

CHAPTER 305

THE TANZANIA POSTS AND TELECOMMUNICATIONS (VESTING OF ASSETS AND LIABILITIES) ACT

An Act to vest the assets and liabilities of Tanzania Posts and Telecommunications Corporation into new designated entities and to provide for other related transitional matters.

[1st January, 1994]

Act No. 21 of 1993

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh305s1]1. Short title and application Act No. 15 of 1977

(1) This Act may be cited as the Tanzania Posts and Telecommunications (Vesting of Assets and Liabilities) Act and shall come into operation on the 1st day of January, 1994.

(2) This Act shall apply to Tanzania Zanzibar as well as to Mainland Tanzania.

[PCh305s2]2. Interpretation

In this Act, unless the context otherwise requires—

"assets" includes all property movable or immovable and all estates, easements and rights whether equitable or legal in, to or out of property, choses-in-action, money and goodwill;

"Commission" means the Tanzania Communications Commission established by the Tanzania Communications Act *;

"Committee" means the Transition Management Committee established by section 6;

"Company" means the Tanzania Telecommunications Company Limited by the Tanzania Posts and Telecommunications Corporation Act *;

"Corporation" means the Tanzania Posts Corporation established by the Tanzania Posts Corporation Act *;

"former corporation" means the Tanzania Posts and Telecommunications Corporation established by the Tanzania Posts and Telecommunications Corporation Act *;

"liabilities" means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether payable to be observed or performed in the United Republic or elsewhere;

"Minister" means the Minister responsible for matters relating to posts and telecommunications;

"rights" means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

"vesting date" means the date on which assets, and liabilities to which the former corporation was entitled or subject to, are transferred to and vested in the Commission, the Company or the Corporation, as the case may be.

PART II

DISSOLUTION AND VESTING PROVISIONS (ss 3-4)

[PCh305s3]3. Dissolution of former corporation

With effect from the date of commencement of this Act, (in this Act referred to as the vesting date) the former corporation shall be deemed to have dissolved.

[PCh305s4]4. Vesting of assets and liabilities of former corporation into new entities

(1) Consequent upon the split of the former corporation into the Company and the Corporation, all assets and liabilities to which the former corporation was entitled or subject to, immediately before the vesting date shall, with effect from the date of coming into operation of this Act, by virtue of this section and without further assurance—

- (a) in respect of telecommunications services, be transferred to and vest in the Company;
- (b) in respect of postal service, be transferred to and vest in the Corporation;
- (c) in respect of telecommunications regulatory services, be transferred to and vest in the Commission.

(2) The Minister shall within not more than twelve months from the vesting date and upon advice by the Committee, by notice published in the Gazette, determine the assets and liabilities allocated to the Company, the Corporation and the Commission respectively.

(3) Every person who, immediately before the vesting date, was managing the affairs and business of the former corporation shall, upon and after the vesting date do all things that are necessary or desirable, subject to such directions as the Committee may

give, for the effectual vesting in accordance with this Act of the assets and liabilities of the former corporation subsisting immediately before the vesting date.

(4) Where before the vesting date any person who was responsible for the management of the affairs and business of the former corporation does, or purports to do, any lawful act in relation to the assets and liabilities of the former corporation which is done after the vesting date would be necessary or desirable for the more effectual vesting of the assets and liabilities of the former corporation in the Company, the Corporation, or, as the case may be, the Commission, such lawful act shall be deemed to have been done under this Act and its performance by that person shall not be called into question in any court by reason only of that act having been done before the vesting date.

(5) Notwithstanding the preceding provisions, no person shall after the enactment of this Act but before the vesting date, transfer or enter into any transaction which might, on or after the vesting date, result in the transfer of any of the assets of the former corporation in any manner other than that provided for by this Act.

(6) For the avoidance of doubt any reference to—

(a) assets in respect of telecommunications or postal services to which the former Corporation was entitled to is a reference to land, property and choses-in-action of the Corporation whether situated in the United Republic or elsewhere;

(b) rights and liabilities in respect of telecommunications and postal services to which the former Corporation is entitled or subject to is a reference to rights which the former Corporation is entitled to or as the case may be liabilities to which the former Corporation is subject to whether under the laws of the United Republic or any country

outside the United Republic and includes rights and liabilities arising under loans raised for telecommunications or postal services, as the case may be.

(7) Every chose-in-action transferred by subsection (1) to the Company, the Corporation or the Commission, may, on or after the vesting date, be sued on, recovered or enforced by the Company, the Corporation or the Commission, as the case may be, in its own name and it shall not be necessary for the Company, the Corporation or the Commission to give notice to the person bound by the chose-in-action of the transfer effected by this subsection.

(8) Every asset and liability transferred by subsection (1) to the Company, the Corporation or the Commission, may, on or after the vesting date, be sued on, recovered or enforced by or against the Company the Corporation or the Commission, as the case may be, in its own name and it shall not be necessary for the Company, the Corporation or the Commission to give notice of the transfer to the person whose asset or liability is transferred by this section.

(9) In the case of assets and liabilities arising under any loans which vest in the Company, the Corporation or the Commission on the vesting date, the Company, the Corporation or the Commission as the case may be, may enter into such arrangements over such rights and liabilities with the Government of the United Republic or any other third party.

(10) Any assets and liabilities of the former corporation which are not vested either in the Company, the Corporation or the Commission shall, at the end of the transitional

period, be dealt with by the Company, the Corporation or the Commission, as the case may be, in such manner as the Minister shall determine.

(11) Any person who fails or refuses to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or to both that fine and imprisonment.

PART III

CONSEQUENTIAL AND TRANSITIONAL PROVISIONS (ss 5-11)

[PCh305s5]5. Transitional period

There shall be a transitional period of not more than twelve months within which, subject to this Act, all necessary measures shall be taken to facilitate the winding-up of the affairs and business of the former corporation, the effectual transfer and vesting of its assets and liabilities and the transfer of and discharge of the affairs of the employees of the former corporation.

[PCh305s6]6. Appointment of Transition Management Committee

(1) There is established a Committee to be known as the Transition Management Committee which shall consist of—

- (a) a Chairman who shall be appointed by the Minister;
- (b) the Attorney-General or his representative;
- (c) the Director-General of the Commission;
- (d) the Managing Director of the Company; and

(e) the Postmaster-General.

(2) The Committee shall, subject to such directions as the Minister may issue in that behalf, regulate the procedure for the conduct of its business, and be answerable to the Minister for the overall conduct of the transitional functions referred to in section 5.

(3) Notwithstanding the generality of subsections (1) and (2) the Committee shall—

(a) complete the transfer of all assets and liabilities to the Company, the Corporation or the Commission and deal with any such matters incidental to the transfer as are necessary;

(b) transfer all employees and affairs of the former corporation to the Company, the Corporation or the Commission in the manner set out under sections 7, 8 and 9;

(c) deal with any residual property, assets and liabilities of the former Corporation in any manner that shall be deemed expedient.

(4) All the expenses of the Committee shall be funded by the Company and be finally recovered from the accounts of the former corporation as winding up expenses and the Committee and its staff shall be paid such fees, salaries and allowances as the Minister shall, upon advice by the Committee, determine.

[PCh305s7]7. Provisions regarding Tanzania Posts and Telecommunications Corporation employees

(1) Subject to this Act, the employees of the former corporation shall with effect from the vesting date be transferred to and be employed by the Company, the Corporation or the Commission, as the case may be.

(2) The Committee shall, not later than the end of the transitional period, and with the approval of the Minister, finally determine which of the employees of the former corporation shall be employed by the Company, the Corporation or the Commission, as the case may be.

(3) With effect from the vesting date—

(a) the Company shall accept into its employment, subject to this Act, every person who immediately before the vesting date was employed by the former corporation in its telecommunications services and is designated by the Committee for employment by the Company;

(b) the Corporation shall accept into its employment, subject to this Act, every person who immediately before the vesting date was employed by the former corporation in its postal services and is designated by the Committee for employment by the Corporation;

(c) the Commission shall accept into its employment, subject to this Act, every person who immediately before the vesting date was employed by the former corporation in its regulatory services and is designated by the Committee for employment by the Commission.

[PCh305s8]8. Provisions applicable to transferred staff

(1) With effect from the vesting date every employee transferred from the former corporation shall be employed by the new employer on terms not less favourable than those applicable to him before his transfer.

(2) Until such time as new schemes, terms and conditions of service are drawn up by the Company or the Corporation or the Commission as the case may be, the schemes, terms and conditions of service in the former Corporation shall continue to apply to every person transferred under subsection (1) to the services of the Company or the Corporation or the Commission as the case may be, as if he was still in the service of the former Corporation.

(3) Where any person who is transferred to the service of the Company or the Corporation or the Commission as the case may be, under subsection (1) is a member of any statutory or voluntary pension scheme or provident fund he shall for the purposes of this Act continue to be governed by the same regulations under those schemes or funds as if he had not been transferred to the service of the Company or the Corporation or the Commission as the case may be, and for the purposes of the regulations governing those schemes, his services with the Company or the Corporation or the Commission as the case may be, shall be deemed to be services in the former Corporation.

(4) The Company or the Corporation or the Commission as the case may be, shall continue to be liable to former employees of the former Corporation or its predecessors, who have retired on or before the date of coming into operation of this Act, such pension benefits payable as they are entitled to under the regulations of those pensions schemes.

[PCh305s9]9. Continuation and completion of disciplinary proceedings

(1) Where on the date of coming into operation of this Act—

(a) any disciplinary proceedings which have been initiated against any employee of the former Corporation and the proceedings are still pending before the

former Corporation or in the course of being heard or investigated by the former Corporation or had been heard or investigated by the former Corporation and no order or decision had been rendered thereon; or

(b) any such employee has been interdicted or suspended,
the Company or the Corporation or the Commission, as the case may be, shall—

(i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and

(ii) in the case of paragraph (b), deal with the employee in such manner as it thinks appropriate having regard to the offence against him, including the institution and completion of disciplinary proceedings and the making of an order or the rendering of a decision as the case may be,

as if such disciplinary proceedings had been commenced by the Company or the Corporation or the Commission as the case may be, to which the employee would be employed.

(2) Where on the date of coming into operation of this Act, any penalty, other than dismissal, has been imposed on any employee of the former Corporation pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, served by that employee, he shall on his transfer to the Company or Corporation or the Commission as the case may be, under subsection (1) serve or continue to serve that penalty to its full term as if it had been imposed by the Company or the Corporation or the Commission and the penalty shall remain valid against the employee on his transfer and shall continue in full force and effect until he has served the penalty in full.

[PCh305s10]10. Repeal of Act No. 15 of 1977

[Repeals the Tanzania Posts and Telecommunications Corporation Act.]

[PCh305s11]11. Savings

Notwithstanding the repeal of the Tanzania Posts and Telecommunications Corporation Act *, all subsidiary legislation made under it which were in force immediately before the vesting date and which are required for the continuation of the business of the former corporation shall continue in force until they are revoked or replaced.