

ACT 706
SUBVENTED AGENCIES ACT, 2006

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ACT 706
SUBVENTED AGENCIES ACT, 2006⁽¹⁾

AN ACT to provide for the reform of subvented agencies and for related matters.

1. Classification of subvented agency

(1) The Minister responsible for Public Sector Reform may by executive instrument published in the *Gazette* classify subvented agencies into relevant categories for purposes of reform.

(2) On the date of publication of the executive instrument in the *Gazette*, the provisions of this Act shall apply.

2. Meaning of subvented agency

A subvented agency is a public agency which receives public funds.

3. Classification of public agencies

Public agencies shall be classified into four categories on the initiative of the Minister in consultation with the Minister responsible for the agency concerned and the Minister of Finance.

4. Purpose of classification

The purpose of classification of a subvented agency is to;

- (a) reduce the dependence on public funds by a public agency,
- (b) minimise the role of the Government in activities which can be efficiently undertaken by the private sector, and
- (c) enhance service orientation, delivery, productivity and accountability in the public interest.

5. Category I subvented agency

- (1) A Category I subvented agency is an agency which ceases to receive subvention.
- (2) A public agency which ceases to receive subvention may
 - (a) be closed down, or
 - (b) have the subvention withdrawn.

6. Subvented agency closed down

- (1) Where a public agency is classified in Category I and is to be closed down,
 - (a) the public agency shall wind up its affairs within twenty-four months after the date of publication in the *Gazette* under section 1,
 - (b) the assets, rights, obligations and liabilities of the public agency shall vest in the public agency that the Minister responsible for the public agency may direct on the recommendation of the Minister in consultation with the Minister for Finance,
 - (c) the Minister responsible for the public agency may re-deploy staff to other agencies that the agency under paragraph (b) shall advise, and
 - (d) the payment of severance awards and other employment benefits shall be secured by the agency specified in paragraph (b).
- (2) The Minister responsible for the public agency shall take any further action considered necessary for the effective closure of the public agency in consultation with the Minister and the Commission.
- (3) Where the processes under this section have been completed, the enactment which established the public agency shall be deemed to be repealed or revoked twenty-four months after the date of publication in the *Gazette*.

7. Subvented agency where subvention withdrawn

Where a public agency is classified in Category I and subvention is withdrawn, the provisions of the Statutory Corporations (Conversion to Companies) Act, 1993 (Act 461) shall apply.

8. Category II subvented agency

A Category II subvented agency is a public agency for which full subvention is provided by Government.

9. Criteria for Category II subvented agency

The criteria for classification of a Category II subvented agency shall be whether or not the public agency performs a core function of the Government.

10. Responsibility of sector Minister for Category II subvented agency

The Minister responsible for the subvented agency shall discharge the following duties in respect of a wholly subvented agency;

- (a) monitor and evaluate the performance of the subvented agency to ensure the pursuit of Government policy objectives and priorities,
- (b) ensure the establishment of an internal audit unit, corporate planning and management information systems by the subvented agency,
- (c) ensure that the subvented agency institutes and implements technical, operational, managerial and professional training for staff members,
- (d) provide guidelines to the subvented agency for the submission of quarterly and annual performance reports to the Minister,
- (e) provide guidelines and the format for the preparation of performance agreements for public officers where applicable, and
- (f) any other duty that is incidental to the provision of this section.

11. Category III subvented agency

A Category III subvented agency is a public agency for which partial subvention is provided by the Government where the subvented agency operates in the public interest and has the capability to perform a commercial function.

12. Operation of Category III subvented agency

A Category III subvented agency shall continue to operate under the Ministry responsible for it and be answerable to the Minister of that Ministry.

13. Duties of the Minister responsible for Category III subvented agency

The Minister shall,

- (a) on the advice of the Commission, make proposals to the governing board for the operation of the agency's commercial activities;
- (b) provide assistance to the subvented agency for the establishment and registration of a subsidiary company,
- (c) assist the subvented agency with arrangements for loans and other credit facilities to perform its commercial function, and
- (d) monitor and evaluate the performance of the subvented agency.

14. Conversion of Category III subvented agency

(1) In respect of a partially subvented agency, the Commission shall examine and initiate action for the conversion of a Category III subvented agency into a fully commercial entity where the Commission determines this to be viable.

(2) Where the statutory subvented agency does not at any time have a governing body, the sector Minister shall, within three months appoint a Board to be the governing body.

(3) Until a Board is appointed under subsection (2) the function of the governing body shall be performed by the sector Minister.

15. Category IV subvented agency

(1) A Category IV subvented agency is a public agency which is fully commercial.

(2) A subvented agency in this category shall not receive subvention.

(3) For purposes of this section, a subvented agency which produces goods, provides services or is required to produce goods or provide services on commercial basis with the potential to generate income on a self-sustaining basis shall be classified in this category.

(4) Subsection (2) shall apply whether the subvented agency was established as a commercial entity by its enabling law or not.

(5) Where a subvented agency in this category is a statutory corporation to be converted to a company limited by shares under the Companies Code, 1963 (Act 179), the Minister in consultation with the Commission shall recommend to the Minister for Finance the amendment of the Schedule to the Statutory Corporation (Conversion to Companies) Act, 1993 (Act 461) and the provisions of that Act shall apply.

(6) Where the subvented agency in Category IV is not a statutory corporation, the provisions of the Statutory Corporation (Conversion to Companies) Act, 1993 (Act 461) shall apply with the modifications required to convert the subvented agency into a company under the Companies Code, 1963 (Act 179).

16. Creation of subvented agency

A subvented agency other than one set up as a commercial venture in Category IV shall be a public corporation under article 192 of the Constitution.

17. Ministerial directives on subvented agency

The Minister shall be responsible for matters of policy concerning the reform of subvented agencies.

18. Regulations

The Minister may, in consultation with the Commission and on the advice of the Minister for Finance, by legislative instrument, make Regulations,

- (a) to change the criteria for the classification of public agencies;
- (b) to change the categories of subvented agencies;
- (c) on the procedure and consultative process for the classification of public agencies; and
- (d) generally to give effect to the provisions of this Act.

19. Interpretation

In this Act, unless the context otherwise requires:

“**agency**” includes institution;

“**commercial function**” means an activity concerned with the sale, purchase, distribution of goods and services of any kind;

“**criteria**” means conditions for consideration in the classification of a subvented agency;

“**Commission**” means the State Enterprises Commission;

“**core function**” means the executive, judicial, legislative, regulatory, management, monitoring or policy formulation of the Government;

“**Government**” means any authority by which the executive authority of the Republic is duly exercised;

“**Minister**” means Minister responsible for Public Sector Reform;

“**private sector**” means an institution which is not maintained either wholly or in part from Central or Local Government Funds;

“**public agency**” means a body set up by the Government in the public interest with or without an Act of Parliament;

“**public interest**” includes a right or advantage which ensures or is intended to ensure to the general benefit of the people of this country; and

“**subvention**” means public funds.

Endnotes

1 (Popup - Footnote)

1. This Act was assented to on 6 April, 2006 and notified in the *Gazette* on 7th April, 2006.