

Zambia

Privatisation Act, 1992

Chapter 386

Legislation as at 31 December 1996

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Zambia

Privatisation Act, 1992 Chapter 386

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[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.

Part I – Preliminary

1. Short title

This Act may be cited as the Privatisation Act.

2. Interpretation

In this Act, unless the context otherwise requires—

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

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

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"**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;

"**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;

"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. Establishment of Agency

There is hereby established the 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.

4. Seal of Agency

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

5. Composition of Agency

- (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:

- (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. Tenure of office and vacancy

- (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.
- (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. Remuneration and allowances of members

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

8. Functions of Agency

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

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

- (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.
- (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. Disclosure of interest

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.

Part III – Administration

12. Director of Agency

- (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.
- (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. Secretary and other staff

- (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.
- (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. Disclosure of interest by employees

- (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.
- (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. Oath of secrecy

- (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.
- (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. Prohibition of publication or disclosure of information by unauthorised persons

- (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.
- (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

[Please note: numbering as in original.]

17. Privatisation of State owned enterprises

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

18. Golden share

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.

19. Allotment of shares

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

20. Obligations of holding companies and share holders

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.

21. Obligations of State owned enterprises

- (1) A State owned enterprise scheduled for privatisation shall—
 - (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;
 - (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. Modes of privatisation

The Agency may employ the following 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](#)]

23. Valuation of state owned enterprise

- (1) The valuation State owned enterprises shall be performed by independent valuers who shall issue a certificate of valuation.
- (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. Eligible buyer

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.

25. Sale of shares to an employee and consultant

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.

26. Political leaders

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

27. Declaration by potential investor

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.

28. Established fund

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

29. Purchase of shares by citizens of Zambia

- (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.
- (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

Foreign investors shall be entitled to incentives under the Investment Act if such investor acquires shares in a State owned enterprise where—

- (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.

[Cap. 385]

31. Mode of payment of shares

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.

32. Negotiations for offer of sale

- (1) The Agency shall appoint an independent negotiating team for each 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. Conversion of private companies to public companies

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.

[Cap. 388]

34. Trading in shares

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.

35. Liquidation

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

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35A. Appointment of receiver

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:

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. Consummation of sale

- (1) The Minister responsible for finance shall sign the final Sales Agreement to transfer shares to the selected bidder.
- (2) The transfer of shares shall be in accordance with the provisions of the Companies Act.

[Cap. 388]

37. Commercialisation of specified Government departments

- (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.
- (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. Publication of information

- (1) The Agency shall publish by notice in the *Gazette*—
 - (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. Use of proceeds

- (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.
- (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. Funds of Agency

- (1) Subject to section thirty-nine the funds of the Agency shall consist of such moneys as may—
 - (a) be appropriated by Parliament, for the purposes of the Agency;
 - (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. Financial year

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

42. Accounts

- (1) The Agency shall cause to be kept proper books of account and other records relating to its 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. Annual report

- (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.
- (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. Progress report

- (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.
- (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. Vesting of the property of Agency

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.

46. Procurement of goods and services under Cap. 394

- (1) The procurement of goods and services of the Agency shall not be subject to the provisions of the Zambia National Tender Board Act:

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. Arbitration

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

[Cap. 40]

48. Penalties for falsification of information

- (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.
- (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. Regulations

The Minister, on the advice of the Agency, may by Statutory Instrument prescribe the—

- (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. Prior leases and agreements

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.