

CHAPTER 182

PUBLIC CORPORATIONS (FINANCIAL CONTROL)

Act
No. 38 of 1971.
(Part II)

AN ACT TO PROVIDE FOR THE FINANCIAL CONTROL OF PUBLIC CORPORATIONS AND FOR OTHER MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[19th October, 1971.]

Short title. **1.** This Act may be cited as the Public Corporations (Financial Control) Act*.

Application of provisions of this Act **2.** (1) The provisions of this Act shall apply to every public corporation notwithstanding anything to the contrary in the provisions of any other written law :

Provided, however, that the Minister in charge of the subject of Finance may from time to time, by Order published in the Gazette, exempt any public corporation from all the provisions of this Act, or from any such provisions as shall be specified in the Order.

(2) Any Order published in the Gazette by the Minister in charge of the subject of Finance under subsection (1) may be amended, revoked or replaced by a like Order.

(3) Any Order published in the Gazette by the Minister in charge of the subject of Finance under the preceding provisions of this section shall come into operation on the date of such publication, or on such later date as may be specified therein.

Effective date for implementation of this &ct. **3.** A public corporation shall give effect to the provisions of this Act from the date of commencement of the financial year 1973 or, if possible, earlier.

Financial obligations of a public corporation. **4.** (1) It shall be the duty of the governing body of a public corporation to conduct the business of the corporation so that the ultimate surpluses on revenue account shall at least be sufficient to cover the ultimate deficits on such account over a period of five years or such other period as may be determined by the Minister in

charge of the subject of Finance. In determining the ultimate surplus or ultimate deficit for each year under this section, there shall be charged against the revenue account the charges specified in section 6 and the appropriations specified in section 7.

(2) Subsidies which may be received by a public corporation from the Government in terms of section 14 shall be included in the revenue of the corporation in arriving at the surplus or deficit in any year.

5. (1) Every public corporation shall prepare a budget in respect of every financial year and such budget shall be approved by the governing body of such corporation not later than three months prior to the commencement of the financial year to which the budget relates.

Preparation of budgets of public corporations.

(2) Notwithstanding the approval of the budget by the governing body of a public corporation, no commitments of capital expenditure provided in such budget in excess of five hundred thousand rupees shall be incurred by such corporation except,—

(a) in any case where the appropriate Minister is the Minister in charge of the subject of Planning, with the prior approval of the appropriate Minister given with the concurrence of the Minister in charge of the subject of Finance ; or

(b) in any case where the appropriate Minister is not the Minister in charge of the subject of Planning, with the prior approval of the

*Sections 5 to 22 of the Finance Act, No. 38 of 1971, are reproduced, renumbered as sections 2 to 19 of this Act.

appropriate Minister given with the concurrence of both the Minister in charge of the subject of Planning and the Minister in charge of the subject of Finance,.

(3) The budget of a public corporation shall give projections of revenue and expenditure both recurrent and capital, financial resources, investments of funds, cash resources and other relevant information. Such budget shall show a budgeted profit and loss account or income and expenditure account for each financial year and a projected balance sheet showing the position at the end of that year. The form and manner in which the budget shall be prepared, and the minimum information that the budget shall contain, shall be as determined in any case where—

- (a) the appropriate Minister is the Minister in charge of the subject of Finance, by the appropriate Minister; or
- (b) the appropriate Minister is not the Minister in charge of the subject of Finance, by the appropriate Minister with the concurrence of the Minister in charge of the subject of Finance.

(4) A public corporation shall forward copies of its budget to the Ministry of the appropriate Minister, the Ministry charged with the subject of Finance and the Ministry charged with the subject of Planning immediately after the budget has been approved by the governing body of the corporation.

Revenue and determination of net surplus and net deficit.

6. (1) The revenue of a public corporation in any year shall consist of moneys received and accrued in the exercise, performance or discharge of its powers, duties or functions in respect of—

- (a) the sale of its products and services;
- (b) any subsidies received in terms of section 14; and
- (c) other sundry income including profit from the sale of capital assets.

(2) For the purpose of determining the net surplus or net deficit in any year of a public corporation, the following charges shall be set off against its revenue:—

- (a) the working, establishment and other expenses of the corporation whether paid or accrued in connexion with the exercise, performance and discharge of its powers, duties and functions, properly chargeable to revenue account;
- (b) allocations to cover the depreciation of the movable and immovable property of the corporation, based on historical cost;
- (c) the interest on any loans obtained by the corporation;
- (d) any losses incurred in the sale of capital assets;
- (e) income tax or any other tax which the corporation is required to pay under any written law; and
- (f) payment to the Consolidated Fund of a return on the capital grants of the Government at such rate, or payment to the Consolidated Fund of such amount, as may be determined, from time to time, by the Minister in charge of the subject of Finance.

7. (1) Subject to the provisions of subsection (3), the net surplus for any year, if any, out of the revenue of a public corporation after defraying the charges mentioned in section 6 may be appropriated by the corporation for all or any of the purposes to which the provisions of this subsection apply-

Appropriation of net surplus revenue of a public corporation.

(2) The provisions of subsection (1) shall apply to the following purposes:—

- (a) writing off the whole or any part of any accumulated losses brought forward,
- (b) writing off the whole or any part of the preliminary expenses incurred

in the formation of the corporation;

- (c) writing off the whole or any part of any unproductive expenditure or loss not properly chargeable to revenue account;
- (d) transfers to a loan redemption reserve which the corporation is hereby authorized to establish and maintain, and
- (e) transfers to other reserves.

(3) No appropriation shall be made by a public corporation under the preceding provisions of this section except, —

- (a) in any case where the appropriate Minister is the Minister in charge of the subject of Finance, with the approval of the appropriate Minister so, however, that, if the purpose for which such appropriation is to be made is the purpose mentioned in paragraph (e) of subsection (2), no such approval shall be given without the concurrence of the Minister in charge of the subject of Planning; or
- (b) in any case where the appropriate Minister is not the Minister in charge of the subject of Finance, with the approval of the appropriate Minister given with the concurrence of the Minister in charge of the subject of Finance so, however, that, if the purpose for which the appropriation is to be made is the purpose mentioned in paragraph (e) of subsection (2), no such approval shall be given without the concurrence also of the Minister in charge of the subject of Planning.

(4) No debits against or transfers out of any of the reserves mentioned in paragraphs (d) and (e) of subsection (2) shall be made by a public corporation except, —

- (a) in any case where the appropriate Minister is the Minister in charge of

the subject of Finance, with the approval of the appropriate Minister given with the concurrence of the Minister in charge of the subject of Planning; or

- (b) in any case where the appropriate Minister is not the Minister in charge of the subject of Finance, with the approval of the appropriate Minister given with the concurrence of both the Minister in charge of the subject of Finance and the Minister in charge of the subject of Planning.

(5) All sums remaining out of the net surplus revenue of a public corporation in any year after the appropriations mentioned in subsection (1) have been made shall be paid to the Consolidated Fund.

8. No moneys of a public corporation shall be invested except, —

Investment of moneys of a public corporation.

- (a) in any case where the appropriate Minister is the Minister in charge of the subject of Finance, with the approval of the appropriate Minister; or
- (b) in any case where the appropriate Minister is not the Minister in charge of the subject of Finance, with the approval of the appropriate Minister given with the concurrence of the Minister in charge of the subject of Finance :

Provided, however, that any temporary surpluses of cash of a public corporation shall be deposited by the corporation in the General Treasury, and shall be refundable on demand made by the corporation.

9. A public corporation shall cause proper accounts of the income and expenditure, assets and liabilities and of all other transactions of the corporation to be kept. A public corporation shall prepare an annual statement of accounts and statistics relating to the activities of the corporation in such form and containing such particulars as,—

Accounts of a public corporation.

- (a) in any case where the appropriate Minister is the Minister in charge of

the subject of Finance, the appropriate Minister may from time to time specify; or

- (b) in any case where the appropriate Minister is not -the Minister in charge of the subject of Finance, the appropriate Minister may from time to time specify with the concurrence of the Minister in charge of the subject of Finance,

10. (1) The Auditor-General shall be the auditor for every public corporation. For the purpose of assisting him in the audit, the Auditor-General may, if he thinks it necessary to do so, employ the services of any qualified auditor or auditors who shall act under his direction and control.

(2) For the purpose of meeting the expenses incurred by him in the audit of the accounts of a public corporation, the Auditor-General shall be paid by the corporation such remuneration as the appropriate Minister may, with the concurrence of the Minister in charge of the subject of Finance, determine. Any remuneration received from the corporation by the Auditor-General shall, after deduction of any sums paid by him to any qualified auditor or auditors employed by him for the purposes of such audit, be credited to the Consolidated Fund.

(3) The Auditor-General shall inspect the accounts, the finances, the management of the finances and the property of a public corporation. The Auditor-General shall as far as possible, and as far as necessary, examine—

- (a) whether the organization, systems, procedures, books, records and other documents have been properly and adequately designed from the point of view of financial control purposes and from the point of view of the presentation of information to enable a continuous evaluation of the activities of the corporation, and whether such systems, procedures, books, records and other documents are in effective operation;

- (b) whether the conduct of the corporation has been in accordance with the law, rules and regulations relevant to the corporation and whether there has been fairness in the administration of the corporation;

- (c) whether there has been economy and efficiency in the commitment of funds and utilization of such funds ;

- (d) whether systems of keeping moneys and the safeguarding of property are satisfactory;

- (e) whether the accounts audited have been so designed as to present a true and fair view of the affairs of the corporation in respect of the period under consideration due regard being had to principles of accountancy, financing and valuation; and

- (f) any such other matters as he may deem necessary.

(4) The Auditor-General shall at his discretion determine the nature and extent of the audit that shall be carried out in any particular period in respect of any particular public corporation, and may at his discretion dispense with the audit of any particular aspect or aspects relevant to a particular public corporation in the period under review.

(5) The Auditor-General shall have—

- (a) the right of access to any books, records, documents and any type of information which is directly or indirectly related to the activities of a public corporation under audit as he deems necessary;

- (b) the right -to call for such information, documents, explanations, reports or other material at any time as in his opinion are necessary for the purposes of the audit;

- (c) the right to summon any person for examination, and for the

Rendering of accounts and audit.

production of any documents where such examination or production is considered necessary for the purposes of the audit;

- (d) the right to require the corporation to settle its minimum internal audit programmes by agreement with the Auditor-General, and the right to give any directions to the corporation with regard to the conduct of the minimum internal audit programmes and the manner of reporting by the internal audit.

The corporation or any person shall comply with any request made by the Auditor-General in the exercise of his above-mentioned rights.

(6) The accounts of a public corporation for each financial year shall be submitted to the Auditor-General for audit within four months after the close of that year along with any report on the accounts which the Auditor-General may require to be submitted in the manner specified by him. Any such corporation which contravenes or fails to comply with the preceding provisions of this subsection shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees.

(7) (a) The Auditor-General shall submit a report to the Chairman of each public corporation within eight months after the close of the financial year to which the report relates dealing with the results of the audit including a report on the accounts examined in the year. Copies of such report shall be forwarded by him where—

- (i) the appropriate Minister is the Minister in charge of the subject of Finance, to the appropriate Minister; or
- (ii) the appropriate Minister is not the Minister in charge of the subject of Finance, to both the appropriate Minister and the Minister in charge of the subject of Finance.

(b) The Auditor-General may, if he thinks it necessary to do so, also submit to

the Chairman of each public corporation interim reports at any time dealing with matters arising from the audit.

(c) The Auditor-General shall, within ten months after the close of the financial year, submit a report to Parliament on the results of the audit carried out in respect of each public corporation drawing attention to matters which in his opinion would be of interest to Parliament.

(8) The reports referred to in paragraphs (a) and (b) of subsection (7) shall be considered by the governing body of a public corporation and after such consideration that body shall inform the Auditor-General of the steps that they propose to take with regard to the matters pointed out in the audit reports within three months of the submission of the reports to the corporation.

(9) For the purposes of this section, the expression " qualified auditor " means—

- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute; or
- (b) a firm of Accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practise, as an Accountant issued by the Council of such Institute;

and includes—

- (i) a person, not being an employee of the public corporation under audit or directly or indirectly associated with the direction and management of the affairs of such corporation, who may be engaged by the Auditor-General to assist him in the examination of any technical, professional or scientific problem relevant to the audit, or

- (ii) any technical or professional or scientific institution, not being an institution which has any interest in the management and affairs of such corporation, whose services the Auditor-General may obtain to assist him in the examination of any technical, professional or scientific problem relevant to the audit.
- (c) any comments or observations made by the Auditor-General which the Auditor-General considers should be published with the annual report of the corporation;
- (d) the statement of accounts and statistics prepared under section 9; and

(10) Where a public corporation is guilty of an offence under this Act by reason of a contravention of the provisions of subsection (6), every member of the governing body of that corporation shall be deemed to be guilty of that offence:

- (e) the annual report of the corporation referred to in subsection (1) in its final form.

Provided, however, that a member of the governing body of such corporation shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence,

(3) The appropriate Minister shall lay copies of the documents transmitted to him under subsection (2) before Parliament before the end of ten months following the year to which such report and accounts relate.

(4) A public corporation shall cause copies of the documents referred to in subsection (2) to be printed at the expense of the corporation and to be made available for purchase by the public at such price as shall be determined by the corporation.

Accounts and reports to be laid before Parliament.

11. (1) A public corporation shall, immediately after the end of each financial year of the corporation, prepare a draft annual report on the exercise, discharge and performance by the corporation of its powers, functions and duties during that year and of its policy and programme. Such report shall set out any directions given by the appropriate Minister to the corporation during the year. Copies of such report shall, within four months after the end of that year, be submitted to the appropriate Minister and to the Minister in charge of the subject of Finance (if he is not the appropriate Minister), the Minister in charge of the subject of Planning and the Auditor-General.

12. The appropriate Minister may direct the governing body of a public corporation to give effect to such recommendations made by the Public Accounts Committee in its reports to Parliament relating to the corporation as may be determined by the Minister.

Recommendations of the Public Accounts Committee.

13. (1) The governing body of a public corporation may, subject to the provisions of subsections (2), (3) and (4), borrow by way of overdraft or otherwise or negotiate and obtain on credit terms in Sri Lanka or abroad, such sums as that body may require for meeting the obligations of the corporation or carrying out its objects.

Borrowing powers of a corporation.

(2) A public corporation shall, on receipt of the audited accounts in respect of any year, cause a copy of each of the following documents relating to that year to be transmitted to the appropriate Minister:—

(2) The governing body of a public corporation shall not exercise the borrowing powers conferred on it by subsection (1), except,—

- (a) the audited balance sheet,
- (b) the audited operating and profit and loss accounts,
- (a) in any case where the appropriate Minister is the Minister in charge of the subject of Finance, with the concurrence of the appropriate Minister, or in accordance with the

terms of any general authority given with the concurrence of the appropriate Minister; or

(b) in any case where the appropriate Minister is not the Minister in charge of the subject of Finance, with the concurrence of both the appropriate Minister and the Minister in charge of the subject of Finance, or in terms of a general authority given with like concurrence.

(3) The aggregate of the amounts outstanding in respect of any borrowings by the governing body of a public corporation under the preceding provisions of this section shall not at any time exceed,—

(a) in any case where the appropriate Minister is the Minister in charge of the subject of Finance, such sum as may be determined by him ; or

(b) in any case where the appropriate Minister is not the Minister in charge of the subject of Finance, such sum as may be determined by the appropriate Minister with the concurrence of the Minister in charge of the subject of Finance.

(4) Where any liability in respect of foreign exchange will be incurred if the governing body of a public corporation exercises the borrowing powers conferred on it by subsection (1), then, such body shall not exercise such powers without the prior concurrence of the Minister in charge of the subject of Planning.

14. (t) A public corporation may be entitled to claim a subsidy from the Government for any year if as a result of any decision of the Government or of any directions issued by the appropriate Minister the governing body of the corporation is prevented from determining during any particular period a pricing policy for the corporation to meet the financial obligations referred to in section 4. Such subsidy shall not in any case exceed an amount which, when added to the revenue for that year, shall enable the corporation to meet the said financial obligations.

Subsidies from the Government.

(2) Every claim for a subsidy by a public corporation in terms of the preceding provisions of this section shall, not later than a period of three months after the end of the year to which the subsidy relates, be referred,—

(a) in any case where the appropriate Minister is the Minister in charge of the subject of Finance, for decision to the appropriate Minister; or

(b) in any case where the appropriate Minister is not the Minister in charge of the subject of Finance, for decision to the Minister in charge of the subject of Finance through the appropriate Minister who shall make his recommendations on such claim.

(3) The Minister in charge of the subject of Finance shall decide on the subsidy to be paid to a public corporation and the manner of such payment.

15. The capital contributed to a public corporation by the Government by way of grants shall not be reduced except on the authority of a resolution introduced in Parliament by the appropriate Minister and passed by Parliament.

Reduction of capital of a public corporation.

16. Where the appropriate Minister considers that the "activities of a public corporation should be terminated, the Minister may, under the authority of a resolution passed by Parliament—

Dissolution of a public corporation

(a) dissolve the corporation ; and

(b) appoint one or more persons to be the liquidator or liquidators of the corporation.

17. The liquidator of a public corporation appointed under section 16 shall, subject to the directions of the appropriate Minister, have power to—

Liquidator's powers

(a) decide any questions of priority which arise between the creditors ;

(b) compromise any claim by or against the corporation with the sanction of the Minister previously obtained ;

- (c) take possession of the books, documents and assets of the corporation;
- (d) sell the property of the corporation with the previous sanction of the Minister; and
- (e) arrange for the distribution of the assets of the corporation in a manner set out in a scheme of distribution approved by the Minister.

Closure of liquidation,

18. (1) In the liquidation of a public corporation, the funds of the corporation shall be applied first to the cost of liquidation and then to the discharge of the liabilities of the corporation.

(2) When the liquidation of a public corporation has been closed, a notice of liquidation shall be published in the Gazette and no action in respect of any claim against the corporation shall be maintainable, unless it is commenced within two years from the date of the publication of such notice in the Gazette.

(3) Any surplus remaining after the application of funds to the purposes specified in subsection (1) and the payment of any claim for which an action has been instituted under subsection (2) shall be vested in the Secretary to the Treasury-

19. In this Act, unless the context otherwise requires—

"appropriate Minister", in any context relating to a public corporation or any object or function of the corporation, means the Minister to whom the subject of the corporation, or of that object or function, as the case may be, has been assigned by the President;

"Auditor-General" means the Auditor-General, and includes any member of his staff acting under his authority;

"governing body ", in relation to a public corporation, means the board of directors, or other body of persons by whatsoever name or designation called, charged with the management or administration of the affairs of the corporation;

"public corporation" means any corporation, board or other body which was or is established by or under an written law, other than the Companies Ordinance*, with capital wholly or partly provided by the Government by way of grant, loan or other form.

* Later repealed and replaced by the Companies Act, No. 17 of 1982 — See the 1985 Supplement to the Revised Edition.