

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE PRIVATISATION ACT

CHAPTER 386 OF THE LAWS OF ZAMBIA

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CHAPTER 386

PRIVATISATION ACT

Act No.
21 of 1992
13 of 1994
9 of 1996

An Act to provide for the privatisation and commercialisation of State owned enterprises; to provide for the establishment of the Zambia Privatisation Agency and to define the functions of the Agency; to provide for the sale of shares in State owned enterprises; and to provide for matters connected with or incidental to the foregoing.

[4th July, 1992]

PART I

PRELIMINARY

1. This Act may be cited as the Privatisation Act. Short title

2. In this Act, unless the context otherwise requires- Interpretation

"Agency" means the Zambia Privatisation Agency established under section *three*;

"bank" means a commercial bank registered under the Banking and Financial Services Act. Cap. 387

"commercialisation" means the re-organisation of specified Government departments into commercialised enterprises which shall operate as profit making commercial ventures without the subvention of the Government and "commercialise" shall be construed accordingly;

"consultant" means any person employed by the Agency to undertake any work of a specialised nature connected with the privatisation programme in Zambia and shall include merchant banks, public accountants, lawyers and valuers;

"current value" means the market value of a State owned enterprise within three months of the completion of the sale;

"divestiture" means the disposing of the whole or part of the assets and shares of a State owned enterprise;

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"divestiture sequence plan" means a list of State owned enterprises, as approved by Cabinet, categorised according to the sequence in which the whole or part of their shares will be disposed of over the period of the privatisation programme;

"established fund" includes pension funds, contributory social security schemes, compensation funds and superannuation funds;

"financial institution" means a company, or body not being a bank, which carries on financial business and which is registered under any other law;

"foreign investor" means a person, being a citizen of Zambia or not, who brings into Zambia foreign exchange for the purchase of shares in a State owned enterprise or for additional investment in a State owned enterprise;

"golden share" means a share with special rights to enable the Government in the national interest to intervene in the operations of a company which intervention is caused by specific actions undertaken by the company;

"investor" means an individual, company, established fund, mutual fund, financial institution or foreign government intending to invest in a State owned enterprise under this Act but does not include the Local Government, the Government of the Republic of Zambia and a State owned enterprise;

"mutual fund" means an investment fund which purchases shares in a portfolio of companies and subdivides such portfolio into individual units for sale of such units to investors;

"privatisation" means the transferring to the private sector of part or the whole of the equity or other interest held by the Government, directly or indirectly, in a State owned enterprise wholly or partly owned by the Government and "privatise" shall be construed accordingly;

"Privatisation Revenue Account" means an account established under section *thirty-nine*;

"Privatisation Trust Fund" means a fund established under section *twenty-nine*;

"property" means all property movable or immovable, and all estates, interests, easements, and rights, whether legal or equitable into or out of property, choses-in-action, money and good-will;

"specified Government department" means a department specified by the Minister under section *thirty-seven*;

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"State owned enterprise" means a corporation, board, company, parastatal or body in which the Government has direct or indirect ownership, equity or interest and includes partnerships, joint ventures or any other form of business arrangement or organisation in which the Government has direct or indirect interest but does not include a Government department;

"stocks and shares" includes loans, stocks, debentures and debenture stock and options on any stocks, shares, loan, stock, debentures or debenture stock and rights, in relation to State owned enterprises;

"stock broker" means a person who carries on the business of buying and selling stocks or shares for and on behalf of other persons;

PART II

THE ZAMBIA PRIVATISATION AGENCY

3. There is hereby established the Zambia Privatisation Agency which shall be a body corporate with perpetual succession and a common seal capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Agency

4. (1) The seal of the Agency shall be such device as may be determined by the Agency and shall be kept by the Director. Seal of Agency

(2) The Agency may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman and the Secretary or any other person authorised in that behalf by a resolution of the Agency.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Agency by the Secretary or any other person generally or specifically authorised by the Agency in that behalf.

(5) Any document purporting to be a document under the seal of the Agency or issued on behalf of the Agency shall be received in evidence and shall be deemed to be executed or issued, as the case may be, without further proof, unless the contrary is proved.

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5. (1) The Agency shall consist of the following members who shall, subject to scrutiny by a Select Committee of the National Assembly and ratification by the National Assembly be appointed by the President: Composition of Agency

- (a) the Permanent Secretary in the Ministry responsible for commerce, trade and industry;
- (b) the Permanent Secretary in the Ministry responsible for finance;
- (c) the Attorney-General;
- (d) a representative of the Zambia Confederation of Chambers of Commerce and Industry;
- (e) a representative of the Zambia Congress of Trade Unions;
- (f) a representative of the Zambia Federation of Employers;
- (g) a representative of the Law Association of Zambia;
- (h) a representative of the Zambia Institute of Certified Accountants;
- (i) the Dean of the School of Business of the Copperbelt University;
- (j) a representative of the churches in Zambia;
- (k) a representative of the Bankers Association of Zambia; and
- (l) a representative of the farmers.

(2) The Chairman and the Vice-Chairman shall be elected by the Agency from amongst its members:

Provided that the Permanent Secretary in the Ministry responsible for finance and the Permanent Secretary responsible for commerce, trade and industry shall not be elected as Chairman or Vice-Chairman.

6. (1) The members, except ex-officio members, referred to in section *five* shall hold office for a period of three years from the date of nomination and shall be eligible for further nomination upon the expiration of that term. Tenure of office and vacancy

(2) A member, except an ex-officio member, referred to in section *five* may resign upon giving one month's notice, in writing, to the organisation which nominated him and to the Minister.

(3) The office of a member, except an ex-officio member, shall become vacant-

- (a) upon his death;
- (b) if he is absent without reasonable excuse from three consecutive meetings of the Agency of which he has had notice;
- (c) on ceasing to be a representative of the organisation which nominated him; or
- (d) if he is an undischarged bankrupt.

7. A member shall be paid such remuneration and allowances as the Agency may, with the approval of the Minister, determine.

Remuneration and
allowances of
Members

8. (1) It shall be the function of the Agency to plan, manage, implement and control the privatisation of State owned enterprises in Zambia.

Functions of Agency

(2) Notwithstanding the generality of subsection (1) the functions of the Agency shall be to-

- (a) recommend privatisation policy guidelines to the Cabinet;
- (b) implement the privatisation programme according to the policy guidelines issued by the Cabinet;
- (c) oversee all aspects of the implementation of the privatisation programme in Zambia;
- (d) monitor progress of the privatisation programme in Zambia;
- (e) prepare the long term divestiture sequence plan and submit such plan to the Cabinet for approval;
- (f) recommend to the Cabinet the most appropriate method of sale for each State owned enterprise to be privatised;

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- (g) carry out or cause to be carried out a valuation of a State owned enterprise that is to be privatised;
- (h) set pre-qualification criteria for the selection of potential buyers or investors of a State owned enterprise to be privatised;
- (i) evaluate offers from potential buyers with regard to the-
 - (i) price;
 - (ii) ability and commitment of buyers to develop the enterprise; and
 - (iii) track record of buyers and their expertise in the type of enterprise on offer;
- (j) ensure that monopolies are not created in the process of privatisation;
- (k) prepare or cause to be prepared the relevant documentation necessary to effect the privatisation of any state owned enterprise;
- (l) seek potential investors for State owned enterprises;
- (m) maintain records, safeguard information and establish administrative procedures to ensure confidentiality of information;
- (n) maintain close liaison with all relevant institutions in the process of privatisation;
- (o) publicise the activities of the privatisation programme; and
- (p) do all such things as are necessary or incidental or conducive to the better carrying out of the functions specified in this Act.

9. (1) Subject to the other provisions of this Act, the Agency may regulate its own procedure.

Proceedings of
Agency

(2) The Agency shall meet for the transaction of business at least once every two months at such places and at such times as the Chairman may decide.

(3) Upon giving notice of not less than fourteen days, the meeting of the Agency may be called by the Chairman and shall be called if not less than four members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) Five members shall form a quorum at any meeting of the Agency.

(5) There shall preside at any meeting of the Agency-

(a) the Chairman;

(b) in the absence of the Chairman, the Vice-Chairman; or

(c) in the absence of both the Chairman and the Vice-Chairman such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Agency on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have the casting vote in addition to his deliberative vote.

(7) The Agency may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Agency but such person shall have no vote.

(8) The validity of any proceedings or decisions of the Agency shall not be affected by any vacancy in the membership of the Agency or by any defect in the appointment of any member.

(9) The Agency shall cause minutes to be kept of the proceedings of every meeting of the Agency and of every meeting of any committee established by the Agency.

10. (1) The Agency may for the purpose of performing its functions under this Act establish Committees and delegate to any such committee such of its functions as it considers necessary.

Committees of Agency

(2) The Agency may appoint as members of a committee established under subsection (1) persons who are or are not members of the Agency and such persons shall hold office for such period as the Agency may determine.

(3) Subject to any specific or general direction of the Agency any committee established under subsection (1) may regulate its own procedure.

11. If any person is present at a meeting of the Agency or any committee of the Agency at which any matter is the subject of consideration and in which matter that person or his immediate family or his professional and business partners, is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable after the commencement of the meeting disclose such interest and shall not, unless the Agency or the committee otherwise directs, take part in any consideration or discussion of or vote on, any question touching on such matter.

Disclosure of interest

PART III

ADMINISTRATION

12. (1) The Agency shall appoint, on such terms and conditions as it may determine, a Director who shall be the Chief Executive Officer of the Agency.

Director of Agency

(2) The Agency may appoint, on such terms and conditions as it may determine, a Deputy Director to assist the Director.

(3) The Director or in his absence the Deputy Director, shall attend meetings of the Agency and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting of the Agency, may for good cause, require the Director or Deputy Director to withdraw from such meeting.

(4) Section *eleven* shall apply, with the necessary modifications, to the Director and the Deputy Director.

13. (1) There shall be a Secretary to the Agency who shall be appointed by the Agency on such terms and conditions as the Agency may determine.

Secretary and other staff

(2) The Secretary shall be responsible for the administration of the day-to-day affairs of the Agency under the general supervision of the Agency.

(3) The Agency may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions.

14. (1) An employee of the Agency, or a consultant to the Agency who is, or whose spouse is, directly or indirectly interested in a private or professional capacity, in any matter relating to the privatisation programme shall be required to disclose such interests.

Disclosure of interest by employees

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(2) A disclosure of interest made under this section shall be made to the Director who shall take such decision as he considers appropriate in each case.

15. (1) The employees of the Agency, consultants, members of the Agency and members of a committee of the Agency shall take an oath of secrecy as prescribed under this Act.

Oath of secrecy

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding twenty thousand penalty units or to a term of imprisonment for a period not exceeding two years, or to both.

(As amended by Act No. 9 of 1996)

16. (1) No person shall, without the consent in writing given by, or on behalf of, the Agency, publish or disclose to any person, otherwise than in the course of his duties, the contents of any documents, communication or information, which relates to, and which has come to his knowledge in the course of his duties under this Act.

Prohibition of publication or disclosure of information by unauthorised persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding four thousand penalty units or to a term of imprisonment not exceeding five years, or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any person he shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding four thousand penalty units or to a term of imprisonment not exceeding five years, or to both.

(As amended by Act No. 13 of 1994)

PART III

PROCEDURE FOR PRIVATISATION AND COMMERCIALISATION

17. A State owned enterprise shall be privatised in accordance with the divestiture sequence plan.

Privatisation of State owned enterprises

18. The Minister responsible for finance may, on the advice of the National Assembly, retain a share in a State owned enterprise and convert such share into a golden share.

Golden share

19. The shares of a State owned enterprise shall be allotted by the Agency.

Allotment of shares

20. The share holders in any State owned enterprise, when requested by the Agency, shall provide to the Agency such information as the Agency may require.

Obligations of holding companies and share holders

21. (1) A State owned enterprise scheduled for privatisation shall-

Obligations of State owned enterprises

- (a) carry out any recommendations, made by the Agency, for preparing the company for privatisation;
- (b) keep up to date all business records and books of account;
- (c) prepare a two to three years' investment and financing plan and a manpower development plan;
- (d) prepare statutory accounts and cause them to be audited not later than four months after each financial year;
- (e) maintain a fixed asset register which shall be reconciled with the financial statement;
- (f) not perform any action or actions that would result in the assets of the company being dissipated;
- (g) not undertake any new capital investment programmes, unless a project appraisal document approved by the Agency, is prepared showing that-
 - (i) routine plant, equipment and vehicle renewal is required;
 - (ii) rehabilitation expenditure is essential to keep the operations of the State owned enterprise running or to improve the marketability of the enterprise;
 - (iii) new capital investment has a pay back period of less than two years;
 - (iv) capital investment will contribute to the promotion of export-import substitution;
 - (v) the State owned enterprise is not earmarked for divestiture within two years of the investment being completed; or
 - (vi) the State owned enterprise demonstrates that the investment will not allow a deterioration of the company's operations;
- (h) clear as far as possible all contractual, legal and other obligations;
- (i) not give any person information which might give undue advantage to that person or any potential investor;

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- (j) pay all costs incidental to the privatisation of an enterprise relating to-
 - (i) valuation fees;
 - (ii) legal costs;
 - (iii) advertising charges;
 - (iv) marketing expenses; and
 - (v) any other expenses;
- (k) when requested by the Agency, disclose all or any information about the enterprise; and
- (l) refrain from taking any action or actions which may cause industrial unrest.

(2) Any person or officer of a State owned enterprise who knowingly contravenes subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifty-five thousand, five hundred and fifty-six penalty units or to a term of imprisonment not exceeding five years, or to both.

(As amended by Act No. 13 of 1994 and Act No. 9 of 1996)

22. The Agency may employ the following modes of privatisation:

Modes of privatisation

- (a) public offering of shares;
- (b) private sale of shares through negotiated or competitive bids;
- (c) offer of additional shares in a State owned enterprise to reduce Government share holding;
- (d) sale of the assets and business of the State owned enterprise;
- (e) reorganisation of the State owned enterprise before the sale of the whole or any part of the State owned enterprise;
- (f) management or employee buyouts by management or employees in that State owned enterprise;
- (g) lease and management contracts; or
- (h) any other method the Agency may consider appropriate.

(As amended by Act No. 9 of 1996)

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23. (1) The valuation State owned enterprises shall be performed by independent valuers who shall issue a certificate of valuation. Valuation of state owned enterprise

(2) The valuation of a State owned enterprise shall be done in accordance with the following:

- (a) the valuation shall be based on the current value of the State owned enterprise;
- (b) where the enterprise is not operational or the assets do not form part of a core of the business, the valuation shall be based on the net asset value of the State owned enterprise; or
- (c) any other prudent and acceptable valuation method.

(3) The net asset value shall be based on the-

- (a) valuation certificate of the market value of the real property valued by a real estate valuer;
- (b) valuation certificate of the depreciated replacement value of tangible assets other than real property; or
- (c) a fair value of other assets and liabilities valued by a consultant.

(4) The Agency shall ensure that each State owned enterprise is sold for its market value.

(As amended by Act No. 9 of 1996)

24. The shares in a State owned enterprise shall be sold to a citizen of Zambia or a person who is not a citizen of Zambia. Eligible buyer

25. No member or members of a committee or any employee or consultant of the Agency or the spouse, child, mother, father, brother, sister or a professional business partner as the case may be, of the employee or consultant shall purchase shares unless the sale is by public offer of shares. Sale of shares to an employee and consultant

26. Political leaders and public officers shall publicly disclose their intention to bid for the purchase of shares in a State owned enterprise. Political leaders

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27. A potential investor shall disclose his bid in a State owned enterprise, his direct personal interest and his indirect interest, either through share holdings or through a nominee or otherwise, in a State owned enterprise. Declaration by potential investor

28. An established fund may, with a consent of the contributors, purchase shares in a State owned enterprise on behalf of the contributors. Established fund

29. (1) The Minister responsible for finance shall establish a Privatisation Trust Fund in which the Government shall hold shares in trust for citizens of Zambia for divestiture. Purchase of shares by citizens of Zambia

(2) The following shall apply to citizens of Zambia-

- (a) shares may be offered at a discount to persons who purchase a small number of shares;
- (b) a share bonus shall be given at the end of a prescribed period to small shareholders who hold onto shares;
- (c) individuals, management and employees of the State owned enterprise may pay for shares in instalments; or
- (d) individuals may participate in the acquisition of shares which have been transferred in a State owned enterprise to a Privatisation Trust Fund which shall be established under this Act.

(As amended by Act No. 9 of 1996)

30. Foreign investors shall be entitled to incentives under the Investment Act if such investor acquires shares in a State owned enterprise where- Foreign investors Cap. 385

- (a) expertise is needed to upgrade efficiency of that State owned enterprise;
- (b) participation is necessary to promote the export market;
- (c) the nature of business requires global linkages and international exposure; or
- (d) capital investment or foreign technology is required to expand the capacity of the business operations.

31. Subject to provisions of section *twenty-nine* or any other written law, the shares of a State owned enterprise shall not be sold on credit. Mode of payment of shares

32. (1) The Agency shall appoint an independent negotiating team for each sale. Negotiations for offer of sale

(2) A person appointed on the negotiating team shall-

- (a) have proper professional qualifications, experience and good business standing;
- (b) take an oath of secrecy; and
- (c) disclose any personal or professional interest before accepting the appointment.

33. The Agency may convert a State owned enterprise scheduled for privatisation, which is not a public company, into a public company in accordance with the provisions of the Companies Act. Conversion of private companies to public companies
Cap. 388

34. Notwithstanding any provision in any other written law and for purposes of this Act, a bank or financial institution may carry on the business of a stock broker or a dealer in stocks and shares. Trading in shares

35. The Agency may liquidate a State owned enterprise in accordance with the provisions of the Companies Act. Liquidation
Cap. 388

35A. The Agency may appoint a receiver to manage a State owned enterprise in financial difficulties or whose assets are being dissipated so as to enable the Agency to restructure or wind up the company in the interests of the greater community of creditors: Appointment of receiver

Provided that nothing in this section shall interfere with the rights under any written law of a debenture or mortgage holder.

(As amended by Act No. 9 of 1996)

36. (1) The Minister responsible for finance shall sign the final Sales Agreement to transfer shares to the selected bidder. Consummation of sale

(2) The transfer of shares shall be in accordance with the provisions of the Companies Act. Cap. 388

37. (1) The Minister, in consultation with the Ministry responsible for the department to be commercialised, may specify, by notice in the *Gazette*, any Government department for purposes of commercialisation under this Act. Commercialisation of specified Government departments

(2) A specified Government department may be incorporated under the Companies Act. Cap. 388

(3) A Government department specified under this section may-

- (a) fix its own rates, prices and charges for goods and services provided;
- (b) capitalise assets; and
- (c) borrow debenture stocks.

(As amended by Act No. 9 of 1996)

38. (1) The Agency shall publish by notice in the *Gazette*-

Publication of
information

- (a) the names of the approved State owned enterprises to be privatised;
- (b) the registered consultants valuers, lawyers, public accountants and merchant banks dealing with the privatisation process;
- (c) the bidders and bid prices;
- (d) the successful bidders and the reason for selecting such bidders;
- (e) the price of shares and any other special conditions of the sale of shares; and
- (f) any other matters deemed appropriate.

(2) Any person having an interest in a State owned enterprise to be privatised, shall make a claim to the Agency within a period of thirty days after the notice referred to in subsection (1) is published.

(3) Any person having an interest in a State owned enterprise and who does not make a claim within thirty days of the notice referred to in subsection (1) shall be deemed to have relinquished all interests in the State owned enterprise.

(As amended by Act No. 9 of 1996)

PART IV

FINANCIAL AND OTHER PROVISIONS

39. (1) Net proceeds from completed sales of shares and assets shall be paid into a Privatisation Revenue Account established by the Minister responsible for finance and held at the Bank of Zambia. Use of proceeds

(2) With the prior approval of the Minister responsible for finance the proceeds of sale referred to in subsection (1) may be used for-

- (a) funding the cost of privatisation and the Privatisation Trust Fund;
- (b) initial financing of mutual funds;
- (c) expanding existing productive capacities;
- (d) financing credit creation by the Government for Zambian investors;
- (e) rehabilitating existing plants;
- (f) supporting new capital investments;
- (g) funding the restructuring of State owned enterprises to be privatised;
- (h) supporting redundancy payment schemes in consultation with the Ministry responsible for labour;
- (i) supporting alternative income generating projects; or
- (j) funding of any social project that will be in the public interest.

(As amended by Act No. 9 of 1996)

40. (1) Subject to section *thirty-nine* the funds of the Agency shall consist of such moneys as may- Funds of Agency

- (a) be appropriated by Parliament, for the purposes of the Agency;

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- (b) be paid to the Agency by way of grants or donations;
- (c) be retained by the Agency from the proceeds of sales as may be approved by the Minister responsible for finance; and
- (d) vest in or accrue to the Agency.

(2) The Agency may-

- (a) accept money by way of grants or donations from any source in Zambia;
- (b) raise money by way of loans from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia, such moneys as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Agency.

(3) There shall be paid from the funds of the Agency-

- (a) the salaries and allowances of the staff of the Agency;
- (b) such loans to members of staff as may be approved by the Agency;
- (c) such reasonable travelling, transport and other allowances for the members of the Agency or a committee of the Agency when engaged on the business of the Agency at such rates as the Agency may, with the approval of the Minister, determine; and
- (d) any other expenses incurred by the Agency in the performance of its functions.

(4) The Agency may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

41. The financial year of the Agency shall be the period of twelve months ending 31st December, in each year. Financial year

42. (1) The Agency shall cause to be kept proper books of account and other records relating to its accounts. Accounts

(2) The accounts of the Agency shall be audited annually by independent auditors appointed by the Agency.

(3) The auditors' fees shall be paid by the Agency.

43. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Agency shall submit to the Minister a report concerning its activities during the financial year. Annual report

(2) the report referred to in subsection (1) shall include information on the financial affairs of the Agency and there shall be appended to the report-

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Agency may consider appropriate.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next, after receipt of the report referred to in subsection (1), lay it before the National Assembly.

(4) The report shall be published for sale to the public.

44. (1) The Agency shall submit a report, at the end of June and at the end of December of each year, on its activities to the Minister giving details of bids received and reasons for preferring the successful bid. Progress report

(2) The Agency shall publish the report for sale to the public.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next, after receipt of the report referred to in subsection (1), lay it before the National Assembly.

45. Any property, real or personal procured or acquired for the purposes of the privatisation programme shall, after the commencement of this Act, vest in the Agency. Vesting of the property of Agency

46. (1) The procurement of goods and services of the Agency shall not be subject to the provisions of the Zambia National Tender Board Act: Procurement of goods and services under Cap. 394.

Provided that the procurement of goods and services above two million kwacha or ten thousand United States Dollars shall be approved by a committee of the Agency and the procurement of goods and services below two million kwacha or ten thousand United States Dollars shall be approved by a management tender committee of the Agency.

(2) The Agency shall, in procuring the goods and services, approve increases to the kwacha amount based on the percentage of the official rate of inflation.

47. Any dispute arising from the privatisation process shall be settled by arbitration in accordance with the Arbitration Act. Arbitration Cap. 40

48. (1) A person who knowingly falsifies any information or knowingly does not disclose any material facts or solicits for his own use or as agent of any other person any confidential information relating to the privatisation of a State owned enterprise shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years, or to both. Penalties for falsification of information

(2) A person found guilty under subsection (1) shall not thereafter participate in the purchase of shares in any State owned enterprise.

(As amended by Act No. 13 of 1994)

49. The Minister, on the advice of the Agency, may by Statutory Instrument prescribe the- Regulations

- (a) sale tender procedures;
- (b) public flotation procedures;
- (c) pre-qualification and registration of bidders procedures;
- (d) public announcement requirements;
- (e) tender evaluation procedures;
- (f) tender selection procedures;
- (g) negotiation guidelines;
- (h) final sale monitoring guidelines;
- (i) pre and post sale audit requirements;
- (j) any forms for the purpose of this Act;
- (k) any fees payable in respect of any service provided by the Agency; and
- (l) such other matters as are necessary or conducive to the better carrying out of the purposes of this Act.

50. All leases and agreements entered into in relation to enterprises to be privatised under this Act and in anticipation of the coming into force of this Act are hereby nullified. Prior leases and agreements

SUBSIDIARY LEGISLATION

PRIVATISATION (SALE OR DISPOSAL OF PROPERTY) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Application
3. Restriction of sale or disposal of property
4. Processing of applications
5. Returns on sale of property
6. Sale of disposal of real property
7. Restriction on lease of property
8. Lease information to be given to Agency

FIRST SCHEDULE-Form 1

SECOND SCHEDULE-Form 2

THIRD SCHEDULE-Form 3

SECTION 49-THE PRIVATISATION (SALE OR DISPOSAL OF PROPERTY) REGULATIONS.

*Statutory Instrument
No.*

Regulations by the Minister

41 of 1993

1. These Regulations may be cited as the Privatisation (Sale or Disposal of Property) Regulations. Title

2. These Regulations apply to state owned enterprises scheduled for privatisation under the Act. Application

3. (1) No state owned enterprise shall sell or otherwise dispose of property of state owned enterprise without the prior approval, in writing, of the Agency. Restriction on sale or disposal of property

The Laws of Zambia

(2) The application for approval referred to in sub-regulation (1) shall be accompanied by-

- (a) a board resolution of the applicant, authorising the sale or disposal of the property;
- (b) a schedule containing a description of the property intended for sale or disposal;
- (c) a statement indicating the manner in which the property will be sold or otherwise disposed of; and
- (d) a statement showing that the property is-
 - (i) redundant, excess or obsolete; and
 - (ii) free, apart from these Regulations, from any prohibition or restriction on sale or disposal.

4. (1) The Agency shall process each application in the best interest of the state owned enterprise and on such terms and conditions as it thinks necessary or expedient. Processing of applications

(2) The decision of the Agency shall be communicated to the applicant not later than thirty days from date the application is received by the Agency.

(3) In granting an application for approval, the Agency shall in its absolute discretion satisfy itself that the sale or disposal of property is in the best interest of the applicant.

(4) The Agency may, in granting its approval, impose such terms and conditions as it may think fit and such conditions shall be binding on all persons.

5. As soon as a sale is completed, a state owned enterprise shall file with the Director information on the following- Returns on sale of property

- (a) the date of completion;
- (b) the amount realised;
- (c) the date of removal of the property from the company register; and
- (d) any other information the Agency may request.

6. Any sale or disposal of real property belonging to a state owned enterprise shall be conducted through a property management company, estate agent, auctioneer or such other class of persons the Agency may specify. Sale of disposal of real property

7. (1) No state owned enterprise shall lease property for a period exceeding one year without the prior approval, in writing, of the Agency. Restriction on lease of property

(2) An application for approval shall be accompanied by-

- (a) a schedule containing the description of the property intended for letting;
- (b) evidence that the intended lease is in the best interest of the state owned enterprise;
- (c) a resolution by the state owned enterprise authorising the leasing of the property;
- (d) a statement giving reasons for the proposed leasing; and
- (e) a draft lease agreement.

(3) This Regulation shall not apply to a state owned enterprise whose main business is the letting of property.

(4) The Agency may, in granting an approval under this Regulation, impose such terms and conditions as it thinks fit and such conditions shall be binding on all persons.

8. A state owned enterprise that signs an agreement for sale, disposal or letting of property after the coming into force of the Act but before the commencement of these Regulations shall communicate to the Agency the following information- Lease information to be given to Agency

- (a) the parties;
- (b) the consideration;
- (c) the duration of the lease;
- (d) the date of expiration of the lease;
- (e) the nature of the transaction;
- (f) the reasons for the transaction;
- (g) the description of the property;
- (h) the effective date of the lease or date of sale of the property; and
- (i) any other information the Agency may request.

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Application for pre-qualification
3. Application by incorporated companies
4. Application for partnerships
5. Applications by individuals
6. Confidentiality agreements
7. References
8. Processing applications
9. Entitlement on pre-qualification
10. Submission of bids
11. Contents of bid documents
12. Evaluation and selection of bids
13. Negotiations

FIRST SCHEDULE-Form 1

SECOND SCHEDULE-Form 2

THIRD SCHEDULE-Form 3

SECTIONS 22 AND 29-THE PRIVATISATION (TRADE SALES AND MANAGEMENT OR
EMPLOYEE BUYOUTS) (SALE TENDER) REGULATIONS.

*Statutory Instrument
No.
40 of 1993*

Regulations by the Minister

1. These Regulations may be cited as the Privatisation (Trade Sales and Management or Employee Buyouts) (Sale Tender) Regulations. Title
2. (1) Any person may participate in tenders relating to the privatisation of any state-owned enterprise by submitting an application for pre-qualification. Application for pre-qualification

(2) The Agency shall determine and publish the deadline for the submission of applications.
3. (1) An application by an incorporated company shall be in the form prescribed in the First Schedule to these Regulations. Application by incorporated companies

The Laws of Zambia

(2) An application by an incorporated company shall be submitted with certified copies of-

- (a) the Board of Directors' resolution authorising the application;
- (b) a certificate of incorporation;
- (c) the memorandum and articles of association;
- (d) the current annual returns;
- (e) the Company Form No. 23; and
- (f) an audited financial statement.

4. (1) An application by a partnership shall be in the form prescribed in the Second Schedule to these Regulations. Application by partnerships

(2) An application for a partnership shall be submitted with certified copies of-

- (a) the articles of partnership or a certificate of registration under the Registration of Business Names Act; and Cap. 389
- (b) the last audited financial statement.

5. An application by an individual shall be in the form prescribed in the Third Schedule to these Regulations. Applications by individuals

6. (1) An applicant for pre-qualification shall enter into a confidentiality agreement with the Agency. Confidentiality agreements

(2) The Agency shall set out the terms and conditions of the confidentiality agreement.

(3) The confidentiality agreement shall be executed on or before submitting the application for pre-qualification.

The Laws of Zambia

7. A person applying for pre-qualification shall submit to the Agency references from his bankers or financiers or any other referee of good standing. References

8. (1) The Director shall ensure that an application is in accordance with these Regulations and contains the required information before submitting the application to the Agency for consideration. Processing applications

(2) The Agency may make consultations relevant to an application.

(3) The decision of the Agency shall be final and binding on the parties and shall be communicated to the applicant within thirty days from the date on which it was received.

9. A person who successfully bids for pre-qualification shall- Entitlement on pre-qualification

- (a) be registered as having pre-qualified for that state-owned enterprise;
- (b) on payment of a non-refundable fee determined by the Agency, be entitled to receive a tender package relating to the state-owned enterprise to which he pre-qualified; and
- (c) be entitled to bid for the state-owned enterprise to which he pre-qualified.

10. (1) A person who pre-qualifies shall be requested by the Agency to submit to the Agency his bid for that state-owned enterprise. Submission of bids

(2) The bid shall be submitted to the Agency in a sealed envelope within a period determined by the Agency.

11. The bid document shall contain information regarding-

Contents of bid documents

- (a) the price;
- (b) the currency of payment;
- (c) the manner of payment;
- (d) the enhancement of competition;
- (e) the enhancement of efficiency;
- (f) the applicant's capital investments;
- (g) the dissipation of assets;
- (h) export promotion and import substitution;
- (i) dependency on foreign exchange for working capital;
- (j) dividend remittability;
- (l) public participation;
- (m) share ownership plans;
- (n) employee expansion or retention plans;
- (o) pension rights and liabilities for employees;
- (p) training policy for employees; and
- (q) any other information which, in the opinion of the bidder, is relevant to the bid.

(2) The bid document shall contain the following information relating to the bidder:

- (a) technical and managerial ability to manage the enterprise which is the subject of the bid;
- (b) the financial standing;
- (c) the performance record and reputation;
- (d) nationality;
- (e) the names and nationalities of the shareholders, together with the number of shares held by each; and
- (f) any other information the Agency may request.

12. (1) The Director shall submit a bids document to the Agency for evaluation after being satisfied that the document contains the required information.

Evaluation and selection of bids

The Laws of Zambia

(2) Where the bid document does not contain the required information, the Director shall request the bidder, within such period as he may determine, to supply the required information unless there is insufficient time for the submission of further information.

(3) When evaluating and selecting the bids, the Agency may make such consultations as it thinks fit.

(4) The evaluation and selection of bids shall be at the discretion of the Agency and its decision in that regard shall be final and binding on the parties.

(5) The decision of the Agency shall be communicated to the bidder not later than ninety days after the bid is submitted.

13. (1) The selected bidder and an independent negotiating team appointed by the Agency under section *thirty-two* of the Act shall negotiate the terms and conditions of a share or asset transfer agreement relating to the state-owned enterprise. Negotiations

(2) On the successful completion of the negotiation for the terms and conditions of a share or asset transfer, the parties to the negotiations shall sign a transfer agreement.

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FIRST SCHEDULE

(Regulation 3)

FORM 1

PRE-QUALIFICATION APPLICATION FORM FOR INCORPORATED COMPANIES

The Laws of Zambia

To: The Director
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

Date

We hereby apply for pre-qualification as bidders in the privatisation of
..... Limited

1. Name of Company
2. Nationality of Company
3. Postal Address
4. Registered Office
5. Telephone
6. Telex No.
7. Telefax No.
8. Date of Incorporation
9. Place of Incorporation
10. Share Capital

Authorised Share Capital	Issued Share Capital	Paid-Up Share Capital
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9. Particulars of share holders

Name	Residential Address	Occupation	Nationality	Number of Shares Held
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10. Particulars of Directors

Name	Residential Address	Occupation	Nationality
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11. Summary of curriculum vitae of senior management

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.....

12. Nature of business of the Applicant:

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The Laws of Zambia
SECOND SCHEDULE

(Regulation 4)

FORM 2

PRE-QUALIFICATION APPLICATION FORM FOR PARTNERSHIPS

The Laws of Zambia

To: The Director
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

Date

We hereby apply for pre-qualification as bidders in the privatisation of
..... Limited

1. Name of Partnership
2. Address
3. Telephone
4. Telex No.
5. Telefax No.
6. Particulars of Partners

Name	Occupation	Nationality	Percentage of shareholding
------	------------	-------------	----------------------------

7. Share structure of partnership
8. Summaries of curriculum vitae of partners

9. Place of business:

10. Description of business:

11. Details of any pending disputes:

12. State reasons for interest in the particular state-owned enterprise:

13. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

Date the day of 19.....

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The Laws of Zambia
THIRD SCHEDULE

(Regulation 5)

FORM 3

PRE-QUALIFICATION FORM FOR INDIVIDUALS

The Laws of Zambia

To: To Director,
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

Date

I hereby apply for pre-qualification as bidder in the privatisation of
..... Limited

1. Name

2. Nationality

3. Occupation

4. Residential Address

5. Postal Address

6. Details of any pending disputes

.....

.....

7. State reasons for interest in the particular state-owned enterprise:

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8. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

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Dated the day of 19.....

Signed by:

Signature

In the presence of:

Signature

Name

Occupation

Residential Address

.....

Postal Address.....

.....

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PRIVATISATION (OATH OF SECRECY) ORDER

ARRANGEMENT OF REGULATIONS

Regulation

- 1. Title
- 2. Oath of member
- 3. Oath of member of committee, consultant or employee

FIRST SCHEDULE-Oath of secrecy

SECTION 49-THE PRIVATISATION (OATH OF SECRECY) ORDER.

Statutory Instrument
119 of 1992

Order by the Minister

- 1. This Order may be cited as the Privatisation (Oath of Secrecy) Order. Title
- 2. The Oath of Secrecy for a member of the Agency shall be as set out in the First Schedule to this Order. Oath of member
- 3. The Oath of Secrecy for a member of a Committee, consultant or employee of the Agency shall be as set out in the Second Schedule to this Order. Oath of member of committee, consultant or employee

FIRST SCHEDULE

(Paragraph 2)

OATH OF SECRECY

I, having been appointed as a member of the Zambia Privatisation Agency, do swear/ affirm that I will not directly or indirectly, disclose the contents, or part thereof, of any document, communication or information which may come to my knowledge in the course of my duties without the authority of the Chairman or Director of the agency.

SO HELP ME GOD

.....
(Signature)

SWORN/Declared before me this day of 19.....
Before me,

.....
(President)

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SECOND SCHEDULE

(Paragraph 3)

OATH OF SECRECY

I, having been appointed as a member of a Committee/Consultant/Employee of the Agency, do swear/affirm that I will not directly or indirectly, disclose the contents or part thereof, of any document, communication or information which may come to my knowledge in the course of my duties without the authority of the chairman or the Director.

SO HELP ME GOD

.....
(Signature)

SWORN/Declared before me this day of 19.....
Before me,

.....
(Judge)

PRIVATISATION (POLITICAL LEADERS AND PUBLIC OFFICERS) (BIDDING) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Title
2. Interpretation
3. Disclosure of intention to bid
4. Disclosure of interest in companies
5. Unsuccessful bidders' fees, charges and expenses

SECTION 49-THE PRIVATISATION (POLITICAL LEADERS AND PUBLIC OFFICERS) (BIDDING) REGULATIONS.

Statutory Instrument
6 of 1994
25 of 1995

Regulations by the Minister

1. These Regulations may be cited as the Privatisation (Political Leaders and Public Officers) (Bidding) Regulations. Title

2. (1) In these Regulations, unless the context otherwise requires-

Interpretation

"Agency" means the Zambia Privatisation Agency established under section *three* of the Act;

"Director" means the Director of the Privatisation Agency;

"political leader" means any of the following persons;

(a) the President, Vice President, Speaker of National Assembly, Minister, Leader of the Official Opposition in Parliament, Deputy Speaker, Deputy Minister and Member of Parliament; and

(b) members of the executive of all registered political parties;

"public officer" means any of the following persons;

State House Chief of Staff, Secretary to the Cabinet, Special Assistants to the President, Deputy Secretary to the Cabinet and Permanent Secretaries.

(2) For the purposes of these Regulations, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service as a public officer.

(As amended by Act No. 25 of 1995)

3. (1) A political leader or public officer who is desirous of purchasing shares in any state-owned enterprise or any of its assets shall-

Disclosure of intention to bid

(a) not less than twenty-one days before bidding, disclose his intention to bid at least once in the *Gazette* or a national daily newspaper of general circulation; and

(b) when submitting his bid, lodge with the Director a copy of the issue of the *Gazette* or newspaper in which his intention was disclosed.

(2) A bid that does not comply with the provisions of these regulations shall not be considered by the Agency and shall be void.

4. (1) A political leader or public officer who has shares in a limited liability company or partnership which is desirous of bidding for shares or assets of a particular state-owned enterprise shall advertise at least once in the *Gazette* or a national daily newspaper of general circulation the intention of his company or partnership to bid.

Disclosure of interest in companies

(2) When a company or partnership referred to in sub-regulation (1) submits its bid, it shall also submit a copy of the *Gazette* or newspaper in which the disclosure referred to therein was made.

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(3) A bid that does not comply with the provisions of these regulations shall not be considered by the Agency and shall be void.

6. The Agency shall not refund costs, fees, charges or expenses incurred by unsuccessful bidders.

Unsuccessful bidders'
fees, charges and
expenses