

CHAPTER 127

THE PRIVATISATION TRUST ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 127

THE PRIVATISATION TRUST ACT

An Act to provide for the establishment of the Privatisation Trust, to define its obligations and functions in relation to the promotion of broader share ownership by citizens of the United Republic of Tanzania, and for matters connected thereto.

[15th June, 1997]

[G.N. No. 334 of 1998]

Act No. 7 of 1997

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh127s1]1. Short title

This Act may be cited as the Privatisation Trust Act.

[PCh127s2]2. Interpretation

In this Act, unless the context otherwise requires—

"accounting date" means the last working day of the month of March, June, September and December in any year during the Trust period;

"auditors" means the auditors of the Privatisation Trust appointed under section 19;

"Board" means the Board of Trustees established under section 5;

"Commission" means the Presidential Parastatal Sector Reform Commission established under the Public Corporation Trust appointed under section 19;

"Divestment Plan" means a plan prepared by the Manager and approved by the Board under section 12;

"eligible institution" means an entity established in Tanzania which allows participation by the general public and which, in the opinion of the Trustees, have been established with the objective of benefiting citizens by investing its assets in among other things, equity securities effectively for the benefit of its members;

"eligible investor" means a citizen of Tanzania or an eligible institution;

"investee company" means a newly privatised enterprise in which the Trustees have acquired shares;

"management contract" means the contract under which the manager is appointed to undertake the management of the Privatisation Trust;

"Manager" includes a professional management company or merchant bank appointed under section 15;

"Minister" means the Minister responsible for finance;

"newly privatised enterprise" means a company which has been privatised by the transfer of shares carrying a majority of the voting rights in the company to a buyer or buyers none of which is an agent or instrumentality of the Government or a company in which the Government or any such agency or instrumentality holds less than thirty percent of the issued shares;

"public corporation" means any corporation established under any written law and in which the Government or its agent owns majority of the shares or is the sole shareholder;

"services" means the duties, powers and obligations of the Manager under the Management Contract;

"shares" means the shares in newly privatised enterprises or any other securities derived therefrom acquired by the Trustees;

"Special Fund" means a fund established under subsection (1) of section 34 of the Public Corporations Act *;

"Trust" means the Privatisation Trust established under section 3;

"Trustees" means the Trustees for the Trust;

"Trust period" means the life of the Trust as prescribed in paragraph (d) of subsection (2) of section 3;

"Trust property" means the shares selected and acquired by the Trustees together with income or other assets whether accruing from the shares, proceeds of sale of shares, or interest accruing on monies received by and held by the Trustees for the account of the Trust;

"undistributed shares" means shares which at the end of the Trust period have not been sold or otherwise subject to a binding commitment to sell under the provisions of this Act.

PART II

ESTABLISHMENT OF THE PRIVATISATION TRUST (ss 3-6)

[PCh127s3]3. Establishment and life span of the Trust

(1) There is established a trust which shall be known as the Privatisation Trust.

(2) The Trust shall—

(a) be a body corporate with a common seal and may sue or be sued in its corporate name;

(b) be an independent entity of the highest integrity and professionalism;

(c) for the purpose of discharging its functions under this Act have power to acquire, hold or dispose of any movable or immovable property or enter into any contract or transaction;

(d) subject to section 8, be in existence for five years from the first accounting date to occur following the coming into operation of this Act.

[PCh127s4]4. Objects and functions of the Trust

The objects and functions of the Trust shall be—

(a) to acquire shares in newly privatised enterprises for sale by public offering to achieve a wide distribution among citizens and to obtain sale proceeds which are reasonable in the circumstances prevailing from time to time;

(b) to encourage and facilitate wider participation by citizens in the ownership of privatised enterprises;

(c) to have responsibility on the disbursement of proceeds in accordance with this Act;

(d) to advise the Minister and the Commission on matters relating to the administration of this Act;

(e) to manage and administer the Trust with a view to ensure that the objectives of the Trust are achieved;

(f) to ensure that shares are sold or distributed; as the case may be, to any eligible investor.

[PCh127s5]5. Board of Trustees

(1) There shall be established a Board of Trustees which shall be the governing body of the Trust.

(2) The Minister shall appoint the Trustees, and in appointing Trustees the Minister shall have regard to persons of good standing in the community, and who have a sound knowledge or experience on matters pertaining to the objects of the Trust.

(3) The Board shall consist of not less than five and not more than seven members who shall work on part time basis.

(4) A Chairman (or in his absence a Vice-Chairman) shall be elected by the Trustees every one year from the first meeting of the Board and shall be eligible for re-election.

(5) A Trustee may cease to hold office if he—

(a) is disqualified from acting as a Trustee by virtue of the provisions of the Trustees' Incorporation Act *;

(b) becomes incapable by reason of mental disorder, illness or injury certified by an independent, qualified medical doctor, of managing and administering his affairs;

(c) is absent from three consecutive meetings of the Board without leave or good cause, and the Board resolves that his absence be vacated;

(d) is declared bankrupt;

(e) is convicted of any criminal offence for which its penalty is imprisonment for a term of more than six months.

(6) A Trustee may be removed by unanimous vote of the other Trustees on the grounds of failure to perform his duties properly.

(7) Subject to the provisions of this Act, a Trustee may at any time by notice in writing to the Minister resign as Trustee of the Trust.

(8) In the event that any Trustee is removed or resigns, the Minister shall appoint a substitute having full regard to the objectives of the Trust.

(9) In no event shall a Trustee or a substitute for a Trustee be a Government employee or an employee of the Commission.

[PCh127s6]6. Meetings of the Board

(1) The Board shall meet for the discharge of its business at such times and places as it may decide but shall meet at least once every month.

(2) The Chairman or, the Vice-Chairman shall preside at all meetings of the Board.

(3) At any meeting of the Board a decision of the majority of the Trustees present and voting shall be deemed to be a decision of the Board, and in the event of an equality of votes the chairman of the meeting shall have a casting vote in addition to his deliberative vote.

(4) Three Trustees shall form a quorum for a meeting of the Board.

(5) A resolution in writing signed by all the Trustees shall be as valid and effectual as if it had been passed at a duly constituted meeting of the Board.

(6) Except as to specified exceptions under this Act all matters shall be decided by majority vote.

PART III

ADMINISTRATION OF THE TRUST (ss 7-14)

[PCh127s7]7. Receipt, holding and divestment of shares

(1) The Trustees shall select, hold and divest the shares in accordance with the Divestment Plan prepared by the Manager.

(2) The Trustees shall cause notice of the trusts under which the Trustees stand possessed to be entered in the Register of members pursuant to section 102 of the Companies Act *.

[PCh127s8]8. Disposal of undistributed shares

(1) If at the expiry of the Trust period the Trust holds shares the Board shall subject to subsections (2) and (3) of this section, convert the Trust into a unit trust, the Trustee or Trustees of which shall be appointed by the Minister.

(2) The Minister shall direct the Trustee or Trustees of the unit trust established pursuant to subsection (1) of this section as to the method of distribution of units in order to achieve the objectives of the Trust whether by sale or allocation without consideration.

(3) The Trustee or Trustees of the unit trust shall be an “exempt dealer” for the purposes of section 49 of the Capital Markets and Securities Act *.

(4) If at the expiry of the Trust period the Trust holds shares which have not been sold but in the reasonable expectation of the Manager are capable of sale in accordance with the objectives of the Trust the Board may apply to the Minister, four calendar months prior to the end of the Trust period for an extension of the Trust period for up to a further two years.

(5) If the Minister after consultation with the Commission refuses or otherwise fails to grant an extension of time made pursuant to subsection (4) within one month of such application, the provisions of subsection (1) of this section shall apply.

(6) If at the end of any period of extension granted pursuant to subsection (4) of this section there remains any undistributed shares the provisions of subsection (1) of this section shall apply.

(7) If no extension has been granted, or if such an extension has been granted and has expired and in the opinion of the Minister it is impractical to implement the provisions of subsection (1) of this section, any undistributed shares and other assets remaining in the Trust shall, after deduction of any amounts required to meet expenses of the Trust, be disposed of as may be directed by the Minister.

[PCh127s9]9. Offer of shares in public corporation or newly privatised enterprises to the Board

(1) The Board shall consult with the Commission—

(a) at the time of divestiture of a public Corporation or after divestiture of a newly privatised enterprise as to the suitability of acquisition by the Trust;

(b) as to the desirability of amending the constitutional documents of a public corporation to provide adequate minority protection and removal of all provisions which have the effect of restricting marketing and transferability of the shares in a public corporation or a newly privatised enterprise; and

(c) and seek the co-operation of the majority shareholder in a newly privatised enterprise and the newly privatised enterprise itself as regards the listing on a stock exchange established in Tanzania, of shares in the newly privatised enterprise or being otherwise marketed in accordance with the objectives of the Trust.

(2) The Commission shall at its discretion offer the shares in a public corporation or in a newly privatised enterprise to the Board.

(3) The Commission shall undertake within seven working days after the day of receipt of a statement from the Board accepting the offer of shares transfer to the Trust the legal interest in the shares selected by the Board.

(4) Any share in registered form shall as soon as reasonably practicable, after receipt of the necessary documents by the Board be registered in the name of the Trustees (or their nominees) and shall remain so registered until disposed of pursuant to the provisions of this Act.

(5) Upon receipt by the Commission of the statement of acceptance, the shares specified in that statement shall be deemed to be subject to the Trust from the date of the receipt by the Commission, notwithstanding that any formalities required for transferring the legal title to such shares may not then have been completed.

(6) The shares shall be offered to the Board by a written offer free of all charges, encumbrances, expenses, taxes, duties, costs or like impositions.

[PCh127s10]10. Power to acquire shares

(1) Subject to the provisions of section 9 the Board shall select and acquire shares of a public Corporation, or a newly privatised enterprise prepared for divestiture, and in so doing regard shall be made to a report or recommendation prepared by the Manager as regards—

- (a) suitability of the proposed shares for sale within the Trust period;
- (b) consideration of, among other things, projected financial performance, profitability, future dividend paying potential corporate and management structure, constitution, existence of pre-emption rights, protection of minority interests, and financial strength;
- (c) possible dilution of the Trust's proposed holding by its inability to contribute to rights issues or other fund raising exercises;
- (d) suitability of the shares for listing on a stock exchange, within the Trust period and the attitude of the majority shareholders to such a listing, or to any other arrangements contemplated for achieving a level of marketability and transferability of the shares.

(2) The Board shall not acquire—

- (a) more than thirty percent of the voting rights in any investee company except with prior approval of the Minister;
- (b) an investment of a highly speculative nature;

- (c) any non-voting shares to which there is any liability attached;
- (d) shares in an investee company which is likely to be broken up or de-merged;
- (e) shares subject to pre-emption rights unless expressly waived prior to acquisition;
- (f) new shares by subscription unless otherwise agreed by the Government (or on its behalf);
- (g) a shareholding for the purposes of exercising management control;
- (h) a shareholding in newly privatised enterprises unless fifty one percent or more of the voting capital is vested in one shareholder or if vested in more than one shareholder, such shareholders shall have entered into an agreement providing for the management responsibility to be in one shareholder or Manager.

[PCh127s11]11. Board to have regard to Divestment Plan

The Board shall have regard to the recommendations in the Divestment Plan approved in accordance with subsection (1) of section 12.

[PCh127s12]12. Board requirements in relation to Divestment Plan

- (1) The Board shall require the Manager–
 - (a) to prepare and advise on a Divestment Plan relating to each investment acquired by the Trust and to submit such plan to the Board for approval on its implementation within the Trust period;

(b) to consult with any stock exchange existing in Tanzania and any relevant institutions in connection with the Divestment Plan;

(c) to divest shares in accordance with the Divestment Plan, so far as it is practicable and ensure that shares are sold directly to eligible investors at an appropriate price having regard to the objectives of the Trust;

(d) to liaise and cooperate with relevant financial institutions and stock exchanges with a view to developing other collective attractive investment schemes;

(e) to facilitate purchase of shares to eligible investors in the Trust.

(2) Where the achievement of the primary objectives of the Trust is not reasonably practicable having regard to the prevailing circumstances, shares may be sold by way of private placement to diversified groups of eligible institutions.

(3) Shares may be sold to small investors on preferential terms at the discretion of the Board and payment of purchase price of the shares by instalments may be permitted if considered appropriate.

(4) Shares not under this Act, shall not be sold to any person other than an eligible investor.

(5) An eligible investor may—

(a) during the Trust period resell his shares to the Board of Trustees who shall be free to offer for sale such shares to any other eligible investor;

(b) after the expiry of the Trust period, resell his shares to the unit Trust period, resell his shares to the unit Trust established pursuant to subsection (1) of section 8.

(6) The sale of shares by the Board shall be conducted in an open and transparent manner with appropriate publicity.

(7) Timely publicising of the availability of shares shall be done to achieve as wide spread awareness among citizens as is reasonably possible.

[PCh127s13]13. Holding of shares

(1) The Board shall pending divestment hold the trust property in the following manner, namely–

(a) the Minister shall discharge liabilities incurred in the management and administration of the Trust out of funds held by the Trust;

(b) liquid funds held by the Trust shall be invested in short term bank deposits or money market instruments pending distribution;

(c) the Manager may in appropriate cases after consultation with the Board arrange for the appointment of a Director to act on the Board of an investee company, and to represent the interest of the Trust;

(d) the Manager shall monitor the progress of each investee company whose shares are held by the Trust and shall endeavour to ensure that such investee company develops satisfactorily towards a public offering and listing if so contemplated by the applicable Divestment Plan;

(e) the Manager shall make quarterly reports to the Board as to the affairs of the Trust;

(f) the Manager shall attend shareholders meetings and exercise voting rights as it considers appropriate after obtaining proxy from the Board.

(2) The Board shall not have responsibility for actively managing the shares pending their divestment and the Board shall only exercise the voting rights attached to the shares to the extent that they are advised to do so by the Minister for the purpose of furthering the objective of the Trust in relation to such shares.

(3) The Trustees shall not be required to undertake any action as holders of shares which in their opinion would or might involve them in material expenses or liability unless the Minister furnishes them with an indemnity satisfactory to them against any such expense or liability.

[PCh127s14]14. Amount available for distribution

(1) All cash income and cash proceed of sale of shares shall subject to subsection (2) of this section, be distributed by the Board annually in respect of four accounting periods covered by the financial statements.

(2) All cash of the Trust which the Board determines is available for distribution shall be remitted to the Special Fund within sixty days after the last accounting period.

(3) The funds in the Special Fund shall, subject to the approval of the Minister, be utilised to assist the citizens of Tanzania to acquire shares in newly privatised enterprises or public corporations.

PART IV

MANAGEMENT OF THE TRUST (ss 15-16)

[PCh127s15]15. Management of the Trust

(1) The Board shall appoint a Manager who, under a management contract entered between the Trustees and the Manager, among other things, shall–

(a) advise and make recommendations on, and to administer, manage, hold and divest the shares and other assets of the Trust, in accordance with the provisions of this Act;

(b) undertake the overall direction and control of the day to day operation and management of the Trust in accordance with the management contract referred to under subsection (1) of this section;

(c) be required to keep the Board fully informed as to the discharge of its services and shall report to the Board with such information and documentation as is required to enable the Board to perform its obligations;

(d) attend all meetings of the Board whenever reasonably required by the Board to do so.

(2) The duties of the Manager shall be—

(a) to advise and make recommendations to the Board concerning the selection and acquisition of shares offered to the Board and advising the Board on matters of policy;

(b) to effect the Boards instructions regarding selection, acquisition of shares, the holding, maintenance and exercise of owners' rights relating to the Trust property and the divestment of shares;

(c) to analyse the progress in the investee companies in which the Board have acquired an interest;

(d) to consider and make recommendations regarding the exercise of or as the case may be the rights of ownership of shares to the Board;

(e) to represent and act on behalf of the Board as member of Board of directors of investee companies as and when such representation is obtained;

(f) to advise and make recommendations on divestment of shares including the preparation of divestment plans, and scheme for disposal of undistributed shares;

(g) to effect the Boards instructions regarding the divestment of shares;

(h) to prepare statements of accounts;

(i) to determine the value of the Trust property from time to time;

(j) to monitor the financial progress of newly privatised enterprise whose shares are held by the Trust and ensure such enterprise continues to develop towards a public offering and listing;

(k) to advise of any future developments or recommended changes of policy relating to the selection, acquisition, holding and divestment policies of the Board which the Manager considers advisable;

(l) to maintain such bank accounts as are necessary for the Manager to undertake its duties;

(m) to maintain all necessary records and books of account;

(n) ensure that the Board complies as are necessary for the Manager to undertake.

[PCh127s16]16. Management fees

(1) The Manager shall be paid fees which shall be determined by the Board and subject to the approval of the Minister.

(2) The Management contract entered into under this Act shall endure during the Trust period.

PART V

FINANCIAL PROVISIONS (ss 17-27)

[PCh127s17]17. Valuation

(1) The Manager shall assess the value of the Trust at all times and inform the Board accordingly.

(2) The value of the assets of the Trust and the amounts of the liabilities shall be determined by the Manager in accordance with appropriate accounting and valuation standards.

[PCh127s18]18. Financial year of the Trust

The financial year of the Trust shall be the same as the financial year of the Government.

[PCh127s19]19. Auditing and reporting

(1) The Board shall appoint auditors of the Trust who shall be an independent firm of chartered accountants.

(2) The auditors shall only be removed by unanimous agreement of the Board after consultation with the Minister.

(3) Upon the removal of the auditors the Board shall forthwith procure that a replacement firm of auditors is appointed.

(4) The Board shall keep or cause to be kept records of all dealings of the Trust including all matters necessary to be recorded for the proper administration and management of the Trust.

(5) The Board shall within thirty days of each accounting date furnish to the Minister and to the Commission a report providing details of shares and other assets acquired or disposed of, sale proceeds received or receivable and income and expenditure arising during the previous accounting period.

(6) The report issued pursuant to subsection (5) of this section shall detail a breakdown of the distribution (if any) due to be paid to the Commission as provided for in subsection (2) of section 14 in respect of such previous accounting period.

(7) The Board shall as at the anniversary of the first accounting date and every anniversary thereafter cause to be prepared financial statements giving details of all assets, acquisitions, disposal, monies held and income and expenditure accruing in respect of the preceding four accounting periods and shall cause the same to be audited by the auditors.

(8) The auditors shall make and sign a report or such statement issued pursuant to subsection (7) of this section to the effect that the accounts, books and records of the Board and the Manager have been examined and that the auditors have obtained all the explanations and information required by the auditors.

(9) The audited accounts shall be submitted to the Board not later than three months after the end of the financial year to which they relate.

(10) It shall be the duty of the Board as soon as possible but in any case not later than one month upon receipt of the report of the auditors to forward such report to the Commission and to the Minister.

(11) A copy of the report shall be submitted to the Controller and Auditor-General.

(12) The Board shall not later than four months after the end of each financial year submit to the Minister an annual report on the management of the Trust in respect of that financial year, the audited accounts, and the auditors report on the accounts, and the Minister shall submit the report together with his observations on it to the National Assembly.

[PCh127s20]20. Fees and expenses

(1) The fees, costs and expenses of the Board and the Manager in the operation and administration of the Trust shall be paid by the Commission.

(2) The Commission shall on the coming into force of this Act, allocate the Board an advance money to cover anticipated expenses up to the first accounting date.

[PCh127s21]21. Costs and expenses of the Manager

(1) Without prejudice to the provisions of section 20, all costs and expenses incurred by the Manager in the performance of his duties shall be borne by the Board except—

(a) those which is agreed between the Board and the Manager, shall be borne by the Manager; and

(b) those involved in providing and maintaining office accommodation and equipment and employing personnel for the performance of the Manager's duties shall be borne by the Manager.

(2) The Manager shall be entitled to allocate costs and expenses incurred by him on behalf of the Board which shall be payable by the Board from accounts of the Board in accordance with directions to be agreed by the Board and the Manager.

[PCh127s22]22. Taxation status of Trust

(1) Except that apart from tax levied on fees payable to the Trustees under this Act and withholding tax levied at source on dividends payable in respect of the shares—

(a) no taxation of any kind in or any duty (pursuant to section 5(1)(ii) of the Stamp Duty Act * shall be chargeable in respect of any instrument executed by or on behalf of the Board in respect of the Trust Property;

(b) the Board shall be exempted from income tax pursuant to the First Schedule of the Income Tax Act *; and

(c) the Board shall not incur or be charged with taxation of any other kind in respect of the assets or income arising to the Board in connection with the Trust, the Trust property and the shares.

(2) The Board shall not be required to make returns to any tax authority in respect of the Trust property or any part thereof.

(3) Except as provided in subsection (1) of this section the Board shall be indemnified at all times against any taxation and any costs, liabilities, claims, demands and expenses arising in connection therewith.

(4) For the purposes of this section “taxation” shall include any liability to any form of taxation whenever created or imposed (and, without limitation, includes income tax, corporation tax, estate duty, capital transfer tax, stamp duty, stamp duty reserve tax, withholding tax, customs and excise duties, and generally any amount payable to the fiscal authorities in Tanzania) and all interest or penalties related to or arising in respect thereof.

(5) The Trust shall be deemed not to be a “financial institution” for the purposes of the Banking and Financial Institutions Act, 1991.

(6) For the purposes of the Capital Markets and Securities Act, 1994 the performance by the Trustees and the Manager of their respective duties under this Act and the Management Contract shall not be deemed to be “dealing in securities” and neither the Trustees nor the Manager shall be deemed to be a “dealer” nor “investment adviser”.

[PCh127s23]23. Remuneration and indemnity of Trustees

(1) Each Trustee shall be paid an annual fee payable quarterly in arrears for the performance of his duties and such remuneration shall be increased at the time and the rate to be approved by the Minister after consultation with the Commission.

(2) In addition to the annual fee the Trustees shall be entitled to the prompt reimbursement by the Commission of all expenses incurred in the execution of their duties and powers.

[PCh127s24]24. Money and banking

(1) The Board shall maintain a bank account in which all monies collected by the Manager shall be credited.

(2) The Management Contract shall provide for all cash income received for the Board or payable to the Board to be credited to a designated bank account.

(3) The books of account and other records relating to the Trust or its assets at all times be open for inspection by the Board and any person authorised by the Board.

[PCh127s25]25. Records and accounts

(1) The Manager shall keep proper and accurate books of account of all acquisitions and transactions of the Trust in accordance with the proper accounting practices together with all necessary receipts and vouchers.

(2) The Manager shall record the location of all certificates and other documents of title.

(3) The books of account and other records relating to the Trust or its assets at all times be open for inspection by the Board and any person authorised by the Board.

[PCh127s26]26. Board's duty to maintain report

The Board shall maintain reports on—

(a) the amount of all cash, dividends, interest and income received for the account of the Trust and the amount available for distribution;

(b) the amount payable to the Manager and the basis upon which such variable fees were calculated;

(c) the amount of all expenses to be deducted in computing the amount available for distribution;

(d) value of the Trust property represented by shares and the value represented by cash and other assets.

[PCh127s27]27. No power to borrow

The Board shall not borrow or extend credit on behalf of the Trust or charge or encumber or otherwise alienate or deal with the Trust property except as may be provided for in this Act.

PART VI

GENERAL PROVISIONS (ss 28-37)

[PCh127s28]28. Disclosure of interests

(1) Where a Trustee or his immediate family or his professional and business partners or company associated with such Trustee is directly or indirectly interested in a private or professional capacity in any matter under consideration by the Trustees or the Manager relating to the Trust, he shall be required to disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching on such matter.

(2) No Trustee shall acquire any beneficial proprietary interest in an investee company or an associated company of an investee company.

(3) Nothing in this Act shall permit—

(a) the Manager or a Trustee to contract or enter into any financial, trading or other transaction with the Board or any investee company or to be interested in any such contract or transaction or the purchase or sale of any shares;

(b) the Manager to acquire a propriety interest in an investee company,

without, in each case, the prior written approval of the Board.

[PCh127s29]29. Confidentiality

(1) The Board shall not use for its own benefit or divulge other than in the proper course of performing its duties and powers, or, as required by any law or order of a court of competent jurisdiction, any confidential information which they may obtain in relation to the affairs of the Trust.

(2) The Manager shall not be entitled to use for its own benefit or divulge other than in the proper course of providing the services to the Board any confidential information which he may obtain in relation to the affairs of the Trust.

[PCh127s30]30. Exclusivity

The Manager shall not render any services similar to its services to any other person except with the consent of the Board, and such consent shall not be unreasonably withheld.

[PCh127s31]31. Conflicts and disclosures

(1) The Manager shall be entitled subject to the consent of the Board to render services—

- (a) to a prospective newly privatised enterprise;
- (b) to any person proposing to buy or sell an interest in a newly privatised enterprise:

Provided that the Manager shall be required to use his best endeavours to ensure that the Boards' interests are not prejudiced.

(2) Subject to the consent of the Board, the Manager or any of its employees shall be entitled to acquire any direct or indirect proprietary interest in a newly privatised enterprise in respect of which the Manager is considering an interest on behalf of the Board.

(3) With the consent of the Board the Manager may render services to an investee company in relation to the preparation for, or evaluation planning or negotiation of a proposed sale by the Board of any interest therein.

(4) Subject to conditions particularly expressed in the management contract, the Manager may, subject to the consent of the Board render advisory or other services to any co-investor of the Board proposing to sell an interest in an investee company.

(5) Where the Board gives its consent for the provision of services by the Manager to, or for a person other than the Board, it shall be deemed to be a condition of the consent that the Manager gives priority to the interests of the Board in providing those services and the Manager shall comply with this requirement unless the Board expressly waives it.

[PCh127s32]32. Ratification, indemnity and extent of liability

(1) The Board shall–

(a) if called on to do so, ratify and confirm any act or thing lawfully and properly done or caused to be done by the Manager in the proper performance of its duties; and

(b) keep the Manager indemnified against all or any actions, proceedings, claims, demands and liabilities arising out of the proper performance of the Manager's

duties but so that the provisions of this section shall be without prejudice to any claims which the Board may have against the Manager in respect of negligence or wilful breach of duty.

(2) The Manager shall not be liable to the Board for any loss suffered by, or arising from any depreciation in the value of shares or the income derived from such shares, or for the acts or omissions of any third party whether or not such third party is acting as the Manager's agent or otherwise in any way, except in so far as the loss arises as a result of the negligence or wilful breach of duty of the Manager.

[PCh127s33]33. No lien

The Manager and the Board shall not be entitled to exercise a right of lien on any of the Trust property or otherwise dispose of any shares other than for the purposes of the Trust.

[PCh127s34]34. Agents

(1) The Trustees shall be empowered to employ and remunerate agents as they think fit, in the proper administration of any business of the Trust including the receipt and payment of income, sale proceeds and administration services.

(2) The fees and remuneration of the agents shall be part of the expenses incurred in the execution of the duties, under the Trust.

(3) The Board shall not be liable for the acts and omissions of any agent except in the event of negligence or any wrongful act or omission on the part of the Board.

[PCh127s35]35. Amendment to existing enactments

(1) The following enactments, namely—

- (a) the Treasury Act;
- (b) the Companies Act *;
- (c) the Public Corporations Act *;
- (d) the Banking and Financial Institutions Act *;
- (e) the Stamp Duty Act *;
- (f) the Income Tax Act *;
- (g) the Capital Markets and Securities Act *,

and other enactments relating to the functions and status of the Trust as provided for under this Act, shall have effect with such modifications as may be necessary to give full effect to this Act.

[PCh127s36]36. Regulations

The Minister may make regulations as he deems necessary or convenient for the effective implementation of the purposes and provisions of this Act.

[PCh127s37]37. Duration of this Act

Without prejudice to the provisions of section 8 this Act shall continue in force for a period of five years commencing on the day the Trust starts operating and shall then expire unless upon the recommendation of the Minister, the National Assembly by resolution extends its duration for a further period as it may deem necessary.