

**BILL No: 6 of 1988**

*Saturday, 27th February, 1988*

**PARLIAMENT OFFICE,  
Public Buildings,  
Georgetown,  
Guyana.**

**1988—02—19**

The following Bill which will be introduced in the National Assembly is published for general information.

*F. A. Narain,*  
Clerk of the National Assembly.



**GUYANA**

**BILL No. 6 of 1988**

**PUBLIC CORPORATIONS BILL 1988**

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## A BILL

## Intituled

AN ACT to dissolve the Guyana State Corporation, to amend the law relating to the establishment and management of public corporations and to make provisions for matters connected therewith.

Enacted by the Parliament of Guyana:—

A.D. 1988

## PART I

## PRELIMINARY

1. This Act may be cited as the Public Corporations Act 1988. Short title.
2. In this Act —
  - (a) “chairman” means chairman of a corporation, being a corporation aggregate; Interpretation.
  - (b) “company” has the meaning assigned to it by section 2 of the Companies Act; Cap. 89:01
  - (c) “concerned Minister”, in relation to a corporation, means the Minister assigned responsibility for the corporation or, where there is no such Minister, the President;
  - (d) “corporation” means —
    - (i) Every existing corporation; and
    - (ii) every public corporation established under section 3 and every corporation which comes into existence as a result of the reconstitution of any body corporate under section 6 or merger of two or more corporations under section 7;
  - (e) “deputy chairman” means deputy chairman of a corporation, being a corporation aggregate;
  - (f) “director”, means any person occupying the position of a director, whatever be the title given to the position;
  - (g) “existing corporation” means a public corporation established under section 46, or which came into existence as a result of the reconstitution of any incorporated body under section 48, or merger of two or more public corporations under section 57, of the Public Corporations Act and in existence at the commencement of this Act; Cap. 19:05

- (h) "financial year", in relation to any corporation, means a period of twelve months beginning on the 1st January, or on any other day specified by the Minister assigned responsibility for finance by notification in the **Gazette**;
- (i) "managing director" means the managing director of a corporation sole;
- (j) "member" means a member of a corporation, being a corporation aggregate, and include the chairman and deputy chairman thereof;
- (k) "Minister" mean the Minister assigned general responsibility for public corporations or, where there is no such Minister, the President;
- (l) "pension" in relation to any person means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him and includes a return of contributions made to a pension fund, with or without interest thereon, or any other addition thereto;
- (m) "pension fund" means a fund established for the purpose of paying pensions:
- (n) "statute of limitation" includes the Limitation Act and the Title to Land (Prescription and Limitation) Act;
- (o) "subsidiary", in relation to a corporation, means —
  - (i) any company, more than one half of the issued share capital whereof is held by the corporation directly or through a nominee; or
  - (ii) any company in relation to which the corporation has power directly or indirectly to appoint the majority of the directors,
 and include any other corporation owned by the aforesaid corporation or in which the controlling interest is vested in the said corporation or in any agency on behalf thereof;
- (p) "Supervisory Council" means a committee appointed under section 51(1).

Cap. 7:02  
 Cap. 60:02

PART II

NEW PUBLIC CORPORATIONS

Establishment of new public corporations.

3. (1) The Minister may, by order, establish a public corporation and may designate the name and style by which the public corporation shall be known.

(2) Upon the coming into operation of an order under subsection (1), this Act shall, subject to the provisions of subsection (3), apply to the public corporation so established.

(3) The Minister may by order establishing a public corporation or by a subsequent order exclude any of the provisions of this Act from application to the corporation or direct that any provision of this Act shall apply to the corporation subject to such modification as may be specified therein.

(4) An order made under subsection (1) shall prescribe the powers, purposes and functions of the public corporation and may contain such other provisions as will enable it to undertake and exercise its functions.

(5) Every order made under this section shall be subject to negative resolution of the National Assembly.

4. (1) A public corporation established under section 3 shall be a Incorporation and composition of a public corporation. body corporate.

(2) Any such corporation may be a corporation consisting of a managing director, to be appointed by the concerned Minister, or a corporation aggregate consisting of a chairman, and such other members, who shall be appointed by the concerned Minister, and the general manager of the corporation who shall be an **ex officio** member.

(3) Subject to the other provisions of this section, the chairman and other members of a corporation aggregate appointed under subsection (2) may be appointed —

- (a) wholly from among the heads of department or other officers of the corporation;
- (b) wholly from among persons appearing to the concerned Minister —
  - (i) as having had experience of, and shown capacity in, matters relating to or connected with the carrying on of the functions of the corporation; and
  - (ii) to represent consumers or local democratic organs;
- (c) partly from among persons mentioned in paragraph (a) and partly from among persons mentioned in paragraph (b).

(4) The concerned Minister shall, after consultation with the trade unions functioning in relation to the employees of a public corporation, being a corporation aggregate, appoint one of such employees as a member of the public corporation.

(5) The general manager of a public corporation, being a corporation aggregate, shall be the deputy chairman thereof, unless the concerned Minister appoint another member as the deputy chairman of the public corporation.

(6) In respect of any public corporation, being a corporation sole, the functions of the chairman and the deputy chairman shall be performed by the managing director, and such of the decisions of the managing director, as would have been required to be taken by the corporation by resolution had it been a corporation aggregate, shall for all purposes be deemed to be the decisions of that corporation;

Provided that in the case of any such corporation sole, there shall be a committee appointed by the concerned Minister, and consisting of such number of heads of departments of the corporation to be designated by him, to aid and advise the managing director and the committee shall, subject to regulation made by the concerned Minister, regulate its own procedure and business.

**Vesting of property.**

5. (1) An order under section 3 may contain provisions vesting in the public corporation, established by the order, movable or immovable property of the State.

(2) Where an order referred to in subsection (1) vests immovable property in a public corporation, the order shall be treated for all purposes as if it were a transport or other document effecting the conveyance of immovable property and the Registrar of Deeds shall take due notice thereof and shall make such annotations on the records as may be necessary.

### PART III

#### REORGANISATION AND DISSOLUTION OF CORPORATIONS AND EMERGENCY POWERS

**Reconstitution of corporations and certain bodies corporate**

6. (1) Any corporation may be reconstituted by the Minister by order under this section.

(2) Any other body corporate owned by the State or the controlling interest in which vests in the State or any agency on behalf of the State, may be reconstituted under this Act by the Minister by order and thereupon the reconstituted body corporate shall be deemed to have been established as a corporation under this Act which shall thenceforth apply thereto:

Provided that a body corporate, being a company, in which all the shares having voting rights are not held by any one or more of the following bodies, namely, the State, any agency on behalf of the State or a corporation, shall not be reconstituted under this section unless the person holding the majority of the shares having voting



rights, and not held by the State, any agency on behalf of the State or a corporation, give their consent for such reconstitution.

(3) All claims by and against a corporation or other body corporate reconstituted under this Act may be brought in the name of the corporation established by the reconstituting order under subsection (1) or (2), as the case may be.

(4) The provisions of this section shall have effect in relation to a body corporate, being a company, notwithstanding anything contained in the Companies Act.

Cap. 89:01

7. The Minister may by order, which shall be subject to negative resolution of the National Assembly, provide for the merger of two or more corporations.

Merger.

8. (1) The Minister may by order transfer to a corporation, or place under its control the whole or a part of —

Transferring to a corporation or placing under its control; whole or part of undertaking.

(a) any undertaking of any other corporation or other body corporate owned by the State or in which the controlling interest is vested in the State or any agency on behalf of the State; or

(b) any commercial, manufacturing or research undertaking of the State.

(2) The corporation or undertaking affected by an order made under subsection (1) shall comply with any directions which may be given to it by, or under the direction of, the Minister so as to give effect to the order.

9. The Minister may by order, which shall be subject to affirmative resolution of the National Assembly, dissolve a corporation.

Dissolution of a corporation

10. (1) During any period to which article 150(1) of the Constitution applies, the President may by order require that the whole or any part of the undertaking or any property or right of, or under the control of, a corporation shall be placed at the disposal of such Minister, or of such other person as may be specified by the order.

Emergency powers.

(2) So long as any order mentioned in subsection (1) is in force, the corporation, and every person in charge of the whole or part of the undertaking or property or right, referred to therein shall comply with —

(a) where the whole or part of the undertaking or property or right is placed at the disposal of a Minister, every direction of that Minister; or

(b) where the whole or part of the undertaking or property or right is placed at the disposal of any other person, every direction of that person and of the Minister, if any, assigned responsibility therefor.

Provision  
in regard to  
consequen-  
tial matters.

11. (1) An order under section 6 reconstituting any corporation or other body corporate, under section 7 merging two or more corporations, under section 8 transferring to a corporation, or placing under its control, the whole or a part of any undertaking, or under section 9 dissolving a corporation, may contain such provisions relating to the vesting or property, the transfer of assets and liabilities, the monetary arrangements, the preservation of rights and liabilities existing immediately before the reconstitution, the merger, the transfer or placing under control of undertaking or the dissolution as well as such other provisions as the Minister considers necessary or expedient to give full effect to the reconstitution, the merger, the transfer or placing under control of undertaking or the dissolution, as the case may be, and may extend to the property or interests of a subsidiary of a corporation.

(2) Without prejudice to the provisions of subsection (1), where any order under section 8(1) transferring to a corporation, or placing under its control, the whole or a part of any undertaking of any other corporation or other body corporate referred to in section 8(1) (a) has rendered insufficient the security for any debt contracted by any such other corporation or other body corporate prior to such order, the Minister may direct such arrangements as he deems appropriate to be made by the other corporation or other body corporate for making up such insufficiency and the other corporation or other body corporate shall comply with the direction.

(3) Any person, who suffers direct injury or loss to property owing to the operation of any order under section 6, 7, 8, 9 or 10, shall be entitled to receive from the Government such compensation as may be determined by agreement between that person and the Government or, in the absence of any such agreement, by the High Court upon motion moved for that purpose against the Attorney General.

(4) Any expense incurred by the Government in the exercise of its powers under this Part shall be paid out of moneys provided by Parliament.

## PART IV

### DUTIES AND POWERS

Functions of  
a corpora-  
tion

12. (1) It shall be the duty of a corporation to stimulate, facilitate and undertake the purpose for which it is established.

(2) A corporation shall have power, for the purpose of the discharge of its duty under subsection (1), —

- (a) to carry on all activities the carrying on whereof appears to it to be requisite, advantageous or convenient for, or in connection with, the exercise and discharge of its functions including the acquisition of interests in any other undertaking of a like nature;
- (b) to promote the carrying on of any such activities by other bodies or persons, and for that purpose to establish or expand, or promote the establishment or expansion of, other bodies, including subsidiaries, to carry on any such activities either under the control or partial control of the corporation or independently, and to give assistance (including financial assistance by the taking up of share or loan capital, by the granting of loan or otherwise) to such bodies or to other bodies or persons appearing to the corporation to have facilities for the carrying on of any such activities;
- (c) to carry on such activities in association with other persons, bodies or authorities or as managing agents or otherwise on their behalf.

(3) A corporation may, with the approval of the concerned Minister, carry on any of its functions through a subsidiary and may for that purpose, with like approval, establish a subsidiary or acquire ownership or control of any other corporation or company.

(4) Without prejudice to any other provision of this Act, and notwithstanding anything contained in any other written law, any Minister may, with the approval of the President, entrust to any corporation, in relation to which he is the concerned Minister, the following functions —

- (a) formulation, and submission for approval to the concerned Minister, of policy in relation to —
  - (i) any subject matter responsibility for which is assigned to him or any part of that subject matter;
  - (ii) the development, exploitation and proper management of any resource, or the importation, supply or distribution of any commodity, being a subject matter, responsibility for which is assigned to that Minister,

and the implementation of the policy so formulated and approved by the Minister;

or

(b) to provide to —

- (i) the concerned Minister; or
- (ii) any other corporation or any authority or body, responsibility for which is assigned to him,

all or any assistance that may be requested for by him or it.

(5) Where any function as is mentioned in subsection (4) is entrusted to a corporation, then subject to the supervision and control of the concerned Minister, that corporation shall have power —

- (a) to give directions to any other corporation or any authority or body, responsibility for which is assigned to the concerned Minister, and having any functions relating to the functions entrusted to the corporation under subsection (4) (a), for the purpose or in the course of the discharge of the functions referred to therein;
- (b) for any of the purposes mentioned in subsection (4), to —
  - (i) monitor the activities of any such corporation, authority or body; and
  - (ii) call for and obtain information and documents relating to the operations of any such corporation, authority or body.

(6) Where a concerned Minister has entrusted to any corporation all or any of the functions referred to in subsection (4), it shall be lawful for the concerned Minister to delegate, by order made with the approval of the President, the chairman, deputy chairman or general manager of the corporation, to exercise on behalf of the concerned Minister, in relation to any corporation, authority or body referred to in subsection (5) (a), such function as may be specified in the order with effect from the date specified therein and thereupon the chairman, deputy chairman or general manager, as the case may be, shall have and may exercise such function with effect from the date so specified.

(7) Nothing in subsection (6) shall authorise a concerned Minister to delegate any person to make subsidiary legislation or to hear any appeal.

(8) Section 28 of the Interpretation and General Clauses Act, shall **mutatis mutandis** apply to, and in relation to, any delegation under subsection (6) and the exercise of any function so delegated.

13. Subject to the other provisions of this Act a corporation shall have power to do anything and to enter into any transaction (whether or not involving expenditure, borrowing, granting of loans or investments or money, the acquisition of any property or rights, or the disposal of any property or rights) which in its opinion is calculated to facilitate the proper exercise or discharge of its functions or is incidental or conducive thereto.

General powers of corporation to transact business.

## PART V

### ADMINISTRATIVE MATTERS RELATING TO A CORPORATION

14. The name or names of the member or the members of a corporation as first constituted and every change in the membership thereof shall be published in the **Gazette**.

Notification of membership of corporation

15. (1) In the case of a corporation sole the managing director shall be paid in respect of his office such salary and allowance as the concerned Minister may determine.

Remuneration, etc., of managing director or members.

(2) A corporation aggregate shall pay to the chairman and to the deputy chairman, in respect of their offices, remuneration and allowances as the concerned Minister may determine and to each other member in respect of his office, such, if any, remuneration and allowances as may be so determined.

(3) The other terms and conditions of appointment of any such managing director, chairman, deputy chairman or member of a corporation shall be such as may be determined by the concerned Minister.

16. (1) Subject to this section, it shall be the duty of a member of a corporation aggregate who is in any way, whether directly or indirectly, interested in an application to the corporation for a loan or in a company or firm in receipt of the loan, or in a contract or proposed contract or in any arrangement or proposed arrangement with the corporation, to declare the nature of his interest at a meeting of the corporation.

Disclosure by members of interest in transaction with corporation, and disqualification from voting etc

(2) The declaration required by this section to be made by a member of a corporation aggregate in respect of an application for a loan, or a contract or an arrangement, referred to in subsection (1), shall be made at the meeting of the corporation at which the question of granting or refusing the application for loan or entering into the contract or arrangement is first taken into consideration or, if the member was not at the date of that meeting interested in the application or proposed contract or arrangement, at the first meeting of the corporation

held after he became so interested, and where the member acquires an interest in any company or firm in receipt of a loan from the corporation or becomes interested in a contract or arrangement with the corporation after it is made, the said declaration shall be made at the first meeting of the corporation held after the member acquires such interest or becomes so interested.

(3) For the purpose of this section, a general notice given by a member of a corporation aggregate to the other members thereof to the effect that he is also a member of a specified company or firm and is to be regarded as interested in any application for a loan by that company or firm or in any contract or arrangement which may, after the date of the notice, be made by or with the company or firm, shall be deemed to be a sufficient declaration of interest under subsection (1) in relation to any application for loan or contract or arrangement so made, except that no such notice shall be of effect unless either it is given at a meeting of the corporation or the member concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the corporation after it is given.

(4) A member of a corporation aggregate shall not vote in respect of any application to the corporation for a loan in which he is interested, either directly or indirectly, or in respect of any contract or arrangement in which he is interested, either directly or indirectly, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum at the meeting.

(5) Where the managing director of a corporation sole is in any way, whether directly or indirectly, interested in any application to the corporation for a loan or in a company or firm in receipt of the loan, or in a contract or proposed contract or in any arrangement or proposed arrangement with the corporation, he shall, before the loan or the contract or arrangement is made, inform the concerned Minister of the nature of his interest and shall not make the loan or the contract or arrangement unless the concerned Minister having been so informed of the nature of the interest of the managing director has agreed thereto, and where the managing director acquires an interest in any company or firm in receipt of a loan from the corporation or becomes interested in a contract or arrangement with the corporation after it is made, he shall as early as possible thereafter and, in any case before the expiry of seven days after he acquires such interest or becomes so interested inform the concerned Minister about it and act in accordance with his directions in regard to the matter.

(6) Any member or managing director who fails to comply with or contravenes this section shall on summary conviction be liable to a fine of one thousand dollars and to imprisonment for six months.

17. (1) Subject to regulations made by the concerned Minister, a corporation shall meet at such intervals as may be necessary or expedient for the transaction of its business, and each meeting of a corporation shall be held at such place and time and on such days as the corporation may determine.

**Procedure at meetings of corporation aggregate.**

(2) The chairman of a corporation may at any time call a special meeting of the corporation and shall call a special meeting of the corporation within seven days of a requisition for that purpose, addressed to him by any three members of the corporation for the consideration of any matter specified in the requisition, being matters falling within, or connected with, the functions of the corporation.

(3) The chairman of a corporation or, in his absence, the deputy chairman thereof, if present, shall preside at a meeting of the corporation; and in the absence of the chairman and deputy chairman at a meeting of the corporation a person elected by the members present at the meeting from amongst themselves shall preside thereat.

(4) The decisions of a corporation shall be by a majority of votes and, in addition to an original vote, in any case in which the voting is equal the chairman or deputy chairman or other member presiding at the meeting shall have a casting vote.

(5) Minutes in proper form of each meeting shall be kept by the secretary of the corporation and shall be confirmed as soon as practicable thereafter at a subsequent meeting by the chairman or deputy chairman or other member presiding at the meeting, as the case may be.

(6) A corporation may co-opt one or more persons to attend any particular meeting of the corporation at which it is dealing with a particular matter, for the purpose of assisting or advising the corporation in respect of that matter, but no such co-opted person shall have any right to vote.

(7) Any person co-opted under subsection (6) to attend any meeting of a corporation shall be paid by the corporation such remuneration as may be determined by it.

(6) The concerned Minister may make regulations prescribing the procedure, including the quorum, for the meetings of a corporation and the manner of transaction of its business

and, subject to any such regulations and the provisions of this Act a corporation may regulate its own procedure and the manner of transaction of its business and may make rules for that purpose.

(9) Until provision is made, in respect of the quorum for the meetings of a corporation, by regulations made under subsection (8), three members shall form the quorum for the meetings of the corporation.

(10) Nothing in this section shall apply in respect of a co-operation sole.

**Minutes  
receivable  
in evidence.**

18. Any minutes made of meetings of a corporation aggregate, if duly signed by the person presiding at the meeting, of which minutes have been made, or confirmed in accordance with section 17(5), shall without proof of any other matter or thing, be receivable in all legal proceedings as *prima facie* evidence of the proceedings of the meeting of the corporation of which minutes have been made, and every meeting of the corporation in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

**Power to  
appoint  
committees.**

19. (1) A corporation may appoint a committee of the Corporation to examine and report to it on any specific matter whatsoever arising out of, or connected with, any of its functions and referred to the committee.

(2) Any such committee shall —

- (a) in the case of a corporation aggregate, consist of at least two members of the corporation together with such other persons, whether members of the corporation or not, whose assistance or advice the corporation
- (b) in the case of a corporation sole, consist of such persons as may be appointed by the managing director.

(3) Where any person, not being a member of a corporation, is a member of a committee appointed by it under this section the corporation may, by resolution, determine the remuneration or allowance payable to him and the sum so determined shall be properly payable out of the funds of the corporation.



(4) The corporation may, by resolution, adopt the report of the committee either wholly or with such modifications, additions or adoptions as the corporation may think fit or may reject it.

20. Subject to this Act, in the case of a corporation aggregate, the corporation may delegate to any member or committee of the corporation the power and authority to carry out on its behalf such functions as the corporation may determine, and in the case of a corporation sole, the managing director may delegate to any officer of the corporation the power and authority to perform on his behalf such functions as the managing director may determine.

Power to delegate.

21. (1) The seal of a corporation shall —

Custody and authentication of seal.

- (a) where it is a corporation sole, be kept in the custody of the managing director or the secretary of the corporation and may be affixed to any instrument pursuant to a decision of the managing director in the presence of the managing director and the Secretary of the corporation; and
- (b) where it is a corporation aggregate, be kept in the custody of the chairman or deputy chairman or the secretary of the corporation and may be affixed to any instrument pursuant to a resolution of the corporation in the presence of the chairman, or deputy chairman, and the secretary of the corporation.

(2) The seal of a corporation shall be authenticated by the signature of the managing director and the secretary of the corporation, in the case of a corporation sole, and by the signature of the chairman, or deputy chairman, and the secretary of the corporation, in the case of a corporation aggregate and the seal shall be officially and judicially noticed.

(3) Except in the case of documents required by law to be under seal and save as otherwise provided by section 22, documents made by, and decisions of, any corporation may be signified under the hand of the managing director, or the secretary of the corporation, in the case of a corporation sole, and under the hand of the chairman, the deputy chairman or the secretary of the corporation, in the case of a corporation aggregate.

22. Any transport, mortgage, lease, assignment, transfer, agreement or other document, requiring to be executed by a corporation, or any cheque, bill of exchange or order for the

Execution of documents.

payment of money, requiring to be executed by a corporation, shall be deemed to be duly executed by a corporation if signed by a person or persons specially or generally authorised so to sign by the managing director, in the case of a corporation sole, and by resolution of the corporation, in the case of a corporation aggregate.

Power of  
concerned  
Minister to  
give direc-  
tions

23. (1) The concerned Minister may give to a corporation directions of a general character as to the policy to be followed by the corporation in the exercise and performance of its functions and the corporation shall give effect to every such directions.

(2) In carrying out such measures of reorganisation or such works of development as involve substantial outlay on capital account, and in dealing with subsidiaries, a corporation shall act in accordance with a general programme settled from time to time in consultation with the concerned Minister.

(3) In the exercise and performance of its functions as to training, education and research, a corporation shall act in accordance with a general programme settled as afore said.

(4) A corporation shall afford to the concerned Minister or officer or other person authorised by him facilities for obtaining information with respect to the business of the corporation and shall furnish annual estimates and such returns and other information as the concerned Minister may direct the corporation to furnish.

(5) A corporation shall provide such facilities to the concerned Minister as will enable the verification of any information furnished in pursuance of this section.

(6) The power of the concerned Minister to give directions to a corporation shall extend to the giving to it of specific directions in respect of —

- (a) the disposal of capital assets; or
- (b) the application of the proceeds of **such disposals**.

(7) Any direction given under subsection (6) by the concerned Minister, with reference to a corporation fully owned by the State or any agency on behalf of the State, may require the whole or any part of the proceeds of any such disposal to be paid into the Consolidated Fund:

Provided that the power conferred on the concerned Minister by subsection (6) or this subsection —

- (a) shall be exercised subject to any claim that a secured creditor may have to the proceeds; and
- (b) shall not be exercised in such a manner as to give preferential treatment to any unsecured creditor or to defect or delay the realisation by any unsecured creditor or any other person of any claim he has against the corporation.

24. A corporation may, subject to the provisions of this Act, make rules — **Power of corporation to make rules.**

- (a) governing the procedure of the corporation and the manner of transaction of its business;
- (b) prescribing the procedure for the execution of documents, cheque, and instrument of any description on behalf of the corporation;
- (c) prescribing the circumstances in which members may receive travelling and subsistence allowances;
- (d) imposing fees in such cases as may be determined by the corporation;
- (e) generally for the exercise of its powers and duties.

## PART VI

### OFFICERS AND EMPLOYEES

25. (1) Every corporation shall, with the approval of the concerned Minister, appoint a general manager of the corporation and may, with the approval of the concerned Minister (which may be given with reference to any category of employees or any employee), employ a secretary and such other officers and employees as it deems necessary for the purpose of carrying out the functions of the corporation: **Appointment of general manager, other officers and employees.**

Provided that the concerned Minister may direct that his approval shall not be necessary for the employment by a corporation of any class of officers or other employees, not being the general manager, secretary or heads of departments of the corporation.

(2) The remuneration and other terms and conditions of or other like benefits by reference to their service of the general manager and other officers and employees of a corporation shall be such as may be determined or varied by the concerned Minister from time to time; and for the avoidance of doubt it is hereby declared that the power conferred on the concerned Minister by this subsection may be exercised by him either prospectively, or retrospectively, with effect from

such date (whether or not earlier than the coming into operation of this Act) as may be specified by the concerned Minister.

(3) Before exercising the powers conferred on the concerned Minister by subsection (2) in relation to any class of officers (not being the general manager) or other employees of a corporation, that Minister shall consult the trade union, if any, which according to the concerned Minister represents the majority of that class of officers or employees of the corporation, and the corporation.

Delegation to corporation of concerned Minister's powers under section 25 (2).

26. The concerned Minister, in relation to a corporation may delegate to that corporation, subject to such conditions as may be specified by him, the power conferred on him by section 25(2) in respect of any class of officers or other employees of that corporation and where the concerned Minister makes any such delegation, with reference to the class of officers or other employees in relation to whom the power is so delegated the corporation shall be required to consult such trade union as is referred to in section 25(3) in any case in which the concerned Minister is required to consult such trade union by the provision last mentioned.

Services of professional men

27. A corporation may at any time, with the approval of the concerned Minister, retain the services of professional persons and may pay such remuneration in respect thereof as the corporation may determine with the approval of the concerned Minister.

Superannuation benefits of teachers and other employees in public service seconded or transferred to corporation.  
Cap. 27:02

28. (1) Where, with the approval of the appropriate authority a public officer is —

- (a) seconded or temporarily transferred from a pensionable office within the meaning of the Pensions Act to an appointment with a corporation, section 5 of that Act shall apply to him as if his service in the last-mentioned appointment were service in a public office;
- (b) transferred from a pensionable office within the meaning of the Pensions Act to a substantive appointment with a corporation, his service with the corporation shall be other public service within the meaning of, and for the purposes of, such provisions in relation thereto as are contained in the Pensions Act.

(2) Where, with the approval of the appropriate authority, a person holding an appointment in the public service, other than a pensionable office within the meaning of the Pensions Act, or holding an appointment in the public service paid for out of an open vote is —

- (a) seconded or temporarily transferred from such appointment to an appointment with a corporation, the period

during which he shall serve in that office shall count for superannuation rights or benefits on his retirement from the appointment from which he is seconded or temporarily transferred as if he had not been seconded or temporarily transferred;

- (b) transferred from such appointment to a substantive appointment with a corporation, sums by way of superannuation rights or benefits payable to him in respect of his service in the appointment from which he is transferred, if he had retired from such appointment on the date of his transfer, shall be paid to him on his retirement from the corporation to which he is transferred or his attaining the age of sixty years, whichever is earlier, or to the legal personal representative on the death of such person, if he dies before the date of retirement or the attainment of sixty years.

(3) Where a teacher who has done qualifying service within the meaning of the Teachers' Pensions Act is, with the approval of the **Cap. 39:05** appropriate authority, —

- (a) seconded or temporarily transferred from his pensionable office a teacher to an appointment with the corporation, section 5 of the Pensions Act (as it applies **mutatis mutandis** to a teacher under section 7C of the Teacher ' Pensions (Amendment) Act 1971) shall apply to him as it applies in the case of a public officer;
- (b) transferred from his pensionable office a teacher to a substantive appointment with a corporation, his service with the corporation shall be treated as if it were other public service within the meaning of, and for the purpose of, such provisions in relation thereto as are contained in the Pensions Act and as if he were a public officer to whom the Pensions Act applies.

(4) In this section, "appropriate authority" means the person or authority vested by law with power to appoint the public officer to the pensionable office held by him (and to which the Pensions Act applies) or to appoint the person holding an appointment in the public service, not being a pensionable office, to the appointment held by him, or to appoint the teacher to the office held by him as a teacher, as the case may be.

(5) A corporation may, with the approval of the concerned Minister, make such provisions as it thinks appropriate for the payment of pension, gratuity or other allowance in respect of the service of its officer and other employees on their retirement therefrom.

## PART VII

## FINANCIAL PROVISIONS

Authorised  
capital of  
corporation.

29. (1) The concerned Minister may, by order made under section 3 or made separately, direct that a corporation shall have authorised capital and, where any such direction is made, shall prescribe the authorised capital of the corporation and such authorised capital may by order be increased or decreased by the concerned Minister at the request of, or after consultation with, the corporation.

(2) Any order under subsection (1) shall also prescribe the number and value of the shares into which the authorised capital or increased authorised capital of the corporation shall be divided or the manner in which the authorised capital, prescribed from time to time, of the corporation shall be decreased.

(3) The whole, or such portion (being not less than fifty-one per cent) of the authorised capital of a corporation as may be specified by the concerned Minister by the order under subsection (1), shall be subscribed by the Government and the remaining portion, if any, shall be subscribed by such person (including any corporations, or other bodies corporate owned by the State or in which the controlling interest vests in the State or any agency on behalf of the State), and to such extent, a may be specified by the concerned Minister by the aforesaid order.

(4) The shares of a corporation shall be registered in the books of the corporation and shall be transferable only with the approval of the corporation, which approval shall not be given if the transfer is likely to result in the contravention of any provision of this Act.

(5) Any order under this section may make such incidental provisions as may be necessary or expedient to give full effect to it, including provisions for the subscription for shares by instalments and the voting rights, of the holders of shares so subscribed, at meetings of the shareholders of the corporation.

(6) Where an order is made by the concerned Minister under subsection (1) in respect of an existing corporation, the assets of that corporation, being immovable property or cash, shall be deemed to be capital subscribed by the Government to the corporation.

Charging  
of fees by a  
corporation.

30. (1) A corporation may, with the approval of the concerned Minister, charge fees for any service rendered by it.

(2) The Minister may make regulations regarding the procedure relating to the levy and collection of such fee.

31. (1) The funds and resources of a corporation, in respect of which no authorised capital has been prescribed under section 29, shall consist of — **Resources of corporation without authorised capital.**

- (a) sums provided to the corporation by or under an appropriation law;
- (b) sums allocated from time to time to the corporation from loan fund ;
- (c) sums from time to time received by, or falling due to, the corporation, in respect of the repayment of any loan made by the corporation and the interest payable in respect of any such loan;
- (d) any property, mortgage, share, debenture, or investment acquired by, or vested in, the corporation;
- (e) moneys earned or arising from any property, investment, mortgage, share or debenture acquired by, or vested in, the corporation; fees, if any, payable to the corporation under the provisions of this Act;
- (f) sums borrowed by the corporation for the purpose of meeting any of its obligations or the exercise or discharge of any of its functions; and
- (g) all other sums or property which may in any manner become payable to or vested in the corporation in respect of any matter incidental to its functions.

(2) The charges on any amount which may be allocated to a corporation from any loan funds shall be met by the corporation except that all or any part of such charges may be met out of money provided by Parliament.

(3) For the purposes of this section, the expression "loan funds" means such sums as may be made available from time to time to the Government by way of loan.

32. (1) Subject to subsection (2), a corporation may borrow sums required by it for meeting any of its obligations or exercising or discharging any of its functions. **Borrowing powers**

(2) The power of a corporation to borrow shall be exercisable only with the approval of the concerned Minister as to the amount, the sources of the borrowing and the terms on which the borrowing may be effected, and approval given in any respect for the purposes of this subsection may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

Powers of  
expenditure.

33. A corporation may from its funds make payments to meet all such expenses as are properly incurred by it for the purpose of the exercise or discharge of its functions, and without prejudice to the generality of the foregoing, in particular may —

- (a) pay any expenses properly incurred by it, including survey, legal and other fees and costs;
- (b) pay any other expenses, costs, or expenditure properly incurred or accepted by it in pursuance of its functions;
- (c) purchase plant, equipment, tools or any other material, or acquire land or erect buildings or carry out any other works or undertakings, in the exercise or discharge of its functions, in contemplation of any loan to be made for any of those purposes under section 6, so, however, that any sum expended by a corporation under this paragraph shall, upon the actual making of such loan, be set off against the loan in contemplation of which it was expended.

Reserve  
fund and  
profits and  
losses of a  
corporation

34. (1) Each corporation shall establish and maintain a general reserve fund.

(2) Out of the net profits earned by a corporation in any financial year —

- (a) there shall be transferred to the reserve fund —
  - (i) where the corporation is fully owned by the State or any agency on behalf of the State, the whole of the net profits or such part thereof, as may be specified by the concerned Minister; and
  - (ii) in any other case, such part of the net profits as may be specified by the concerned Minister, having regard to the need to maintain adequate balance in the reserve fund;
- (b) Where the corporation is fully owned by the State or any agency on behalf of the State and only part of the net profits is transferred to the reserve fund under paragraph (a), the whole or such part of the balance of the net profits as may be specified by the concerned Minister shall be paid by the corporation into the Consolidated Fund;
- (c) where the shares in any corporation are held partly by the State or any agency on behalf of the State and partly by any other person, such part of the net profits as may



be specified by the concerned Minister shall be distributed by way of dividend among the shareholders; and

- (d) subject to the other provisions of this subsection, such part of the net profits of the corporation as may be specified by the concerned Minister shall be utilised for such other public purposes as may be specified by him.

(3) The net loss of a corporation for any financial year in which there is an excess of expenditure over income shall be met by an appropriation, from the general reserve fund established by the corporation, of such amount as may be necessary to cover such loss.

(4) For the purposes of this section, net profits shall be determined by deducting from gross income all expenses together with allowances for depreciation of assets, contributions to staff benefit funds, provision for bad and doubtful debts, and such other contingencies and accounting provisions as are made by comparable corporate bodies.

35. Moneys standing to the credit of a corporation may from time to time be invested in securities approved either generally or specifically by the concerned Minister and the corporation may from time to time, with like approval sell any or all of such securities. **Investments**

36.(1) Subject to such terms and conditions as it may deem fit to impose in particular cases, a corporation may, out of its funds, make loans to any person in accordance with the provisions of this Act in that behalf, in the exercise or discharge of its functions. **Power of corporation to make loans.**

(2) In making loans under this Act a corporation may charge such rate of interest as it may deem fit in any particular case.

37.(1) Where a corporation has made a loan of money under this Act, it may — **Examination as to application of moneys lent.**

- (a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied for the purpose for which it was made; and
- (b) require financial statement in such detail as it may determine to be submitted by the person in receipt of the loan, bi-annually or at shorter intervals at the discretion of the corporation and such person shall comply with the requirement.

(2) A corporation may authorise in writing any of its officers or any other person to make the examination referred to in subsection (1)

(a), and the person in receipt of this loan shall produce to such officer or person all the relevant books, documents and other matters and things necessary for the purposes of the examination.

(3) Any person who contravenes subsection (1) (b) or (2) shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months and to a further fine of one hundred dollars for each day, after the first day, during which the offence continues.

**Non-application of whole or part of loan**

38. Where it appears to a corporation that any sum, being the whole or any part of a loan made by it, has not been applied for the purpose for which the loan was made, it may notice direct —

- (a) that such sum be applied for such purpose within the time specified in the direction; or
- (b) that the sum, together with any interest due thereon up to the date of repayment, be repaid to the corporation within the time specified in the direction,

and if the sum is not applied as directed under paragraph (a), or the sum together with the interest due thereon is not repaid as directed under paragraph (b), within the time specified in the direction, the sum, together with the interest due thereon up to the date of repayment, shall, notwithstanding the terms and conditions subject to which the loan was granted, become a debt due and payable to the corporation and may be recovered by the realization of any security given for the purpose of the loan or in any other manner provided for in this Act or in any other written law.

**Mis-application of loan secured by mortgage or otherwise.**

39. If any loan made under this Act by a corporation or any part of the loan has been misapplied, the corporation may, notwithstanding the terms and conditions subject to which the loan was granted, —

- (a) where the loan has been secured by mortgage or in any other manner, by notice in writing addressed to the borrower, recall the loan or any part thereof and may require the loan or that part, together with any interest due thereon up to the date of repayment, be repaid within the time specified in the notice, and, in default of repayment within the time so specified, recover the sum, together with the interest due thereon up to the date of repayment, by the realization of any security given for the purpose of the loan or in any other manner provided for in this Act or in any other written law; or
- (b) where the loan has not been secured by mortgage as in any other manner, by notice addressed to the borrower,

require the loan or any part thereof, together with any interest due thereon up to the date of repayment, be repaid within the time specified in the notice, and, in default of repayment within the time so specified, the sum, together with the interest due thereon up to the date of repayment, may be recovered in any manner provided for in this Act or in any other written law.

40. Every loan made by a corporation shall be repaid to it in accordance with the terms and conditions under which the loan was made and the moneys so paid shall without any delay be taken into the accounts of the corporation: **Repayment of loan made by corporation.**

Provided that a corporation may —

- (a) at any time accept payment of the whole or any part of the amount representing the principal of a loan, or interest due thereon, or both, before the time when the payment is due, upon such terms and conditions as it may think fit; or
- (b) with the approval of the concerned Minister —
  - (i) postpone, for any time not exceeding five years, the payment of any amount due to it, by way of principal or interest, or both, in respect of a loan made by it, upon such terms and conditions as it may deem necessary for the carrying out of the purposes for which the loan was made and the ultimate repayment of such principal or payment of interest thereon; or
  - (ii) from time to time, extend the period for the repayment of, or compound or release, any loan or any part thereof, subject to such terms and conditions as it may deem fit.

41. (1) A charge (including a mortgage or pledge) on movable or immovable property may be made in favour of a corporation in such manner and upon such terms and conditions, including payment of fees and stamp duty, as the Minister assigned responsibility for finance may prescribe by order and where the charge is created on immovable property the Registrar of the Supreme Court shall, upon such notice as may be prescribed by the aforesaid Minister by order, annotate the charge against the title issued in respect of the property in the same manner as if the property were subject to a mortgage passed before the High Court. **Charge on movable or immovable property.**

(2) A charge created under this Act may be determined in such manner as the Minister assigned responsibility for finance may pres-

cribe by order and the Registrar of the Supreme Court shall take due notice thereof and shall make such annotations on the records as may be necessary.

**Priority of loan.**

42. Where a loan is made by a corporation on the security of a mortgage of any property, whether with or without any other security, the property, from and after the date of the mortgage, shall be charged with the payment of the loan and interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, to every other debt, mortgage or charge whatsoever affecting the property, except for any charge or lien in favour of the State, or any loan, due to any creditor not assenting to such priority, which has been made in good faith before the loan made by the corporation and which has been secured by a duly registered mortgage of the property.

**Power of corporation to buy and manage mortgaged property.**

43. Where the property mortgaged as security for a loan under this Act is sold for the purpose of the enforcement of the security, a corporation may buy such property and may either manage and hold such property or sell or otherwise dispose of it as it may deem fit.

**Offences in respect of loans.**

44. (1) Any person who —

- (a) obtains a loan from a corporation by means of any false representation;
- (b) wilfully applies any loan, made to him by a corporation, or any part thereof to any purpose other than the purpose for which the loan was made; or
- (c) having obtained a loan from a corporation, wilfully destroys any security given in relation to the loan, shall be liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

(2) In any criminal proceeding in respect of an offence under subsection (1) (b), the onus of proving that the person, who is charged with the offence, acted in good faith and without knowledge that he was not entitled to apply the loan, or any part thereof, in respect of which the offence is alleged to have been committed, in the manner he applied it, shall be upon the person so charged.

**Limitation provisions excluded**

45. No statute of limitation shall apply to a claim brought by a corporation or in respect of movable or immovable property owned by a corporation.

**Recovery of claims.**

46. Any sum due to a corporation may be recovered by parate or summary execution and the right of recovery granted by this section shall be in addition to any other procedure available to the corporation under any other provision of this Act or any other written law.

47. Nothing in this Act shall be deemed to exempt a corporation from the liability from any tax, duty, rate, levy or other charge whatsoever, but the Minister assigned responsibility for finance may by order, which shall be subject to negative resolution of the National Assembly, exempt a corporation from the payment wholly or partly of any tax, duty, rate, levy or other charge payable under any written law for the time being in force. Power to exempt from tax, duty, etc.

48. (1) A corporation shall keep accounts of its transactions to the satisfaction of the concerned Minister and the accounts shall be audited annually by an auditor appointed by the concerned Minister. Accounts and audit

(2) The concerned Minister may, at any time appoint an auditor to examine the accounts of a corporation and to report thereon to him.

(3) The members, officers and employees of a corporation shall grant to the auditor appointed to audit the accounts of a corporation under subsection (1) and (2) access to all books, documents, cash and securities of the corporation and shall give to him on request all such information as may be within their knowledge in relation to the operation of the corporation.

(4) An auditor appointed under this section shall have power to summon and examine all persons whom he shall think fit to examine for the purpose of obtaining information in connection with the examination and audit of the accounts of the corporation and respecting all other matters and things whatever necessary for the due performance of the functions vested in him; and if any person summoned as aforesaid is not a public officer or an officer or other employee of a corporation he shall be entitled to payment for his attendance as if he were a witness attending a legal proceeding in obedience to a summons issued at the instance of the State.

(5) Any person summoned under subsection (4) who without reasonable excuse makes default in obeying the summons shall be liable on summary conviction to a fine of one thousand dollars.

(6) A corporation may, with the approval of the concerned Minister, write off bad debts.

49. A corporation may, and when so directed by the concerned Minister shall, in consultation with the Auditor General or the concerned officer of any corporation establish under section 54(1), as may be specified by the Minister, make arrangements for a regular system of internal audit which shall be in addition to the audit and examination of accounts hereinbefore provided for in this Part. Internal audit.

Regulations  
regarding  
financial  
procedure.

50. The Minister may make regulations relating to the procedure to be followed by a corporation with respect to its financial business and, without prejudice to the generality of the foregoing, such regulations may in particular provide for all or any of the following matters —

- (a) accounting methods and procedures, including the books and accounts that are to be kept by a corporation and the form in which such books and accounts shall be kept.
- (b) the preparation of balance sheets, financial statements and abstracts of accounts and the forms therefor;
- (c) budgetary control;
- (d) fees payable to an auditor, appointed under any provision of this Act, for the audit or examination of the accounts of a corporation;

Provided that different fees may be prescribed in respect of different corporations:

- (e) the procedure in relation to the purchase of stores and equipment; and the custody and issue of stores and equipment;
- (f) the receipt, transmission and safe custody of cash;
- (g) the procedure relating to the levy and collection of fees by a corporation;
- (h) the procedure in relation to tendering and entering into contracts.

## PART VIII

### SUPERVISORY COUNCILS

Appoint-  
ment of  
Supervisory  
Councils.

51.(1) The President may by order appoint such number of committees, to be known by such style as may be specified by him, for the purposes of this Part and specify the corporations, or other bodies corporate owned by the State or in which the controlling interest vests in the State or any agency on behalf of the State, in respect of which each such committee is appointed.

(2) A Supervisory Council shall consist of such Ministers, and such experts and advisors, as the President may deem fit to appoint to it.

(3) Where there is only one Minister assigned responsibility in relation to the corporation and other bodies

corporate in respect of which a Supervisory Council has been appointed under subsection (1), that Minister shall be the chairman of the Supervisory Council and where there are more than one Minister assigned responsibility for such corporations and other bodies corporate, one of such Ministers as may be specified by the President shall be the chairman of the Supervisory Council.

(4) The membership of a Supervisory Council as first constituted and every change in the membership thereof shall be notified in the *Gazette*.

(5) A Supervisory Council shall regulate its own procedure.

(6) The terms and conditions of appointment of the experts and advisors appointed under subsection (2) as members' of a Supervisory Council shall be such as may be determined by the President.

52. (1) It shall be the function of a Supervisory Council to -- Functions  
of Supervi-  
sory Council.

- (a) co-ordinate the activities of such corporations, and other bodies corporate owned by the State or in which the controlling interest vests in the State, or any agency on behalf of the State, as may be specified in the order appointing it;
- (b) monitor the performance of such corporations and other bodies corporate; and
- (c) perform such other functions as may be conferred upon it by the President in respect of such corporations and other bodies corporate.

(2) Without prejudice to the provisions of sub-section (1), the President may direct any Supervisory Council to perform, in relation to any corporation or other body corporate in respect of which it has been appointed, any power conferred by this Act on the Minister or the concerned Minister.

(3) Where a Supervisory Council has been appointed in respect of any corporation or other body corporate, every person or authority, other than the President or the Minister, on whom any function has been conferred by or under this Act in relation to that corporation or other body corporate, shall in exercising or discharging that function defer to the authority of the afore-said Supervisory Council exercised in pursuance of the provisions of this Act.

(4) Subject to the provisions of section 54, a Supervisory Council may make suitable arrangements to provide itself with the services of such officers and other employees as are required for the performance by it of its functions.

(5) The sum of money, if any, required by a Supervisory Council to meet the expenses in any year of arrangements made under subsection (4) shall be provided by the corporations and other bodies corporate in respect of which it has been appointed and the sum payable in each year by each such corporation or other body corporate shall be determined by the Supervisory Council.

Performance contracts.

53. (1) A Supervisory Council may enter into a performance contract with a corporation or other body corporate in respect of which it has been appointed.

(2) A performance contract may make provisions in respect of the performance target to be achieved by the concerned corporation or other body corporate within the time specified for that purpose in the contract, the cost efficiency, the pricing of goods manufactured or services rendered by it, any export targets, and such other matters as may be prescribed by the Minister by regulations.

(3) A performance contract shall be signed on behalf of a Supervisory Council by such person as may be specified by it.

(4) Any person who commits a breach of any provision of a performance contract shall, without prejudice to any other provision of this Act or any other written law, be liable to such consequence as may be specified in the performance contract.

Officers and employees to assist Supervisory Councils and the Minister.

54. (1) The Minister shall make such arrangements as he thinks fit to provide Supervisory Councils with officers and other employees required for the performance by them of their functions, and for that purpose, and to provide to the Supervisory Councils and the Minister such other services as may be specified by the Minister (being services which are required or expedient to achieve the objects of this Act), he may, by order, establish an organisation which shall be a body corporate with such name and consisting of such members as may be specified in the order.

(2) For the purposes of subsection (1), the Minister may create, outside the public service, such offices, having such titles and terms and conditions of appointment as may be determined by him, and may make appointments thereto and



may remove or exercise disciplinary control over any person holding or acting in any such office.

(3) A person appointed to any office under subsection (2) shall, subject to the other provisions of this Act, perform such functions as may be determined by the Minister.

(4) The sum of money required to meet the expenses of arrangements made by the Minister under subsection (1), including the expenses of any organisations established under that subsection, shall be provided by the corporations and other bodies corporate in respect of which Supervisory Councils have been appointed and the sum payable by each such corporation or other body corporate shall be determined by the Minister.

(5) Every corporation, and every other body corporate specified in any order under section 52(1)(a), shall provide any organisation established under subsection (1) or persons appointed under subsection (2), with such information or documents in its possession, or returns, in regard to the functioning of the corporation or other body corporate, as the case may be, as may be necessary or expedient for the organisation or person to exercise or discharge its or his functions.

(6) Any member or employee of the organisation established under subsection (1) or any person appointed under subsection (2) may for the purpose of exercising or discharging the functions of the organisation or such person, as the case may be, with the approval of, or when directed by, the concerned Minister enter upon the premises of a corporation or other body corporate specified in any order under section 52(1)(a) and examine documents, or obtain information otherwise, pertaining to the functioning of the corporation or other body corporate.

(7) Section 63 shall apply to, and in relation to, every member of any organisation established under subsection (1) and every one of its employees and every person appointed under subsection (2) as if such member were a member, and such employee or person were an employee, of a corporation.

(8) An order establishing an organisation under subsection (1) may contain provisions for vesting in that organisation movable or immovable property of the State.

(9) Where an order referred to in subsection (8) vests immovable property in the organisation referred to therein, the order shall be treated for all purposes as if it were a transport or other document effecting the conveyance of immovable property and the Registrar of Deeds shall take due notice there-

of and shall make such annotations on the records as may be necessary.

**Validation.** 55. All things done or actions taken before the commencement of this Act by every committee, consisting of Ministers only or of Ministers and other persons, appointed before such commencement in respect of any group of existing corporations or other bodies corporate and designated as Supervisory Council for that group of corporations or other bodies corporate, shall be deemed to be valid and always to have been valid; and each such Supervisory Council as constituted immediately before the commencement of this Act shall, after such commencement and until otherwise directed by the President by order, continue to perform the functions, which it was performing immediately before such commencement, in respect of the existing corporations or other bodies corporate in respect of which it was appointed.

## PART IX

### PUBLIC INTEREST COMMITTEE

**Appoint-  
ment  
of Public  
Interest  
Committee**

56. (1) The Minister may by order appoint for the purposes of this Part one or more committees, with such styles as may be specified by the Minister (any such committee hereinafter being referred to as Public Interest Committee), consisting of not more than twelve persons to be appointed by the Minister, to represent organisations of workers, women, youth and students, consumers and the State Planning Secretariat.

(2) Where only one Public Interest Committee is appointed, the appointment shall be in relation to —

- (a) all corporations; and
- (b) such other bodies corporate owned by the State or the controlling interest in which vests in the State, or any agency on behalf of the State, as are specified by the Minister,

and where more than one Public Interest Committees are appointed, the appointment of each such Committee shall be in relation to such corporations, and such other bodies corporate owned by the State or the controlling interest in which vests in the State or any agency on behalf of the State, as are specified by the Minister.

(3) The terms and conditions of appointment of the members of a Public Interest Committee shall be such as may be determined by the Minister.

(4) The names of the members of a Public Interest Committee as first constituted and every change in the membership thereof shall be published in the **Gazette**.

(5) Subject to any regulations made by the Minister, a Public Interest Committee shall regulate its own procedure.

(6) The Minister shall make arrangements to provide a Public Interest Committee with such facilities as may be required to enable it to carry out its functions under this Act.

57.(1) A Public Interest Committee shall have in respect of the corporations or other bodies corporate in relation to which it is appointed such functions as may be specified by the Minister by order.

Functions  
of  
Public  
Interest  
Committee

(2) Each corporation or other body corporate in relation to which a Public Interest Committee is appointed shall designate a person at a senior managerial level in the corporation or other body corporate to deal with the Public Interest Committee and intimate to the Committee of the designation.

(3) Save as otherwise directed by the Minister, the members of a Public Interest Committee shall be entitled to seek from any corporation or other body corporate, in relation to which it is appointed information about the functioning thereof and shall be entitled to call for and examine documents relating thereto.

(4) Where a Public Interest Committee is of the view that there is need for improving the functioning of a corporation or other body corporate in relation to which it is appointed, it may make its suggestions to the corporation or other body corporate and, where it is not satisfied about the implementation of the suggestions, it shall be entitled to make representation to the concerned Minister.

(5) Subject to the other provisions of this Act, any member of a Public Interest Committee shall not be subject to prosecution or any other legal action in respect of anything done or omitted to be done by him in the exercise, or purported exercise, of his functions as such member.

(6) Every member of a Public Interest Committee or employee provided to it or assisting it —

- (a) shall regard and deal with as secret and confidential all information, documents and matters which, or knowledge of which, he may obtain as such member or employee; and

- (b) shall not make use of any information, document or matter which, or knowledge of which, he may obtain as such member or employee, for the benefit of himself or any other person, or otherwise than for the purposes of his duties as such member or employee,

and any such member or employee who contravenes the provisions of this subsection shall, on summary conviction, be liable to a fine of ten thousand dollars and to imprisonment for twelve months.

## PART X

### DISSOLUTION OF GUYANA STATE CORPORATION

**Dissolution of Guyana State Corporation** 58.(1) In this section and section 59 "appointed day" means the date on which the Guyana State Corporation referred to in subsection (2) shall stand dissolved under that subsection.

Cap. 19:05

(2) The Guyana State Corporation established by section 3 of the Public Corporations Act shall stand dissolved with effect from such date, being a date before the expiry of six months from the commencement of this Act, as may be fixed by the Minister by order, or, if no such date is so fixed by the Minister, on the expiry of six months from the commencement of this Act.

(3) All the assets (including rights and interests) of the Guyana State Corporation, as on immediately before the appointed day shall, with effect from that day, by virtue of this section and without further assurance, stand transferred to and vested in the State.

(4) The liabilities incurred by the Guyana State Corporation prior to, and subsisting immediately before, the appointed day shall, with effect from that day, be discharged by and be enforceable against, the State as if the said liabilities had been incurred by the State.

(5) Nothing in subsection (3) and (4) shall apply to rights and liabilities under any contract of service.

(6) Without prejudice to the provisions of subsection (4), all contracts, deeds, bonds, overdrafts, guarantees, agreements or other instruments or other documents, which were subsisting immediately before the appointed day and affected the Guyana State Corporation shall as from that day, in so far as they relate to the undertakings or the assets of the Guyana State Corporation, be of as full force and effect against or in favour of, the State and be enforceable as fully and

effectually as if, instead of the Guyana State Corporation, the State had been named therein or had been a party thereto.

(7) Where immovable property has, by virtue of this section, vested in the State, the Registrar of Deeds shall take due notice thereof and shall make such annotations on the records as may be necessary.

(8) Any proceedings commenced by or against the Guyana State Corporation prior to the appointed day for the enforcement of any right or liability which is transferred or attached to the State by virtue of this section, and pending immediately before that day in any court or before any authority, may be continued by or against the State.

(9) Notwithstanding anything contained in this Act or any other written law or contract to the contrary, the appointments of all the officers and employees employed by the Guyana State Corporation immediately before the appointed day shall stand terminated with effect from that day:

Provided that any person whose appointment stands terminated under this subsection may be appointed to the public service, or by the Minister under section 54(2), on such terms and conditions as may be agreed upon between the authority making the appointment and the person so appointed, and in respect of any person so appointed to the public service, where the appointment is made to the public service, or the organisation established under section 54(1), where the appointment is made under section 54(2), shall be the successor of the Guyana State Corporation with regard to his leave or superannuation rights or benefits, whether accrued, earned, inchoate or contingent.

(10) During the period commencing on the date of the commencement of this Act and ending on the appointed day the Guyana State Corporation shall have and exercise and discharge the functions conferred by or under this Act on the organisation referred to in section 54(1).

59. On and from the appointed day, unless the context otherwise requires, a reference in any other written law to the Guyana State Corporation shall be construed as a reference to the Minister.

Construction  
of reference  
to Guyana  
State Cor-  
poration in  
any other  
written law.

## PART XI

### MISCELLANEOUS

60. Where any function in relation to any corporation has been conferred by this Act on any Minister other than the concerned Minister, the Minister first mentioned shall, before he exercise in

consultation  
with con-  
cerned Min-  
ister.

relation to the corporation any such function, consult the concerned Minister:

Provided that whether any such consultation has taken place shall not be enquired into in any court.

- Defect in constitution of corporation, etc. not invalidate act or thing done**
61. No act or thing done or proceeding taken by a corporation shall be questioned on the grounds of —
- (a) the existence of any vacancy in membership in the case of a corporation aggregate, or any defect in the constitution of the corporation, whether it is a corporation aggregate or corporation sole;
  - (b) the contravention of section 16 by a member of a corporation aggregate or the managing director of a corporation sole; or
  - (c) any omission, defect or irregularity not affecting the merits of the case.
- Protection of managing director and members.**
62. (1) Subject to subsection (2), no action, suit, prosecution or other proceedings shall be brought or instituted personally against a managing director of a corporation sole or a member of a corporation aggregate, as the case may be, in respect of any act done **bona fide** in pursuance of execution or intended execution of his functions under this Act.
- (2) Where a managing director of a corporation sole or a member of a corporation aggregate, as the case may be, is exempt from liability by reason only of subsection (1), such corporation shall be liable to the extent that it would be if the managing director or member was a servant or agent of the corporation, so however, that if in any case the corporation is not liable for any such act then subsection (1) shall not operate to exempt such managing director or member as therein stated.
- Information, etc. obtained as managing director, member or employee of a corporation to be secret and confidential.**
63. (1) A managing director of a corporation sole or a member of a corporation aggregate or any officer or other employee of any corporation —
- (a) shall regard, and deal with, as secret and confidential all information, documents and matters which, or knowledge of which, he may obtain as such managing director, member or officer or other employee; and
  - (b) shall not make use of any document, matter or information which, or knowledge of which, he may obtain as such managing director, member or officer or other em-

ployee, for the benefit of himself or any other person, or otherwise than for the purpose of his duties as such managing director, member or officer or other employee.

(2) Nothing in subsection (1) shall be deemed to prevent a managing director, member or officer or other employee, referred to therein, from disclosing, or to entitle such managing director, member, officer or other employee to refuse to disclose, to any person the information, documents or matters referred to therein for the purpose of the exercise or performance of his functions or when lawfully required to do so by any court or under any law.

(3) Any managing director, member or officer or other employee, referred to in subsection (1), who contravenes any provision of this section shall, on summary conviction, be liable to a fine of ten thousand dollars and to imprisonment for twelve months.

64. Any member of a corporation aggregate, the managing director of a corporation sole or officer or other employee of a corporation, or any person appointed under section 54, including a member of any organisation established under section 54(1) or any person appointed by such organisation, who, being required by or under any provision of this Act to furnish any information in regard to any matter or any return, to any person or authority, knowingly or negligently furnishes information in regard to that matter, or a return containing information, which is false or misleading in any material particular shall, without prejudice to any other liability that he may incur thereby, be liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

**Penalty for furnishing false or misleading information by member or employee of corporation**

65. During any period when there is no managing director of a corporation sole or members of a corporation aggregate in office or when the number of members of a corporation aggregate in office is less than the number of members required for a quorum for a meeting of the corporation, the functions conferred on such corporation by this Act, shall be exercised and discharged by the concerned Minister, and the provisions of this Act shall in any such case be construed with such modifications, adaptations and exceptions as may be necessary.

**Performance of functions of a corporation by the concerned Minister in certain cases.**

66. (1) The Minister may by notification in the **Gazette** apply any provision of this Act, without modifications or with such modifications as may be specified therein, to any body corporate, not being a corporation, owned by the State or in which the controlling interest vests in the State or in any agency on behalf of the State.

**Application of provisions of Act to certain bodies corporate**

(2) Any provision of this Act applied to any body corporate under subsection (1) shall have effect notwithstanding anything contained in any written law, other than that provision as so applied or in any contract or **of instrument.**

**Annual report.** 67. (1) A corporation shall, not later than six months after the expiry of each calendar year, submit to the concerned Minister a report containing —

- (a) an account of its functioning throughout the preceding calendar year in such detail as the concerned Minister may direct; and
- (b) a statement of the accounts of the corporation audited in accordance with section 48.

(2) A copy of the report mentioned in subsection (1) together with a copy of the report of the auditor in relation to the same period shall be laid before the National Assembly not later than nine months after the expiry of the calendar year to which it relates.

(3) Where the accounts of a corporation are kept by reference to a financial year different from the calendar year, the expression “calendar year” in this section shall be read with respect to such corporation as if the expression “financial year” were substituted therefor.

**Penalty.  
General**

68. Every one who is guilty of the contravention of any provision of this Act, or any regulation made thereunder, for which no penalty is otherwise expressly provided by this Act or any regulation made thereunder, as the case may be, shall, on summary conviction, be liable to a fine of one thousand dollars and to imprisonment for six months.

**Power to  
make  
regulations.**

69. (1) The Minister may make regulations for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing, and in particular, such regulations may provide for all or any of the following matters —

- (a) the carrying on of transactions between a corporation and any person, authority or body resident overseas or any foreign Government;
- (b) the preparation of, and the particulars to be included in, a performance contract;
- (c) the recruitment, removal and discipline of officers and employees;
- (d) the procedure to be followed upon the transfer of an undertaking of a corporation, other body corporate or the State, or the merger of corporations, or the reconstitution of any corporation under this Act.



- (e) the acquisition by a corporation of interests in, and dealings with, subsidiaries;
- (f) service of process by and upon a corporation;
- (g) any other matter that is required to be, or may be, prescribed by the Minister under this Act.

(3) A concerned Minister may make regulations to provide for all or any of the following matters —

- (a) the procedure, including the quorum for the meetings, of a committee appointed under the proviso to section 4(6);
- (b) the procedure, including the quorum for the meetings, of a corporation, the responsibility for which is assigned to him, and the manner of transaction of the business of the corporation.
- (c) any other matter that is required to be, or may be, prescribed by the concerned Minister under this Act.

(4) The provisions of this section shall be without prejudice to the provisions of section 50.

(5) Notwithstanding the repeal of the Public Corporations Act, any regulation made under the Public Corporations Act to make provision for any of the matters referred to in the preceding subsections or section 50 and in force at the commencement of this Act shall, so far as it is capable of being made under this Act, continue in force as if made under this Act, subject to amendment or repeal by any regulation made under this Act. Cap. 19:05

70. Regulations made under this Act may provide that every person who is guilty of a breach of any regulation shall be liable to such fine not exceeding one thousand dollars, and to imprisonment for such term, not exceeding six months and that in the case of a continuing offence to such further fine, not exceeding one hundred dollars, for each day, after the first day during which the offence continues, as may be prescribed by the regulations. Penalty for contravention of provisions of regulations.

71. (1) The Public Corporations Act is hereby repealed. Repeal and savings.

(2) The repeal of the Public Corporations Act by this Act shall not be deemed to affect the power of the President to establish or continue a department of the Government for public corporations with such style, organisational structure and functions as may be determined by him. Cap. 19:05

(3) Notwithstanding the repeal of the Public Corporations Act by this Act —

- (a) every existing corporation shall continue to function as if it is a public corporation established under section 3 of this Act and the members thereof were appointed under this Act and every order made under section 46 (establishing a public corporation), under section 48 (reconstituting incorporated bodies) or under section 57 (merging two or more public corporations) of the Public Corporations Act, and in force immediately before the commencement of this Act, shall, subject to the other provisions of this Act, continue to be in force after such commencement as if it were an order made under the corresponding provision of this Act, but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Act;
- (b) any person who holds immediately before the commencement of this Act, the office of a member of an existing corporation shall, notwithstanding any provision in this Act, continue to hold such office until such date, after such commencement, as may be specified by the concerned Minister; and
- (c) every guarantee given by the Minister under section 32 of the Public Corporations Act, and subsisting at the commencement of this Act, shall continue to be in force as if that section had not been repealed by this Act.

Power to  
remove  
difficulties

72. The Minister may, for the purpose of removing any difficulty in giving effect to the provisions of this Act, particularly in relation to the transition from the provisions of Public Corporations Act to the provisions of this Act, make such order or give such direction not inconsistent with the provisions of this Act, as appears to him to be necessary or expedient for the purpose of removing the difficulty:

Cap. 19:05

Provided that no such order or direction shall be made or given after the expiry of two years from the commencement of this Act.

## PART XII

## AMENDMENT OF GUARANTEE OF LOANS (PUBLIC CORPORATIONS AND COMPANIES) ACT

73. (1) Section 2(1) of the Guarantee of Loans (Public Corporations and Companies) Act is hereby amended by the substitution for the definition of the expression "Corporation," of the following definition —

‘ “Corporation” means

- (a) any corporation as defined in section 2(c) of the Public Corporations Act 1988;
- (b) any other body corporate owned by the State or in which the controlling interest vests in the State or any agency on behalf of the State;
- (c) any co-operative society registered under the Co-operative Societies Act; and
- (d) any such company incorporated in Guyana and, having regard to its importance to the national economy or capital invested in it by the Government, as may be specified by the Minister by notification in the *Gazette*, for the purposes of this Act;

(2) Every guarantee given by the Government under the aforesaid Act, and subsisting at the commencement of this Act, shall continue to be in force after such commencement to the extent to which it could have been given under the said Act as Amended by this Act and the provisions of that Act shall apply accordingly.

**EXPLANATORY MEMORANDUM**

This Bill seeks to repeal and re-enact with modifications the Public Corporations Act, Cap. 19:05, so as to restructure the management of public corporations. The main changes proposed to be made are dealt with in the following paragraphs.

2. The Guyana State Corporation is proposed to be dissolved (clause 58) and the Minister assigned responsibility for a public corporation will be responsible for the direction and supervision of its management. Legal backing is proposed to be given to the scheme of Supervisory Councils established to co-ordinate and monitor the activities of groups of corporations, as defined in clause 2(e) of the Bill, and other bodies corporate owned by the State or in which the controlling interest vests in the State or any agency on behalf of the State, and to

perform in relation to them such other functions as may be conferred by the President. (See Part VIII). A Supervisory Council, as proposed by the Bill, would consist of the Minister or Ministers and experts and advisors appointed by the President.

3. Provisions are proposed to be made also in regard to the system of performance contracts introduced since January 1985. A performance contract is intended to establish for the corporation or other body corporate entering into it binding targets in respect of performance, cost efficiency, export, etc. (Cl use 53).

4. Statutory basis is proposed to be given also to the Public Interest Committee appointed last year. (Part II).

5. It is also proposed to make provision to enable a public corporation to have authorised capital, fifty-one per cent or more of the authorised capital as may be specified by the concerned Minister, being required to be subscribed by the Government and the remaining portion, if any, to be subscribed by such persons (including public corporations, or other bodies corporate owned by the State or in which the controlling interest vests in the State or any agency on behalf of the State) to such extent, as may be specified by the concerned Minister. (Clause 29).

6. The provisions of the Bill (other than those contained in Part II) are proposed to be made applicable to existing corporations established under the Public Corporations Act, Cap. 19:05. A new public corporation, as proposed by the Bill, can be either a corporation sole or a corporation aggregate. Clause 4(2). Power is also proposed to be given to a corporation to charge fees for any services rendered by it. (Clause 30).

7. Consequential amendment is proposed to be made to the Guarantee of Loans (Public Corporations and Companies) Act, Cap. 77:01. (Clause 73). In view of the provisions contained in that Act, it is not proposed to re-enact existing section 32 of the Public Corporations Act, Cap. 19:05, dealing with the guarantee by the Minister of Finance of borrowings by a corporation.

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