

The Conversion of Statutory Bodies to Companies Bill 1999

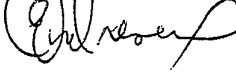
(NAME OF BILL)

CONTENTS: Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
(Authorisation from Minister of Finance under s.60 of Constitution)

FROM: Attorney General's Chambers

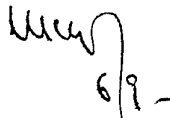
TO: Minister 
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

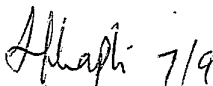
TO: Minister of Finance
(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

TO: Clerk to National Parliament 
(for certificate by Speaker)

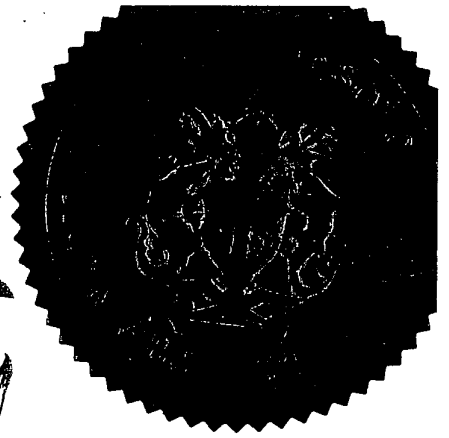
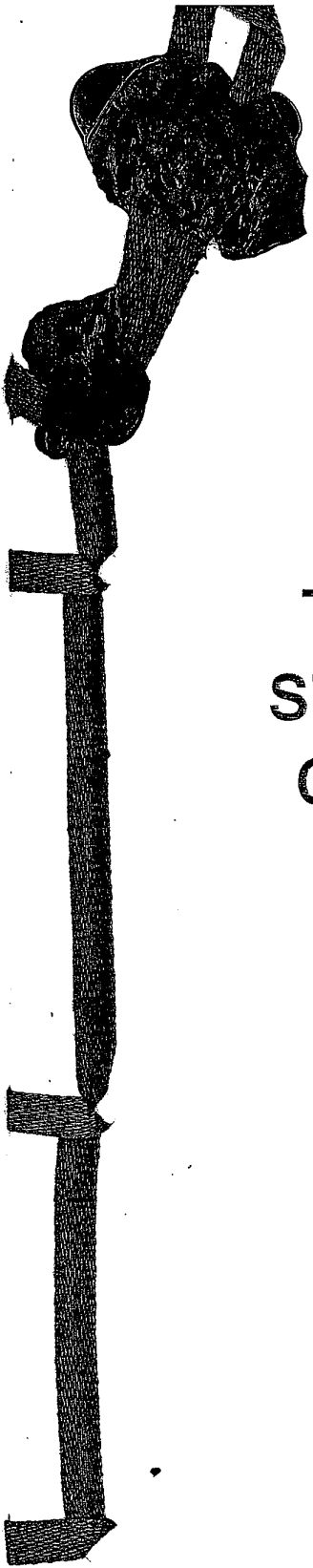
TO: Attorney General's Chambers
(for printing)

TO: Clerk to National Parliament
(for reference during 1st, 2nd and 3rd Readings)
(Date passed.....17/6/99 Act No. 5/99...)

TO: Attorney General's Chambers 
(for checking before Assent)

TO: Governor-General 
(for Assent)

TO: Clerk to National Parliament
(for distribution: 1 copy Attorney General's Chambers
1 copy Ministry
1 copy Parliament Office
1 copy Registrar of the High Court)



THE CONVERSION OF STATUTORY BODIES TO COMPANIES ACT 1999

(NO. 5 OF 1999)



THE CONVERSION OF STATUTORY BODIES TO COMPANIES ACT 1999

(NO. 5 OF 1999)

Passed by the National Parliament this seventeenth day of June 1999.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

Edresen
Elizabeth Andresen
Acting Clerk to National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this seventh day of September 1999.

Rev. John Ini Lapli
Governor-General

Mapli

Date of commencement: date of publication in the Gazette.

AN ACT TO MAKE PROVISION FOR THE CONVERSION OF
STATUTORY BODIES ESTABLISHED UNDER ACTS OF
PARLIAMENT INTO COMPANIES AND TO PROVIDE FOR

THE CONVERSION OF STATUTORY BODIES TO
COMPANIES ACT 1999

ARRANGEMENT OF SECTIONS

SECTION

1. SHORT TITLE
2. ESTABLISHMENT OF A COMPANY TO CARRY ON THE
FUNCTIONS OF A STATUTORY BODY
3. EXAMINATION OF ACCOUNTS BY ACCOUNTANT OR PUBLIC
OFFICER.
4. DIRECTION AND ORDER TO CEASE OPERATIONS
5. VESTING OF STATUTORY BODY IN COMPANY
6. REPEAL OF CERTAIN ACTS.

1. This Act may be cited as the Conversion of Statutory Bodies to Companies Act, 1999.

Short title.

2. (1) Subject to the provisions of subsection (2) and section 4, where the Cabinet considers it necessary or expedient in pursuance of a policy of privatisation that a company be incorporated for the purpose of taking over the functions of any statutory body or part thereof, the Minister charged with responsibility for the particular statutory body (hereinafter referred to as "the Minister") in consultation with the Minister charged with responsibility for finance shall forward a Memorandum and Articles of Association to the Registrar of Companies, together with a direction to the Registrar to register such statutory body or any part thereof, as a company under the Companies Act.

Establishment of a company to carry on the functions of a statutory body.

Cap. 175.

(2) The Memorandum and Articles of Association forwarded under subsection (1) shall specify that the shares in the said company shall be held by the Permanent Secretary, Ministry of Finance and his nominee.

(3) Where the Cabinet considers pursuant to subsection (1) that in the public interest or for any other reason a part of the functions performed by a statutory body should be vested in a ministry or any department of the Government, the Minister shall notwithstanding the provisions of any other law to the contrary, direct that such functions be so vested before a direction is issued to the Registrar of Companies pursuant to subsection (1) in respect of the other part.

(4) A direction under subsection (3) may in particular include a direction that the property or other assets used or capable of use in the carrying on of activities or such functions be vested absolutely in the ministry or department of the Government, as the case may be.

(5) Notwithstanding any other provisions of the Companies Act, on receipt of a direction under subsection (1), the Registrar of Companies shall -

- (ii) publish an Order in the Gazette declaring that a company is incorporated in the name specified in the Order to take over the functions of the statutory body, or such part of the statutory body as specified therein.

(6) No stamp duty shall be payable under the Stamp Duties Act on the allotment of shares under subsection (3).
 Cap. 126.

(7) In this section "privatisation" means the transfer to private ownership, for valuable consideration or otherwise, of the management and control of the assets and liabilities including the rights, duties and functions (or part thereof) of a statutory body or corporation.

Examination of accounts by accountant or public officer.
 Cap. 120.

3. Notwithstanding the provisions of the Public Finance and Audit Act, before -

- (a) the forwarding of a Memorandum and issuing a direction under section 2 (1),

- (b) the issuing of a direction under section 2(3); or

- (c) making recommendation to the Cabinet under section 4 (1),

the Auditor General may, on the request of the Minister, appoint any person publicly carrying on the profession of accountant or any public officer to examine books and accounts of such statutory body and submit a report to the Minister and the Minister charged with responsibility for Finance.

Direction and order to cease operations.

4. (1) Where the Minister or the Minister charged with responsibility for finance considers, on the basis of a report submitted under section 3 or otherwise that it is in the public interest that such statutory body be wound up or cease to function, he may make such recommendation to the Cabinet.

(2) Where the Cabinet on receipt of a recommendation submitted by a Minister pursuant to subsection (1) is of the opinion that such statutory body should be wound up or cease to function, the Minister shall publish an Order in the Gazette to such effect.

(3) Upon the publication of an Order under subsection (2) in the Gazette in respect of a statutory body specified in the Order, in addition to the provisions of section 6 taking effect the provisions of section 5(1) and paragraphs (a), (b), (c), (d) and (e) of section 5(3) shall *mutatis mutandis* apply and the reference to "company" therein shall be construed as a reference to the Permanent Secretary, Ministry of Finance.

5. (1) With effect from the date of publication of the Order under section 2(5)(ii) in the Gazette (in this section referred to as "the relevant date") the statutory body (hereinafter referred to as "the Corporation") or part thereof, as the case may be, to which the Order relates shall vest absolutely in the company referred to in the Order.

Vesting of Statutory body in company.

(2) For the purposes of this section "Corporation" means -

(a) all property movable or immovable, owned by the Corporation and used for the purposes of that Corporation on the day immediately preceding the relevant date;

(b) all rights, powers, privileges and interests arising from or out of such property and all liabilities of the Corporation;

(c) all books, accounts and documents relating or appertaining to the Corporation or any property of the Corporation.

(3) Without prejudice to the generality of subsection (1) -

(a) all property movable or immovable owned by the Corporation and used for the purposes of the Corporation on the day immediately preceding the relevant date and specified in the Order made under section 2(5) or section 4(2) shall with effect from the relevant date, vest in the company.

(b) all liabilities of the Corporation subsisting on the day, immediately preceding the relevant date and specified in the Order made under section 2(5) shall be deemed to be liabilities of the company with effect from the relevant date;

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Cap. 72.

(c) all officers and employees of the Corporation on the day immediately preceding the relevant date, who are not offered employment with the company shall be entitled to redundancy payment in accordance with the Employment Act;

(d) all contracts and agreements entered into for the purposes of the Corporation and subsisting on the day immediately preceding the relevant date, and specified in the Order made under section 2(5) shall be deemed to be contracts and agreements entered into by that company;

(e) all actions and proceedings instituted by or against the Corporation and pending on the day immediately preceding the relevant date, and specified in the Order made under section 2(5)(ii) shall be deemed to be actions and proceedings instituted by or against the company;

Cap. 123.

(f) the profit and income, if any arising from the vesting of a Corporation in a company under subsection (1) shall be exempted from tax under section 16 of the Income Tax Act and the company shall be deemed to be included in the Third Schedule to the aforesaid Act; and

(g) where a Corporation is vested in a company under subsection (1) -

(i) any loss incurred by such Corporation which has not been set off against its income in any year of assessment shall be deemed to be a loss incurred by such company; and

(ii) any capital loss incurred by such Corporation in the year of assessment in which such vesting takes place shall be deemed to be a capital loss incurred by such company.

6. Upon publication of an Order made under section 1(5)(ii), in respect of a Corporation specified in the Order, the following shall have effect -

Repeal of
certain Acts.

(a) the Board of such Corporation shall cease to exist and any functions, duties or powers purported to be exercised by such Board thereafter shall be null and void; and

(b) the Act establishing such Corporation shall be repealed from the date of publication of such Order.

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