

THE ZAMBIA NATIONAL TENDER BOARD
ACT, 1982

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Date of Assent

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GOVERNMENT OF ZAMBIA

ACT

No. 30 of 1982

Date of Assent: 24th December, 1982

An Act to provide for the establishment of the Zambia National Tender Board; to regulate and control the procurement of goods and services for the Government and parastatal bodies; to consolidate the law relating to tenders generally; and to provide for matters connected with or incidental to the foregoing.

[*

ENACTED by the Parliament of Zambia.

Enactment

PART I
PRELIMINARY

1. This Act may be cited as the Zambia National Tender Board Act, 1982, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short
title and
commence-
ment

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

Interpreta-
tion

“Board” means the Zambia National Tender Board established by section *three*;

“Chairman” means the Chairman of the Board appointed under section *four*;

“company” means a company registered under the Companies Act;

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“Director” means the Director of the Board appointed under section *fourteen*;

“member” means a member of the Board;

“parastatal body” means a statutory corporation or body, or a company in which the Government has a majority or controlling interest, and includes a local authority;

“Secretary” means the person appointed under section *fifteen* to be Secretary to the Board.

*This Act shall come into operation on such date as the Minister may, by statutory instrument, appoint.

PART II

ZAMBIA NATIONAL TENDER BOARD

Establish-
ment of
Board

3. There is hereby established the Zambia National Tender Board which 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 do by law.

Composi-
tion of
Board

4. (1) The Board shall consist of a Chairman and twelve other members of whom the following shall be *ex-officio* members—

- (a) the Secretary to the Cabinet;
- (b) the Director-General of the Zambia Industrial and Mining Corporation Limited;
- (c) the Chairman of the Zambia Consolidated Copper Mines Limited;
- (d) the Governor of the Bank of Zambia;
- (e) the Permanent Secretary in the Ministry responsible for finance;
- (f) the Permanent Secretary in the Ministry responsible for development planning; and
- (g) the Permanent Secretary in the Ministry responsible for works and supply.

(2) The Chairman and the other members, other than the *ex-officio* members, shall be appointed by the President.

(3) Where an *ex-officio* member is for any reasonable cause unable to attend any meeting of the Board, he may, in writing, nominate another senior official from his organisation to attend such meeting in his stead and the person so nominated shall be deemed to be a member for the purpose of such meeting.

Tenure
of office
and
vacancies

5. (1) The provisions of this section shall apply to members other than the *ex-officio* members.

(2) Subject to the provisions of this section, a member shall hold office for a period of two years:

Provided that a retiring member may be reappointed.

(3) Upon the expiry of the period for which a member is appointed, he shall continue to hold office until his successor has been appointed, but in no case shall such further period exceed three months.

(4) A member shall cease to hold office—

- (a) subject to subsection (3), upon the expiry of the period for which he is appointed or reappointed;

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(2) Without pre-
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8. (1) The Board
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(3) Subject to any
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its own procedure.

- (b) if he is adjudged or otherwise declared to be of unsound mind;
- (c) if he is adjudged or otherwise declared to be bankrupt;
- (d) if he is lawfully detained or his freedom of movement is restricted under any law in force in Zambia;
- (e) if he is sentenced to a term of imprisonment exceeding six months;
- (f) if he is absent from three consecutive meetings of the Board without reasonable cause;
- (g) upon the expiry of not less than one month's notice in writing of his intention to resign given by him to the Chairman;
- (h) if he is removed by the President.

6. A member other than a public officer or an employee of a parastatal body shall be paid such remuneration or allowance as the Minister may from time to time determine.

Remuneration and allowances of members

7. (1) The functions of the Board shall be to regulate and control the procurement of goods and services for the Government and parastatal bodies.

Functions of Board

(2) Without prejudice to the generality of subsection (1), the Board may—

- (a) formulate rules and regulations governing the procurement of goods and services for the Government and parastatal bodies;
- (b) advertise locally and abroad tenders for the procurement of goods and services for the Government and parastatal bodies;
- (c) regulate the procedures relating to the award of contracts on behalf of the Government and parastatal bodies;
- (d) formulate the conditions under which any rules and regulations governing the procurement of goods and services for the Government and parastatal bodies may be varied or waived.

8. (1) The Board may, for the purpose of carrying out its functions under this Act, establish committees and delegate to any such committee such of its functions as it may think fit.

Committees of Board

(2) The Board may appoint as members of a committee established under subsection (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board, any committee established under subsection (1) may regulate its own procedure.

Disclosure
of
interest

9. (1) If a person is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter such person or his spouse is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Immunity
of
members

10. No action or other proceedings shall lie or be instituted against any person for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

Procedure
and
meetings

11. (1) The Board shall regulate its own procedure and the validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(2) For the transaction of its business, the Board shall meet at such places and at such times, being not less than once every three months, as the Chairman may determine.

(3) At any meeting of the Board, one-half of the members holding office at that time shall form a quorum.

(4) There shall preside at every meeting of the Board the Chairman or in the absence of the Chairman such member as the members present may elect for the purpose of that meeting.

(5) A decision of the Board on any question shall be by a majority of the members present and voting at a meeting of the Board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(6) Notwithstanding the provisions of subsection (5), a decision may be made by the Board on any urgent matter by the circulation of the relevant papers among the members, and by the expression in writing of the views of the majority thereof:

Provided that any member shall be entitled to require that any decision shall be deferred until the matter is considered at a meeting of the Board.

(7) The Board may in its opinion desirable, publish the proceedings of a meeting of vote.

(8) The Board shall publish the proceedings of every meeting of any committee of the Board.

12. (1) The seal of the Board shall be determined by the Board.

(2) The Board may use the seal.

(3) The affixing of the seal shall be regulated by the Chairman and one other person appointed by the Board.

(4) Any contract or document executed by a person required to be under seal without seal or without the signature of other person authorized by the Board.

(5) Any document or seal of the Board received in evidence shall be admissible in evidence issued, as the case may be, if the contrary is proved.

13. (1) No person shall be held liable for any act or thing done or omitted to be done in the course of, or in the exercise of, his duties as a member of the Board.

(2) Any person who is liable upon conviction to a fine of not less than five hundred Kwacha or to imprisonment for not less than one year, or to both such fine and imprisonment.

(3) If any person has been published in the Gazette in pursuance of subsection (1) of this section in connection with any such information of an offence and a fine of not exceeding five thousand Kwacha or imprisonment for not exceeding three months.

(7) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(8) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

12. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary.

Seal of
Board

(2) The Board may use a wafer or rubber stamp *in lieu* of the seal.

(3) The affixing of the seal of the Board shall be authenticated by the Chairman and the Secretary, or by the Chairman and one other person authorised in that behalf by a resolution of the Board.

(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 the Board by the Secretary or any other person authorised in that behalf by a resolution of the Board.

(5) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

13. (1) No person shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act.

Prohibi-
tion of
publication
or disclosure
of infor-
mation to
unauthorised
persons

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding five thousand kwacha or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of the provisions of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand kwacha or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

PART III
ADMINISTRATIONAppoint-
ment of
Director

14. (1) The President shall appoint, on such terms and conditions as he thinks fit, a Director who shall be the chief executive officer of the Board.

(2) The office of Director shall be an office in the public service.

(3) The Director shall attend all meetings of the Board, and shall be entitled to address such meetings, but shall not vote on any matter under discussion:

Provided that the Board may, for good cause, request the Director to withdraw from any meeting of the Board.

Secretary
and other
staff

15. (1) There shall be a Secretary to the Board 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 Board under the general supervision of the Director.

(3) The Board may appoint, on such terms and conditions as it may determine, such other staff as it may consider necessary for the performance of its functions under this Act.

Inspectorate
unit

16. (1) In order to ensure due compliance with the provisions of this Act, the Board shall establish under the general supervision of the Director an inspectorate unit which shall monitor, in accordance with the rules or regulations made under this Act, all contracts placed by the Board, any committee established by the Board, any Government Department or any parastatal body.

(2) The Board may appoint such inspectors and other staff to the inspectorate unit as may be necessary for the performance of its functions under this Act.

Powers
of
inspectors,
etc.

17. In the performance of his duties under this Act, any inspector or member of staff of the inspectorate unit shall have—

- (a) access to all books, records, returns, reports and other documents relating to the work of any Government Department or parastatal body which is under inspection;
- (b) access at all reasonable times to the premises of any Government Department or parastatal body which is under inspection;

(c) power to call persons responsible for any Government work which is under inspection.

Provided that no inspectorate unit shall have reports or other documents

(a) such books, records or premises belonging to the Force or the Z

(b) such access is li

(i) prejudicial relation or date

(ii) involvements of Central sub-committee of the Cal

18. (1) Notwithstanding any written law, when any procurement of goods

(a) in respect of an officer designated under section (Management)

(b) in respect of an officer of that

to ensure that such procurement is in accordance with the provisions of this Act.

(2) Subject to the provisions of this Act, the principal officer and chief executive officer failing to comply with

(3) Where a contract satisfies the Board the provisions of any rules delegated his functions or committee, then such committee shall comply with the provisions

(4) Where a contract satisfies the Board the

- (c) power to call for any relevant information from persons responsible for the financial administration of any Government Department or parastatal body which is under inspection:

Provided that no inspector or member of staff of the inspectorate unit shall have access to any books, records, returns, reports or other documents, or to any premises if—

- (a) such books, records, returns, reports, other documents or premises belong to any component of the Defence Force or the Zambia Security Intelligence Service; or
- (b) such access is likely to—
- (i) prejudice the security, defence or international relations of the Republic or the investigation or detection of offences; or
- (ii) involve the disclosure of any matters or deliberations of a secret or confidential nature of the Central Committee or the Cabinet or of any sub-committee of the Central Committee or the Cabinet.

18. (1) Notwithstanding anything to the contrary contained in any written law, where any expenditure is to be incurred on any procurement of goods or services, it shall be the duty—

- (a) in respect of a head of expenditure, of the controlling officer designated as such for that head of expenditure under section four of the Finance (Control and Management) Act; or
- (b) in respect of a parastatal body, of the chief executive officer of that parastatal body;

to ensure that such procurement of goods or services is in accordance with the procedures prescribed by or under this Act.

(2) Subject to the provisions of subsection (3), every controlling officer and chief executive officer shall be accountable for failing to comply with the provisions of subsection (1).

(3) Where a controlling officer or chief executive officer satisfies the Board that he had, in accordance with the provisions of any rules or regulations made under this Act, delegated his functions under subsection (1) to any other person or committee, then such other person or every member of such committee shall also be accountable for any failure to comply with the provisions of subsection (1).

(4) Where a controlling officer or chief executive officer satisfies the Board that he is, under the provisions of any

Failure
to
comply
with
prescribed
procedures

Cap. 600

written law, subject to the control or direction of any other person, board, committee or other body, and that it was such control or direction of such other person, board, committee or other body which caused the failure to comply with the provisions of subsection (1), then such other person or every member of such board, committee or other body shall also be accountable for such failure to comply with the provisions of subsection (1).

(5) In respect of any failure to comply with the provisions of subsection (1), the Board may take such appropriate corrective or punitive measures as it may consider necessary.

Surcharge
and
appeals

19. (1) Where the Board is satisfied that an employee of the Government or parastatal body has caused financial loss by his recklessness, misconduct or wilful default to follow procedures laid down in this Act or in any regulations made thereunder, the Board shall afford such person a reasonable opportunity to furnish a written explanation as to why he should not be surcharged with the amount of such loss.

(2) After considering any explanation furnished under subsection (1), the Board may surcharge such person with the amount of such loss or any part thereof, and certify in writing to that effect.

(3) Any person aggrieved by a decision of the Board made under subsection (2) may, where the amount of surcharge is in excess of K1,000, appeal against such decision to the High Court or to a subordinate court of competent jurisdiction.

(4) The High Court or subordinate court, as the case may be, may, upon determining any appeal lodged under subsection (3)—

- (a) confirm, vary or quash the decision of the Board;
- (b) remit the case to the Board with such directions as it thinks fit for giving effect to the decision on appeal;
- (c) make such other order as to costs or otherwise as may seem just.

(5) The Chief Justice may, by statutory instrument, make rules providing for the period within which appeals under this section may be brought and otherwise regulating such appeals.

Payment
and
recovery
of
surcharge

20. (1) The amount of every surcharge certified in accordance with subsection (4) shall become due and recoverable from the emoluments or other financial benefits of such employee within thirty days after a copy of the certificate has been furnished to him or, if an appeal with respect to the

surchage has been is finally disposed of thereof, as the case is

(2) The Board may instalments:

Provided that if instalment, the balance thereupon become payable

(3) The amount recoverable by the Board

(4) Unless the certificate the recovery of the by the Board shall therein, and a certificate certified to be due in evidence of non-payment

21. Any person inspector or member exercise of his powers information under shall be liable, upon thousand kwacha or two years, or to both

FINAL

22. (1) The fund as may—

- (a) be appropriated Board;
- (b) vest in or to

(2) The Board may:

- (a) subject to of loans or for the period
- (b) charge and document
- (c) levy fees on Board.

(3) There shall be

- (a) the salaries Board;

surchARGE has been lodged, within thirty days after the appeal is finally disposed of or abandoned or fails by non-prosecution thereof, as the case may be.

(2) The Board may authorise the payment of a surcharge in instalments:

Provided that if default is made in the payment of any instalment, the balance of the surcharge outstanding shall thereupon become payable in full.

(3) The amount of any surcharge which is not paid shall be recoverable by the Board as a civil debt.

(4) Unless the contrary is proved, in any proceedings for the recovery of the amount of a surcharge, a certificate issued by the Board shall be conclusive evidence of the facts certified therein, and a certificate signed by the Secretary that the sum certified to be due has not been paid to him shall be conclusive evidence of non-payment.

21. Any person who assaults, resists or obstructs any inspector or member of staff of the inspectorate unit in the exercise of his powers of access or power to call for relevant information under this Act shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two thousand kwacha or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Resisting
or
obstructing
inspector,
etc.

PART IV

FINANCIAL AND OTHER PROVISIONS

22. (1) The funds of the Board shall consist of such moneys as may—

Funds of
Board

- (a) be appropriated by Parliament for the purposes of the Board;
- (b) vest in or accrue to the Board.

(2) The Board may—

- (a) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the performance of its functions;
- (b) charge and collect fees on tender and other related documents;
- (c) levy fees and other charges for services provided by the Board.

(3) There shall be paid from the funds of the Board—

- (a) the salaries, allowances and loans of the staff of the Board;

(b) such reasonable travelling, transport and subsistence allowance for members or members of any committee of the Board when engaged on the business of the Board, at such rates as the Board may determine; and

(c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Financial
year

23. The financial year of the Board shall be the period of twelve months ending on the 31st December in each year.

Books of
accounts

24. (1) The Board shall keep proper books of accounts and other records relating to its accounts.

(2) Such books of accounts and other records shall be open for inspection by the Minister or any person duly authorised by him in that behalf.

Audit of
accounts

25. (1) The accounts of the Board shall be audited annually and a detailed report thereon submitted to the Minister and to the Board.

(2) For the performance of his duties under subsection (1), the auditor to the Board shall have access at all reasonable times to all books of accounts, records, returns, reports and other documents relating to the Board's accounts.

(3) In respect of each financial year, the auditor to the Board shall certify whether or not—

(a) he has received all the explanations and other information necessary for the performance of his duties;

(b) the accounts of the Board have been properly kept; and

(c) according to the explanations and other information received, and the books of accounts, records, returns, reports and other documents relating to the Board's accounts produced to him, the accounts of the Board reflect a true and accurate financial position of the Board or of its profit and loss position, for the period covered by his certification.

Annual
report

26. (1) As soon as is practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report containing a balance sheet showing the assets and liabilities of the Board as at the last day of the financial year to which the report relates, accompanied by an income and expenditure account for that financial year, together with all supporting statements and returns duly certified by the auditor to the Board.

(2) The Minister writing to submit the reports, duly certified, consider necessary, request.

(3) The Minister first sitting of the Board the report referred to the Assembly.

27. (1) The Minister regulations for the Board Act.

(2) Without prejudice the Minister may, or rules or regulations is authorised by this

(3) Rules or regulations respect of any contract liable to a fine not exceeding of imprisonment not and imprisonment.

(2) The Minister may at any time request the Board in writing to submit to him such other reports, returns or statements, duly certified by the auditor to the Board as he may consider necessary, and the Board shall comply with such request.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1) lay it before the National Assembly.

27. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act.

Regulations-

(2) Without prejudice to the generality of subsection (1), the Minister may, on the recommendation of the Board, make rules or regulations prescribing any matter which the Board is authorised by this Act to formulate, regulate or prescribe.

(3) Rules or regulations made under this Act may provide in respect of any contravention thereof that the offender shall be liable to a fine not exceeding ten thousand kwacha or to a term of imprisonment not exceeding ten years, or to both such fine and imprisonment.
