

P.N.D.C.L. 326**DIVESTITURE OF STATE INTERESTS (IMPLEMENTATION) ACT, 1993****ARRANGEMENT OF SECTIONS****SECTION**

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P.N.D.C.L. 326**DIVESTITURE OF STATE INTERESTS (IMPLEMENTATION) ACT, 1993¹**

AN ACT to provide for the divestiture of interests of the Republic in corporate and other bodies and for related matters.

1. Divestiture directives

The divestiture by the Republic of any of its interests in a statutory corporation or a corporate body incorporated under the Companies Act, 1963 (Act 179) or under the Incorporated Private Partnerships Act, 1962 (Act 152) shall be in accordance with the policy directives determined by the President.

2. Establishment of the Divestiture Implementation Committee

There is hereby established a Divestiture Implementation Committee,² which shall be the agency of the Government for the implementation of Government policies in respect of divestiture programmes under this Act.

1. This Act was issued as the Divestiture of State Interests (Implementation) Law, 1993 (P.N.D.C.L. 326), made on 5th January, 1993 and notified in the *Gazette* on 11th May, 1993.
2. By the definition of "public corporation" in article 295 of the Constitution, the Committee is a public corporation and thus part of the Public Services.

3. Object and functions of the Committee

(1) The object of the Committee is to implement and execute Government policies in respect of divestiture programmes.

- (2) For the purpose of achieving its object under subsection (1), the Committee shall
- (a) plan, monitor, co-ordinate and evaluate the divestitures under this Act;
 - (b) arrange for the effective communication to the public of Government's policies and objectives for a divestiture;
 - (c) develop criteria for the selection of enterprises to be divested and assume the responsibility that the Committee considers appropriate over bodies earmarked for divestiture in order to prepare those enterprises for divestiture;
 - (d) make appropriate consultations for successful processing of the divestiture programmes under this Act;
 - (e) ensure consistency in procedures for divestiture, in particular with regard to valuation, invitation for bids, negotiation of sales and settlement of account;
 - (f) perform any other functions assigned to it by the President; and
 - (g) do any other things that are incidental to the performance of its functions.

4. Recommendations and transfer of interests

(1) The recommendations of the Committee in respect of a divestiture under this Act shall be submitted to the President for approval.

(2) In the case of an interest of the Government created by statute, on the approval of the President of a recommendation made under subsection (1), the chairman of the governing council and the executive secretary shall sign on behalf of the Government instruments of transfer of the Government interest.

5. The governing body

- (1) The governing body of the Committee³ is a Council consisting of
- (a) one Minister of the Cabinet or any other person determined by the President, as chairman,
 - (b) one representative of the Trades Union Congress,
 - (c) one representative of the Ghana Armed Forces,
 - (d) *omitted*,⁴
 - (e) the executive secretary of the Committee, and

3. By virtue of clause (3) (b) of article 190 of the Constitution, as a public corporation, it must have a governing body.

4. The paragraph provided for "a representative of the Committee for the Defence of the Revolution". That Committee no longer exists.

- (f) three other persons who by reason of their ability, experience or specialised knowledge would be capable of making meaningful contribution to the work of the Committee.

(2) The members of the Council shall be appointed by the President in accordance with article 70 of the Constitution.

6. Meetings of members

(1) The Council shall meet at the times and at the places determined by the chairman.

(2) The chairman shall preside at the meeting of the Council and in the absence of the chairman a member elected by the members present from among themselves shall preside.

(3) The quorum at a meeting of the Council is five.

(4) Decisions at the meetings of the Council shall be by consensus and where a consensus cannot be arrived at, the decision shall be taken by a vote of the majority of the members present, and in the event of an equality of votes, the chairman shall have a casting vote.

(5) The Council may at any time co-opt a person to act as an adviser, but a co-opted person is not entitled to vote at the meetings of the Council on a matter for decision by the Council.

(6) The validity of the proceedings of the Council shall not be affected by a vacancy among its members or by a defect in the appointment of any of the members.

(7) The Council shall keep minutes of its proceedings.

(8) Except as otherwise provided in this section, the Council shall regulate its procedure at its meetings.

7. Sub-committees

The Council may, on the terms that it may determine, appoint the sub-committees that it finds necessary for the effective performance of its functions under this Act.

8. Tenure of office and allowances of members

(1) Members of the Council shall hold office for the periods and may be paid the allowances, determined by the President on the recommendations of the Minister responsible for Finance.

(2) The members of a sub-committee appointed by the Council shall be paid allowances determined by the governing council.

9. Executive secretary and staff of the Committee

(1) The Committee shall have an officer to be designated as the executive secretary who shall be appointed by the President in accordance with article 195 of the Constitution on the terms and conditions determined by the President.

(2) The executive secretary is responsible, subject to the directives given by the Council, for the day-to-day management and administration of the affairs of the Committee and is accountable to the governing council.

(3) The executive secretary shall submit recommendations on divestiture to the governing council for its consideration.

(4) The President shall provide the Committee with any other staff as required by the Council for the effective performance of the functions of the Committee.

(5) A person shall not be appointed to the professional staff of the Committee unless that person has the requisite qualification and experience in finance, accounting, economics, law or industrial relations.

10. Funds of the Committee

Parliament shall provide the Committee with the funds necessary for the efficient performance of its functions.

11. Accounts and audit

(1) The Council shall ensure that proper books of account are kept in respect of the financial affairs and transactions of the Committee.

(2) The accounts of the Committee shall be audited annually by the Auditor-General.

12. Witnesses

(1) The Council may require a person

- (a) to attend at the time and place indicated by the Council, to give evidence or to produce a document in the possession or control of that person which relates to a matter specified by the governing council, or
- (b) to give to the governing council information it may require for the purpose of a matter before it.

(2) A person who appears before the Council under subsection (1) may be examined on oath and the Council may for that purpose administer the oath.

13. Offences

A person who

- (a) refuses or wilfully neglects to attend in obedience to a requirement by the governing council under subsection (1) (a) of section 12 or to give evidence as required under that provision, or
- (b) wilfully alters, suppresses, conceals, destroys or refuses to produce a document under subsection (1) (a) of section 12, or
- (c) refuses or wilfully neglects to furnish information required of that person under subsection (1) (b) of section 12,

commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

14. Report to the President

The Council shall make periodic reports on its activities to the President who may at any time request the governing council to submit a report on a matter specified in the request.

15. Indemnity against court proceedings

An action shall not be brought and a Court shall not entertain proceedings against the Republic, the Committee or a member of the Council or an officer of the Committee in respect of an act or omission arising out of a disposal of an interest made or under consideration under this Act.

16. Interpretation

In this Act, unless the context otherwise requires,

“**Committee**” means the Divestiture Implementation Committee established under section 2;

“**Council**” means the governing body of the Committee;

“**divestiture programme**” means a programme for the disposal by the Government of an interest held by the Republic in a statutory corporation, company or partnership;

“**interests**” includes ownership of shares, debentures, securities and any other property.

17. Commencement

*Spent.*⁵

5. The section provided that the Law shall come into force on the 1st day of January, 1993. Under section 4 (6) of the Provisional National Defence Council (Establishment) Proclamation, 1981, a “Law made by the Council shall, unless otherwise provided in that Law, come into force on the date it is made”. The 1992 Constitution came into force on the 7th day of January, 1993, two days after the present Law was made, although the Constitution was made on the 8th day of May, 1992 and notified in the *Gazette* on 15th May, 1992.

