

Zambia

## Self-Management Enterprises Act, 1988

### Chapter 408

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## Zambia

# Self-Management Enterprises Act, 1988

## Chapter 408

Published

Commenced on 1 March 1989 by Self-Management Enterprises (Commencement) Order, 1989

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*[Act No. 33 of 1988]*

**An Act to empower the President to declare any State enterprise to be a self-management enterprise; to define the functions and the powers of self-management enterprises; to provide for the management and administration of self-management enterprises; to provide for the exemption of any State enterprise or self-management enterprise from the provisions of any written law; 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 Self-Management Enterprises Act.\*

\*This Act commenced on 01.3.1989. "Secretary" means the person appointed Secretary under section twenty-four;

#### 2. Interpretation

In this Act, unless the context otherwise requires—

**"Advisory Council"** means the Advisory Council of a self-management enterprise constituted under section thirteen;

**"Board"** means the Employees' Board of Directors of a self-management enterprise elected and approved under section nine;

**"Committee"** means the Management Committee established under section eighteen;

**"Conference"** means the Employees' Conference of a self-management enterprise established under section five.

**"employee"** means an employee of a self-management enterprise other than an employee specifically engaged on a temporary basis for work of an intermittent or seasonal nature and shall include staff of a sub-committee;

**"local community representative"** means any person in the Province who is not an employee of a self-management enterprise but is elected to sit on the Board on account of his business experience;

**"Managing Director"** means the person elected Managing Director under section twenty-two;

**"self-management enterprise"** means any State enterprise declared by the President to be a self-management enterprise under section three;

**"Standing Committee"** means a Standing Committee of the Conference established under section eight;

**"State enterprise"** means a company, corporation, parastatal body or statutory board, which is wholly-owned by the State or any Government department that engages in commercial activities.

## **Part II – Self-management enterprises**

### **3. Declaration of self-management enterprise**

- (1) Notwithstanding any law to the contrary, the President may, by statutory instrument, declare any State enterprise to be a self-management enterprise.
- (2) A self-management enterprise 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.
- (3) The President may by statutory instrument exempt any State enterprise, which has been declared a self-management enterprise under sub-section (1), from the provisions of any written law:

Provided that any instrument made under this subsection shall not affect any vested legal rights.

### **4. Seal of self-management enterprise**

- (1) The seal of a self-management enterprise shall be such a device as may be determined by the Conference and shall be kept by the Managing Director.
- (2) A self-management enterprise may use a wafer or rubber stamp in lieu of the seal.
- (3) The affixing of the seal shall be authenticated by the Managing Director and one other person authorised in that behalf by the Conference.
- (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 a self-management enterprise by the Managing Director or any other person authorised in that behalf by the Conference.
- (5) Any document purporting to be a document under the seal of a self-management enterprise or issued, as described under subsection (4), on behalf of a self-management enterprise shall be received in evidence and shall be deemed to be a document so executed or issued, as the case may be, without further proof, unless the contrary is proved.

### **5. Employees' Conference and composition**

- (1) There shall be an Employees' Conference for a self-management enterprise which shall be the overall policy-making body for that enterprise.
- (2) The Conference shall consist of—
  - (a) where the self-management enterprise has employed more than 50 employees, not more than 50 employees elected by the employees of the enterprise;
  - (b) where the self-management enterprise employs not more than 50 employees, not more than one-third of the employees elected by the employees of the enterprise.
- (3) There shall be a Chairman and a Vice-Chairman of the Conference who shall be elected by the Conference from among its members.

### **6. Meetings of Conference**

- (1) The Conference shall meet at least once every twelve months for the discharge of its functions under this Act.
- (2) Subject to the other provisions of this Act the Conference may regulate its own procedure at meetings.

## 7. Functions of Conference

- (1) Except as otherwise provided under this Act the functions of the Conference shall be to exercise the corporate powers of a self-management enterprise.
- (2) Without prejudice to subsection (1), the Conference shall—
  - (a) formulate policies for the smooth operations of a self-management enterprise;
  - (b) consider and where appropriate, approve the development plans of a self-management enterprise;
  - (c) consider and approve the investment plans of a self-management enterprise;
  - (d) elect members of the Board; and
  - (e) give directives to and exercise control over the Board.

## 8. Standing Committee

- (1) There shall be a Standing Committee of the Conference which shall consist of at least five but not more than ten employees elected by the Conference from among its members.
- (2) The Standing Committee shall—
  - (a) hear and determine any appeal from any decision made by or on behalf of the Board;
  - (b) confirm, vary or set aside any disciplinary decision made by the Board or make such other order as it considers necessary.

## 9. Employees' Board of Directors

There shall be an Employees' Board of Directors for a self-management enterprise which shall be appointed by the Conference and approved by the President.

## 10. Composition of Board, qualification of members and tenure of office

- (1) The Board shall consist of—
  - (a) obsolete;
  - (b) one representative nominated by the trade union operating at a self-management enterprise;
  - (c) four employees of the self-management enterprise;
  - (d) one representative nominated by the local community;
  - (e) obsolete.
- (2) There shall be a Chairman of the Board who shall be elected by the Board from among its members.
- (3) No person shall qualify to be appointed as a member of the Board unless—
  - (a) he is literate and conversant with the official language of Zambia;
  - (b) he is a disciplined person without a record of dishonesty; and in the case of an ex-convict, a period of five years has elapsed after serving the last sentence;
  - (c) he has worked for a period of not less than two years in the same enterprise;
  - (d) he has not been declared to be of unsound mind under any law; and
  - (e) having been adjudged or otherwise declared bankrupt under any law has been discharged as a bankrupt.

- (4) A member of the Board shall hold office for a period of two years but shall be eligible for re-appointment.

## 11. Meetings of Board

- (1) The Board shall meet at least once every three months for the discharge of its functions under this Act.
- (2) Subject to the other provisions of this Act the Board may regulate its own procedure at meetings.

## 12. Functions of Board

- (1) Subject to the control, and any general or specific directions, of the Conference the function of the Board shall be to supervise the operation and management of a self-management enterprise.
- (2) Without prejudice to the generality of subsection (1), the Board shall—
  - (a) supervise the Committee and the Managing Director in the performance of their functions;
  - (b) consider and approve where appropriate the annual budget of a self-management enterprise in accordance with the development plans of an enterprise as well as those of the national development plan of Zambia;
  - (c) be responsible for approving the raising of new capital;
  - (d) approve where appropriate appropriation of surplus funds;
  - (e) consider and approve where appropriate any alteration in the administrative organisation, structure and establishment of a self-management enterprise;
  - (f) recruit, employ and provide for the training of, employees for a self-management enterprise; and
  - (g) determine the terms and conditions and salaries of employees of the self-management enterprise.
- (3) The Board may in writing, delegate to the Committee or to the Managing Director any of its functions under this Act.

## 13. Advisory Council

- (1) There shall be an Advisory Council for every self-management enterprise which shall consist of not less than three and not more than five persons who are not employees or members of the Board.
- (2) The President shall appoint the members of the Advisory Council.
- (3) When appointing a person to be a member of the Advisory Council the President shall take into consideration the need to appoint a person with wide experience in business management.

## 14. Tenure of office

- (1) A members of the Advisory Council shall, unless his appointment is terminated earlier by the President, hold office for such period and upon such conditions as may be specified at the time of his appointment, and shall, on the expiry of that period, be eligible for re-appointment.
- (2) A member may, at any time in writing, resign as a member of the Advisory Council and he may, at any time, be removed as a member by the President.



**15. Remuneration of member of Advisory Council**

A member of the Advisory Council shall be paid such remuneration or allowance as the President may determine.

**16. Functions of Advisory Council**

- (1) The Advisory Council shall monitor the performance of the self-management enterprise and give such advice as it considers necessary for the attainment of the objects of the enterprise.
- (2) The Advisory Council may delay, for at least one month, implementation of any decision made by any organ of a self-management enterprise if, in its judgement, that decision is not in the best interest of the enterprise; and within that period a self-management enterprise shall review its decision; but if the organ fails to do so it shall refer the matter to the President.
- (3) The Advisory Council may be consulted by the President on any matter relating to the running of a self-management enterprise.

**17. Immunity of member of Advisory Council**

No action or other proceedings shall lie or be instituted against any member of the Advisory Council for or in respect of any act or thing done or omitted to be done in good faith in the exercise of or purported exercise of his duties under this Act

**Part III – Administration****18. Management Committee**

There shall be a Management Committee which shall be the executive organ of a self-management enterprise and shall, subject to the control of the Board, be responsible for the administration of the affairs of the enterprise.

**19. Composition of Committee and tenure of office**

- (1) The Committee shall consist of—
  - (a) the Managing Director who shall be the Chairman;
  - (b) the secretaries of all the sub-committees; and
  - (c) such number of employees as may be appointed by the Board.
- (2) The employees referred to in paragraph (c) of subsection (1) shall hold office for a period of three years and shall be eligible for re-appointment.

**20. Meetings of Committee**

- (1) The Committee shall meet at least once every month to review, and decide on, the affairs of a self-management enterprise.
- (2) Subject to the other provisions of this Act, the Committee shall regulate its own procedure.

**21. Sub-committees**

- (1) The Committee shall establish sub-committees for the purpose of performing its functions under this Act and in particular shall establish a—
  - (a) Financial Sub-Committee;

- (b) Legal and Administrative Sub-Committee;
  - (c) Social and Personnel Sub-Committee;
  - (d) Development and Planning Sub-Committee;
  - (e) Marketing Sub-Committee;
  - (f) Technical and Production Sub-Committee; and
  - (g) Security and Safety Sub-Committee.
- (2) A sub-committee set up under subsection (1) shall be headed by a full time secretary and shall have such other administrative and operating staff as may be necessary for the performance of its functions.
- (3) The Committee may delegate to any sub-committee such of its functions as it considers fit.
- (4) Subject to any general or specific direction of the Committee, any sub-committee set up under subsection (1) may regulate its own procedure.

## **22. Managing Director**

- (1) There shall be a Managing Director for each self-management enterprise who shall be the Chief Executive Officer and shall be nominated by the Board and popularly elected by a majority of the votes cast at the Conference:
- Provided that the President, may on declaring a State enterprise to be a self-management enterprise or where a Conference fails to elect a Managing Director, appoint any person to be Managing Director.
- (2) The Managing Director shall hold office on such terms and conditions as may be specified in his contract of employment.
- (3) The Managing Director shall attend meetings of the Board and may address any such meetings but shall not vote on any matter;
- Provided that the person presiding at any meeting of the Board may, for good cause, require the Managing Director to withdraw from the meeting.

## **23. Duty of Managing Director**

- (1) The Managing Director shall, subject to the control of the Board, be responsible for the administration of the affairs of a self-management enterprise.
- (2) The Managing Director shall exercise supervision and control over the acts and proceedings of all employees of a self-management enterprise and shall be responsible for initiating disciplinary action against any employee and shall where necessary, recommend to the Board the dismissal of any employee.
- (3) The Managing Director shall co-ordinate the functions of the various sub-committees set up by the Committee.

## **24. Secretary**

- (1) There shall be a Secretary to a self-management enterprise who shall be appointed by the Board on such terms and conditions as the Board may determine.
- (2) The Secretary shall be responsible for the administration of the day-to-day affairs of the enterprise under the general supervision of the Managing Director.

## 25. Employees

- (1) Any person who, immediately before a State enterprise was declared to be a self-management enterprise, was working for that State enterprise, may voluntarily transfer from the State enterprise to a self-management enterprise.
- (2) Any person who is eligible to transfer under subsection (1) shall be deemed to have transferred to a self-management enterprise unless within six months after the declaration setting up a self-management enterprise he gives notice in writing to the Board of his intention not to transfer from the service of the State enterprise.
- (3) Any person to whom subsections (1) and (2) apply and who does not voluntarily transfer to the service of a self-management enterprise under subsection (2) shall be deemed to have voluntarily retired from the service of the State enterprise from the date of his notification to the Board of his intention not to transfer or the expiration of the six months period prescribed by subsection (2) whichever is the earlier.
- (4) Any person who is deemed to have retired under subsection (3) shall be entitled to be paid all retirement benefits which he would have been paid if he had voluntarily retired in accordance with the relevant rules and conditions of the State enterprise.
- (5) The terms and conditions of service of an employee transferred to the service of a self-management enterprise, in accordance with subsections (1) and (2), shall be no less favourable than those which were applicable to him immediately before the transfer; and for the purposes of determining any right to gratuity or any other superannuation benefit, the service of the employee with a self-management enterprise shall be regarded as continuous with the service immediately preceding the transfer.

## Part IV – Finance

### 26. Assets and liabilities

- (1) Where the President declares any State enterprise to be a self-management enterprise, he shall, by statutory instrument, provide for the transfer of the assets and liabilities of the State enterprise to a self-management enterprise on such terms and conditions as may be specified in the statutory instrument.
- (2) The assets and liabilities specified in the statutory instrument made under subsection (1) shall, on the coming into force of the statutory instrument, vest in or as the case may be subsist against the self-management enterprise.

### 27. Funds from Government

- (1) The Government may, with the approval of the National Assembly, raise moneys within or outside the Republic of Zambia specifically for the purpose of any self-management enterprise and all money so raised shall be charged upon and issued out of the general revenues of the Republic and when transferred to a self-management enterprise, shall form part of the funds of the enterprise.
- (2) Where any moneys are transferred to a self-management enterprise as part of its funds in accordance with subsection (1), the President may require the enterprise to pay interest on those moneys to the Government at such times and at such rates as the President may determine.
- (3) Any sums received by the Government from a self-management enterprise, in repayment of any loan made to it by the Government or in repayment of any moneys raised by the Government under subsection (1) of this subsection or in payment of any interest on any such moneys, shall be paid into the general revenues of the Republic.

## 28. Guarantee

The Government may guarantee in such manner and on such terms and conditions as it may consider fit, the repayment of the principal and interest and other charges on any borrowings of a self-management enterprise and any such guarantee shall be charged on, and issued out of, the general revenues of the Republic.

## 29. Consolidated Fund and trust

- (1) Notwithstanding section twenty-seven the President may set up a Consolidated Fund for self-management enterprises into which moneys intended for the purposes of self-management enterprises may be paid.
- (2) Where the President sets up a Consolidated Fund he may set up a Trust for the purposes of maintaining the Consolidated Fund.

## 30. Accounts and audit

- (1) A self-management enterprise shall cause to be kept proper accounts and other records relating to its accounts in a form approved by the Advisory Council.
- (2) Subject to any other written law, the accounts of a self-management enterprise shall be audited by the Auditor-General or by such other person as the Advisory Council may appoint.
- (3) At the end of every financial year the Board shall send a copy of the statement of accounts prepared under this section, together with any report made by the auditors, to the Minister and the Minister shall lay a copy of the statement of accounts and the auditors' report before the National Assembly.

# Part V – General

## 31. Name

Every self-management enterprise shall have as an integral part of its name the letters SME.

## 32. Dissolution

No self-management enterprise shall be liquidated or dissolved except by an Act of Parliament.

## 33. Exclusion of certain laws

- (1) Subject to subsection (2) and any other provision of this Act, the Companies Act and the Industrial Relations Act and the provisions of any other written law, which the President shall consider to be in conflict with the spirit of this Act, shall not apply to a self-management enterprise.
- (2) Notwithstanding subsection (1) the President may, by statutory instrument apply to a self-management enterprise any provisions of the Companies Act or of the Industrial Relations Act that are not inconsistent with the provisions of this Act and that application may be with such modifications as he may consider necessary.

*[Cap. 321; Cap. 225]*

## 34. Special powers of the President

- (1) The President may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act.
- (2) The President may, by statutory instrument, delegate all or any of his powers under this Act, other than his power under section three to the Minister.

- (3) The President may, in writing, give to the Conference Board, Committee or the Managing Director directions as to the discharge of their functions.