and registered under the Companies Act in pursuance of section 1, the assets, properties, rights, liabilities and obligations of that statutory corporation shall, by virtue of this section, vest in the company as the successor company.

(2) This Act shall not prevent one successor company being registered in place of two or more of the statutory corporations specified in the Schedule or two or more successor companies being registered in place of a statutory corporation specified in the Schedule.

11. Shareholding by Government

(1) The successor company shall issue

- (a) to the Republic, or
- (b) to any other person,

the shares in the company directed by the Minister, in consultation with the State Enterprises Commission.

(2) The shares held by the Republic shall be allotted to and held in the name of the Minister responsible for Finance.

(3) The Minister responsible for Finance may in consultation with the chairman of the State Enterprises Commission appoint a person as the nominee of the Minister for the purposes of this section; and a person holding shares as a nominee of the Minister shall hold and deal with them on the terms and in the manner directed by the Minister.

(4) This section shall not prevent a successor company from being registered as a private or public company.

3. Inserted by the Statutory Corporation (Amendment) Decree, 1973 (N.R.C.D. 209) as section 6B.

4. Sections 9, 10, 11, 12, 13, 14, 15, 16 and 17 and the Schedule have been incorporated in this Act from the Statutory Corporations (Conversion to Companies) Act, 1993 (Act 461).

5. Originally the Schedule to the Statutory Corporations (Conversion to Companies) Act, 1993 (Act 461) which was assented to on 22nd December, 1993.

12. Banks

Where a statutory corporation to which this Act applies is a bank, this Act shall apply to the bank, despite a provision to the contrary in the enactment that established the bank, and the Banking Act, (Act 273) shall apply to the bank registered under the Companies Act, 1963 (Act 179).

*Miscellaneous***13. Responsibility of Minister**

The Minister responsible for Finance shall take the steps that are necessary for the implementation of this Act, in particular, the registration of successor companies.

14. Interpretation

In this Act, unless the context otherwise requires,

“**company**” means a company limited by shares and registered under the Companies Act, 1963 (Act 179);

“**successor company**” includes a bank registered under the Companies Act, 1963 (Act 179) for the purpose of this Act.

15. Amendment of Schedule

The Minister responsible for Finance may, by legislative instrument, amend the Schedule.

16. Dissolution of statutory corporation

On the date of the registration of a successor company in accordance with this Act, the statutory corporation or corporations in respect of which the company was registered shall cease to exist and the enactment by virtue of which the corporation or corporations existed shall cease to have effect.

17. Transitional provisions

*Spent.*⁶

6. The section provided that,

- (1) Any agreement made, transaction effected or other thing done by or in relation to a statutory corporation to which this Act applies and in force immediately before the date of the registration of the successor company shall have effect after that date as if made, effected or done in relation to the successor company in all respects.
- (2) References in this Act to property, rights, liabilities and obligations of the statutory corporation are references to such property, rights, liabilities and obligations, whether they are capable of being transferred or assigned by the corporation and whether they are in Ghana or elsewhere.
- (3) Where immediately before the date of registration of a successor company under this Act, there is in force an agreement which
 - (a) confers or imposes on the statutory corporation any rights, liabilities or obligations which vest in the successor company by virtue of section 2 of this Act; and
 - (b) refers, whether expressly or by implication, to a member or officer of the statutory corporation,

footnote continued on next page

18. Repeal and saving*Spent.*⁷

SCHEDULE

1. Agricultural Development Bank
2. Bank for Housing and Construction
3. Ghana Commercial Bank
4. National Investments Bank
5. National Savings and Credit Bank
6. Architectural and Engineering Services Corporation
7. Electricity Corporation of Ghana
8. Football Pools Authority
9. Ghana Airways Corporation
10. Ghana Cocoa Board
11. Ghana Film Industry Corporation
12. Ghana Food Distribution Corporation
13. Ghana National Manganese Corporation
14. Ghana National Petroleum Corporation
15. Ghana National Procurement Agency
16. Ghana National Trading Corporation
17. Ghana Oil Palm, Development Corporation
18. Ghana Publishing Corporation
19. Ghana Reinsurance Organisation
20. Ghana Trade Fair Authority
21. Irrigation Development Authority
22. Omnibus Services Authority
23. Telecommunications Division of the P & T Corporation
24. Precious Minerals Marketing Corporation
25. State Construction Corporation

the agreement shall have effect after the registration of the successor company as if the reference were to such person as the successor company may appoint or in default of appointment, to the officer of the company who corresponds as nearly as may be to the officer of the statutory corporation concerned.

- (4) This Act does not vest in the successor company an obligation to retain the services of a member of the governing body of the statutory corporation on the board of directors of the successor company.
 - (5) All expenses incurred in the conversion of a statutory corporation into a company limited by shares under this act shall be borne by the successor company."
7. The section reads:
- (1) The Statutory Corporation Act, 1961 (Act 41) is hereby repealed.
 - (2) Notwithstanding the said repeal any instrument made under that Act and in force immediately before the commencement of this Act shall continue in force until revoked under section 4 or section 5 of this Act."

SCHEDULE—*continued*

- 26. State Gold Mining Corporation
 - 27. State Housing Corporation
 - 28. State Insurance Corporation
 - 29. State Shipping Corporation
 - 30. State Transport Corporation
 - 31. Tema Food Complex Corporation
 - 32. Tema Shipyard and Drydock Corporation
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