

## **CHAPTER 98**

### **THE PUBLIC ENTERPRISES REFORM AND DIVESTITURE ACT.**

#### **Arrangement of Sections.**

#### Section

##### **PART I—PRELIMINARY.**

1. Interpretation.
2. Objectives of this Act.

##### **PART II—INSTITUTIONAL FRAMEWORK FOR REFORM AND DIVESTITURE.**

3. Divestiture and Reform Implementation Committee.
4. Membership of committee and participation in its proceedings and functions.
5. Functions of committee.
6. Disclosure of interest.

##### **PART III—INSTITUTIONAL FRAMEWORK FOR MONITORING.**

7. Monitoring by Minister responsible for finance.

##### **PART IV—MONITORING.**

8. Operational principles.
9. Management of public enterprises.
10. Employee participation in ownership.
11. Operating plans.
12. Annual reports to responsible Minister.
13. Submission of report and other information to the Minister, etc.
14. Confidential information not to be divulged to third parties.
15. Annual certificate of responsibility.
16. State shares.
17. Auditor General to audit public enterprises.
18. Minister to lay reports, etc. before Parliament.

#### PART V—REFORM.

19. Financial discipline.
20. Criteria for reform, restructuring, etc.
21. Compensation for redundant employees.

#### PART VI—DIVESTITURE.

22. Divestiture.
23. Actual sale and transfer of public enterprises.
24. Power of responsible Minister to direct transfer of shares.
25. Shares to public and employees, etc.
26. Use of proceeds of divestiture.
27. Acquisition of shares by Minister.
28. Formation of successor companies.
29. Minister to appoint a date for vesting of undertaking of public enterprises in successor company.
30. Consequential provision.
31. Protection of employee contracts, etc.
32. Vesting of land of public enterprise in successor company.
33. Successor company and public enterprises to be treated as same for tax purposes.
34. Registration of two or more successor companies in place of a single public enterprise.
35. Effect of divestiture or liquidation on relevant enactments.

#### PART VII—OFFENCES AND PENALTIES.

36. Penalty for stripping or concealing assets.
37. Penalty for causing financial loss.
38. Restriction on persons, parties participating in divestiture.
39. Offences and penalties.

#### PART VIII—MISCELLANEOUS.

40. Reports to Parliament.
41. Primacy of this Act.
42. Application of Investment Code.
43. Regulations.
44. Amendment of Schedules.

45. Amendment of Third and Fourth Schedules.
46. Departed Asians' Property Custodian Board legislation not affected.
47. Saving of private rights.

### **Schedules**

*First Schedule*      Classification of public enterprises.

*Second Schedule*      Divestiture guidelines.

*Third Schedule*      Currency point.

*Fourth Schedule*      Meetings of the committee.

## CHAPTER 98

### THE PUBLIC ENTERPRISES REFORM AND DIVESTITURE ACT.

*Commencement:* 8 October, 1993.

**An Act to provide for the reform and divestiture of public enterprises; to establish the Divestiture and Reform Implementation Committee charged with the implementation of the Government's programme on the matter and for other related matters.**

#### PART I—PRELIMINARY.

##### 1. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “appointed day” means the date appointed by the responsible Minister by statutory instrument made under section 29(1) for the vesting of the undertaking of a public enterprise named in the instrument in the successor company of that enterprise;
- (b) “associate”, in relation to a person, means—
  - (i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10 percent of the voting rights (either under all circumstances or by reason of the occurrence of an event that has occurred and is continuing) or a currently exercisable right or option to acquire such shares or securities;
  - (ii) a partner of that person acting on behalf of the partnership of which they are partners;
  - (iii) a trust in which that person has a substantial beneficial interest or in respect of which he or she serves as trustee or in a similar capacity;
  - (iv) a spouse or child of that person; or
  - (v) a relative of that person or of his or her spouse, if the relative has the same residence as that person;
- (c) “board” or “board of directors” means—
  - (i) in relation to a public enterprise that is a company, the board of directors of that enterprise; and

- (ii) in relation to any other public enterprise, the persons occupying the positions in or in relation to that enterprise that are comparable with those of the board of directors of a company;
- (d) “committee” means the Divestiture and Reform Implementation Committee;
- (e) “currency point” has the meaning assigned to it in the Third Schedule to this Act;
- (f) “Development Credit Agreement” means the Development Credit Agreement entered into on the 9th day of January, 1992, between the Republic of Uganda and the International Development Association;
- (g) “divestiture” means the transfer of the proprietary interest in, or operational control of, a public enterprise or its assets from the State or that enterprise to private persons utilising one or more of the methods referred to in paragraph 7(1) of the Second Schedule to this Act, and includes where appropriate the winding up or dissolution of that enterprise;
- (h) “divestiture account” means the divestiture account established by virtue of the Development Credit Agreement;
- (i) “financial year” means the financial year of the public enterprise;
- (j) “instrument” includes—
  - (i) any instrument of any form or kind that creates, evidences, modifies or extinguishes rights, interests or liabilities or would do so if it or a copy of it were lodged, filed or registered under any enactment; and
  - (ii) any judgment, order or process of a court;
- (k) “liabilities” means liabilities, debts, charges, duties and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in Uganda or outside Uganda;
- (l) “line Minister”, in relation to a public enterprise, means the Minister responsible for the sector in which that enterprise falls;
- (m) “net book value” means the value in accounting terms of total assets less total liabilities and includes shareholders’ interest or equity or net worth;
- (n) “present value” means the current hypothetical price of a given quantum of future profits as a basis for determining the notional value of an enterprise;
- (o) “private”, in relation to ownership of an enterprise, means ownership by persons other than the State;

- (p) “property” means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes—
  - (i) choses in action and money;
  - (ii) goodwill; and
  - (iii) rights, interests and claims of every kind in or to property, whether arising from, occurring under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective;
- (q) “public”, in relation to ownership of the proprietary interest in any enterprise, means ownership by the State;
- (r) “public enterprise” means—
  - (i) an enterprise specified in the First Schedule to this Act;
  - (ii) any other body corporate, whether established under the Companies Act or under any other enactment, in which the State owns the whole or part of the proprietary interest or which is otherwise controlled directly or indirectly by the State; and
  - (iii) any company established for the purposes of, or in connection with, the divestiture of an enterprise specified in the First Schedule to this Act, whether pursuant to section 28 or otherwise;
- (s) “redundancy account” means the redundancy account established by virtue of the Development Credit Agreement;
- (t) “reform” means—
  - (i) the strengthening or improvement of the policies and procedures of a public enterprise and of its relationship with the Government; and
  - (ii) the restructuring of a public enterprise;
- (u) “registrar” means the registrar of companies;
- (v) “responsible Minister” means the Minister responsible for the reform and divestiture of public enterprises;
- (w) “rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;
- (x) “shares” includes other proprietary interest;
- (y) “State”, in relation to the ownership of the proprietary interest in an enterprise, includes a statutory corporation;
- (z) “subsidiary” has the meaning assigned to it in the Companies Act;
- (aa) “successor company”, in relation to a public enterprise, means

the company in which the undertaking of the public enterprise is to be vested in accordance with section 29(1);

- (bb) “undertaking”, in relation to a public enterprise, means the property, rights and liabilities of the public enterprise;
- (cc) “valuation” means an estimate of the worth of an enterprise.

## **2. Objectives of this Act.**

(1) The main objective of this Act is to give effect to the Government Policy for Public Enterprise Reform and Divestiture published in Gazette No. 48 of 1st November, 1991, and also the Action Plan for Public Enterprise Reform and Divestiture.

(2) Without prejudice to the general effect of subsection (1), the following objectives shall be deemed to fall under the objective specified in that subsection—

- (a) the reduction of Government equity holding in the public enterprises and thereby, *inter alia*, relieving the Government of the financial drain on its resources and the burden of their administration and raising revenue by means of divestiture, including, where necessary, liquidation or dissolution of public enterprises and by the promotion, development and strengthening of the private sector;
- (b) the promotion of institutional arrangements, policies and procedures for—
  - (i) ensuring the efficient and successful management, financial accounting and budgetary discipline of public enterprises;
  - (ii) ensuring the separation of ownership and management functions;
  - (iii) enabling the Government to play its proper role more effectively as owner of public enterprises; and
  - (iv) enforcing accountability;
- (c) the rehabilitation and restructuring where appropriate, of public enterprises; and
- (d) the promotion of local entrepreneurship.

## **PART II—INSTITUTIONAL FRAMEWORK FOR REFORM AND DIVESTITURE.**

### **3. Divestiture and Reform Implementation Committee.**

There shall be a body to be known as the Divestiture and Reform

Implementation Committee.

**4. Membership of committee and participation in its proceedings and functions.**

- (1) The committee shall consist of the following members—
  - (a) the Minister responsible for finance who shall be the chairperson;
  - (b) the responsible Minister;
  - (c) four eminent Ugandans with considerable knowledge and experience in industry, commerce, law, finance or economics appointed by the Minister responsible for finance; and
  - (d) the chairperson of the Uganda Investment Authority.

(2) The Attorney General is entitled to attend personally or by a representative and participate in the proceedings of the committee in an advisory capacity without the right to vote.

(3) The line Minister shall be entitled to attend and participate in the proceedings of the committee and shall have a right to vote in respect of the reform and divestiture of a public enterprise under his or her sector and shall for that purpose be deemed to be a member of the committee.

(4) The committee may co-opt any person to assist the committee in carrying out its functions if the committee is satisfied that the person possesses expertise in relation to the public enterprise; but the person co-opted under this subsection shall have no right to vote on any matter coming before the committee.

**5. Functions of committee.**

(1) The committee shall be responsible for implementing the Government's policy on reform and divestiture of public enterprises under this Act.

(2) The committee shall also have such other functions as are prescribed by this Act.

(3) The committee may co-opt to any of its meetings any person whom the committee is satisfied can assist it at the meeting; and a person so co-opted may participate in proceedings of the committee at that meeting but shall have no right to vote.



(4) The proceedings of the meetings of the committee shall be as set out in the Fourth Schedule to this Act.

**6. Disclosure of interest.**

(1) If a member of the committee, or any associate of any such member, is directly or indirectly interested in a private or professional capacity in a matter being considered or about to be considered by the committee, the member shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the committee.

(2) A disclosure of interest under subsection (1) shall be recorded in the minutes of the meeting of the committee, and the member making the disclosure shall not—

- (a) be present during any deliberation on the matter by the committee; or
- (b) take part in the decision of the committee.

(3) This section shall, with the necessary modifications, apply to a person who is co-opted to a committee meeting as referred to in section 5.

PART III—INSTITUTIONAL FRAMEWORK FOR MONITORING.

**7. Monitoring by Minister responsible for finance.**

(1) The Minister responsible for finance shall—

- (a) exercise a strategic economic monitoring role in relation to public enterprises; and
- (b) liaise as necessary with line Ministers in monitoring the performance of public enterprises and in participating in the development and supervision of their operating plans.

(2) Without prejudice to subsection (1), the Minister responsible for finance shall—

- (a) monitor public enterprise subsidies both direct and indirect with a view to the phased elimination of all public enterprise subsidies;
- (b) identify financial flows and dues between public enterprises and the Government and arrange for their settlement; and

- (c) oversee caretaker costs and activities of public enterprises which have been selected for divestiture and those that are financially distressed.

#### PART IV—MONITORING.

### **8. Operational principles.**

In determining the policies, operational issues and plans of a public enterprise generally, the managers, directors and line Ministers of enterprises and the Minister responsible for finance shall be guided by the following considerations—

- (a) the commercial objectives of the enterprise;
- (b) the need for financial self-sufficiency of the enterprise;
- (c) developmental strategies of the Government;
- (d) international and regional obligations of Uganda;
- (e) inducement for Ugandan and foreign investment and participation in business by the general public.

### **9. Management of public enterprises.**

(1) In the management of public enterprises, Government policy shall recognise the need for the following fundamental conditions—

- (a) autonomy in public enterprise management, which shall be deemed to be freedom of the enterprise to manage its operational and financial affairs efficiently without interference or hindrance;
- (b) accountability of public enterprises;
- (c) support for improved performance;
- (d) rewarding good performance while censuring poor performance;
- (e) clear definition of the functions of boards of directors;
- (f) selecting experienced and qualified boards of directors, chief executive officers and managers.

(2) Government policy towards the management of public enterprises shall also be guided by the following—

- (a) an institutionalised mechanism with defined and published procedures and criteria;
- (b) elimination of nonobjective and other extraneous factors for public enterprise appointments;
- (c) equal opportunity for employment and selection; and
- (d) promotion of confidence, initiative, professionalism and

excellence in management.

(3) The managers and directors of a public enterprise shall be persons who are qualified by training and experience to assist the enterprise in achieving its objectives.

(4) The board of a public enterprise shall be appointed by the shareholders of the enterprise in a general meeting in accordance with the Companies Act where applicable.

(5) The board of directors of the enterprise shall appoint the managers, including the chief executive, based on merit and open competition through public advertisement indicating the qualifications and experience required and interviews by competent panels.

#### **10. Employee participation in ownership.**

A public enterprise may provide for participation in the ownership of the enterprise through investment by its employees in shares and may, to this end, permit—

- (a) individual, union, collective and institutional ownership of shares;
- (b) payment of share calls and other dues through discounts, installments, bonus schemes and other arrangements intended to benefit employees.

#### **11. Operating plans.**

(1) The board of directors of each public enterprise under divestiture shall submit to the Minister responsible for finance and the line Minister a draft operating plan in respect of the activities of that public enterprise and its subsidiaries during the next succeeding financial year, not later than two months prior to the commencement of that financial year.

(2) Each operating plan shall contain such information and be in such form as is specified in guidelines issued to the relevant public enterprise by the Minister responsible for finance in consultation with the line Minister and shall include without limitation to the foregoing the following information—

- (a) the objectives of the public enterprise;
- (b) the nature and scope of the activities to be undertaken;
- (c) the accounting policies of the public enterprise;

- (d) the performance targets and other measures by which the performance of the public enterprise may be judged in relation to its objectives;
- (e) an estimate of the profit that is intended to be distributed to the Government in respect of the relevant financial year; and
- (f) the kind of information to be provided to the Minister responsible for finance and the line Minister by the public enterprise during the course of the relevant financial year, including the information to be included in each half-yearly report.

(3) The Minister responsible for finance, in consultation with the line Minister, shall review the draft operating plan and send his or her comments on it to the board of directors concerned within one month after its original submission, and the board shall incorporate those comments into the operating plan in a manner satisfactory to the Minister responsible for finance in consultation with the line Minister and deliver the final operating plan to each such Minister not later than the date of commencement of the financial year with which the operating plan is concerned.

(4) An operating plan for a public enterprise may be modified by the board of directors of that public enterprise at any time if the board has first given written notice to the Minister responsible for finance and the line Minister of the proposed modification and the Minister responsible for finance in consultation with the line Minister has approved the modification.

(5) All decisions relating to the operation of a public enterprise shall be made by or pursuant to the authority of the board of directors in accordance with its operating plan; and the board shall be accountable to the Minister responsible for finance acting in consultation with the line Minister for any derogation from the operating plan.

## **12. Annual reports to responsible Minister.**

(1) The board of directors of a public enterprise shall, within three months after the end of each financial year, deliver to the Minister responsible for finance and the line Minister—

- (a) a report of the operations of the public enterprise and of its subsidiaries during that financial year;
- (b) audited financial statements for that financial year, consisting of a statement of a balance sheet, profit and loss account, source and application of funds, and such other statements as may be

necessary to show the financial position of the public enterprise and its subsidiaries and the results of its operations for that financial year;

- (c) the auditor's report on the financial statements referred to in paragraph (b) of this subsection.

(2) Every report under subsection (1)(a) shall contain such information as is necessary to enable an informed assessment to be made of the operations of the public enterprise and its subsidiaries, including a comparison of the performance of the public enterprise and its subsidiaries with the relevant operating plan, and shall state the dividend payable to the Government by the public enterprise for the financial year to which the report relates.

### **13. Submission of report and other information to the Minister, etc.**

(1) Within two months after the end of the first half of each financial year of a public enterprise, the board of directors of that public enterprise shall deliver to the Minister responsible for finance and the line Minister a report on its operations and the operations of its subsidiaries during that half year.

(2) Each report required by this section shall include the information required by the operating plan to be included in it.

(3) Each chief executive, director, secretary and manager of a public enterprise shall supply to the Minister responsible for finance and the line Minister such information relating to the affairs of that public enterprise as either Minister may, from time to time, in writing request.

(4) The Minister responsible for finance shall have the power to obtain access to the books and records of each public enterprise at its premises during normal working hours upon giving reasonable notice; and no chief executive, director, secretary, manager or other employee of a public enterprise shall impede such access.

### **14. Confidential information not to be divulged to third parties.**

No chief executive, director, secretary, manager or other employee of a public enterprise shall divulge any confidential information in relation to that public enterprise to any third party without the authority of the board of

directors of that public enterprise.

**15. Annual certificate of responsibility.**

(1) A public enterprise shall cause to be issued within three months after the end of each financial year, a public certificate signed by its chairperson, chief executive officer and its chief financial officer acknowledging their responsibility for the proper and due regard for the safeguarding of the assets of the enterprise and their compliance with those responsibilities.

(2) A copy of the certificate shall be delivered to the Minister responsible for finance and the line Minister, and the enterprise shall cause a copy to be published in a national newspaper together with the audited financial statements of the enterprise.

**16. State shares.**

(1) Shares of the State in a public enterprise held in the name of a person described as Minister shall be held by the person for the time being holding the office of Minister.

(2) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of shares of the kind referred to in subsection (1) consequent upon a change in the person holding the office of Minister by reason only of that change.

(3) The Minister responsible for finance or the line Minister may, at any time, by written notice to the managing director or other chief executive of a public enterprise, authorise, on such terms and conditions as are specified in the notice, such person as the Minister thinks fit to act as the Minister's representative at any or all of the meetings of shareholders, and any person so authorised shall be entitled to exercise the same powers on behalf of the Minister as the Minister could have exercised if present in person at the meeting or meetings.

**17. Auditor General to audit public enterprises.**

(1) Notwithstanding the Companies Act, the Auditor General shall be responsible for auditing the accounts of public enterprises in classes I and II of the First Schedule and shall have, in relation to them, the same duties

and powers as he or she has in respect of Government departments and, in particular, with regard to public funds and Government property.

(2) Without prejudice to the general effect of subsection (1), the Auditor General shall cause the accounts of each public enterprise to be audited at least once a year.

(3) Every public enterprise shall pay to the Auditor General's office for carrying out its functions under this section, fees at such rates as may be prescribed by the Minister responsible for finance.

(4) Without limiting subsections (1) to (3), the Auditor General may appoint a person or a firm that is qualified for appointment as an auditor to be a joint auditor of the public enterprise or any of its subsidiaries.

(5) Every public enterprise shall cause to be published annually in a national newspaper its audited financial statements consisting of a balance sheet and profit and loss account within ninety days after the end of its financial year.

#### **18. Minister to lay reports, etc. before Parliament.**

(1) The line Minister of the public enterprise shall lay before Parliament the memorandum and articles of association of a public enterprise for whose affairs he or she is responsible after they have been published or otherwise adopted and also any changes made in them as soon as practicable after they have been published or adopted.

(2) The line Minister shall also lay before Parliament, as soon as possible after receiving them—

- (a) the operating plan of the public enterprise and any modifications made to it;
- (b) the reports described in section 12; and
- (c) the auditor's report in respect of the preceding financial year.

#### **PART V—REFORM.**

#### **19. Financial discipline.**

The Government's policies regarding the reform of public enterprises shall recognise the following basic requirements—

- (a) strict compliance with the budget and financial discipline in public enterprises;
- (b) separation of commercial and noncommercial objectives within public enterprises;
- (c) setting up more efficient operating systems within the enterprise.

## **20. Criteria for reform, restructuring, etc.**

(1) The Government shall not be obliged to support unprofitable enterprises, and the question of whether any enterprise is or is not profitable shall be determined by the Minister responsible for finance.

(2) The criteria for selection of public enterprises for restructuring and the individual mode of restructuring shall be determined by the responsible Minister.

(3) The responsible Minister shall determine the course or courses of action, if any, to be taken in the case of restructured enterprises that do not meet their operating and financial targets.

(4) The responsible Minister shall have the power to formulate and execute detailed plans for the reform of any public enterprise.

(5) The Minister responsible for finance or the responsible Minister, as the case may be, shall consult with the relevant line Minister prior to his or her making any determination or exercising any power in relation to a public enterprise under this section.

## **21. Compensation for redundant employees.**

The Minister responsible for finance shall ensure that provision is made for payment of compensation to employees who are declared redundant as a result of the restructuring or liquidation of public enterprises through the establishment and operation of a redundancy account to be opened at a commercial bank approved by the Minister responsible for finance.

### PART VI—DIVESTITURE.

## **22. Divestiture.**

- (1) Subject to this Act, the enterprises specified in the First Schedule



to this Act shall be dealt with as follows—

- (a) the enterprises specified in class I of that Schedule shall be or continue to be fully owned by the State;
- (b) as to the enterprises specified in class II of that Schedule, the State shall retain a majority of the shares of each enterprise, and the remainder shall be disposed of to persons other than the State in accordance with this Act;
- (c) as to the enterprises specified in class III of that Schedule, the State shall totally divest itself by disposal of all the shares in each enterprise to persons other than the State in accordance with this Act; and
- (d) as to the enterprises specified in class IV of that Schedule, the State shall liquidate the enterprises in accordance with this Act.

(2) For the avoidance of doubt, any company established for the purposes of, or in connection with, the divestiture of an enterprise specified in the First Schedule to this Act whether under section 28 or otherwise shall be deemed to be listed in the same class as that enterprise.

(3) The divestiture under this section shall be carried out in accordance with the divestiture guidelines set out in the Second Schedule to this Act.

(4) All proceeds of divestiture of a public enterprise shall be deposited in the divestiture account to be maintained in commercial banks and development banks designated by the Minister responsible for finance in consultation with the Divestiture and Reform Implementation Committee.

(5) Subject to section 26, the divestiture account shall be used for promoting Ugandan entrepreneurs for agricultural and industrial development.

### **23. Actual sale and transfer of public enterprises.**

(1) Subject to this Act (but notwithstanding the provisions of the Companies Act, any other enactment or the articles of association of any public enterprise or any rule of law), the Minister responsible for finance shall have the power, in relation to a public enterprise, to enter into, execute, make or give, on behalf of the Government or such enterprise, as the case may be, such contracts, agreements, conveyances, deeds, leases, licences and other instruments, undertakings and notices as shall be necessary or desirable

to give effect to the divestiture of the enterprise.

(2) Without prejudice to the general effect of subsection (1), the Minister responsible for finance, or the responsible Minister may, for purposes of this Act, transfer any right, asset, property, obligation or liability of any existing public enterprise to any other public enterprise established to replace it in pursuance of this Act.

(3) Where a contract, agreement, conveyance, deed, lease, licence or other instrument, undertaking or notice of the type mentioned in subsections (1) and (2) involves the transfer of a proprietary interest into private ownership, the responsible Minister shall first obtain the approval of the committee to the commercial terms of divestiture of the enterprise concerned.

(4) All proceeds of divestiture of a public enterprise, including, for the avoidance of doubt, any proceeds to which, but for this subsection, the enterprise concerned would be entitled, shall be deposited in the divestiture account to be maintained in commercial banks and development banks designated by the Minister responsible for finance in consultation with the committee and used solely in accordance with this Act.

(5) The Minister responsible for finance may delegate any of his or her powers under Part VI of this Act to the responsible Minister.

#### **24. Power of responsible Minister to direct transfer of shares.**

- (1) Subject to this Act, the responsible Minister may—
- (a) in the case of a public enterprise specified in class II, III or IV of the First Schedule to this Act which is wholly owned by the Government or which is only partly owned by the Government but in respect of which there are no applicable preemption rights on transfer conferred under its articles of association or in any other way, by notice to the line Minister or other person or persons registered as the holder of any share of the Government in that enterprise, require that line Minister or person or persons to cause their interest in that share to be transferred into the name of the responsible Minister or the Minister responsible for finance; and
- (b) in the case of a public enterprise specified in class II, III or IV of the First Schedule to this Act, which is only partly owned by the Government and in respect of which there are applicable

preemption rights on transfer conferred under its articles of association or in any other way, by notice to the line Minister or other person or persons registered as the holder of any share of the Government in that enterprise, require that line Minister or person or persons to offer that share for sale to the other shareholders of that enterprise in accordance with those preemption rights and subject to that, to any directions given by the responsible Minister and, if the other shareholders fail or decline to purchase that share when offered for sale, by notice require that line Minister or other person or persons to offer that share for sale to any other person or persons in accordance with those preemption rights and articles of association and, subject to that, any directions given by the responsible Minister.

(2) Subsection (1) shall apply to any public enterprise specified in class II, III or IV of the First Schedule to this Act which is wholly or partly owned by another public enterprise which latter enterprise is wholly owned by the Government and which is referred to in this section as the holding company as if references in that subsection to the Government and to the line Minister or other person or persons registered as the holder of any share of the Government were, in each case, to the holding company and, in those circumstances, any notice by the responsible Minister under subsection (1) shall be addressed to the person or secretary of the board of directors of the holding company, and the chairperson or secretary as the case may be shall cause the holding company to comply with the terms of the notice.

(3) Any notice given by the responsible Minister under subsection (1) shall be in such form as the responsible Minister may determine and shall be acted upon by the person to whom the notice is addressed within thirty days after receipt.

(4) Notwithstanding the Companies Act, any other enactment or the articles of association of any public enterprise, it shall be the duty of the board of directors and the secretary of every public enterprise to cooperate with the responsible Minister in the transfer of any share under this section.

## **25. Shares to public and employees, etc.**

Shares, property or enterprises may be issued and disposed of under section 23 to—

- (a) members of the general public;

- (b) attract capital and investments by offering special rights, preferential shares or otherwise further the aims of the Investment Code Act;
- (c) ensure the disposal of the shares of the enterprise by allotting part or the whole of the issue to an individual, a firm, a corporation or an institution.

## **26. Use of proceeds of divestiture.**

(1) The Minister responsible for finance may use the proceeds of divestiture in the divestiture account to meet—

- (a) costs and expenses associated with termination of contracts of employment between a public enterprise specified in class II, III or IV of the First Schedule to this Act and its employees as a result of the divestiture of that enterprise;
- (b) liabilities of a public enterprise specified in any of the classes referred in paragraph (a) which—
  - (i) for the purposes of divesting the enterprise in the manner approved by the committee require satisfaction before that enterprise's divestiture; or
  - (ii) given the mode and terms of divestiture, are directly or indirectly assumed by the Government at the time of divestiture;
- (c) costs and expenses incurred in the process of preparing a public enterprise specified in any of the classes referred to in paragraph (a) for divestiture; and
- (d) costs and expenses of divestiture.

(2) Any costs and expenses associated with termination of contracts of employment between a public enterprise and its employees shall be paid from the proceeds of divestiture of that enterprise in priority to all other liabilities, costs and expenses referred to in subsection (1).

(3) Proceeds of divestiture of an enterprise in the divestiture account which, in the opinion of the responsible Minister, are not required to meet any present or future costs, expenses or liabilities of the type mentioned in subsection (1), whether relating to that enterprise or otherwise, may, if so determined by the Minister, be transferred, wholly or partly, to the redundancy account and, subject to the foregoing, shall be used for promoting Ugandan entrepreneurs for agricultural and industrial development.

## **27. Acquisition of shares by Minister.**

(1) The Minister responsible for finance and the responsible Minister may, from time to time, with the approval of the committee on behalf of the State, subscribe for or otherwise acquire the requisite number of shares in any enterprise in which the State is required to hold shares.

(2) Any money required to be paid by a Minister for subscribing or applying for or being allotted shares by virtue of subsection (1) shall be paid out of monies appropriated by Parliament for the purpose.

(3) A Minister who is a shareholder in an enterprise which is subject to divestiture shall not, except as required for the purposes of the divestiture—

- (a) sell or otherwise dispose of any shares in any enterprise held in the Minister's name; or
- (b) permit shares of the State in the enterprise to be allotted to any person other than a shareholding Minister.

## **28. Formation of successor companies.**

(1) This section applies to every public enterprise specified in class II, III or IV of the First Schedule to this Act that is not a public or private limited liability company under the Companies Act.

(2) Notwithstanding anything in any enactment under which a public enterprise referred to in subsection (1) was established, the responsible Minister may, from time to time, form and register under the Companies Act, in respect of that enterprise, a company limited by shares, having the shareholding referred to in subsection (3) and, subject to the foregoing, such memorandum and articles of association, name and directors as the responsible Minister shall determine.

(3) The shareholders of a company formed and registered under subsection (2) shall be the responsible Minister and the Minister responsible for finance, each of whom shall be issued such number of shares, credited as fully paid, as the responsible Minister shall determine, and all such shares held by a shareholding Minister shall be held on behalf of the Government.

(4) Except as provided in this Act, and subject to subsection (5), the

Companies Act shall apply to every company formed and registered under this section.

(5) In the application of the Companies Act to any company formed and registered under this section as a public company, section 32 (relating to carrying on business when the number of members is reduced below the legal minimum) and section 222(d) (relating to winding up by the court when the number of members is reduced below the legal minimum) of the Companies Act shall be construed, at all times prior to the divestiture of the company, as if references in them to seven members were references to two members.

**29. Minister to appoint a date for vesting of undertaking of public enterprises in successor company.**

(1) On a date appointed by the responsible Minister by statutory instrument, the undertaking of the public enterprise named in the instrument shall, by virtue of this section, vest in the successor company of that public enterprise.

- (2) On the appointed day in relation to a public enterprise—
- (a) the board of directors of that enterprise shall be deemed to be dissolved; and
  - (b) every person holding office as a member of the board shall cease to hold that office, and no such member shall be entitled to compensation in respect of loss of office.

**30. Consequential provision.**

Without limiting the general effect of section 29, on and after the appointed day in relation to a public enterprise—

- (a) a reference, express or implied, to the public enterprise in any instrument made, given, passed or executed before the appointed day shall be read and construed as a reference to its successor company;
- (b) without prejudice to section 35, a reference express or implied to the public enterprise in any enactment shall be read and construed as a reference to its successor company;
- (c) all contracts, agreements, conveyances, deeds, leases, licences and other instruments, undertakings and notices whether or not in writing entered into by, made with, given to or by or addressed to the public enterprise whether alone or with any other person

before the appointed day and subsisting immediately before the appointed day shall, to the extent that they were previously binding on and enforceable by, against or in favour of the public enterprise, be binding on and enforceable by, against or in favour of its successor company as fully and effectively in every respect as if, instead of the public enterprise, the successor company had been the person by whom they were entered into, with whom they were made, to or by whom they were given or to whom they were addressed, as the case may be;

- (d) nothing effected or authorised by this Act shall be regarded—
  - (i) as placing the public enterprise or its successor company or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong;
  - (ii) as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
  - (iii) as placing the public enterprise or its successor company or any other person in breach of any enactment, rule of law or contractual provision prohibiting, restricting or regulating the arrangement or transfer of any property or the disclosure of any information; and
- (e) any action, arbitration, proceedings or cause of action which, immediately before the appointed day, is pending or existing by, against or in favour of the public enterprise or to which the public enterprise is a party may be prosecuted and, without amendment of any writ, pleading or other document, continued and enforced by, against or in favour of its successor company.

### **31. Protection of employee contracts, etc.**

Notwithstanding any other provision of this Act—

- (a) on the appointed day in relation to a public enterprise, each employee of the public enterprise shall become an employee of its successor company but, for the purposes of every enactment, law, determination, contract and agreement relating to the employment of each such employee, the contract of employment of that employee shall be deemed to have been unbroken and the period of service of that employee with the public enterprise, and every other period of service of that employee that is recognised as continuous service by the public enterprise, shall be deemed to have been a period of service with the company;

- (b) the terms and conditions of employment of each such employee shall, until varied, be identical with the terms and conditions of the employee's employment with the public enterprise immediately before the appointed day and be capable of variation in the same manner; and
- (c) property held on trust or vested in any person under any provident, benefit, superannuation or retirement fund or scheme for the employees of the public enterprise, their dependents or other persons immediately before the appointed day shall, on and after the appointed day, be deemed to be held on trust or vested in that person for those employees in their capacity as employees of the successor company of the public enterprise, their dependents or other persons on the same terms and conditions; and every reference in any instrument constituting that fund or scheme to the public enterprise, an employee of the public enterprise, a dependent of that employee or any other person shall be read and construed as a reference to the successor company of that public enterprise, an employee of that company, a dependent of that employee or any other person, as the case may be.

**32. Vesting of land of public enterprise in successor company.**

(1) No registrar of lands or any other person charged with the keeping of any books or registers shall be obliged solely by reason of this Act to change the name of a public enterprise to that of its successor company in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by a successor company of a public enterprise executed or purporting to be executed by the company, relating to any property held immediately before the appointed day in relation to the public enterprise by that public enterprise and containing a recital that that property has become vested in the company by virtue of this Act shall, in the absence of proof to the contrary, be sufficient proof that the property is vested in the company.

**33. Successor company and public enterprises to be treated as same for tax purposes.**

For the purpose of any enactment that imposes or provides for the collection of a tax, duty, levy or other charge—



- (a) a public enterprise and its successor company shall be deemed to be the same person; and
- (b) all transactions entered into by, and acts of, the public enterprise before the appointed day in relation to the public enterprise shall be deemed to have been entered into by, or to be the acts of, the successor company and to have been entered into or performed by the company at the time when they were entered into or performed by the public enterprise.

**34. Registration of two or more successor companies in place of a single public enterprise.**

Nothing in this Act shall prevent two or more successor companies being registered under section 28 in the place of a single public enterprise and, in those circumstances, the property, rights and liabilities of that enterprise shall be divided between the successor companies in accordance with the statutory instrument in relation to the enterprise made under section 29(1), and sections 28 to 35 shall be construed accordingly.

**35. Effect of divestiture or liquidation on relevant enactments.**

(1) Upon the completion of the divestiture or liquidation or, as the case may be, upon vesting in the successor company under section 29 of the undertaking of any enterprise being a statutory corporation, the enactment under which the enterprise exists shall subject to subsection (4) stand repealed.

(2) Any repeal effected by this section shall take effect in the case of a vesting of the undertaking automatically upon the vesting and, in any other case, on such date as the Minister responsible for finance may, by statutory instrument, appoint, being the date of completion of the divestiture or liquidation of the relevant enterprise.

(3) The repeal of any enactment under subsection (1) shall not affect any agreement, contract or other liability which the Government may have undertaken in respect of the particular enterprise.

(4) A statutory instrument in relation to a public enterprise made under section 29(1) may provide for any one or more provisions in any enactment under which the enterprise exists to continue in force, in which event all references express or implied to the enterprise in the provision shall

be read and construed as references to its successor company.

PART VII—OFFENCES AND PENALTIES.

**36. Penalty for stripping or concealing assets.**

Any person who in respect of a public enterprise—

- (a) fraudulently sells or transfers any property of that public enterprise; or
- (b) deliberately conceals from the Minister responsible for finance or the responsible Minister or officials and staff in those Ministries any property of that public enterprise and the concealment results in a reduction of the proceeds of divestiture,

commits an offence and is liable on conviction to imprisonment for a term of not less than three years and not exceeding fourteen years.

**37. Penalty for causing financial loss.**

No chief executive, director, secretary, manager or other employee of a public enterprise shall do any act or omit to do any act knowing or having reason to believe that the act or omission will cause financial loss to that public enterprise.

**38. Restriction on persons, parties participating in divestiture.**

(1) Subject to subsection (2) and except for the purposes of, or in connection with, carrying out his or her duties and responsibilities in accordance with this Act, none of the following persons or any associate of any such person shall participate, directly or indirectly, in the purchase of a public enterprise—

- (a) the Minister responsible for finance and officials and staff in his or her Ministry;
- (b) the responsible Minister and officials and staff in his or her Ministry;
- (c) the relevant line Minister and officials and staff in his or her Ministry;
- (d) members of the committee;
- (e) any person advising the Government in relation to the divestiture of the enterprise; and
- (f) each chief executive, director, secretary, manager or other

employee of the enterprise.

(2) Subsection (1) shall not apply to participation in a public offer of shares and, in the case of a person mentioned in subsection (1)(f), participation by that person in a management buyout or scheme for worker participation.

### **39. Offences and penalties.**

(1) Any person who contravenes any of the provisions of section 6, 11, 12, 13, 14, 24, 37 or 38 commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or to imprisonment for a term not exceeding two years or to both.

(2) Any failure by the board of directors of a public enterprise to comply with sections 11, 12 or 13 or paragraph 6(1) of the Second Schedule to this Act shall be treated as an offence for the purposes of subsection (1) by each member of the board concerned.

## **PART VIII—MISCELLANEOUS.**

### **40. Reports to Parliament.**

The Minister responsible for finance shall, at least once in every six months, submit a report to Parliament on the steps taken to implement this Act.

### **41. Primacy of this Act.**

(1) Anything duly done under the authority of this Act for the purposes of giving effect to the Government's policy on reform and divestiture of public enterprises shall have effect notwithstanding any other enactment.

(2) Where any provision of any enactment conflicts with any provision of this Act, the latter shall prevail over the former.

### **42. Application of Investment Code.**

A company established or existing in Uganda as a result of divestiture under this Act shall with the approval of the Uganda Investment Authority be eligible for incentives under the Investment Code, as if it were a company

which commenced operations after the commencement of that code.

#### **43. Regulations.**

(1) The Minister responsible for finance may, by statutory instrument, with the approval of the committee, make regulations for giving full effect to the provisions of this Act.

(2) Without prejudice to the general effect of subsection (1), regulations made under it shall bind any public enterprise affected by it notwithstanding any existing enactment applicable to the public enterprise.

(3) Regulations made under this section may prescribe as a penalty for the contravention of the regulations a fine not exceeding five million shillings.

#### **44. Amendment of Schedules.**

(1) The Minister responsible for finance may, with the approval of the Cabinet, by statutory instrument, amend the First or Second Schedule to this Act and may, in particular, in the case of the First Schedule—

- (a) delete an enterprise or insert a new enterprise; or
- (b) transfer an enterprise from one class of the Schedule to another.

(2) The Minister responsible for finance shall lay before Parliament any statutory instrument made under this section, and the statutory instrument shall not be effective unless approved by Parliament.

#### **45. Amendment of Third and Fourth Schedules.**

The Minister responsible for finance may by statutory instrument with the approval of the Cabinet amend the Third and Fourth Schedule to this Act.

#### **46. Departed Asians' Property Custodian Board legislation not affected.**

Nothing in this Act shall detract from any enactment concerning the treatment of properties falling under the Departed Asians' Property Custodian Board.

**47. Saving of private rights.**

Any divestiture under this Act shall not prejudice the right of any person who has suffered damage from obtaining fair, adequate and prompt redress in respect of the damage.

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**SCHEDULES**

*First Schedule.*

s. 22.

**Classification of public enterprises.**

CLASS I.

Public enterprises in which the State is required to retain 100 percent shareholding.

1. Civil Aviation Authority
2. Cotton Development Organisation
3. National Social Security Fund
4. Uganda Coffee Development Authority
5. Uganda Tea Authority
6. Uganda Tourist Board
7. Uganda Wildlife Authority
8. Any regulatory agencies formed as a result of sectoral reform

CLASS II.

Public enterprises in which the State is required to retain majority shareholding.

1. Housing Finance Company of Uganda Limited
2. Mandela National Stadium Limited
3. National Enterprise Corporation
4. National Medical Stores
5. National Water and Sewerage Corporation
6. National Housing and Construction Corporation
7. New Vision Printing and Publishing Corporation
8. Nile Hotel International

9. PostBank Uganda Limited
10. Uganda Air Cargo Corporation
11. Uganda Electricity Board
12. Uganda Post Limited
13. Uganda Prisons Industries
14. Uganda Railways Corporation

CLASS III.

Public enterprises which the State is required to fully divest from.

1. African Ceramics Company Ltd.
2. African Textile Mills Ltd.
3. Agip(U) Ltd.
4. Agricultural Enterprises Ltd.
5. Associated Match Company Ltd.
6. Associated Paper Industries Ltd.
7. Bank of Baroda Ltd.
8. Barclays Bank Ltd.
9. BAT (U) Ltd.
10. Blenders (U) Ltd.
11. Cable Corporation Ltd.
12. Central Purchasing Corporation
13. Chillington Tool Company (U) Ltd.
14. Coffee Marketing Board Ltd.
15. Dairy Corporation
16. Development Finance Company of Uganda Ltd.
17. Foods & Beverages Ltd.
18. Fresh Foods Ltd.
19. Gomba Motors (1973) Ltd.
20. Industrial Promotion Services (U) Ltd.
21. Johnas Bros. (Africa) Ltd.
22. Kakira Sugar Works (1985) Ltd.
23. Kasese Cobalt Ltd.
24. Kibimba Rice Company Ltd.
25. Kilembe Mines Ltd.
26. Kinyara Sugar Works, Ltd.
27. Lango Development Company Ltd.
28. Motor Craft & Sales Ltd.
29. National Insurance Corporation
30. Nyanza Textile Industries Ltd.

31. PAPCO Industries Ltd.
32. Paramount Manufacturers Ltd.
33. Printpak (U) Ltd.
34. Produce Marketing Board
35. Republic Motors Ltd.
36. Sino-Uganda Fisheries Joint Venture Company Ltd.
37. Soroti Agricultural Implements Manufacturing Co. Ltd. (SAIMMCO Ltd.)
38. Stanbic Bank Ltd.
39. Steel Corporation of E.A. Ltd.
40. Sugar Corporation of Uganda Ltd.
41. The Uganda Metal Products & Enameling Co. Ltd.
42. Toro Development Corporation
43. Total (U) Ltd.
44. Transocean Uganda Ltd.
45. Ugadev Bank Ltd.
46. Ugadev Holdings Ltd.
47. Ugadev Properties Ltd.
48. Uganda Airlines Corporation
49. Uganda American Insurance Company Ltd.
50. Uganda Bags & Hessian Mills Ltd.
51. Uganda Cement Industries Ltd.
52. Uganda Clays Ltd.
53. Uganda Commercial Bank
54. Uganda Consolidated Properties Ltd.
55. Uganda Crane Estates Ltd.
56. Uganda Crane Industries Ltd.
57. Uganda Development Bank
58. Uganda Development Corporation
59. Uganda Fisheries Enterprises Ltd.
60. Uganda Garment Industries Limited
61. Uganda Grain Milling Company Ltd.
62. Uganda Hardwares Ltd.
63. Uganda Hire Purchase Company Ltd.
64. Uganda Hotels Ltd.
65. Uganda Industrial Machinery (U) Ltd.
66. Uganda Leather & Tanning Industries Ltd.
67. Uganda Libyan Arab Holding Co. Ltd.
68. Uganda Livestock Industries Ltd.
69. Uganda Meat Packers Ltd.
70. Uganda Motors Ltd.

71. Uganda Pharmaceuticals Ltd.
72. Uganda Printing & Publishing Corporation
73. Uganda Seeds Limited
74. Uganda Spinning Mills Ltd. (Lira)
75. Uganda Tea Corporation
76. Uganda Telecoms Limited
77. UGMA Engineering Company Ltd.
78. United Garment Industries Limited
79. Winits Ltd.
80. Wolfram Investments Ltd.

CLASS IV.

Public enterprises which the State is required to liquidate.

1. Agro-Chemicals Ltd.
  2. Domestic Appliances
  3. Farm Machinery Ltd.
  4. Gobbot (U) Ltd.
  5. International TV Sales Ltd.
  6. Intra African Traders Ltd.
  7. Itama Mines
  8. Lebel (E.A.) Ltd.
  9. Lint Marketing Board
  10. People's Transport Company Ltd.
  11. R.O. Hamilton Ltd.
  12. Uganda Fish Marketing Corporation Ltd.
  13. Uganda General Merchandise Ltd.
  14. Uganda Toni Services Ltd.
  15. Uganda Tour and Travels Ltd.
  16. Uganda Transport Company (1975) Ltd.
  17. Uganda Wildlife Development Ltd.
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**Divestiture guidelines.**

**1. General principles.**

(1) In all divestitures and privatisation plans, due regard shall be given to implementing the Government's policy on broadening the basis of ownership among Ugandans. Accordingly, the responsible Minister, in consultation with the committee, will continuously explore practical ways in which the Government can assist Ugandans to participate meaningfully in the acquisition of interests in enterprises being divested or privatised or both.

- (2) The general principles guiding the divestiture process will be—
  - (a) all divestitures shall be carried out strictly in accordance with the procedures prescribed from time to time by the responsible Minister;
  - (b) purchasers will not be accorded special protection;
  - (c) wherever possible public enterprises will be divested into competitive markets; purchasers will not obtain an intact or unregulated monopoly;
  - (d) in cases where the Government is to retain a minority shareholding, it will not exercise any special or extraordinary voting rights, except in limited, predetermined and well-defined policy areas or otherwise, and only to the extent necessary, for the purposes of protecting its minority interest;
  - (e) there will be a moratorium on new Government investments in enterprises that are to be privatised except for financial and operational restructuring measures that are necessary to prepare enterprises for sale;
  - (f) privatisation sales shall generally be on a cash-only basis and extended terms of payment shall be avoided. In exceptional cases, other forms of payment, including the issue of shares to employees on noncash or discounted terms, may be permitted;
  - (g) no specific class of potential purchasers will be excluded from participating in the divestiture process;
  - (h) all transactions will be conducted in an open and transparent manner, consistent with normal standards of commercial discretion; and
  - (i) all aspects of the transaction will be made public which, where appropriate, means—

- (i) issuing a prospectus or offering memorandum;
- (ii) providing a full body of financial, management and other information;
- (iii) applying fair and equitable bidding procedures;
- (iv) stating criteria for ranking bids; bids will be opened in public;
- (v) disclosing the names of the purchasers, the price paid and the conditions of sale; and
- (vi) disclosing the valuation of the assets and the details of all offers received.

## **2. The committee.**

(1) The committee shall confine its activities to the formulation and determination of key policy issues as referred to it by the Minister responsible for privatisation.

(2) In particular, the committee shall not be concerned with matters of a technical, operational or administrative nature affecting any particular public enterprise or privatisation transaction, such as—

- (a) the order in which public enterprises shall be divested;
- (b) the technical evaluation of bids;
- (c) the negotiation of contracts; and
- (d) the valuation procedures.

(3) Notwithstanding subparagraph (2), the committee shall still be required to approve the divestiture of a public enterprise.

(4) In all matters relating to the divestiture of public enterprises, the director of the privatisation unit shall serve as the secretary to the committee.

## **3. Minister responsible for privatisation and line Ministers.**

(1) Responsibility for the implementation of the Government's policy on divestiture of public enterprises shall vest in the responsible Minister.

- (2) The responsible Minister shall—
  - (a) prepare and maintain an up-to-date list of public enterprises and make recommendations to the committee on the divestiture of a public enterprise;
  - (b) formulate and execute detailed divestiture procedures and

agreements in relation to a public enterprise being divested in accordance with the committee's decisions;

- (c) supervise, monitor and enforce the divestiture procedures and agreements in relation to public enterprises;
- (d) liaise as necessary with line Ministers and other agencies of Government, with a view to ensuring that the objectives of the Government are achieved;
- (e) cause the transfer of all shares of public enterprises intended for divestiture to the Ministry responsible for finance with the temporary exception of statutory corporations for which an Act of Parliament is needed to effect transfer;
- (f) have authority over the management and the board of the enterprises due for privatisation; and
- (g) make such other recommendations to the committee as the Minister considers necessary to enable the objectives of this Act to be achieved.

(3) The line Minister shall—

- (a) participate in meetings of the committee, in accordance with section 4(3) of the Act;
- (b) provide information on public enterprises under his or her Ministry to the responsible Minister;
- (c) during and after the divestiture, continue to be responsible for sector policy and subject to any relevant enactment or regulation.

(4) Where operations of an enterprise under the supervision of the line Minister conflict with the divestiture programme, the divestiture programme shall prevail by virtue of section 41 of the Act.

#### **4. Privatisation unit.**

(1) The privatisation unit shall be responsible for the day-to-day implementation of the divestiture programme.

(2) The privatisation unit shall be headed by a director who, for operational purposes, shall report to the Minister responsible for privatisation but for administrative purposes shall report to the Secretary to the Treasury.

(3) The privatisation unit shall be staffed by such officers and employees and assisted by such other advisers and consultants as the Minister responsible for privatisation considers necessary to achieve its

objectives and the efficient discharge of its responsibilities.

(4) To enable it to carry out the divestiture of a public enterprise, the privatisation unit shall—

- (a) cause a detailed financial, legal and operational analysis of the public enterprise to be carried out by independent auditors, lawyers and other necessary advisers;
- (b) determine the means by which the divestiture of the public enterprise may be implemented;
- (c) cause a valuation of the assets of the public enterprise to be carried out by independent valuers;
- (d) invite expressions of interest from potential purchasers of public enterprises or lessors of the assets of public enterprises;
- (e) publish guidelines for bidding and valuation procedures and criteria for the selection of purchasers or lessors;
- (f) determine the price at which the shares in or the assets of the public enterprises may be purchased or leased;
- (g) hold discussions with the members of the board and officers and employees or their representatives of the public enterprise with a view to achieving a fair, reasonable and harmonious divestiture of that public enterprise;
- (h) determine, in consultation with the responsible Ministers, fair and reasonable severance, pension and other payment arrangements that may be appropriate following a divestiture of the public enterprise;
- (i) negotiate and cause to be executed such arrangements as may be necessary with any party for the purchase, settlement or discharge of the liabilities or any other indebtedness of the public enterprise;
- (j) negotiate and cause to be executed such agreements as may be necessary with any party for the purchase, lease, management or control of the shares in or the assets of the public enterprise;
- (k) cause proceedings for the recovery of any debt owed to or by a public enterprise or for the winding up, liquidation or dissolution of the public enterprise to be initiated; and
- (l) do all such other acts as may be required to effect the divestiture of any public enterprise.

## **5. Enterprise selection criteria.**

- (1) The order in which public enterprises should be divested shall, to

the extent practicable, be as follows—

- (a) firms in which the Government has a majority ownership;
  - (b) enterprises that will not require extensive operational, financial or legal restructuring prior to sale;
  - (c) enterprises that have generated an operating profit (before depreciation and debt service) for at least the past two years; other complementary indicators may also be reviewed to select enterprises that are attractive to the private sector, including rate of return on assets and equity, debt-to-equity ratio, inventory turnover and accounts receivable turnover;
  - (d) enterprises in which operational and financial records and accounts are reasonably accurate, up-to-date and readily available to the privatisation unit and to potential investors;
  - (e) enterprises that are not severely overstaffed, so as to avoid the necessity of undertaking significant layoffs as part of the divestiture process.
- (2) Enterprises shall be drawn from diverse sectors of the economy.

## **6. Duties of a public enterprise.**

(1) The responsible Minister shall notify the board of directors and publish an appropriate notice in the Gazette when, in accordance with the privatisation unit's work plan from time to time, the enterprise is scheduled for divestiture within the following twelve months; after that, the board of directors of that enterprise shall—

- (a) carry out directions given by the privatisation unit in writing to prepare the enterprise or its assets for privatisation or to implement the privatisation;
- (b) keep up-to-date business records and books of account;
- (c) prepare a rolling two-year investment and financing plan and a manpower development plan;
- (d) prepare annual financial statements and cause them to be audited not later than three months after each financial year;
- (e) maintain a fixed assets register which shall be reconciled with the financial statements;
- (f) not perform any action that would result in the assets of the enterprise being dissipated;
- (g) not undertake any new capital investment programme, unless a project appraisal document is prepared demonstrating to the satisfaction of the privatisation unit that—

- (i) routine plant, equipment or vehicle renewal is required;
  - (ii) the investment has a payback period of less than two years;
  - (iii) the investment will, within a period of two years, or such lesser period as the privatisation unit shall specify, result in a reduction of the liabilities of the enterprise in excess of the amount of the investment; or
  - (iv) the investment will, within a period of two years, or such lesser period as the privatisation unit shall specify, result in a reduction of the operating costs of the enterprise during that period in excess of the amount of the investment;
- (h) not incur any liabilities other than in the ordinary course of business without the prior written approval of the privatisation unit;
- (i) not give any person information other than in the ordinary course of business which might confer any advantage on that person or any other potential investor;
- (j) when directed by the privatisation unit, pay any costs incidental to the privatisation of the enterprise relating to—
- (i) valuation fees;
  - (ii) legal costs;
  - (iii) advertising charges;
  - (iv) marketing expenses; and
  - (v) any other expenses;
- (k) when directed by the privatisation unit, disclose to the privatisation unit or to the general public or to such other person as the privatisation unit shall direct such information about the enterprise as the privatisation unit shall specify; and
- (l) refrain from taking any action which may cause industrial unrest.

(2) The responsible Minister shall be deemed to have met the notification and publication requirements in subparagraph (1) in the case of each public enterprise which, in accordance with the privatisation unit's work plan for the calendar year, is scheduled for divestiture during that year.

(3) A chief executive, director, secretary, manager or any other employee of a public enterprise who contravenes subparagraph (1) commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding two years or both.

## **7. Methods of privatisation.**

(1) The privatisation unit may employ the following modes of privatisation or any combination of them—

- (a) public offering of all or part of the shares of a public enterprise;
- (b) sale of shares through negotiated or competitive bids;
- (c) sale by public auction or public tender of all or part of the assets and business of a public enterprise;
- (d) management or employee buyouts;
- (e) lease, management or concession contracts;
- (f) negotiated repossession by previous owners;
- (g) conversion of long-term debt into equity;
- (h) employee stock ownership plan; or
- (i) any other method which the privatisation unit may consider appropriate.

(2) No transfer of ownership shall be proposed or considered without first having had a valuation and a full financial and legal analysis of the enterprise.

(3) Subject to the general principles contained in paragraph 1 of this Schedule, the sale or transfer of ownership in public enterprises shall be guided, *inter alia*, by the following considerations—

- (a) price offered by the purchaser;
- (b) willingness to take on the existing debt of the enterprise;
- (c) undertaking to maintain and improve the operation of the enterprise;
- (d) agreement to safeguard the interests of the existing employees;
- (e) ability to settle the agreed price in a convenient and expeditious manner; and
- (f) creation of an appropriate opportunity for management and employees to own part of the voting share capital of the enterprise.

## **8. Valuation.**

(1) The valuation of a public enterprise or its assets shall be performed by independent valuers who shall issue a certificate of valuation to the privatisation unit.

(2) In determining the value of a public enterprise, the following

factors shall be taken into account—

- (a) prior earnings record and prospect for future earnings;
- (b) financial condition and the need for major renewals of assets;
- (c) composition and quality of management and the work force;
- (d) operation, financial, market, taxation and other factors that may increase or decrease the value of the enterprise in the eyes of a prospective purchaser.

(3) The valuation of a public enterprise or its assets shall be carried out as follows—

- (a) the valuation shall be based on the current value of the public enterprise or its assets as a going concern;
- (b) where the enterprise is not a going concern, the valuation shall be based on net asset value; or
- (c) any other prudent valuation method approved by the privatisation unit.

(4) Net asset value shall be based on—

- (a) the market value of immovable property as assessed by a real estate valuer;
- (b) the market value of tangible assets other than immovable property; and
- (c) the fair value of other assets.

## **9. Public auction and public tender.**

(1) Public auctions may be used for selling individual assets such as land, cars, and pieces of equipment and similar assets in accordance with the following procedures—

- (a) the item to be sold shall be advertised along with the location of the auction;
- (b) the terms and conditions of sale shall be fixed and require that the items to be auctioned are sold to the highest bidder;
- (c) a reserve price approved by the committee may be set in advance, so that if that price is not reached in the bidding, the seller has the option of either withdrawing the items from the sale or negotiating a sale after the auction at a lower price with the highest unsuccessful bidder.

(2) The public tender procedure may be used for the sale of substantial assets or larger or more complex businesses where there is not



likely to be wide public participation, in accordance with the following principles and procedures—

- (a) the availability of the enterprise for sale shall be advertised and interested parties may be prequalified if the privatisation unit wishes to establish in advance their financial capacity or to review their operational or investment plans;
- (b) bidders may be required to negotiate the transfer agreement before submitting their bids and to accompany their bids with a signed copy of the agreement in order to avoid the risk of post-tender negotiations on issues not addressed in the tender document;
- (c) the tender notice shall be widely publicised and shall provide summary information on the assets, fix the date of bidding and invite prospective bidders to obtain the tender documents;
- (d) interested parties who request the tender documents shall have the opportunity to carry out a due diligence evaluation of the enterprise and for that purpose shall be permitted to inspect the books of account, examine the physical assets and interview senior management;
- (e) to preserve confidentiality, prospective bidders may be required to sign an undertaking not to divulge or to use sensitive commercial information and may be asked to post a bond in support of that undertaking;
- (f) bids shall be accompanied by a bid bond, for not less than 10 percent of the price offered by the bidder;
- (g) bids shall remain valid for a period after the closing date to allow careful evaluation and possible negotiation with the top bidder;
- (h) the privatisation unit shall have the right to reject any bids which do not conform to the general bidding guidelines, or to reject all bids if none are adequate;
- (i) tenders shall be where the enterprise concerned operates in a liberalised market with a large number of competitors evaluated solely on the basis of price. Noncash aspects of the bid, such as the assumption of liabilities by the bidder, shall be assessed on a net present value basis, using a standard and consistent discount rate.

*Bidding conditions.*

(3) Where there is a prequalification of bidders, the successful bidder shall be required to deposit a nonrefundable amount not exceeding \$10,000.

The amount shall count towards payment of the agreed price in the case of the successful bidder.

*Terms of sale.*

- (4) The following shall apply in respect of the sale—
  - (a) in any offer of sale other than a sale by way of public offering, there shall be included a provision in the bid documents requiring the successful bidder to submit a bid bond in respect of the enterprise being offered for sale;
  - (b) the bid bond shall be held by the privatisation unit pending conclusion of the sale agreement;
  - (c) from the date of which the winning bidder is invited for negotiation the parties shall have a maximum of three months within which to complete the deal;
  - (d) if the sale and purchase documentation is concluded, the successful bidder's bid bond may, depending on its form and subject to subparagraph (4)(e), count towards payment of the purchase price;
  - (e) a bidder's bid bond may be forfeited in the case of—
    - (i) any misrepresentation by the bidder in its bid;
    - (ii) the withdrawal or modification of its bid during the period of validity; or
    - (iii) where the bidder is the successful bidder, failure to execute the sale and purchase documentation and pay, in full, the purchase price or that part of it which is then payable;
  - (f) where negotiations are successful, the successful purchaser shall be required to pay not less than 50 percent of the purchase price on or before execution of the sale and purchase documentation and the balance payable over a period not exceeding twelve months;
  - (g) interest shall be payable on all outstanding balances at an appropriate rate as determined by the committee;
  - (h) in all cases of installment purchase, the buyer shall be required to furnish a performance bond or bank guarantee from a reputable financial institution to cover the full amount of the unpaid balance of the purchase price and the interest payable on that balance.

## **10. Public offering of shares.**

(1) A public offering of shares requires as complete a disclosure as possible of relevant financial and business information concerning the assets and liabilities of the enterprise, its profitability history, business activities and future prospects.

(2) The disclosure shall be in the form of an offering document, information memorandum or prospectus containing a description of the new shares and the terms on which they will be allocated.

(3) The offering document shall be prepared by the privatisation unit, in conjunction with the management of the enterprise, and approved by the board of directors of the enterprise.

(4) Responsibility for any errors or omission in the offering document shall rest with the board of directors which approved its issue.

(5) The privatisation unit shall work with the board of directors of the enterprise in—

- (a) determining the offer price and the time of sale, according to the valuation and the recommended strategy of sale;
- (b) organising a selling campaign and the distribution of the prospectus as widely as possible;
- (c) distributing and collecting applications for the purchase of shares.

## **11. Records and monitoring procedures.**

(1) The records of the privatisation unit shall be maintained in such a manner as to show clearly the following information in respect of each privatisation transaction—

- (a) advertisement;
- (b) tender documents;
- (c) responses by interested parties;
- (d) reference check;
- (e) record of negotiations;
- (f) offer;
- (g) acceptance;
- (h) legal clearance;
- (i) approval of the committee;
- (j) contract for sale;

(k) other pertinent information.

(2) The privatisation unit shall also institute a procedure for monitoring and evaluating its activities.

(3) For the purposes of subparagraph (2), the following *inter alia*, shall be accepted as relevant benchmarks—

- (a) the number of public enterprises divested and method of divestiture;
- (b) the amount of money collected;
- (c) the Government subsidies eliminated;
- (d) the reduction in Government obligations to banks for loans and guarantees; and
- (e) the eventual profitability of the divested enterprises.

## **12. Miscellaneous.**

(1) No member of the privatisation unit or member of a committee of the privatisation unit or employee of the privatisation unit or consultant or associate of any such person shall participate, directly or indirectly, in a privatisation except through a public offer of shares.

(2) The privatisation unit shall appoint a negotiating team for each privatisation other than a public offering of shares.

(3) Each member of the negotiating team shall—

- (a) have the appropriate professional qualifications, experience and good business standing;
- (b) sign a confidentiality and secrecy agreement as prescribed by the privatisation unit; and
- (c) disclose to the privatisation unit any personal or professional interest in the transaction before accepting the appointment.

(4) Where there is no competent professional expertise within the privatisation unit, the unit shall engage professional consultants to undertake the privatisation process.

(5) Any consultant engaged under subparagraph (4) shall report to the committee through the privatisation unit, and the final decision shall be taken by the committee.

(6) A consultant engaged under subparagraph (4) shall disclose to the privatisation unit any personal or professional interest in the transaction before accepting the appointment.

(7) The privatisation unit shall notify Cabinet and publish by notice in the Gazette promptly following the completion of each privatisation transaction—

- (a) the name of the public enterprise and a summary description of the transaction;
- (b) the name of the consultants advising the privatisation unit on the transaction;
- (c) the name and address of the successful bidder;
- (d) the total proceeds of the transaction;
- (e) the manner in which the proceeds are to be disbursed; and
- (f) any other matter considered appropriate by the privatisation unit.

(8) Any person whether or not a citizen of Uganda, or a body corporate formed under the laws of Uganda, shall be eligible to participate in privatisation.

(9) The Minister responsible for privatisation may prescribe—

- (a) tender procedures;
- (b) public flotation procedures;
- (c) prequalification and registration of bidders procedures;
- (d) public announcement requirements;
- (e) any forms required for the purpose of these guidelines;
- (f) any fees payable in respect of any service provided by the privatisation unit; and
- (g) such matters as are necessary or conducive to carrying out the purposes of these guidelines.

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*Third Schedule.*

s. 1.

**Currency point.**

A currency point is equivalent to twenty thousand shillings.

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*Fourth Schedule.*

s. 5(4).

**Meetings of the committee.**

1. The committee shall meet as and when necessary for the purposes of carrying out its functions as prescribed by the Act.
2. The responsible Minister may, and the secretary on the requisition of any three members of the committee shall, at any time summon a meeting of the committee.
3. Notice of a meeting of the committee shall be given in writing to each member of the committee and to each line Minister who, in accordance with section 4 of the Act, is entitled to participate in the meeting at least four days before the day of the meeting, but an urgent meeting may be called with less notice if it is so agreed by a majority in number of the members of the committee.
4. A notice given under paragraph 3 shall state—
  - (a) the venue and time of the meeting; and
  - (b) the agenda specifying the business to be discussed.
5.
  - (1) A simple majority of the members of the committee shall form a quorum at a meeting of the committee.
  - (2) For the purpose of determining whether there is a quorum, any member to whom section 6(2) of the Act applies shall be counted.
6. The chairperson shall preside at all meetings at which he or she is present and, in his or her absence, shall delegate one of the members of the committee to preside.
7. Questions arising at any meeting of the committee shall be decided by a simple majority of votes; and in the case of an equality of votes, the person presiding shall have a second or casting vote.
8. The chairperson may request the director of the privatisation unit, any officer or employee of the privatisation unit or any adviser or consultant to the privatisation unit to attend and address the committee when he or she considers it appropriate.
9. The committee shall cause to be recorded and kept minutes of all

proceedings of its meetings, and the minutes shall at the next meeting be signed by the chairperson and the secretary.

10. The validity of the proceedings of the committee shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.
11. Except as otherwise provided expressly by this Schedule, the committee may prescribe its own procedure at its meetings.

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**History:** Statute 9/1993; S.I. 72/1993; S.I. 12/1997; S.I. 14/1997; Act 13/1998; S.I. 34/1999; S.I. 35/1999; Act 1/2000.

#### **Cross References**

Companies Act, Cap. 110.  
Investment Code Act, Cap. 92.

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