

CONSOLIDATED TO 30 JUNE 2012

LAWS OF SEYCHELLES

Act 2 of 1989

CHAPTER 154

PARASTATAL CORPORATIONS ACT

[Note: Commencement date of this Act is unclear]

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PART I - PRELIMINARY

1. This Act may be cited as the Parastatal Corporations Act, and shall come into operation on such date as the President may, by Notice published in the Gazette appoint.

2. In this Act -

"Appointing Authority" means the Minister for the time being responsible for parastatal corporations;

"director" means a person appointed on the Board of a parastatal corporation;

"Board" means the Board of directors of a parastatal corporation;

"parastatal corporation" means a parastatal corporation established or continued under section 3;

PART II - ESTABLISHMENT OR CONTINUATION

3. (1) The Appointing Authority may, by an Order published in the Gazette -
- (a) establish a parastatal corporation, or
 - (b) continue under this Act as a parastatal corporation, a corporation established or incorporated by or under any other written law.

(2) Where an Order is made under subsection (1)(b) the parastatal corporation in respect of which the Order is made shall be deemed to have been established under this Act and the written law by or under which the parastatal corporation was originally established or incorporated shall cease to apply to it.

(3) Any asset, property, right, debt, liability or obligation of a corporation which existed immediately prior to the coming into force of an Order under subsection (1) (b) in respect of that corporation shall be the asset, property, right, debt, liability or obligation of the parastatal corporation continued under that Order and -

- (i) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to, or by, the corporation and in force immediately prior to the coming into force of the Order under subsection (1)(b) are deemed to be contracts, agreements, arrangements and undertakings entered into with, and securities given to, or by, the parastatal corporation,
- (ii) all proceedings by or against the corporation and pending immediately prior to the coming into force of the Order are deemed to be proceedings by or against the parastatal corporation, and
- (iii) any reference in any written law to the corporation shall, after the coming into force of the Order, be read as a reference to the parastatal corporation.

(4) An Order made under subsection (1) -

- (a) shall set out -
 - (i) the name, registered address, objects, functions and powers of the parastatal corporation;
 - (ii) where the parastatal corporation has or is to have a share capital -

- A.** the number of shares which makes up the share capital and the nominal value of the shares;
- B.** if there are more than one class of shares, the name of each class of shares, their nominal value and the rights and obligations attached to each class;
 - (iii) in the case of an Order under subsection (1)(b), the written law under which the corporation which is continued as a parastatal corporation under that Order was established or incorporated;
 - (b) may provide for -
 - (i) any matter relating to the assets, capital, fund, finance, administration and management of the parastatal corporation;
 - (ii) any matter necessary for the better carrying out of the objects of the parastatal corporation, and
 - (c) in the case of an Order under subsection (1)(b), may repeal or amend the written law under which the corporation which is continued as a parastatal corporation under that Order was established or incorporated and may provide for the striking off of from any register kept pursuant to the written law of the name of the corporation by which the corporation was known under the written law.
- 4.** A parastatal corporation -
 - (a) shall be a corporate body;
 - (b) shall have a seal;
 - (c) may acquire, hold and dispose of moveable or immoveable property; and
 - (d) may do all other things necessary for the purposes of carrying out its objects.
- 5.** The liability of the holder of shares in a parastatal corporation which has a share capital to contribute towards the assets of the parastatal corporation or, in the winding up of the parastatal corporation, towards payment of the debts and liabilities of the parastatal corporation is limited to the amount for the time being not paid up, or not credited as paid up, of the nominal value of the shares.

PART III - THE BOARD OF DIRECTORS

- 6.** (1) A parastatal corporation shall have a Board of directors consisting of not less than 3 directors who shall be appointed by the Appointing Authority by Notice published in the Gazette.

(2) The Appointing Authority shall appoint one of the directors to be the Chairman, and another director to be the Vice-Chairman, of the Board.

(3) The Appointing Authority shall, before appointing a person to be a director, satisfy himself that the person does not have an interest which is likely to prejudicially affect the discharge by the person of his functions as director and to this end the Appointing Authority shall require the person whom he intends to appoint as a director to furnish the Appointing Authority with a declaration of interest in such form as the Appointing Authority may from time to time determine.

7. Unless otherwise provided in an Order made under section 3(1) the First Schedule has effect with respect to the meetings, quorum and proceedings of the Board of a parastatal corporation,

8. The Appointing Authority may give to the Board of a parastatal corporation directions in writing on the policy to be followed by the Board or of a general nature relating to the performance of the functions of the parastatal corporation or to its management, and the Board shall comply with the directions.

9. An act or decision of a parastatal corporation is not invalid by reason only -

- (a) of a vacancy in the membership of its Board;
- (b) of a defect or irregularity in connection with the appointment of a director;
- (c) of an irregularity in the convening of a meeting of the Board;
- (d) that a person, who is disqualified from being appointed a director under this Act or any other written law, has been appointed director;
- (e) that a director who is disqualified from voting at or participating in a meeting of the Board, has voted at or participated in the meeting at which the decision or the decision in relation to the act was made.

10. (1) The Appointing Authority shall appoint a person to be the secretary of the Board of a parastatal corporation.

(2) The secretary of the Board shall be responsible for convening meetings of the Board, keeping records of meetings and decisions of the Board, communicating decisions of the Board, submitting documents on behalf of the Board and, when required by the Board, executing an order of the Board.

11. (1) The Board, a director, the secretary or an authorised officer of a parastatal corporation shall not be criminally or civilly liable in respect of an act done or omission made by

the parastatal corporation, the Board, a director, the secretary or an authorised officer in good faith in the execution or purported execution of a function under this Act.

(2) Subsection (1) shall not apply to exempt a parastatal corporation from criminal or civil liability in respect of an act done or omission made by the Board, a director, the secretary or an authorised officer of the parastatal corporation.

PART IV - MANAGEMENT AND STAFF

12. (1) The Appointing Authority shall appoint a person who is a director of the parastatal corporation to be its Chief Executive Officer.

(2) Where the person appointed under subsection (1) is the Chairman of the Board the person shall be referred to as the Executive Chairman but he shall otherwise be referred to as the Managing Director.

(3) The Chief Executive Officer shall hold office upon such terms and conditions as the Board may, with the approval of the Appointing Authority, determine.

(4) The Chief Executive Officer of a parastatal corporation shall, subject to any direction of the Appointing Authority or the Board -

- (a) have supervision over and direction of the day-to-day affairs of the parastatal corporation,
- (b) have power to sign documents on behalf of the parastatal corporation.

(5) The Chief Executive Officer of a parastatal corporation may, subject to any direction of the Appointing Authority or the Board, delegate any of his powers under this section to any director or other employee of the parastatal corporation.

13. (1) A parastatal corporation may employ such persons as are necessary for the parastatal corporation to perform its functions.

(2) A parastatal corporation may, in the exercise of its powers under subsection (1), employ, with the approval of the President, a public officer on such terms and conditions as the President may determine.

(3) Sections 91 to 96 of the Penal Code or the corresponding provisions of these provisions of the Penal Code in any written law shall apply to a director and the secretary of and a person employed by a parastatal corporation and, for this purpose, a director and the secretary of and a person employed by a parastatal corporation shall be deemed to be employed in the public service.

PART V - ACCOUNTABILITY

14. (1) The Board of a parastatal corporation shall prepare and deliver to the Appointing Authority not later than one month after the coming into force of an Order under section 3(1) in respect of the parastatal corporation and thereafter not later than one month after the commencement of each financial year of the parastatal corporation a draft statement of corporate intent in respect of the financial year in which it is delivered and in respect of each of the immediately following two financial years.

- (2) A statement of corporate intent shall specify -
- (a) the objectives of the parastatal corporation;
 - (b) the nature and scope of the activities to be undertaken by the parastatal corporation;
 - (c) where a parastatal corporation has a share capital, the ratio of the shareholders' funds to total assets of the parastatal corporation;
 - (d) the accounting policies of the parastatal corporation;
 - (e) the performance target and other measures by which the performance of the parastatal corporation may be judged in relation to its objectives;
 - (f) an estimate of the amount which it is intended to be distributed as dividends;
 - (g) the kind of information to be provided to the Appointing Authority by the parastatal corporation during the course of the financial year, including the information to be provided in each half yearly report under this Act;
 - (h) the Board's estimate of the commercial value of the Government's investment in the parastatal corporation and the manner in which, and the time at which, this value is to be reassessed;
 - (k) such other matters as are agreed between the Appointing Authority and the Board or which the Appointing Authority has directed shall be specified in the statement of corporate intent.

(3) The Appointing Authority shall consider the draft statement of corporate intent and shall submit any comments thereon to the Board within one month of the date of receipt of the draft.

(4) The Board shall consider any comments of the Appointing Authority on the draft statement of corporate intent and shall submit the completed statement of corporate intent to the Appointing Authority within one month after the date of receipt of the comments of the Appointing Authority or, where the Appointing Authority has not submitted any comments

within the time specified in subsection (3), within one month of the date by which the Appointing Authority should have submitted its comments.

(5) The Board of a parastatal corporation may at any time, after giving the Appointing Authority at least one month's notice in writing of the proposed amendments to the statement of corporate intent and after considering any comment which the Appointing Authority may have made thereon, modify the statement of corporate intent of the parastatal corporation and serve a copy of the modified statement of corporate intent on the Appointing Authority.

15. The Board of a parastatal corporation shall prepare and deliver to the Apointing Authority at the time of the delivery of the completed statement of corporate intent a manpower plan for the parastatal corporation in the form which the Apointing Authority may from time to time determine.

16. (1) The Board of a parastatal corporation shall deliver to the Appointing Authority within 3 months after the end of each financial year of the parastatal corporation -

- (a) a report of the operation of the parastatal corporation for that financial year;
- (b) audited financial statements of the parastatal corporation for that financial year consisting of -
 - (i) a statement of financial position;
 - (ii) a statement of profit and loss;
 - (iii) a statement of changes in financial position;
 - (iv) such other statements as may be necessary to show the financial results of the parastatal corporation during that financial year; and
- (c) the auditor's report on those financial statements.

(2) A report under subsection (1)(a) shall -

- (a) contain such information as is necessary to enable an informed assessment of the operations of the paras- tatal corporation, including a comparison of the performance of the parastatal corporation with the relevant statement of corporate intent; and
- (b) state the dividend, if any, payable by the parastatal corporation for the financial year to which the report relates.

(3) Each auditor's report shall -

- (a) identify those to whom it is addressed and the financial statements to which it relates;
- (b) state whether the accounts have been audited in accordance with standard auditing practices and what those practices are;
- (c) refer to the particular conventions or accounting policies followed in preparing the accounts;
- (d) state whether in the opinion of the auditor the accounts have or have not been prepared in accordance with the provisions of this Act and the conventions or policies referred to in paragraph (c);
- (e) state whether in the opinion of the auditor the accounts do or do not give a true and fair view of the state of affairs of the parastatal corporation and, in the case that they do not, his reasons;
- (f) state whether in the opinion of the auditor proper and adequate accounting records have or have not been kept;
- (g) state whether the auditor has received all the information necessary for the purposes of this audit and whether he is or is not satisfied with the information he has obtained;
- (h) state whether in the opinion of the auditor the accounts are or are not in agreement with the accounting records and returns;
- (i) state whether in the opinion of the auditor the information given by the directors in their report under subsection (1)(a) in relation to the financial year being reported is or is not consistent with the accounts;
- (j) state any other matter which in the opinion of the auditor needs to be stated.

17. (1) The Board of a parastatal corporation shall, within 2 months after the end of the first half of each financial year of a parastatal corporation, deliver to the Appointing Authority a report of the operations of the parastatal corporation during that half year.

(2) A report under subsection (1) shall include the information required by the statement of corporate intent to be included in the report.

18. The Board of a parastatal corporation shall deliver to the Appointing Authority such other information, account or report relating to the affairs of the parastatal corporation as the Appointing Authority may from time to time request.

19. The Appointing Authority shall deliver the following documents in respect of a parastatal corporation to the Council of Ministers -

- (a) the Order made under section 3 and any amendemnt made to the Order thereafter;
- (b) any rules, including amendment to the rules, of the parastatal corporation;
- (c) the statement of corporate intent, and any notice of amendment to the statement of corporate intent, delivered to the Appointing Authority under section 14;
- (d) the reports and statements delivered to the Appointing Authority under sections 16 and 17,

within 15 days after the date of receipt of the documents.

PART VI – MISCELLANEOUS

20. In addition to any other functions conferred on the Appointing Authority under this Act, the Appointing Authority -

- (a) shall appoint an auditor for each parastatal corporation;
- (b) may, at any time, order an investigation into the affairs of a parastatal corporation and may, as a result, take such action in respect of the parastatal corporation as the Appointing Authority may deem necessary;
- (c) may require the Board of a parastatal corporation to -
 - (i) after making provision for the acquisition, replacement and depreciation of assets, repay- ment of loans and advances and repayment of interest on, and all charges and expenses incurred in connection with, any loan, pay such amount of dividend out of the profits and revenue reserves of the parastatal corporation as the Appointing Authority may deem fit;
 - (ii) make provision for capital reserves;
 - (iii) increase the share capital of the parastatal corporation and to issue shares in the parastatal corporation;
 - (iv) authorise any person or body, including the Board of the parastatal corporation, to exercise, on behalf of the Government or the

Republic, the voting rights conferred by the shares of a parastatal corporation;

- (d) may, on being satisfied that there is sufficient ground for doing so, extend the period or time specified or prescribed under this Act for the doing of anything as the Appointing Authority may think fit.

21. Information submitted by the Board of a parastatal corporation under this Act shall not be published in a form or manner as to enable the identity of an employee, customer or other person dealing with the parastatal corporation to be ascertained.

22. The President may, subject to such conditions as he may deem fit to impose, vest or authorise the vesting in a parastatal corporation the whole or part of any asset or of any right, title or interest which belongs to the Republic or of any right, title or interest to which the Republic is entitled in any property, project, contract, undertaking or venture.

23. (1) Any dispute arising among parastatal corporations shall be settled by agreement among the parastatal corporations.

(2) A dispute among parastatal corporations which cannot be settled by agreement shall be referred to the Appointing Authority whose decision on the matter shall be final.

(3) The Appointing Authority may delegate the exercise of the power under subsection (2) to any person or body and the decision of the person or body shall be final.

24. (1) The Appointing Authority may, by an Order published in the Gazette, dissolve a parastatal corporation and appoint a liquidator for the purpose of discharging any liability of the parastatal corporation and for the purpose of distributing the assets remaining thereafter to the Republic or, in the case of a parastatal corporation which share capital, to the shareholders of the parastatal corporation.

(2) When discharging the liabilities of a parastatal corporation, the liquidator shall comply with the Second Schedule and other written laws with regard to the priority of claims, debts and other liabilities against the assets of the parastatal corporation.

(3) Subject to subsection (2), the liquidator shall be subject to the directions of the Appointing Authority.

(4) Subsection (2) shall apply with regard to priority of claims, debts or other liabilities against the assets of a parastatal corporation in the event of -

- (a) the appointment of a receiver of any asset of a parastatal corporation which is subject to any charge or mortgage; or

- (b) the crystallisation of a floating charge created over the assets of a parastatal corporation.

25. (1) The Appointing Authority may -

- (a) make regulations for carrying into effect the purposes and provisions of this Act; and
- (b) by regulations amend the Schedules.

FIRST SCHEDULE

Section 7

1. The Board of a parastatal corporation -

- (a) shall hold an annual meeting not more than 3 months after the close of each financial year in order -
 - (i) to consider and approve the report of the Board, the audited financial statements and the auditor's report referred to in section 16 for that financial year;
 - (ii) to make recommendations to the Appointing Authority on the payment of dividends by the parastatal corporation, and
 - (iii) to deal with any other financial or other matter of the parastatal corporation;
- (b) shall hold a special meeting not more than 2 months prior to the close of each financial year of the parastatal corporation in order to consider and approve the budget, the statement of corporate intent and the manpower plan of the parastatal corporation for the ensuing three financial years and approve the calendar of the ordinary meetings (of which there shall be at least one every three months) of the Board for the coming financial year; and
- (c) shall, in addition to the meetings referred to in paragraphs (a) and (b), hold ordinary meetings -
 - (i) in accordance with the calendar of meetings established under paragraph (b); but the Board may at any of its meetings amend the calendar, provided that it holds at least one meeting every 3 months;

- (ii) when directed in writing (the direction shall state the reason for the calling of the meeting) by the Appointing Authority;
- (iii) at the request in writing (the request shall state the reason for calling the meeting) of any two directors.

2. Where a meeting is convened in accordance with paragraph (c)(ii) or paragraph (c) (iii), the notice of the meeting shall state the purpose of the meeting.

3. The quorum for a meeting of the Board of a parastatal corporation shall consist of half the number of the members of the Board plus one.

4. (1) The Chairman or, in the absence of the Chairman, the Vice - Chairman or, subject to sub-paragraph (2), in the absence of both the Chairman and the Vice- Chairman, a director elected by the other directors for this purpose at a meeting of the Board, shall preside at a meeting of the Board of a parastatal corporation.

(2) Where the Chairman and the Vice - Chairman are for any reason unable to exercise their functions with regard to the meetings of the Board of a parastatal corporation for a prolonged period, the Appointing Authority shall appoint a director to preside over the meetings of the Board.

5. (1) At a meeting of the Board of a parastatal corporation each director has one vote in respect of any matter which is before the Board for its decision but in the event of an equality of votes the person presiding at the meeting shall, in addition, have a casting vote.

(2) Decisions of the Board of a parastatal corporation shall be by a majority of votes of the directors present and voting at a meeting.

6. A director who has a direct or indirect interest in any matter which falls to be decided by the Board of a parastatal corporation shall disclose the nature of the interest at a meeting of the Board and shall not vote on the matter nor take part in any discussion in respect of that matter.

7. All orders, directions or decisions of the Board of a order of Board parastatal corporation shall be given or notified under the hand of the Chairman or such other director as the Board may approve for this purpose.

8. Subject to this Act, the Board of a parastatal corporation shall regulate its own proceedings.

SECOND SCHEDULE (Section 24)

PREFERENTIAL PAYMENTS

1. Notwithstanding any other written law, the liquidator shall, when discharging the liabilities of a parastatal corporation, pay in priority to the other debts of the parastatal

corporation, the other claims or liabilities against the assets of the parastatal corporation and the other charges or privileges created or secured against any assets of the parastatal corporation the following in the following order -

- (a) the fees and expenses necessarily incurred in preserving, realising or getting the assets of the parastatal corporation;
- (b) the fees and expenses necessarily incurred in the winding up of the affairs of the parastatal corporation;
- (c) any judicial costs;
- (d) the remuneration, if any, of the liquidator and of any other person employed by the liquidator for the purpose of winding up the affairs of the parastatal corporation;
- (e) the wages of all the workers of the parastatal corporation, including their holiday pay and payment in lieu of notice due to them upon the termination of employment up to an amount of R.20,000, or such larger amount as may be prescribed under the Employment Act, in respect of any one worker;
- (f) contribution deducted under the Social Security Act by the parastatal corporation from the emolument of an employee for the purpose of payment to the Social Security Fund; and any other contribution due and payable under that Act by the parastatal corporation for a period of six months prior to the publication of the Order dissolving the parastatal corporation;
- (g) trades tax due and payable under the Trades Tax Act, by the parastatal corporation for a period of six months prior to the publication of the Order dissolving the parastatal corporation;
- (h) income tax due and payable by the parastatal corporation under the now repealed Income Tax Assessment Decree, 1978; and business tax and other taxes due and payable under the Business Tax Act, by the parastatal corporation up to the 31st December next preceding the date of the publication of the Order dissolving the parastatal corporation but not exceeding in whole one year's assessment, the year for which priority is claimed being selected by the Commissioner of Taxes.

2. If any person -

- (a) lends money to the parastatal corporation to enable it to satisfy, in whole or in part, a debt or claim which is, or which if not so satisfied would be, a debt or claim to which priority is given under paragraph 1, or

- (b) guarantees or gives security for the payment of any debts or claim referred in paragraph 1 and, either before or after the publication of the Order dissolving the parastatal corporation, satisfies the debt or claim, in whole or part, by paying it himself or by the security given by him being realised,

that person shall in the winding up of the affairs of the parastatal corporation be entitled to priority under paragraph 1 for the loan made by him, or for an indemnity in respect of the guarantee or security given by him, to the extent that the amount of the debt, or claim which was satisfied out of the loan, or by that person, or out of the security given by him, has been diminished.

3. For the purpose of the paragraph 2 -

- (a) a loan shall include any form of advance and an overdraft at a bank;
- (b) a person shall be deemed to have given a guarantee or security if he is personally liable to satisfy a debt or claim by a rule of law or a written law, or if any of his assets may be seized, distrained upon or sold in order to satisfy the debt or claim, or if any of his assets are charged with the debt or claim or are ordered to be sold by order of any court in order to satisfy it;
- (c) a person who lends money to the parastatal corporation to enable it to pay any of its debts, or who gives a guarantee or security in respect of all debts, or all its debts of a particular class, shall be deemed to have made a loan to enable it to satisfy debts or claims to which priority is or would be given by paragraph 1, or to have guaranteed or given security for such debts or claims, to the extent that the loan is actually used to satisfy such debts or claims, or to the extent that the guarantor or the person giving the security satisfies them, or to the extent that they are satisfied by the realisation of the security, whether the contract of loan or guarantee or the instrument creating the security expressly refers to such debts or claims or not; and
- (d) a security shall be deemed to be realised if any of the assets subject to it are sold or are ordered by a court to be sold, or if a receiver is appointed in respect of any of those assets, or if the person entitled to the security takes possession of any of those assets.

4. The debts and claims to which priority is given by paragraphs 1 and 2 shall -

- (a) be paid in full in the order specified in paragraph 1; and
- (b) so far as the assets of the parastatal corporation available for payment of all its debts and liabilities are insufficient to meet them, have priority over the claims of other creditors, and of other charges or privileges created against the assets, of the

parastatal corporation, and be paid accordingly out of any property comprised in or subject to such charges or privileges.

5. The debts and claims to which priority is given by paragraphs 1 and 2 shall be discharged forthwith so far as the assets of the parastatal corporation are sufficient to meet them.

6. In the event of a landlord or other person having distrained or enforced a privilege under article 2102 of the Civil Code on any goods or effects of the parastatal corporation within three months next before the date of the Order dissolving the parastatal corporation, the debts to which priority is given by paragraphs 1 and 2 shall be a first charge on the goods or effects so distrained on or over which the privilege is exercised or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

7. The debts and liabilities, other than those referred to in paragraphs 1 and 2, of the parastatal corporation shall be discharged in accordance with the priority set out in the other written laws.

8. Where the claims, debts and other liabilities of the parastatal corporation referred to in paragraph 7 rank equally among themselves and there are insufficient assets available for the payment of all the claims, debts and other liabilities the liquidator shall distribute the assets pro rata among the creditors.

NO SUBSIDIARY LEGISLATION
