

# CHAPTER 95A EXECUTIVE AGENCIES ACT

---

• Act • Subsidiary Legislation •

---

## ACT

Act No. 4 of 2008

## ARRANGEMENT OF SECTIONS

### PART I

#### *Preliminary*

1. Short title.
2. Interpretation.

### PART II

#### *Power to Establish Executive Agencies; their Functions and Operational Principles*

3. Power of Ministers to establish Executive Agencies.
4. Functions of Executive Agencies and operational principles.

### PART III

#### *Role of Permanent Secretaries*

5. Role of Permanent Secretaries.

### PART IV

#### *Ministerial Advisory Boards*

6. Ministerial Advisory Boards.
7. Functions of Ministerial Advisory Board.
8. Meetings and procedure of Ministerial Advisory Boards.

### PART V

#### *Chief Executive and Employees*

9. Appointment and tenure of Chief Executive.
10. Functions of Chief Executive.
11. Appointment, etc., of employees.
12. Exemption from personal liability.

### PART VI

#### *Financial and Related Matters*

13. Funds of an Executive Agency.
14. Other monies to be paid into the Consolidated Fund.
15. Collection of fees by an Executive Agency.
16. Estimates of income and expenditure.

17. Accounts and Audit.
18. Annual Report and Performance Agreement.

## PART VII

### *Miscellaneous*

19. Vesting of property.
20. Regulations.

---

## CHAPTER 95A EXECUTIVE AGENCIES ACT

**An Act to make provisions for the establishment and operations of semi-autonomous Executive Agencies within the ambit of Government Ministries for the purpose of providing public services in selected areas in a more efficient and effective manner, and for related matters.**

[Act No. 4 of 2008.]

[20th March, 2008.]

## PART I

### *Preliminary*

#### **1. Short title**

This Act may be cited as the Executive Agencies Act.

#### **2. Interpretation**

In this Act, unless the context otherwise requires—

“Chief Executive” means the chief executive of an executive agency;

“Executive Agency” means an executive agency established under this Act;

“Financial Year” means, in respect of the first accounting period of an Executive Agency, a period starting from the date of the establishment of the Executive Agency concerned and ending on the 31st of December of the following year, and for any subsequent accounting period, the period of twelve months ending on the 31st of December;

“Framework Document” means a document containing the functions, aims, role, objectives, authority, performance contract and any other particulars of the Executive Agency, taking into account any existing laws;

“Minister”, in relation to an Executive Agency, means the Minister responsible for the department in respect of which that Executive Agency is established;

“Ministerial Advisory Board” means an advisory board constituted under section 6;

“Performance Agreement” means an agreement between the Permanent Secretary and the Chief Executive comprising the tasks, remuneration and base for the review and assessment of the Chief Executive’s performance;

“Permanent Secretary”, in relation to an Executive Agency, means the Permanent Secretary of the Ministry under which the Executive Agency is established.

## PART II

### *Power to Establish Executive Agencies; their Functions and Operational Principles*

#### **3. Power of Ministers to establish Executive Agencies**

(1) Where a Minister is of the opinion that, having regard to the provisions of this Act, it is appropriate to establish an Executive Agency for the purpose of carrying out the functions of a department of government with which he or she is charged with responsibility, he or she may, by Order published in the *Gazette*, establish such an Agency.

(2) Before a Minister establishes an Executive Agency, he or she shall take into account whether the establishment of the Agency will—

- (a) improve efficiency and effectiveness in the delivery of public services;
- (b) create an environment conducive to efficient and effective management;
- (c) improve the quality of the services hitherto provided by the department concerned; and
- (d) promote the potential for the continuous improvement of the services provided by the proposed Executive Agency.

(3) An Order made under subsection (1) shall specify the department of government in relation to which the Executive Agency is established and may be made in respect of more than one department of government of the same Ministry or, with the approval of another Minister concerned, may be made so as to include a department of government of another Ministry, and it shall be set out, in a Framework Document.

(4) If, at any time after the establishment of an Executive Agency, the matters in respect of which it is established are assigned to another Minister, the responsibility for the Executive Agency under this Act shall, by virtue of this subsection, vest in that other Minister.

(5) Without prejudice to any other provisions of this Act, a Minister may, with the approval of the Minister with responsibility for the Public Service establish an Executive Agency under an Order containing such modifications to the provisions of this Act relating to the structural organisation of Executive Agencies as will facilitate the more effective discharge of its functions.

(6) Notwithstanding any other law, an Executive Agency shall—

- (a) be capable of entering into contracts in its own name;
- (b) without prejudice to the right and liability of any person to sue or to be sued by the Government in any other respect, be capable of suing or being sued, in its own name, only in contract; and all laws applicable to legal proceedings, shall apply to legal proceedings to which the Executive Agency is a party;
- (c) have power, in its own name, to borrow money and to acquire, hold or dispose of movable and immovable property, but its power to borrow money shall only be exercised with the approval of Parliament and upon such terms and conditions as it may specify, either generally or in any particular case; and
- (d) do all other things which are necessary or desirable for the efficient and effective discharge of its functions, including the establishment of consultative arrangements necessary to secure the views of the users of its services.

#### **4. Functions of Executive Agencies and operational principles**

(1) Subject to this Act, an Executive Agency shall perform such functions as are conferred upon it under section 3(3).

(2) In the performance of its functions, an Executive Agency shall—

- (a) provide its services to its customers and the public in the most efficient and effective manner;
- (b) manage its affairs in a businesslike and cost-effective manner and in accordance with modern management and business practices, and techniques and, in particular, to apply to its operations the best standards of financial management and accounting; and
- (c) ensure that its operations are designed for the provision of the best service to its customers and to maintain a high degree of responsiveness to their needs.

### PART III

#### *Role of Permanent Secretaries*

#### **5. Role of Permanent Secretaries**

(1) The Permanent Secretary shall be responsible to the Minister for the supervision of the Executive Agency.

(2) The Permanent Secretary will monitor, review and evaluate the performance of the Executive Agency and the Chief Executive on the Minister's behalf in terms of the relevant performance documentation but will not, apart from conveying his or her views to the Chief Executive to ensure that the terms of such documentation are met, direct the allocation of the Executive Agency's internal resources.

(3) The Permanent Secretary shall—

- (a) in conjunction with the Chief Executive and subject to the ultimate approval of the responsible Minister, conclude a Framework Document for the Executive Agency and an individual Performance Agreement for the Chief Executive;
- (b) ensure that the Chief Executive will have sufficient autonomy to manage the Executive Agency;
- (c) following consultation with the responsible Minister and Chief Executive, approve the Executive Agency's Corporate and Business Plans;
- (d) receive an Annual Report referred to in section 18; and
- (e) submit the audited accounts to the Accountant General.

### PART IV

#### *Ministerial Advisory Boards*

#### **6. Ministerial Advisory Boards**

(1) Each Executive Agency shall have a Ministerial Advisory Board consisting of the Permanent Secretary as Chairman, and not more than four other members, all of whom shall be appointed by the Minister as follows—

- (a) two members with management experience at best practice;

- (b) one member after having consulted with such association of trade unions or individual trade unions as in the opinion of the Minister is representative of employees of that executive agency; and
- (c) one member after having consulted with the Chamber of Commerce.

(2) In appointing the members of a Ministerial Advisory Board, the Minister shall have due regard to the need to include in its membership, persons whether or not in the public service who possess the necessary qualifications and expertise in respect of the matters for which the Executive Agency is established and persons who are representative of the interests of the Executive Agency's customers.

(3) The Minister may at any time, if he or she is of the opinion that a member of a Ministerial Advisory Board is unfit to continue in office or is incapable of performing his or her duties, revoke the appointment of that member.

(4) A member of a Ministerial Advisory Board, other than an *ex officio* member, shall hold office for a period not exceeding three years and shall be eligible for re-appointment.

(5) The Chief Executive shall attend all meetings of the Ministerial Advisory Board and may participate in its deliberations, except in matters affecting his or her own interests, but he or she shall have no right to vote.

(6) The quorum of a Ministerial Advisory Board shall be three members, one of whom shall be the Chairman.

(7) A member of a Ministerial Advisory Board shall not participate in the deliberations of the Board on any matter in which he or she has or may have any interest.

## **7. Functions of Ministerial Advisory Board**

The function of a Ministerial Advisory Board is to give advice to the Minister on—

- (a) the development and maintenance of a strategic framework;
- (b) the objectives of the Executive Agency;
- (c) the appropriateness of the Chief Executive's plans and associated budgets;
- (d) the setting of priorities and annual performance targets for the Executive Agency;
- (e) the Executive Agency's annual reports and accounts;
- (f) the evaluation of the Executive Agency's performance; and
- (g) any other matter provided for in this Act.

## **8. Meetings and procedure of Ministerial Advisory Boards**

A Ministerial Advisory Board shall hold its meetings as often as the Chairman may determine, but not less than twice in each financial year, and without prejudice to the power of the Minister with responsibility for the Public Service to make rules for the conduct of its meetings, and shall determine its own procedure.

## **PART V**

### *Chief Executive and Employees*

## **9. Appointment and tenure of Chief Executive**

(1) An Executive Agency shall have a Chief Executive appointed on contract by the Governor-General, acting in accordance with the advice of the Public Service Commission, from among persons who possess the necessary qualifications, skills,

experiences and competences to manage, efficiently and effectively, the affairs of the Executive Agency in accordance with modern management standards and he or she shall hold office on such terms and conditions of service as the Governor-General may specify.

(2) The Public Service Commission in order to tender advice to the Governor-General on the best candidate for appointment as Chief Executive, may ask the Ministerial Advisory Board to provide it with a short list of candidates from those who submitted their applications to the Public Service Commission for such office, together with an objective assessment of the suitability of each candidate.

(3) The Chief Executive shall hold office for not more than three years and shall be eligible for re-appointment.

#### **10. Functions of Chief Executive**

- (1) The Chief Executive shall be the head of the Executive Agency and shall—
  - (a) subject to section 5(1) and (2), be responsible for the operational management of the Agency; and
  - (b) be responsible to exercise the functions delegated to him or her by the Public Service Commission.
- (2) The Chief Executive shall—
  - (a) be the Agency's Accounting Officer with such financial responsibilities as may be provided for in its Framework Document and delegated to him or her by the Minister responsible for Finance;
  - (b) perform his or her functions in accordance with an Annual Performance Agreement concluded between him or her and the Permanent Secretary.

#### **11. Appointment, etc., of employees**

(1) Subject to subsection (2), a Chief Executive may act, from time to time, in accordance with an instrument of delegation issued to him or her by the Public Service Commission under section 84(2) of the Constitution.

(2) In exercising powers under subsection (1), the Chief Executive shall act in accordance with regulations made by the Public Service Commission and other regulations in force.

(3) Where a Chief Executive intends to fill a vacant post in the Executive Agency, the Chief Executive shall give public notice of such vacancy in a manner sufficient to enable suitably qualified persons to apply for employment in the post.

(4) A certificate signed by the Chief Executive that any person named in the certificate was appointed to any office in the Executive Agency from the date stated in the certificate shall be sufficient evidence that the person was duly appointed and continues to hold the office unless the contrary is proved.

#### **12. Exemption from personal liability**

An employee of an Executive Agency shall not, in his or her personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done or made in good faith in the performance of his or her functions.

### **PART VI**

#### *Financial and Related Matters*

### **13. Funds of an Executive Agency**

The funds of an Executive Agency shall consist of such monies as may be voted by Parliament for the purposes of the Executive Agency.

### **14. Other monies to be paid into the Consolidated Fund**

(1) Monies received by the Executive Agency for goods or services provided under the authority of this Act; and monies borrowed, received by or made available to the Executive Agency for the purposes of its functions shall be paid into the Consolidated Fund.

(2) Notwithstanding subsection (1), the Minister responsible for Finance may by Order specify the percentage of monies referred to in subsection (1) which may be lodged in an account operated by an Executive Agency, however, any difference shall be paid into the Consolidated Fund.

(3) An Order made by the Minister under subsection (2) shall be subject to an affirmative resolution of Parliament.

(4) An Executive Agency shall be subject to the Public Finance Act, Chapter 262A.

### **15. Collection of fees by an Executive Agency**

An Executive Agency shall—

- (a) perform its functions in accordance with modern commercial principles and shall ensure that, as far as possible, its revenue is sufficient to meet its expenditure as set out in its business plan;
- (b) charge and collect fees or commissions for the provision of any goods or services it provides under the authority of this Act.

### **16. Estimates of income and expenditure**

(1) The Chief Executive shall prepare, in accordance with the Public Finance Management Act, Chapter 262A, and submit to the Permanent Secretary the estimates of income and expenditure for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the Permanent Secretary any estimates supplementary to the estimates of the current year.

(2) No expenditure shall be incurred from the funds of an Executive Agency unless that expenditure is part of the expenditure approved by the Permanent Secretary under subsection (1) in respect of the financial year to which the expenditure relates.

(3) The Chief Executive shall ensure that all payments out of the Executive Agency's funds are correctly made and properly authorised and adequate control is maintained over its property and over the incurring of liabilities by the Executive Agency.

(4) The Chief Executive shall prepare a corporate plan every three years and submit it to the Permanent Secretary for his or her approval.

### **17. Accounts and Audit**

(1) Every Chief Executive shall cause to be kept—

- (a) accounts of the transactions of the Executive Agency in accordance with the Public Finance Management Act, Chapter 262A; and
- (b) a record of the Executive Agency's performance in accordance with its approved corporate and annual business plans,

and such accounts and record of the Agency's performance shall be audited annually by the Director of Audit.

(2) The Chief Executive and employees of the Executive Agency shall give to the Director of Audit—

- (a) access to all books, documents, cash and securities of the Executive Agency; and
- (b) on his or her request, all such information as may be within their knowledge in relation to the activities of the Executive Agency.

(3) The Director of Audit shall be entitled at all times to examine the accounts and the records of performance of every Executive Agency.

## **18. Annual Report and Performance Agreement**

(1) The Chief Executive shall, within two months after the end of each financial year, submit to the Minister and the Permanent Secretary an annual report in respect of that year containing—

- (a) a copy of the audited accounts of the Executive Agency, together with the auditor's report on those accounts;
- (b) a report on performance against key targets and any other related information;
- (c) a report on the operations of the Executive Agency during that financial year; and
- (d) such other information as the Permanent Secretary may require.

(2) The annual report referred to in subsection (1) shall also contain the Annual Performance Agreement between the Permanent Secretary and the Chief Executive.

(3) The Minister shall cause a copy of the annual report to be laid before Parliament, within two months or at the next meeting of Parliament, after he or she has received the report.

(4) The Permanent Secretary shall cause a copy of the audited accounts to be submitted to the Accountant General within two months after he or she has received the report.

## **PART VII**

### *Miscellaneous*

## **19. Vesting of property**

All movable and immovable property, except any such property as the Minister may determine which immediately before the commencement of this Act is vested in the Government for the use of the department in relation to which an Executive Agency is established shall, on the date of commencement of an Order made under section 3(3) and without further assurance, vest in the Executive Agency subject to all interests, liabilities, charges, obligations and trusts affecting that property.

## **20. Regulations**

The Minister with responsibility for the Public Service may make regulations for the carrying out of the purposes of this Act.

## **SUBSIDIARY LEGISLATION**

---

*No Subsidiary Legislation*

---