

**CHAPTER 273
THE DAR ES SALAAM WATER AND SEWERAGE AUTHORITY ACT**

[PRINCIPAL LEGISLATION]

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CHAPTER 273

THE DAR ES SALAAM WATER AND SEWERAGE AUTHORITY ACT

An Act to make provisions in pursuance of enactment of the Energy and Water Utilities Regulatory Authority Act, 2001 in relation to the functions, powers and privileges of the Dar es Salaam Water and Sewerage Authority; to enhance the regulatory framework for the Dar es Salaam Designated Area; to repeal the Dar es Salaam Water and Sewerage Authority Act, 1981 and to provide for related matters.

[7th March, 2003]

[G.N. No. 80 of 2003]

Act No. 20 of 2001

PART I

PRELIMINARY PROVISIONS (ss 1-3)

1. Short title

This Act may be cited as the Dar es Salaam Water and Sewerage Authority Act.

2. Omitted

[Omitted.]

3. Interpretation

In this Act, unless the context requires otherwise:

"Act" means the Dar es Salaam Water and Sewerage Authority Act;

"Board" means the Board of Directors of DAWASA established by section 9(1);

"catchment area" means any area of land or of water delimited by the Minister as an area connected with the supply of waterworks;

"Chairman" means the Chairman of the Board and includes the Vice-Chairman and any

person presiding at a meeting of the Board;

"Chief Executive Officer" means the Chief Executive Officer of DAWASA appointed in accordance with section 13(1);

"concession" means the contract or agreement which may be entered into between DAWASA and the Operator in accordance with section 8(1);

"consumer" includes any person or body of persons supplied, or applying to be supplied with, or using, water from the waterworks or who is liable for payment of any fees or other charges for the supply or use of water;

"cut-off" in relation to a supply of water, means to stop the supply whether by operating a tap, disconnecting pipes or in any other way;

"DAWASA" means the Dar es Salaam Water and Sewerage Authority established pursuant to section 4(1);

"DAWASA Designated Area" means the City of Dar es Salaam and part of the Coast Region as shown on a sketch map labelled "DAWASA Designated Area" and deposited in the office of the Chief Executive Officer;

"default notice" means a notice issued by the Operator and sent to the Owner or Occupier of Premises to which water or sewerage services are supplied specifying the tariffs or other charges which are overdue for payment;

"EWURA" means the Energy and Water Utilities Regulatory Authority established by section 4 of the Energy and Water Utilities Regulatory Authority Act *(4);

"fire service" means any pipes and fittings used for the sole purpose of supplying water to premises to combat fire;

"fittings" means and includes all taps, stop cocks, ball cocks, cold water cisterns, hot water apparatus, flushing apparatus or any other apparatus or appliances other than meters, used on an internal supply in connection with the supply of water from the waterworks;

"Government entity" means any entity owned by or on behalf of the Government and includes any central government department or agency, statutory body, executive agency, body corporate, council, municipality or parastatal company;

"internal supply" means the supply of water by service to any premises;

"mains" includes any water pipe owned and maintained by DAWASA including connections to the mains;

"meter" means an appliance, apparatus or device used to measure, ascertain or regulate the amount of water taken or used from the Waterworks and includes any meter box, meter box

cover and indicator marking the position and size of the meter;

"Minister" means the Minister responsible for water;

"occupier" means any person who is in occupation of the premises in connection with which that term is used;

"operator" means the operator appointed in accordance with section 7;

"owner" in relation to any premises, means the person for the time being receiving the rent in respect of the premises in question, whether on his own account or as agent or trustee for any other person, or who would receive it if the premises were let at a rent;

"premises" means any structure, building or part of a building, and includes any land with or without buildings which is held or occupied as a distinct or separate holding or tenancy, and any pier, sea-wall or wharf;

"public fountain" means any fountain, standpipe, tap, trough, valve or other appliance or structure erected, provided or maintained by or on behalf of DAWASA for the purpose of supplying water to the public from the waterworks;

"rules" means rules made in accordance with section 41 of the Energy and Water Utilities Regulatory Authority Act;

"service" means pipes, cisterns, cocks, fittings and other appliances or structures, other than meters, through which water flows or is intended to be used for the purpose of supplying any premises from the waterworks;

"street" includes highway, road, lane, footway, square, court, alley or passage, whether or not a thoroughfare; and

"waterworks" includes all gathering grounds, reservoirs, dams, weirs, tanks, cisterns, tunnels, filter beds, conduits, aqueducts, mains, pipes, meters, fountains, sluices, valves, hydrants, pumps, prime movers and all other structures and appliances used or constructed for the storage, conveyance, supply, measurement or regulation of water, which are used or have been constructed by or on behalf of DAWASA.

PART II

THE DAR ES SALAAM WATER AND SEWERAGE AUTHORITY (ss 4-8)

4. Continuation of DAWASA

There shall continue to exist the Dar es Salaam Water and Sewerage Authority also known by its acronym DAWASA.

5. Legal status of DAWASA

(1) DAWASA shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name be capable of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property;
- (c) exercising the powers and performing the functions conferred upon it by or under this Act;
- (d) entering into any contract or other transactions, and doing or suffering to do all other acts and things which a body corporate may lawfully perform, do or suffer to be done.

(2) The common seal of DAWASA shall be duly affixed if witnessed under the hand of the Chairman, the Chief Executive Officer or the Secretary of DAWASA and such affixation on any document executed or authenticated shall be judicially noticed.

6. Functions of DAWASA

The functions of DAWASA shall be—

- (a) to secure the continued supply of water for all lawful purposes;
- (b) to develop and maintain waterworks connected with the supply of water;
- (c) to promote the conservation and proper use of water resources;
- (d) to advise the Government in the formulation of policies relating to the development and conservation of water and potable water standards;
- (e) to plan and execute new projects for the supply of water;
- (f) to educate and provide information to people on public health aspects of water supply, water conservation and similar issues;
- (g) to liaise with other authorities on matters relating to water disposal and the preparation and execution of plans relating to the expansion of water supply;
- (h) to collect fees and levies (including any regulatory levy) for water and sewerage services supplied to consumers;
- (i) to provide amenities or facilities which it considers necessary or desirable for persons making use of the services or the facilities provided by DAWASA;
- (j) to do anything or enter into any transaction which, in the opinion of the Board, is calculated to facilitate the proper exercise of its functions;
- (k) to construct and maintain sewerage disposal works on any public land or land acquired

or lawfully appropriated for that purpose; and

- (l) to construct and maintain a public sewer in, on, under or over any street or under or through any cellar or vault below any street.

7. Appointment of an Operator

DAWASA may, by notice published in the *Gazette*, appoint an Operator to perform the functions and exercise the powers which are vested on it by this Act on such terms and for a period as may be specified in a concession, contract or agreement entered into between itself and the Operator.

8. Power to make concession

(1) DAWASA may make a concession providing for the lease and temporary transfer of its fixed and landed assets to the Operator for the purpose of providing water supply and sewerage services.

(2) The concession may provide for the incremental extension of the services provided by the Operator over the whole of the DAWASA Designated Area in accordance with a plan which may be developed pursuant to the concession.

(3) During a term of any concession, the Operator shall exercise and perform the powers, duties and functions of DAWASA in the areas specified in the concession and DAWASA shall retain the powers to perform the functions and discharge its responsibilities in areas where the Operator does not provide services.

(4) It shall be lawful for members of a community in areas within the DAWASA Designated Areas where Operator's water supply services do not extend to abstract and use water from that community's sources and other private sources even if the Operator has lawful access provided that such water is not used for commercial use.

(5) Notwithstanding subsection (1), the Operator may during the term of the concession, improve, upgrade, purchase or add new items to the fixed and landed assets of DAWASA and any such assets shall be deemed to have been vested in DAWASA at all times and shall be conveyed back to DAWASA on termination or expiry of the term of concession.

PART III THE BOARD (ss 9-14)

9. Board of Directors

(1) There shall be a Board of Directors of DAWASA.

(2) The provisions of the Schedule to this Act shall have effect as to the appointment, constitution and the procedure of the Board and to other matters related to it.

(3) Except for the provisions relating to the appointment of the Chairman, the Minister may, by Order published in the *Gazette*, amend, vary or replace any of the provisions of the Schedule to this Act.

10. Powers of the Board

The powers of the Board shall be—

- (a) to approve any individual capital work for the purposes of DAWASA;
- (b) to establish committees from among its Members for the purposes of DAWASA and delegate any functions to any of those committees;
- (c) to consider legislative proposals relating to water and the supply of it and recommend their enactment to the Minister;
- (d) subject to section 22, to provide services or facilities relating to water supply requested by the Government and the local government authorities in areas within the DAWASA Designated Area;
- (e) to give directions of any nature to the Chief Executive Officer; and
- (f) to recommend to EWURA any changes to water tariffs and other charges made for the services provided by DAWASA.

11. Power of Board to delegate

(1) The Board shall be responsible for the management of DAWASA.

(2) Subject to subsection (5), the Board may, by instrument, appoint and delegate on such terms and conditions as it may specify, to any of the employees of DAWASA or to any committee appointed by it any of the functions, authorities or duties conferred upon it by or under this Act and where any delegation is so made the delegated function, power, authority or duty may be performed or as the case may be, exercised by the delegate subject to the terms, conditions and restrictions specified in writing by instrument of delegation.

(3) The Board may revoke a delegation made under this section.

(4) No delegation so made shall prevent the Board from itself performing or exercising the function, power, authority or duty delegated.

(5) The Board shall not delegate its function, power, authority or duty in relation to—

- (a) approval of the annual report of audited accounts;
- (b) borrowing the sums of money as may be necessary for DAWASA.

12. Minister may give directions to the Board

Without prejudice to section 10, the Minister may, subject to relevant established procedure, give to the Board written directions of a general policy regarding performance or exercise by the Board of any of its functions, powers, duties or authority in relation to any matter appearing to the Minister to affect DAWASA or national interest and the Board shall give effect to every such direction.

13. Appointment of Chief Executive Officer

(1) The Minister shall, subject to subsection (2), appoint the Chief Executive Officer upon recommendation of the Board and upon such appointment, the Chief Executive Officer shall be full-time in office and will not be engaged in any other paid employment.

(2) The Board shall on the basis of a competitive recruitment process, recommend to the Minister names of not less than three suitable persons who may be appointed to be the chief executive officer of DAWASA.

(3) The Chief Executive Officer shall be a person—

- (a) who possesses the relevant experience and knowledge of the water and sewerage utilities; and
- (b) who, in the opinion of the Board, is suitable to perform the functions and duties of chief executive officer competently and honestly.

(4) The terms and conditions of employment of the Chief Executive Officer shall be set out in a contract of employment as may be determined by the Board and provided for in the Annual Budget.

(5) The Chief Executive Officer shall subject to the directions of the Board be responsible for the day to day operations of DAWASA.

(6) The Chief Executive Officer or a member of the Board shall not participate in any deliberations or decisions of the Board relating to his terms and conditions of employment.

(7) The Board may, appoint such number of other professional and non-professional employees of DAWASA as it may deem necessary for the proper and efficient conduct of the business and activities of DAWASA.

(8) All such employees shall be appointed on the basis of qualification, experience and merit and salaries for each position shall be set on the basis of the market rates as may be decided by the Board.

14. Allocation of employees

(1) Subject to the terms of concession allowing the Operator to choose staff, allocation of

employees of DAWASA shall be determined in accordance with the concession, but employees transferred from—

- (a) DAWASA to the Operator; or
- (b) the Operator to DAWASA; or
- (c) the former Operator to the new Operator,

shall be employed on the terms which are not less favourable than those applicable to them prior to such transfer.

(2) The arrangement made between DAWASA and the Operator shall not include a provision preventing DAWASA or the Operator, as the case may be, to retrench any employee of DAWASA.

(3) Where an employee is transferred from DAWASA to the Operator or from the former Operator to the new Operator and that employee is a member of any statutory or voluntary pension scheme or provident fund prior to such transfer, such employee shall continue to be governed by the same laws and regulations governing such schemes and his service, for the purpose of such schemes shall be deemed to be service with DAWASA and the Operator shall contribute to the scheme accordingly.

(4) Notwithstanding the preceding provisions of this section, DAWASA and the Operator are entitled during the term of a concession, to appoint employees for their own account.

PART IV POWERS AND OPERATIONS OF DAWASA (ss 15-24)

15. Agreement as to drainage, etc., of land

DAWASA may enter into agreement with the Owner or Occupier of any land with respect to the execution and maintenance by any party to the agreement of works as DAWASA considers necessary for the purpose of draining that land or for more effectively collecting, conveying or preserving the purity of water which DAWASA is for the time being authorised to take.

16. Power to restrict, suspend, etc., the supply of water

DAWASA may restrict, diminish, withhold or suspend, stop, turn off or divert the supply of water through or by means of any mains, internal supply or public standpipe, either wholly or in part, whenever DAWASA thinks fit, and without prejudice to any water rate, meter rent or other sum due without compensation for any damage or loss which may result—

- (a) whenever the available supply of water from the waterworks is, in the opinion of DAWASA, insufficient;
- (b) whenever it is expedient or necessary for the purpose of extending, altering, testing or

repairing the waterworks or for the purpose of the connection of internal supply or fire service;

- (c) whenever any public fountain is damaged or its waters are polluted or wasted;
- (d) in case of an outbreak of fire; or
- (e) in case of a breakdown in the waterworks.

17. Custody and administration of waterworks

Subject to the provisions of this Act and to any directions given by the Minister, DAWASA shall have the custody and administration of the waterworks in the DAWASA Designated Area and with respect to those waterworks, shall have the management of supply of water.

18. Power to supply water fittings, etc.

(1) DAWASA may, on the application or request of any person to whom it supplies or proposes to supply water, supply to him, by sale or hire, any such water fittings or appliances as are required or allowed by rules or regulations made under this Act or by any other written law and may on such application or request, install, repair or alter any such water fittings or appliances whether supplied by them or not, as the case may be, and may provide any materials and do any work required in connection with such installation, repair or alteration of water fittings or appliances, as the case may be.

(2) DAWASA may make such charges as may be agreed on or, in default of agreement, as may be reasonable for any fittings or appliance supplied, or any materials provided or work done and may recover those charges as a civil debt.

(3) Any fittings or appliances let for hire by DAWASA shall—

- (a) notwithstanding that they are fixed to some part of the premises in which they are situated or are laid in the soil under the Premises, continue to be the property of, and removable by, DAWASA; and
- (b) not be subject to distress or to the landlord's remedy for rent or be liable to be taken in execution under any process of any court or in any proceedings in bankruptcy against the persons in whose possession they may be:

Provided that nothing in this subsection shall affect the valuation for rating of any rateable hereditament.

(4) A person who wilfully damages any water fitting or appliance belonging to DAWASA, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both and DAWASA may do all such work as are necessary for repairing the damage caused to the fitting or appliance and

recover from the offender by way of summary proceedings expenses reasonably incurred by it.

19. Way leave to lay water pipe, etc., on private land

(1) DAWASA or the Operator shall have way leave to enter upon any land after giving reasonable notice in writing to the Owner or Occupier for the purpose of erecting a public fountain or for the purpose of laying any water pipe through, across or under such land or in case of serious emergency, enter upon land without giving notice and do anything which may be necessary for the purpose of repairing, maintaining, renewing, removing, altering, inspecting, attending to or testing any such water pipe on the land.

(2) Where DAWASA or the Operator have entered upon any land pursuant to subsection (1), it shall, at the option of the Owner or Occupier, make good or pay such amount as may be reasonable to compensate any damage done or occasioned by reason of such entry and repairing, maintaining, renewing, removing, altering, inspecting, attending to or testing any water pipe.

(3) Where DAWASA or the Operator have, in relation to any land, taken steps towards fulfilment of conditions stipulated under subsections (1) and (2), it shall assume control over ten metres of such land being five metres from the edge of each side of the big pipe (mains) and two metres being one metre from the edge of each side of the small pipe (tertiary) and no person shall be permitted to enter and stay or do anything upon that land without the permission of DAWASA or the Operator, as the case may be.

(4) A person who erects or allows to be erected any structure whether of a permanent or temporary nature or inhabits or allows to be inhabited any part, cave, cavity, depression or hole in any part of the waterworks, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(5) Where an offence has been committed pursuant to subsection (4), DAWASA may issue a notice in writing requiring any structure in respect of which an offence has been committed to be removed or habitation terminated and if that structure is allowed to remain or habitation continues after such notice being issued, the person on whose control the said structure is or who continue to habitate as such, commits an offence and shall be liable on conviction to a further fine of ten thousand shillings for each day during which commission of offence continues.

20. Provision of domestic supply

(1) Where an Owner or Occupier of land within the DAWASA Designated Area proposes to erect buildings for which a supply of water for domestic purposes will be needed, he shall make an application to DAWASA in the prescribed form, requesting it to construct any necessary service reservoirs, to lay the necessary mains to such point or points as will enable the internal supply system of those buildings to be connected to the mains at a reasonable cost and to bring water to that point or points and DAWASA may, subject to the provisions of this Act,

accede to that request.

(2) For the purposes of this section, the "internal supply system" means a system of water, drainage and sewerage mains laid or required to be laid or complied with in connection with a building or area of buildings in accordance with any requirements pursuant to sections 4 to 19 of the Public Health (Sewerage and Drainage) Act. *(5)

(3) Any question arising pursuant to subsection (2) as to the points to which mains must be taken in order to enable buildings to be connected to the mains at a reasonable cost shall, in default of agreement, be determined by EWURA.

21. Power of entry into premises

(1) Any authorised officer may, at any reasonable time, or in the case of emergency at any time, enter into and upon any premises into or upon which any internal supply system is being or has been laid for the supply of water from the waterworks, for the purposes of—

- (a) inspecting any internal supply and to ascertain whether there is any waste, leakage, obstruction, alteration, interference or damage to any internal supply or meter in it and anything in connection with it;
- (b) regulating or repairing any internal supply or meter;
- (c) ascertaining the consumption; or
- (d) disconnecting the internal supply to any premises or to diminish, withhold or suspend, stop, turn off or divert the supply of water to any premises through or by means of any internal supply either wholly or in part.

(2) For the purposes of subsection (1), "authorised officer" means a police officer and includes any officer of DAWASA or other person authorised in writing by DAWASA for the purpose of exercising the power of entry conferred under this section.

22. General powers of DAWASA in relation to water, etc.

(1) DAWASA shall be the principal body for the implementation of Government policy in relation to water, water supply and sewerage services as well as water resource conservation in the DAWASA Designated Area and for that purpose, it shall subject to this Act, have and exercise such functions, powers and duties as are conferred upon it by this Act or by any other written law.

(2) In the performance of its functions and duties and in the exercise of its powers, DAWASA may, do all lawful things that may be necessary or expedient for securing the proper and advantageous execution of the purposes of this Act.

23. DAWASA to operate commercially

DAWASA shall operate commercially services it provides to the public and shall ensure that revenues of DAWASA are sufficient to meet its outgoings, including payment of debt service charges.

24. Power to charge fees etc. for services rendered

(1) DAWASA shall charge and collect tariffs, fees or other charges for water supplied, sewerage or other services rendered or facilities availed to consumers in accordance with the rates authorised by EWURA and published in the *Gazette* and in at least one Kiswahili and one English newspaper circulating in the area concerned.

(2) The Owner or Occupier of any premises in respect of which tariffs, fees or other charges are payable under this Act shall be liable for payment of those tariffs, fees or other charges.

(3) When any premises are occupied by two or more persons, each person shall be jointly and severally liable for the payments referred to in this section.

(4) The payments referred to in this section shall be paid to such officer or at such office as DAWASA may, from time to time, notify in the *Gazette*.

(5) DAWASA may cut-off or withdraw the supply of water or sewerage services from any premises in respect of which any tariffs or charges in connection with the supply of services have not been fully paid within thirty days following receipt by the Owner or Occupier of a default notice.

PART V

REGULATION OF DAWASA AND THE OPERATOR (ss 25-27)

25. Regulation by EWURA

(1) DAWASA and the Operator shall, in the exercise of their respective functions under this Act, be subject to regulation by EWURA, the licence and the concession.

(2) DAWASA and the Operator shall each obtain a licence from EWURA permitting them to perform their respective functions under this Act.

26. Functions of EWURA

In addition to the functions set out in section 6 of the Energy and Water Utilities Regulatory Authority Act *(6), EWURA shall in relation to the regulation of water supply and services in the DAWASA Designated Area—

- (a) exercise licensing and regulatory functions in respect of water supply and sewerage services including the establishment of standards relating to equipment attached to the water and sewerage system;
- (b) provide guidelines on tariffs chargeable for the provisions of water supply and

- sewerage services;
- (c) examine and approve tariffs chargeable for the provision of water supply and sewerage services as submitted by DAWASA;
 - (d) monitor water quality and standards of performance for the provision of water supply and sewerage services;
 - (e) initiate and conduct investigations in relation to quality of service given to consumers;
 - (f) conduct studies necessary for administrative or management purposes;
 - (g) collect and compile data on operators as it considers necessary for the performance of its functions under this Act;
 - (h) give directions to any person granted a licence under this Act;
 - (i) levy charges and fees for the granting of licences and other services provided by EWURA as may, in its opinion, be appropriate;
 - (j) lay down or approve standards and codes of conduct in respect of the Operator and consumers;
 - (k) perform other functions which are incidental or ancillary to the functions stipulated under this subsection;
 - (l) promote the development of water supply and sewerage services in accordance with recognised international standard practices and public demand;
 - (m) subject to paragraph (h) of section 6, collect from DAWASA any regulatory levy charged in accordance with section 43 of EWURA Act;
 - (n) prescribe and cause to be published in the *Gazette* and in at least one Kiswahili and one English newspaper circulating in the DAWASA Designated Area, standards for services;
 - (o) monitor the environmental impact of the provision of water supply and sewerage services.

27. Settlement of disputes

(1) EWURA may, with the prior approval of the Minister responsible for EWURA, make rules of procedure for settlement of disputes between DAWASA and the Operator by EWURA.

(2) Any dispute of a regulatory nature arising between DAWASA and the Operator referred to in accordance with the terms of concession shall be submitted to EWURA for settlement.

(3) For the purposes of this section, "disputes of regulatory nature" means the disputes that

affect Operator tariffs and customer tariffs in relation to proposal by the Operator to change tariffs.

PART VI
GENERAL PROVISIONS (ss 28-32)

28. Protection of members

No act or thing done by any Member or by any employee of DAWASA if done or omitted to be done *bona fide* in the execution or purported execution of his duties as a Member or as an employee of DAWASA shall subject him to any action, liability or demand of any kind.

29. Liability of employer or principal

Where an offence is committed against this Act or any subsidiary legislation made under it by a person being an agent, the principal or employer shall be vicariously guilty of the offence and shall be liable to be proceeded against.

30. Recovery of expenses, etc.

(1) All monies other than those payable as penalties or fines, under this Act, shall be recoverable together with interest at such rate as the Board may determine.

(2) Notwithstanding subsection (1), no money which was due and owing for more than two calendar months before demand was made shall be recovered in accordance with the provisions of this section.

31. Proof of liability

In any action for the recovery of any amount due under this Act a certificate under the hand of the Chief Executive Officer or any employee of DAWASA so authorised on that behalf specifying the amount in question is due and that the defendant is the person liable to pay the money, shall in the absence of evidence to the contrary, be conclusive evidence of the amount which is due for payment by the defendant.

32. Regulations

(1) The Minister may make regulations providing for—

- (a) the forms of all notices required to be given or sent under this Act and the issuing and service of those notices; and
- (b) anything which in the opinion of the Minister is necessary for the better carrying into effect of the purposes and objects of this Act.

(2) Any regulations made under this Act may provide that the contravention of any of their provisions shall constitute an offence and may prescribe penalties in respect of an offence

committed.

(3) Where the matter for which regulations are to be made is regulated by EWURA, the Minister shall consult the Minister responsible for EWURA prior to making any such regulation.

PART VII FINANCIAL PROVISIONS (ss 33-38)

33. Funds of DAWASA

The funds and resources of DAWASA shall consist of—

- (a) the sums as may be appropriated by Parliament for the purposes of DAWASA;
- (b) the sums or property which may vest in DAWASA under this Act or any other written law or otherwise vested in DAWASA in any other manner in the process of performance of its functions;
- (c) any sums which DAWASA may receive as fees, rates or charges for water supplied or any services rendered by it; and
- (d) the donations, grants, bequests and loans as the Board may, receive from any person or body of persons.

34. Power to raise and guarantee loans

(1) The Board may obtain loans and other credit facilities from any person for the purposes of DAWASA upon such terms and conditions relating to repayment of the principal and the payment of interests.

(2) The Board may, if it is of the opinion that the public interest so requires and, subject to the approval of the Minister, secure the payment of money by mortgage, charge or lien of its undertaking or property, both present or future, or any part of it, and by issuance of debenture, stock, bills, bonds and other means as the Board may deem fit or guarantee the repayment of interest on a loan made to any person or body of persons engaged in the development, conservation or extraction of water in the DAWASA Designated Area or other water supply areas.

(3) A person giving a loan or other credit facility to DAWASA or, as the case may be, to any person or body of persons the repayment of which is guaranteed by DAWASA, shall not be bound to enquire whether the Board has obtained the approval of the Minister for the purposes of that loan or other credit facility or the guarantee.

35. Investment

The Board may invest any part of the moneys available in any fund of DAWASA which is not for the time being required for the purposes of the business of DAWASA.

36. Annual and supplementary budget

(1) Not less than two months before the beginning of every financial year, the Board shall, at a meeting, pass a detailed budget (in this Act called the "annual budget") of the amounts respectively—

- (a) expected to be received; and
- (b) expected to be disbursed,

by DAWASA during that financial year and, whenever circumstances so require, the Board may pass a supplementary budget in any financial year.

(2) If in any financial year DAWASA requires to make any disbursement not provided for, or of an amount in excess of the amount provided for in the annual budget for any year, the Board shall, at a meeting, pass a supplementary budget detailing such disbursement.

37. Accounts and audit

(1) The Board shall cause to be provided and kept in accordance with International Accounting Standards and on an accruals basis, proper books of accounts and records with respect to—

- (a) the receipt and expenditure of moneys by, and other financial transactions of DAWASA; and
- (b) the assets and liabilities of DAWASA, and shall cause to be made out for every financial year a balance sheet showing the details of the income and expenditure of DAWASA and its assets and liabilities.

(2) Within six months of the close of every financial year, the accounts including the balance sheet of DAWASA shall be audited by a commercial firm of internationally accredited auditors licensed to practise as such in Tanzania as may be appointed by the Board.

(3) Every audited balance sheet shall be placed before a meeting of the Board and, if adopted by the Board, be endorsed with a certificate that it has been so adopted.

(4) As soon as the accounts of DAWASA have been audited, and in any case not later than six months after the close of the financial year, the Board shall submit to the Minister a copy of the audited statement of accounts together with a copy of the report on that statement made by the auditors.

38. Annual report

(1) DAWASA shall cause to be prepared and submitted to the Minister within six months after the close of each financial year an annual report detailing generally activities and operations of DAWASA during that year.

(2) The report shall be accompanied by—

- (a) a copy of the audited accounts of DAWASA together with the auditor's report on the accounts;
- (b) a statement of all directions given by the Minister to DAWASA during a year in question; and
- (c) such other information as the Minister may direct.

(3) DAWASA shall also submit to the Minister such other reports on its financial affairs as the Minister may by writing request.

(4) The Minister shall, as soon as practicable after receiving the report, lay before the National Assembly the audited accounts of DAWASA together with the auditor's report, if any, on the accounts and the annual report of DAWASA.

PART VIII TRANSITIONAL PROVISIONS (ss 39-44)

39. Continuation and completion of disciplinary proceedings

Where immediately before the day on which this Act comes into operation—

- (a) any disciplinary proceedings have been initiated against any employee of DAWASA and such proceedings are still pending before the court or Board or are in the course of being heard or any such matter likely to give rise to investigation by DAWASA and no order or decision had been rendered on it;
- (b) any employee has been interdicted or suspended,

the court or Board shall carry on and complete the hearing or such disciplinary proceedings and make an order or render such decision, as the case may be, or deal with such employees in such manner as it deems appropriate.

40. Transfer of powers, rights, liabilities and duties

Subject to the provisions of this Act, all powers, rights, privileges, duties, liabilities or obligations which, immediately before the date of coming into operation of this Act were exercisable by persons appointed or employed pursuant to the provisions of the Dar es Salaam Water and Sewerage Authority Act, 1981 shall, as from that date vest in DAWASA.

41. Transfer of assets

All land, assets and other property of every kind owned by a Government entity including all rights of way, public pumps, pumping stations, treatment works, drains, sewers, cisterns, fountains, wells, reservoirs, conduits and other facilities conferred to, vested in or used by DAWASA pursuant to the Dar es Salaam Water and Sewerage Authority Act for the supply of

water and sewerage services to the inhabitants of the DAWASA Designated Area shall, by virtue of this section and without further assurance, vest in DAWASA.

42. Restriction on execution against property of DAWASA

(1) Notwithstanding anything to the contrary in any written law—

- (a) where any judgment or order has been obtained against DAWASA, no execution or attachment or process in the nature thereof shall be issued against the DAWASA or against the property of DAWASA but the Chief Executive Officer shall cause to be paid out of the revenue of DAWASA such amount as may, by the judgment or order, be awarded against DAWASA to the person entitled to it;
- (b) no assets and property belonging to DAWASA other than assets and property under duly executed mortgage, charge or lien shall be seized or taken by any person having by law power to attach or distrain property without prior written permission of the Minister.

(2) Where any action other than legal proceedings is commenced in a court of law against DAWASA for any act done in pursuance or execution of or intended execution of any public duty or authority, or in respect of any alleged neglect or default in the execution of this Act or any such duty or authority, the action or legal proceedings shall not be commenced against DAWASA until at least one month after written notice containing the particulars of the claim and of intention to commence the action or legal proceedings has been served upon the Chief Executive Officer by the plaintiff or his agent.

43. Continuation of service of officers and employees

Subject to section 14, every person who, immediately before the date of coming into operation of this Act, was employed as an officer or employee of DAWASA shall, on and after that date, be transferred to the employment of DAWASA.

44. Repeal of Act No. 7 of 1981

[Repeals the Dar es Salaam Water and Sewerage Authority Act.]

PART IX OFFENCES AND PENALTY (ss 45-55)

45. Damage to or alteration of waterworks, etc.

(1) Any person who, in the DAWASA Designated Area, wilfully or negligently damages the waterworks, any sewer, sewerage treatment plant or other asset owned or vested in DAWASA, or unlawfully draws off, diverts or takes water from the waterworks or from any stream or waters by which the waterworks are supplied, or alters or causes or permits any internal supply to be altered without the approval of DAWASA commits an offence.

(2) Any person who is convicted for an offence under subsection (1), shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

46. Misuse or waste of water

Any person who, in the DAWASA Designated Area, wilfully or negligently misuses or wastes, or causes or allows to be misused or wasted any water passing into, through or upon or near any premises from the waterworks, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings to imprisonment for a term not exceeding three months or to both.

47. Fraudulent measurement

(1) Any person who alters or causes or permits to be altered any service with intent to avoid the accurate measurement or register of water by means of any meter or to obtain a greater supply of water than he is entitled to or to avoid payment for the supply of water or who wilfully or negligently interferes with or damages any meter, commits an offence.

(2) A person who is convicted under subsection (1) shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

(3) Any service so altered or meter damaged or interfered with and in relation to such alteration, damage or interference a conviction has been procured shall be replaced or repaired by DAWASA at the expense of any person convicted and the cost incurred by DAWASA may be recovered from that person as a civil debt.

48. Using water other than for purposes supplied

(1) Any person who uses any water supplied to him by DAWASA for purposes other than those for which water is supplied commits an offence.

(2) A person who is convicted under subsection (1) shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months.

(3) A conviction and sentence under this section shall be procured without prejudice to the right of DAWASA to recover the value of water improperly used.

49. Bathing, washing etc. in waterworks

Any person who—

- (a) washes his person or bathes in any part of the waterworks or catchment area or in any vessel used by DAWASA for supplying water from any public fountain;
- (b) washes, throws or causes or permits to enter into any part of the waterworks or catchment area or into any vessel used by DAWASA for supplying water from any

public fountain, any animal, clothing, material or thing; or

- (c) wrongfully opens or closes any lock, cock, valve, sluice or manhole belonging to the waterworks,

commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two months.

50. Pollution

(1) Any person who deposits or allows or causes to be deposited any earth, material or liquid in such manner or place that it may be washed, fall or be carried into the waterworks commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(2) Except for part of land which has been allocated under a right of occupancy, any person who on any part of the waterworks erects or inhabits or allows or causes to be erected or inhabited any structure whether of permanent or temporary nature or who inhabits any cave, cavity, depression or hole in any part of the waterworks, commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months

(3) Where a court convict a person in pursuance of subsection (1) or (2), it may issue an order requiring that person to remove any object or stop from doing any act or omission with respect to which an offence has been committed and such person shall comply forthwith with the order of the court.

51. Offences under other laws

Where an act or omission punishable under this Act can equally be punishable under other law for the time being in force, the offender shall be proceeded against and punished under this Act alone.

52. General penalty

Any offence committed against this Act for which no penalty is expressly provided shall be punishable by a fine not exceeding one hundred and fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

53.-55. Omitted

[Omitted: R.E. 2002.]

SCHEDULE

(Section 9(2))

1. Composition of Board

(1) The Board shall consist of–

- (a) a Chairman, who shall be appointed by the President;
- (b) Chief Executive Officer;
- (c) one Member appointed by the Minister to represent the Ministry responsible for water;
- (d) a representative of the Ministry responsible for finance;
- (e) six members appointed by the Minister being–
 - (i) one from the Dar es Salaam City Council;
 - (ii) two representatives from large water consumers;
 - (iii) one representative of Community Water User Organization;
 - (iv) one representative from the Coast Region;
 - (v) one member from the body representing private sector.

(2) In making appointments of Members, the Minister shall ensure that every person appointed by him is a person who, in his opinion, has such technical qualifications or experience by virtue of his involvement in commerce, industry, agriculture, finance, public services or administration, as would enable that person to make a useful contribution to the deliberations of the Board.

(3) The Board may appoint any employee of DAWASA to be the Secretary of the Board.

2. Vice-Chairman

The Members shall elect one of their number to be the Vice-Chairman of the Board and any Member so elected shall, subject to his continuing to be a Member, hold office for a term of one year from the date of his election and shall be eligible for re-election.

3. Tenure of appointment

(1) Subject to subparagraph (2), a Member shall, unless his appointment is sooner terminated by the appointing authority or he otherwise ceases to be a Member, hold office for such period as the appointing authority may specify in his appointment, or if no period is so specified, shall hold office for a term of three years from the date of his appointment, and shall be eligible for re-appointment.

(2) In the case of a Member appointed by virtue of the provisions of paragraph 1 (1) (d), he shall cease to be a Member upon his ceasing to hold office in the institution by which he was

recommended for appointment.

(3) Any Member, other than a Member referred to in subparagraph (2), may at any time resign by giving notice in writing to the President or, as the case may be, to the Minister and from the date specified in the notice or if no date is so specified, from the date of the receipt of the notice by the President or the Minister, he shall cease to be a Member.

4. Absent member to be represented

If a Member appointed pursuant to paragraph 1(1)(d) is unable for any reason to attend any meeting he may nominate in writing another person from the institution which recommended him for appointment to the Board, to attend that meeting in his place.

5. Casual vacancies

Where any Member ceases to be a Member for any reason before the expiration of his term of office, the appointing authority may appoint another person in his place and the person so appointed shall hold office for the remainder of the term of office of his predecessor.

6. Meetings of Board

(1) The Board shall ordinarily meet for the transaction of its business at the times and at the places determined by it, but shall meet at least once in every three months.

(2) The Chairman, or in his absence, the Vice-Chairman, may at any time call a special meeting of the Board upon a written request by a majority of the Members in office.

(3) The Chairman, or in his absence, the Vice-Chairman, shall preside at every meeting of the Board and in the absence of both the Chairman and the Vice-Chairman the Members present at a meeting shall appoint one of their number to preside at the meeting.

(4) The Chairman or, in his absence, the Vice-Chairman, may invite any person who is not a Member to participate in the deliberations at any meeting of the Board, but a person so invited shall not be entitled to vote.

7. Quorum

The quorum at any meeting of the Board shall be half of the Members in office.

8. Decisions of the Board

(1) Questions proposed at a meeting of the Board shall be decided by a majority of the votes of the Members present and voting and, in the event of equality of votes, the person presiding shall have a second or casting vote in addition to his deliberative vote.

(2) Notwithstanding subparagraph (1), a decision may be made by the Board without a meeting by circulation of relevant papers among the Members, and the expression in writing of

similar views by the majority of the Members shall constitute the decision of the Board.

9. Minutes of meetings

(1) The Board shall record and keep minutes of all business conducted or transacted at its meetings and the minutes of each meeting of the Board shall be read and confirmed, or amended and confirmed, at the next meeting of the Board and signed by the person presiding at the meeting.

(2) Any minutes purporting to be signed by the person presiding at a meeting of the Board shall, in the absence of proof of error, be deemed to be a correct record of the meeting whose minutes they purport to be.

10. Vacancies not to invalidate proceedings

The validity of any act of proceedings of the Board shall not be affected by any vacancy among its Members or by any defect in the appointment of any of them.

11. Orders, directions, etc.

All orders, directions, notices or other documents made or issued by or on behalf of the Board shall be signed by—

- (a) the Chairman or the Vice-Chairman; or
- (b) the Chief Executive Officer or any other officer or officers of DAWASA authorised in writing to do so by the Chief Executive Officer.

12. Affixing seal of DAWASA

The seal of DAWASA shall not be affixed to any instrument except in the presence of the Chairman or the Vice-Chairman or the Chief Executive Officer or some other officer of DAWASA and at least one other Member of the Board.

13. Board may regulate its own proceedings

The Board may regulate its own proceedings.

Endnotes

1 (Popup - Popup)

Cap. 336

2 (Popup - Popup)

Cap. 288

3 (Popup - Popup)

Cap. 336

4 (Popup - Popup)

Cap. 414

5 (Popup - Popup)

Cap. 336

6 (Popup - Popup)

Cap. 414