

Uganda

## National Enterprise Corporation Act Chapter 312

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# Uganda

## National Enterprise Corporation Act Chapter 312

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**An Act to provide for the establishment of the National Enterprise Corporation, to define its functions and powers and to provide for other purposes connected therewith.**

### Part I – Interpretation

#### 1. Interpretation

In this Act, unless the context otherwise requires—

- (a) "**board**" means the board of directors established under [section 6](#);
- (b) "**chairperson**" means the chairperson of the board appointed under [section 7](#);
- (c) "**corporation**" means the National Enterprise Corporation established under [section 2](#);
- (d) "**financial year**" means a period of twelve months beginning on the 1st of July in a given year and ending on the 30th day of June in the ensuing year;
- (e) "**general manager**" means the general manager to a subsidiary company appointed under [section 13](#);
- (f) "**Minister**" means the Minister responsible for defence;
- (g) "**secretary**" means the secretary to the corporation appointed under [section 12](#).

### Part II – Establishment and functions of the corporation

#### 2. Establishment of the corporation

- (1) There is established a corporation to be known as the National Enterprise Corporation.
- (2) The corporation shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and, subject to this Act, may do or suffer all other acts and things that bodies corporate lawfully do or suffer.

#### 3. Functions of the corporation

The functions of the corporation shall be to—

- (a) acquire, lease, hold and enjoy any property, and sell, let or otherwise dispose of the property;
- (b) manage, develop, let, hire or buy, subscribe for or otherwise acquire, sell, dispose of, or otherwise deal in immovable or movable property of any sort, including stocks, shares, bonds, debentures and security or any interest;
- (c) take over or acquire shareholdings in any company and establish subsidiary companies;

- (d) engage in agriculture, agricultural produce and the processing, purchase and disposal of the same;
- (e) establish and maintain factories and similar establishments for the production of textiles, hardware, electric materials, timber, woodworks and other factory products;
- (f) engage in the business of transportation and motor assembling;
- (g) engage in the production of chemicals, polymers, pharmaceutical products and other related products;
- (h) build or purchase business premises in furtherance of its functions;
- (i) establish and maintain offices in Uganda and abroad; and
- (j) carry on research in relation to any of its functions or to national defence, and for those purposes may train, organise, develop and utilise personnel.

#### 4. Seal of the corporation

- (1) The seal of the corporation shall not be affixed on any document except in accordance with a resolution of the board, and shall be authenticated by the signatures of the managing director and the secretary, and in the absence of the managing director, by the secretary and any member of the board.
- (2) The signatures of the managing director, corporation secretary or other member of the board shall be independent of the signing by any other person as witness.
- (3) A certificate signed by the secretary that an instrument purporting to be made or issued by or on behalf of the corporation was made or issued shall be conclusive evidence of that fact.
- (4) Every document purporting—
  - (a) to be an instrument made or issued by or on behalf of the corporation and bearing the seal of the corporation authenticated in the manner provided by subsection (1) or signed or executed by the chairperson or any other person authorised by the board to act in that behalf; or
  - (b) to be a certificate mentioned in subsection (3),shall be received in evidence without further proof, unless the contrary is shown.

#### 5. Custody of the seal

The common seal of the corporation shall be kept in the custody of the corporation secretary.

### Part III – The board

#### 6. Board of directors

- (1) The governing body of the corporation shall be a board which shall consist of thirteen members who shall be appointed by the Minister from different fields of expertise, for a period of three years and upon such terms and conditions as may be specified in the instruments of appointment.
- (2) A board member appointed by the Minister under subsection (1) may resign from office in writing under his or her hand addressed to the Minister, and the Minister may remove any member from office for inability to perform the functions of that office or for any other reason permitted by law.
- (3) A member of the board appointed under subsection (1) shall be eligible for reappointment.

## 7. Meetings of the board

- (1) There shall be a chairperson and a vice chairperson who shall be appointed by the Minister upon terms and conditions that the board may determine.
- (2) The chairperson shall convene and preside at all meetings of the board and in his or her absence the vice chairperson shall preside; and in the absence of both the chairperson and the vice chairperson, the members present and forming a quorum may elect one of themselves to preside.
- (3) Meetings of the board shall be held as often as the business of the corporation requires, but in any case shall be held at least once every three months at such place and time as the chairperson in consultation with the secretary may, from time to time, appoint.
- (4) The chairperson shall, if requested by notice in writing signed by not less than four members of the board, convene a meeting of the board within forty-eight hours, and the meeting shall not be adjourned before completion of the business for which it was convened except with the consent of the majority of the members present.
- (5) At all meetings of the board, five members shall constitute a quorum.
- (6) Questions proposed or arising at any meeting of the board shall be decided by a simple majority of the members present and voting; and in the case of equality of votes, the presiding chairperson shall have a casting vote.
- (7) Subject to this Act, the board may regulate its own procedure, including the manner in which matters of the board are to be determined by or on behalf of the board.
- (8) The board may co-opt a person not being a member of the board to attend and to speak upon any relevant matter at any meeting of the board, but that person shall not have a right to vote on any matter before the board.
- (9) Notice of the time, place and agenda of every meeting of the board shall be served by or on behalf of the secretary on every member of the board either personally or by leaving it at his or her usual place of residence or at his or her business address—
  - (a) in the case of ordinary meetings, not less than seven days before the meeting; and
  - (b) in the case of special meetings, not less than twenty-four hours before the meeting.
- (10) Minutes of the proceedings of every meeting shall be regularly entered in a book to be kept by the secretary, and such minutes shall be confirmed at the next meeting; and when the minutes are confirmed, they shall be signed by the chairperson and the secretary in the presence of the members of the board.

## 8. Transaction of business by circulation of papers

The board may, if it thinks fit, transact any business by the circulation of papers, and a resolution in writing approved by the majority of the members of the board shall be as valid and enforceable as if it had been passed by majority at a meeting of the board.

## 9. Minister to give directions

The Minister may give to the corporation such directions as to the exercise and performance of its functions under this Act as appear to the Minister to be requisite in the public interest, and the corporation shall give effect to the directions.

## Part IV – Staff and administration

### 10. Managing director

- (1) There shall be a managing director who shall be the chief executive of the corporation.
- (2) The managing director shall be appointed by the Minister on recommendation of the board upon terms and conditions that the Minister may determine.
- (3) The managing director shall, from time to time, in writing, keep the Minister and the chairperson informed of the progress of the corporation business.
- (4) The Minister or the chairperson may, from time to time, in writing, direct the managing director to submit a report on any matter affecting the affairs of the corporation.
- (5) The managing director shall be responsible for the management of the funds, property and business of the corporation and for the administration, organisation and control of the staff of the corporation, and in that regard shall be under the general supervision and control of the board.

### 11. Deputy managing director

- (1) There shall be a deputy managing director who shall assist the managing director and do such duties as the managing director may assign to him or her.
- (2) The deputy managing director shall be appointed by the Minister on recommendation of the board.

### 12. Secretary

- (1) There shall be a secretary to the corporation who shall be appointed by the Minister on the recommendation of the board upon such terms and conditions that the Minister may determine.
- (2) In addition to any other duties that may be conferred upon the secretary by the board, the secretary shall have custody of the seal of the corporation and be responsible for—
  - (a) the taking of minutes at all meetings of the board;
  - (b) the keeping of records of all transactions of the corporation;
  - (c) the giving of legal advice and handling of legal matters of the corporation.

### 13. General manager

- (1) There shall be a general manager to every subsidiary company who shall be appointed by the board on the recommendation of the subsidiary board of directors of the respective company upon such terms and conditions as the board may determine.
- (2) The general manager of each subsidiary company shall be responsible to the board of directors of the subsidiary company, and shall be responsible for the management of the funds, property and business of the company and for the administration, organisation and control of the staff of the company.

### 14. Employees

- (1) The board may, from time to time, and upon terms and conditions that it may think fit, appoint heads of departments, heads of projects and other employees as may be expedient for the proper and efficient functions of the corporation.
- (2) The board may pay to the staff of the corporation remuneration and allowances it deems fit and may grant pension or retirement benefits or gratuity to them.

- (3) No director, employee or servant of the corporation shall be personally liable for an act or omission of the corporation done or omitted to be done in good faith and without negligence, in the course of the operations of the corporation.

## 15. Funds of the corporation

The funds and resources of the corporation shall consist of—

- (a) sums from the Consolidated Fund that may, from time to time, be appropriated by Parliament for the purpose of the corporation;
- (b) monies accruing to the corporation in the discharge of its functions;
- (c) any loan granted to the corporation by the Government or any other person or body, with the approval of the Minister responsible for finance; and
- (d) grants, gifts or donations to the corporation.

## 16. Borrowing powers of the corporation

- (1) The corporation may, with the prior approval of the Minister in consultation with the Minister responsible for finance, and in accordance with the laws governing the raising of internal or external loans by statutory corporations in Uganda, borrow sums of money as may be required by it for the discharge of its functions under this Act, from such sources and on terms that the Ministers deem fit.
- (2) The Government may guarantee by the undertaking of the Minister responsible for finance, in a manner and on terms that he or she thinks fit, the payment of the principal sum and interest on any borrowing of the corporation authorised under subsection (1).

## 17. Estimates

- (1) The board shall, within three months before the end of each financial year, cause to be prepared and shall submit to the Minister for his or her approval, estimates of the income, capital, recurrent and other expenditure of the corporation for the next ensuing year.
- (2) The board may, from time to time, submit to the Minister for his or her approval, supplementary estimates to provide for unforeseen or urgently required expenditure on matters not provided for in the estimates or necessary additional expenditure on matters provided for in the annual estimates.
- (3) In exceptional circumstances the Minister, in consultation with the Minister responsible for finance, may authorise the corporation to incur expenditure of funds appropriated for one purpose on any other, contained in the approved estimates or supplementary estimates.
- (4) No expenditure shall be made out of the funds of the corporation unless it has been approved by the Minister under this section.

## 18. Proper books of account to be kept

- (1) The board shall cause to be kept such books of account of all income and expenditure and records in relation thereto as are necessary to give a true and fair view of the corporation and to explain its transactions.
- (2) Subject to such directions as the Minister responsible for finance may give, the board shall cause to be prepared in respect of each financial year, and not later than six months after the close of that financial year—
  - (a) a report showing the performance of the corporation during that financial year, including the extent to which any direction given by the Minister during that year has been carried out;

- (b) a statement of account, including a balance sheet, a statement of income and expenditure, a statement of surplus or deficit, and containing such other information as would normally be required to be laid before directors in a company under the Companies Act; and
- (c) any other information in respect of the financial affairs of the corporation as the Minister responsible for finance may require,

and shall submit the reports and information to the Minister.

- (3) The Minister shall, as soon as possible after receiving the reports and statements specified under subsection (2), together with a report of the Auditor General, cause them to be laid before Parliament.

## 19. Audit of books of account

- (1) The books of account of the corporation shall be audited within three months after the end of each financial year by the Auditor General, or an auditor appointed by him or her, who shall be entitled to have access to all books of account, vouchers and other financial records of the corporation and to require such information and explanation thereto as he or she thinks fit.
- (2) The Auditor General's report on the results of his or her examination of the accounts and financial statement of the corporation shall state whether in his or her opinion—
  - (a) proper books of account have been kept by the board;
  - (b) the financial statement of the corporation—
    - (i) was prepared on a basis consistent with that of the preceding year and is in agreement with the books of account;
    - (ii) gives a true and fair view of the income and expenditure, or profit and loss account of the corporation for the financial year, and the Auditor General shall call the attention of the board to any other matter falling within the scope of his or her examination which in his or her opinion should be brought to their attention.

## 20. Report

Each general manager of a subsidiary company shall furnish the subsidiary board of directors with an annual report, giving a full account of the activities, resources, problems, achievements and plans of their respective companies, and the chairperson of the subsidiary board shall cause the report to be delivered to the board.

## 21. Investment of funds

All funds of the corporation that are not immediately required shall be invested in such ventures as the board, with the prior approval of the Minister, may determine.

## 22. Bank of the corporation

The corporation shall operate a bank account with the Uganda Commercial Bank or such other bank as the board may approve.

## 23. Corporation to operate on sound financial principles

In the performance of its functions under this Act, the corporation shall have due regard to sound financial principles and shall conduct its business in such manner that taking one transaction with another, and taking one year with another—

- (a) its revenue is sufficient for meeting all charges including interest on capital and loans properly chargeable to revenue account;



- (b) sufficient provision is made to provide for depreciation of assets; and
- (c) where any loss arises in respect of any transaction, provision is made in respect of other transactions whether of a similar nature or otherwise to offset the amount of the loss.

## Part V – Miscellaneous

### 24. Contracts

- (1) Contracts on behalf of the corporation may be made in furtherance of the objectives of the corporation in the following manner—
  - (a) a contract which if made between private persons would be by law required to be in writing, and if made according to any law for the time being in force in Uganda is required to be under seal, may be made on behalf of the corporation under seal; and
  - (b) a contract which if made between private persons would by law be required to be in writing signed by the parties may be made on behalf of the corporation in writing signed by any person acting under its authority express or implied.
- (2) A contract made according to and under subsection (1) shall be enforceable in law and shall bind the corporation and its successors and all other parties to the contract, and may be varied or terminated in the same manner in which it was made.
- (3) A member of the board who is in any way directly or indirectly interested in a transaction or project of the corporation shall disclose the nature of his or her interest at a meeting of the board, and the disclosure shall be recorded in the minutes of the board; and the member shall not take part in any deliberations or decisions of the board with respect to that transaction or project.

### 25. Service of process

Service of process shall be deemed to be effected by—

- (a) delivering it personally to the secretary of the corporation; or
- (b) properly addressing it, prepaying the postage on it and dispatching it by post or registered post, addressed to the secretary of the corporation at the head office of the corporation.

### 26. Preliminary expenses and validation of actions

Any act done and preliminary expenses sanctioned by the Government in connection with the establishment of the corporation and any acts done or made under the purported National Enterprise Corporation Ordinance, 1989, shall be binding and have effect as if done and authorised under this Act.

### 27. Regulations

The Minister may, in consultation with the board, make regulations for better carrying into effect the provisions of this Act.