

LAW N^o 2017/011 OF 12 JUIL 2017

TO LAY DOWN THE GENERAL RULES AND REGULATIONS
GOVERNING PUBLIC CORPORATIONS



*The Parliament deliberated and adopted,
the President of the Republic hereby
enacts the law set out below:*

PART I
GENERAL PROVISIONS

CHAPTER I
PURPOSE, SCOPE AND DEFINITIONS

I – PURPOSE AND SCOPE

Section 1. - (1) This law lays down the general rules and regulations governing public corporations.

(2) It lays down rules relating to the establishment, incorporation, functioning, dissolution and liquidation of public corporations.

Section 2. - (1) This law shall be applicable to:

- State-owned enterprises; and
- Semi-public enterprises.

(2) The semi-public (private-public) enterprises referred to in Sub-section (1) above shall be enterprises wherein the State, a public enterprise, or a regional or local authority is the majority shareholder.

(3) This law shall not be applicable to semi-public enterprises wherein the State, a public enterprise, or a regional or local authority is a minority shareholder.

II - DEFINITIONS

Section 3.- For the purposes of this law, the following definitions shall apply:

- **OHADA Uniform Act relating to commercial companies and economic interest groups:** an act issued with a view to adopting the common rules of the Treaty on the Harmonization of Business Law in Africa.
- **Director:** any natural or legal person, member of the board of directors of a company, who is appointed in keeping with the rules

governing public corporations and who, participates in the administration of the company.

- **Amortization of capital assets**: an operation whereby a company pays to its shareholders all or part of the nominal value of their shares as an advance on the proceeds of the company's future liquidation.
- **Financial autonomy**: powers granted to a legal person to freely administer and manage its movable and immovable, tangible or liquid assets in the pursuit of its business purpose.
- **Public enterprise**: any business entity with legal and financial autonomy, engaged in an industrial and commercial activity, and exclusively or majority-owned by a legal person under public law.
- **Allocated property**: all movable or immovable, tangible or liquid assets placed at the disposal of a public corporation by the State, a regional or local authority or any other legal person under public law.
- **Performance**: ability to undertake results-oriented activities based on pre-set objectives, while minimizing resource costs and implementation processes.
- **Programme**: a set of activities to be implemented within an entity to achieve a specific public policy goal as part of a mandate. In practical terms, it covers the appropriations earmarked for the implementation of a coherent set of activities devolving upon the same entity with specific goals that are based on general interest objectives and expected outcomes, and that are evaluated.
- **Public limited company**: company wherein shareholder liability for corporate losses is limited to their share contribution only and shareholder rights are based on the number of shares they hold.
- **State-owned enterprise**: any legal person under private law, having financial autonomy whose share capital is held exclusively by the State, one or more public enterprises or one or more regional or local authorities, set up to undertake, in the general interest, industrial, commercial or financial activities.
- **Semi-public enterprise**: legal person under private law, having financial autonomy and majority-owned by the State, one or more public enterprises, or one or more regional or local authorities.



- **Memorandum and Articles of Association**: instruments of incorporation of a public corporation.
- **Supervisory authority**: powers of the State or any other legal person under public law to define and guide national or local policy in the sector wherein the public corporation is engaged, with a view to achieving public interest goals.

CHAPTER II **COMMON PROVISIONS GOVERNING PUBLIC CORPORATIONS**

I - SUPERVISORY AUTHORITY, FOLLOW-UP OF THE MANAGEMENT AND PERFORMANCE

Section 4 : (1) Public corporations shall have technical and financial supervisory authorities.

(2) The technical supervisory authority shall ensure that the resolutions of the board of directors are compliant with the laws and regulations in force, and consistent with sector-specific policy orientations.

(3) The financial supervisory authority shall ensure compliance of resolutions of the board of directors with financial implications, the sustainability of financial commitments and overall consistency of the performance plans of public corporations with sector-specific programmes.

Section 5: (1) Every public corporation established by the State shall be under the technical oversight of the ministry (les) responsible for its sector of activity or of any other body provided for in the establishment instrument.

(2) All public corporations established by the State shall be under the financial oversight of the ministry in charge of finance.

(3) In the event of dual technical oversight, the first ministry mentioned in the establishment instrument shall be the lead supervisory authority.



Section 6: (1) Public corporations established by regional or local authorities shall be under the technical and financial oversight of the executive organs of such authorities.

(2) A public corporation set up by one or several public enterprises shall be placed under the technical and financial supervisory authority of such public corporation(s).

Section 7: Technical and financial supervision of public corporations jointly set up by two or more legal persons under public law shall be exercised by the body(ies) laid down in the establishment instrument.

Section 8: The State and regional and local authorities shall participate in the management of public corporations of their portfolio through their representative(s) on the boards of directors.

Section 9: (1) The technical and financial supervisory authorities, in conjunction with the board of directors, shall contribute towards monitoring the performance of public corporations.

(2) Public corporations shall submit to the technical and financial supervisory authorities all documents and information relating to the life of the public corporation, notably financial statements, the auditor's report and activity reports.

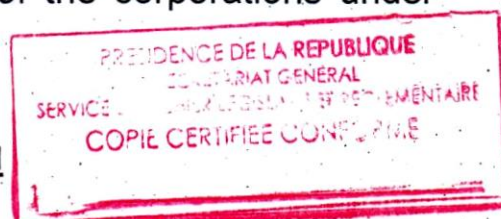
(3) The relevant Ministers shall submit to the President of the Republic annual reports on the situation of the corporations under their technical supervisory authority.

II. INCORPORATION

Section 10: Each public corporation shall be incorporated as a limited liability company in accordance with the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups, as well as the provisions of this law.

Section 11: The shares held by the State, public enterprises and/or regional and local authorities in public corporations shall be registered shares.

Section 12: (1) The shares owned by the State in public corporations shall be held on behalf of the State by the Minister in charge of finance.



(2) The shares owned by a public enterprise or a regional or local authority in public corporations shall be held by the executive organs of the public enterprise or local authority concerned.

(3) The shares in a public corporation jointly owned by the State, public enterprises and/or regional and local authorities shall be held by the organ specified in the articles of incorporation.

Section 13: Property owned by a public enterprise shall be public property with regard to the accountability of managers.

Section 14: (1) Public corporations shall be subject to registration in the Trade and Personal Property Credit Register.

(2) Any modification in the configuration of the management organs, in particular the appointment or designation, resignation or dismissal of managers shall be registered in the Trade and Personal Property Credit Register.

(3) Any amendment to the articles of association, as well as transfer of head office shall be advertised according to ordinary law rules.

III. MANAGEMENT

Section 15: The management organs of a public corporation shall be:

- the general meeting of shareholders;
- the board of directors;
- the general management.



Section 16: (1) The general meeting of shareholders shall be convened by the board of directors.

(2) The general meeting may be convened by default by:

- the auditor, through a hand-delivered letter against acknowledgement of receipt or registered letter with request for acknowledgement of receipt, after failing to have the board of directors convene the meeting. The auditor shall draw up the

agenda and may, on compelling grounds, choose a venue different from that provided for in the articles of association. The auditor shall state the reasons for convening in a report read at the meeting;

- a representative designated by the president of the competent court in an emergency ruling at the behest of one or several shareholders holding at least one-tenth of the share capital, in case of a general meeting;
- the liquidator.

Section 17: Except otherwise stipulated in the articles of association, the general meeting of shareholders shall be held at the head office or any other venue within the national territory.

Section 18: (1) Subject to the provisions of this section, the articles of association of the corporation shall lay down the rules for convening general meetings of shareholders.

(2) General meetings of shareholders shall be convened through a convening notice inserted in a journal of legal notices. Such notice shall indicate the agenda.

(3) The convening notice must reach or be notified to shareholders at least fifteen (15) days to the date of the general meeting, in case of first convening, and, where appropriate, at least six (6) days for any subsequent convening.

(4) Where the general meeting of shareholders is convened by a court-appointed administrator, the judge may set a deadline other than that provided for in Section 18(3) above.

Section 19: Attendance of ordinary general meetings, extraordinary general meetings, quorum and majority shall be governed by the rules laid down in the OHADA Uniform Act relating to the Law on Commercial Companies and Common Interest Groups.

Section 20: The convening notice shall indicate the name of the corporation and, as appropriate, its abbreviation, its form, the amount of its share capital, its head office address, its registration number in the Trade and Personal Property Credit Register, the day, time and venue of the general meeting, as well as its ordinary, extraordinary or special nature and its agenda.

Section 21: (1) The sender of the convening notice shall draw up the agenda of the general meeting of shareholders.

However, where the general meeting of shareholders is convened by a court-appointed administrator, the agenda shall be fixed by the court that appointed such administrator.

(2) One or several shareholders may request for the inclusion of a draft resolution in the general meeting agenda, in accordance with the provisions of the OHADA Uniform Act relating to the Law on Commercial Companies and Common Interest Groups.

Section 22: The general meeting of public corporations having several shareholders shall have the same powers as those devolved on the general meetings of shareholders of limited liability companies.

In this regard, and without this list being exhaustive:

A/ The ordinary general meeting shall have the powers to:

- adopt the summary financial statements of the financial year;
- decide on income appropriation. Under pain of nullity of any contrary decision, an allocation equal to at least one-tenth of the profit for the financial year less deferred losses, where applicable, shall be earmarked for a "legal reserve" fund. Such allocation shall cease to be compulsory when such reserve reaches one-fifth of the share capital;
- appoint the auditor;
- approve or disapprove agreements signed between the corporate managers and the corporation;
- issue bonds;
- approve the auditor's report;
- fix the amount of session allowances as well as the monthly allowance of the chairperson of the board of directors;
- allocate to board members, as remuneration and according to the performance of the corporation, a fixed annual allowance which it shall freely determine.

B/ The extra-ordinary general meeting shall have the powers to:

- amend all the provisions of the articles of association;

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- authorize mergers, split-ups, transformation and partial transfer of assets;
- decide, as appropriate, on capital increase, the report of the board of directors and the auditor, in accordance with the provisions of the OHADA Uniform Act relating to the Law on Commercial Companies and Common Interest Groups;
- authorize capital reduction, or delegate to the board of directors all the powers to do so, in pursuance to the provisions of the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups;
- transfer the head office to any other town of the State where it is located, or on the territory of any other State;
- dissolve the corporation in advance or extend its corporate term.

Section 23: The amortization of capital shall be decided by the ordinary general meeting where provided for in the articles of association. In case of no provisions in the articles of association, it shall be decided by the extra-ordinary general meeting.

Section 24: Public corporations shall be bound to publish an information note on the financial situation of their accounts in a journal of legal notices at least once a year.

IV. PERSONNEL

Section 25: (1) Personnel of public corporations may comprise:

- personnel recruited by the corporations;
- civil servants on secondment and State employees on temporary assignment;
- seasonal, casual and temporary personnel.

(2) Civil servants on secondment and State employees on temporary assignment shall be governed by the Labour Code throughout their employment, subject to the provisions of the General Rules and Regulations of the Public Service and special regulations relating to retirement, advancement, end of secondment, end of temporary assignment and payment of retirement benefits.

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Section 26: (1) Civil servants on secondment and State employees assigned to a public corporation, irrespective of their original status, shall be under the full financial responsibility of the public corporation concerned.

(2) The financial responsibility referred to in Section 26(1) above shall concern salaries and perquisites, allowances, bonuses and other benefits granted by the public corporation concerned.

Section 27: The civil and/or criminal liability of the personnel of public corporations shall be subject to ordinary law regulations.

PART II

PROVISIONS SPECIFIC TO PUBLIC ENTERPRISES

CHAPTER I **ESTABLISHMENT**

Section 28: (1) Public enterprises having the State as sole shareholder shall be set up by decree of the President of the Republic.

(2) Their articles of association shall be approved in the same manner.

(3) The instrument of establishment of public enterprises shall serve as articles of association for its registration in the Trade and Personal Property Credit Register.

(4) The State's shareholding in the share capital of the public enterprise shall be approved by decree of the President of the Republic.

(5) The final incorporation of the enterprise shall be in accordance with ordinary law rules.

Section 29: A public enterprise may be set up by other public corporations or regional and local authorities, in accordance with ordinary law rules.

Section 30: A public enterprise may be jointly set up by the State, one or several public corporations and/or one or several regional and local authorities, in accordance with ordinary law rules.

Section 31: (1) The share capital of a public enterprise shall be owned entirely by the legal person(s) that set it up.

(2) The provisions of Section 31(1) above shall also apply to the public enterprise set up by one or several public corporations.

(3) The shares of public enterprises shall be registered shares.

Section 32: Property acquired by public enterprises may be pledged.

CHAPTER II **ADMINISTRATION AND MANAGEMENT**

I – GENERAL MEETING OF SHAREHOLDERS

PARAGRAPH I **COMPOSITION**

Section 33.- (1) Where the State is the sole shareholder of a public enterprise, the role of the general meeting shall devolve on a college of 5 (five) members whose composition shall be determined by the articles of association. This college must include a representative of the minister in charge of finance and the representative of the technical supervisory authority.

(2) The representative of the minister in charge of finance shall act as chairperson of the general meeting.

(3) Each authority shall appoint its representative to the general meeting under the conditions laid down in the articles of association.

Section 34: (1) Where a regional or local authority is sole shareholder, the role of the general meeting shall devolve on a college of 5 (five) members designated by the authority's policy-making organ.

(2) The provisions of Section 34(1) above shall apply *mutatis mutandis* to a public enterprise set up by another public corporation.

Section 35: Where the public enterprise has several shareholders, the general meeting shall be composed of representatives of the shareholders.

Section 36: Members of the general meeting may be entitled to reimbursement expenses occasioned by general meeting sessions.

PARAGRAPH II **FUNCTIONING OF THE GENERAL MEETING**

Section 37: The general meetings of public enterprises with several shareholders shall function under the same rules as those stipulated for limited liability companies.

Section 38: Public enterprises having the State, a public corporation or regional or local authority as sole shareholder shall hold ordinary and extraordinary general meetings.

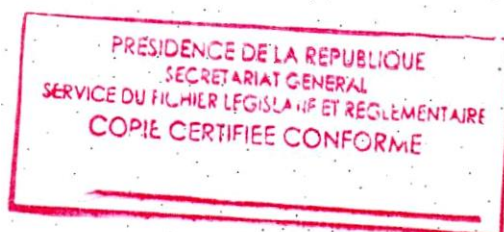
Section 39: (1) The ordinary general meeting shall be held at least once a year within 6 (six) months of the end of the financial year, when convened by the chairperson.

(2) Decisions of the ordinary general meeting shall be taken by a 3/5 (three-fifths) majority of members.

Section 40: (1) The extraordinary general meeting shall be held at the request of the board chairperson or that of 1/3 (one-third) of the board members, whenever necessary.

(2) Decisions of the extraordinary general meeting shall be taken by a 4/5 (four-fifths) majority of members.

Section 41: The ordinary and extraordinary general meetings may not validly conduct business except in the presence of 4/5 (four-fifths) of their members, including, compulsorily, the representatives of the technical and financial supervisory authorities.



II - BOARD OF DIRECTORS

PARAGRAPH I **ADMINISTRATION OF THE BOARD OF DIRECTORS**

Section 42: The board of directors of every public corporation shall be composed of a college of at least 5 (five) and at most 12 (twelve) members. It must include 1 (one) peer-elected personnel representative.

Section 43: Board members of public enterprises having as sole shareholder the State shall be appointed by decree of the President of the Republic.

Section 44: Board members of public enterprises having public corporations or regional or local authorities as sole shareholder shall be appointed under conditions laid down in the articles of association.

Section 45:(1) Shareholders of a public enterprise set up jointly by the State, one or several public corporations and/or one or several regional or local authorities shall be appointed under the conditions laid down in the articles of association.

(2) With the exception of the personnel representative, each shareholder shall be entitled to representation proportionate to the number of shares they hold. Small shareholders may group together for purposes of representation on the board of directors.

Section 46: (1) For public enterprises with several shareholders, members of the board of directors shall be appointed by the ordinary general meeting of shareholders.

(2) The general meeting shall be free to change the number of board members.

(3) Where the number of board members becomes lower than the legal or statutory minimum required, it shall be supplemented by decision of the ordinary general meeting.

PARAGRAPH II **TERM OF OFFICE OF BOARD MEMBERS**

Section 47: (1) Board members of public enterprises shall be appointed for a 3 (three)-year term, renewable once.

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(2) The renewal provided for in Section 47(1) above shall be tacit.

Section 48: (1) A board member's term of office shall end:

- upon death or resignation;
- following loss of the capacity that prompted the appointment;
- by dismissal due to gross misconduct or activities incompatible with the duty of board member;
- upon its normal expiry;
- upon the dissolution or transformation of the enterprise;
- following permanent disability established by the board of directors.

(2) In the cases provided for in Section 48(1) above, the board member shall be replaced under the same conditions as those of his appointment.

Section 49: Board members of public corporations who, directly or indirectly have interests in a business involving the corporation other than a contract of employment for a board member who is a personnel representative, shall be bound to keep the board of directors informed thereof.

Section 50: (1) Board members, the general manager and deputy general manager, as well as their spouses, ascendants or descendants and through other third parties shall, under penalty of nullity of the agreement, be forbidden to contract, in any form whatsoever, loans from the enterprise, obtain therefrom a current account or other overdraft, or surety or guarantee for their commitments towards third parties.

(2) The prohibition referred to in Section 50(1) above shall not apply to a legal person that is a board member. However, where the representative of the legal person is acting on a personal basis, he/she shall also be subject to the provisions of Section 50(1) above.

(3) Where the enterprise operates a bank or financial institution, such prohibition shall not apply to the current account transactions concluded under normal conditions.

PARAGRAPH III

BOARD CHAIRPERSON

Section 51: The board of directors shall appoint, from among its members, a chairperson who must be a natural person.

Section 52: (1) The term of office of the board chairperson may not exceed his term as board member.

(2) The term of office of the board chairperson shall be renewable by tacit agreement.

Section 53: (1) The board chairperson shall preside over board meetings.

(2) He must ensure that the board oversees the management of the enterprise entrusted to the general manager.

Section 54: At any moment during the year, the board chairperson shall conduct audits he deems appropriate and may request for any documents deemed useful for the discharge of his duties.

Section 55: (1) The board chairperson shall receive a monthly allowance and benefits.

(2) Board members shall receive a duty allowance and may claim a reimbursement of expenses occasioned by board meetings.

(3) The monthly allowance, session allowance and benefits of the board chairperson, as well as the session allowances of board members referred to in Section 55(1) and (2) above shall be fixed by the general meeting, on the recommendation of the board of directors.

PARAGRAPH IV

POWERS OF THE BOARD OF DIRECTORS

Section 56: (1) The board of directors shall have the widest powers to act on behalf of the enterprise in all circumstances.

(2) It shall exercise such powers within the limits of the corporate purpose of the enterprise and subject to those expressly granted by the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups.

Section 57: (1) The powers of the board of directors shall be those laid down by the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups. In particular, the board of directors shall have the powers to:

- specify the objectives of the enterprise and the guidelines to be given to its management;
- exercise constant control over the general manager's management;
- approve the financial statements of each financial year;
- prepare management planning documents and corresponding reports;
- appoint and dismiss the board chairperson and general managers;
- appoint members of review boards;
- share out board meeting attendance allowances;
- authorize first-demand securities, sureties and guarantees subscribed by the enterprise for commitments made by third parties;
- authorize all transfers of movable or immovable, tangible or intangible property, in accordance with the conditions provided for in Sections 112 and 113 of this law.

(2) The provisions of the articles of association or the general meeting to limit the powers of the board of directors shall have no effect against third parties.

Section 58: (1) The board may entrust special tasks to one or more of its members for one or more specified reasons.

(2) In that capacity, the board of directors may decide to set up internal committees or commissions to discuss issues relating to its duties.

Section 59: The board of directors may allocate special payments to board members, for tasks and assignments entrusted to them, or authorize reimbursement of travel expenses incurred in the interest of the enterprise, subject to prior approval by the said board.

Section 60: (1) The board of directors shall authorize the recruitment and dismissal of staff on the general manager's recommendation.

(2) It shall, on the general manager's recommendation, appoint persons to duty posts of the rank of sub-director, director and the equivalents thereof.

PARAGRAPH V **FUNCTIONING**

Section 61: (1), The board of directors shall meet as often as necessary when convened by its chairperson.

(2) Where necessary, 1/3 (one-third) of board members may convene a board meeting to discuss a specific agenda.

Section 62: (1) Members shall be convened by telex, telegram, fax or any other means leaving a paper trail at least 15 (fifteen) days before the scheduled date of the meeting. Convening notices shall bear the agenda, date, venue and time of the meeting.

(2) In case of emergency, the time-limit referred to in the preceding sub-section may be reduced to 5 (five) days.

Section 63: (1) The board of directors shall deliberate only where all its members have been duly invited.

(2) All members present or represented at a board meeting shall be deemed to have been duly invited.

(3) All members represented at a board meeting shall be deemed to be present.

Section 64: (1) Any board member who is unable to attend a board meeting may request another board member to represent him.

(2) No board member may represent more than one other member at the same meeting.

Section 65: (1) Board decisions shall take the form of resolutions. They shall be signed in session by the board chairperson or, where applicable, the pro tem chairperson, and one board member.

(2) The decisions referred to in the preceding subsection shall take effect upon adoption.

Section 66: (1) The board of directors may not validly deliberate on any agenda item unless at least $\frac{1}{2}$ (one half) of its members are present. All provisions repugnant hereto shall be deemed unwritten.

(2) Board decisions shall be taken by simple majority of members present or represented, subject to a qualified majority provided for by the articles of association. In the event of a tie, the chairperson shall have the casting vote, subject to provisions in the articles of association repugnant hereto.

(3) Any decision taken in violation of the provisions in this section shall be deemed null and void.

Section 67: Board members, and persons invited to attend board meetings, shall be bound by discretion concerning confidential information or released as such by the pro tem chairperson.

Section 68: (1) The general management shall act as secretary of meetings of the board of directors.

(2) The minutes of meetings shall be entered in a special minute's book kept at the head office, and initialled and signed by the President of the competent Court of First Instance. They shall mention the members present or represented. They shall be read and adopted by the board of directors at its next meeting.

(3) The minutes of meetings shall be co-signed by the board chairperson, or, where applicable, the pro tem chairperson, and the pro tem secretary.

III - GENERAL MANAGEMENT

Section 69: The general management of a public enterprise shall be under the authority of a general manager, assisted if need be, by a deputy general manager.

Section 70: (1) The general manager and, where applicable, the deputy general manager, shall be appointed by a $\frac{2}{3}$ (two-thirds) majority of the

board of directors upon recommendation of the majority or sole shareholder.

(2) The general manager and deputy general manager shall be appointed for a 3(three)-year term of office, renewable twice.

(3) Provided that the cumulative terms of the general manager and deputy general manager may not exceed 9 (nine) years.

(4) All decisions taken by the general manager or deputy general manager beyond the period provided for in Section 70(3) above shall be null and void.

Section 71: Under the supervision of the board of directors, the general manager shall be responsible for the implementation of the general policy and the management of the enterprise. He shall be responsible for the general management thereof.

Section 72: (1) The powers of the general manager shall be those laid down by the OHADA Uniform Act relating to the Law on Commercial Companies' and Economic Interest Groups shareholders' meetings. The general manager shall be responsible, inter alia, for:

- preparing the budget and annual financial statements;
- preparing the deliberations of the board of directors, participating in an advisory capacity in its meetings, and implementing its decisions;
- carrying out the technical, administrative and financial management of the corporation;
- recruiting, appointing, awarding marks to and dismissing staff, subject to the powers of the board of directors, fixing their remuneration and benefits in keeping with the laws and regulations in force, the internal regulations and board decisions;
- managing the movable and immovable, tangible and intangible property of the enterprise, in keeping with the corporate purpose of the enterprise and the powers of the board of directors.

(2) The general manager may delegate some of his powers.

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(3) The general manager shall represent the enterprise in all acts of civil life and before the law.

Section 73: (1) The duties of the general manager and the deputy general manager shall end upon:

- a) normal expiry of their terms of office;
- b) dismissal, due to gross misconduct or acts incompatible with the position of general manager or deputy general manager;
- c) death or resignation;
- d) permanent incapacity established by the board of directors;
- e) dissolution of the enterprise.

(2) Apart from dissolution of the enterprise, the occurrence of any of the cases referred to in the preceding sub-section shall lead to a vacancy in the positions of general manager and deputy general manager.

Section 74: (1) Where the general manager is temporarily unable to perform his duties:

- for a period not exceeding 3 (three) months, the deputy general manager shall deputize. Where there is no provision for the post of deputy general manager, the general manager shall appoint an acting general manager;
- beyond a period of 3 (three) months, the board of directors shall meet and designate an acting general manager.

(2) In the event of vacancy of the post of general manager or deputy general manager, the board of directors shall appoint a new general manager and/or deputy general manager, on the recommendation of the majority or sole shareholder.

Section 75: (1) The board of directors may sanction the general manager or deputy general manager as follows:

- suspension of some powers;
- immediate suspension from duty for a limited period;
- immediate suspension from duty.

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(2) In the cases referred to in the preceding sub-section, the board of directors shall take the necessary measures to ensure the smooth running of the enterprise.

PART III **PROVISIONS SPECIFIC TO** **SEMI-PUBLIC ENTERPRISES**

Section 76: The incorporation, administration, management, supervision, dissolution and liquidation of a semi-public enterprise shall be in accordance with the provisions of the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups, subject to the provisions of this law.

PART IV **RESTRICTIONS AND INCOMPATIBILITIES**

Section 77: Appointed on the basis of their qualifications and competence, board members representing the State, public corporations or regional or local authorities in public corporations may not delegate their duties.

Section 78: (1) The positions of board chairperson and board member of a public corporation shall be incompatible with those of Member of Parliament, Judicial Officer or member of the Constitutional Council.

(2) The positions of member of government or person ranking as such, Member of Parliament, Judicial Officer or member of the Constitutional Council shall be incompatible with those of general manager or deputy general manager of a public corporation.

(3) The general manager or deputy general manager, who is appointed member of government, shall automatically lose the position of general manager or deputy general manager.

PART V **AUDITING OF PUBLIC CORPORATIONS**

Section 79: (1) Each public corporation shall be audited by one or more auditors.



(2) The auditors shall be natural persons or firms formed by such natural persons.

(3) Only chartered accountants approved by the Cameroon National Association of Chartered Accountants may exercise the functions of auditor in Cameroon.

Section 80: The functions of auditor shall be exercised in accordance with the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups.

Section 81: The provisions of Sections 79 and 80 above shall be implemented without prejudice to the audit conducted by competent State bodies, in accordance with the laws and regulations in force.

PART VI **DISSOLUTION AND LIQUIDATION**

CHAPTER I **DISSOLUTION**

Section 82: (1) Dissolution of public corporations shall be pronounced on the grounds provided for in their articles of association or in accordance with the OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups

(2) It may in particular be pronounced on the following grounds:

- expiry of the term for which it was incorporated;
- realization or extinction of its purpose;
- cancellation of partnership agreement;
- decision of the sole shareholder;
- decision of shareholders, under the conditions laid down for amending the articles of association;
- advance dissolution pronounced by a competent court at the request of a partner for compelling reasons, in particular in case of non-fulfilment of their obligations by a partner or disagreement between partners preventing the normal functioning of the enterprise;

- effect of a judgment ordering the liquidation of the assets of the enterprise;
- any other grounds provided for in the articles of association.

Section 83: (1) Notwithstanding the provisions of Section 82 above, dissolution of a public corporation with the State as sole shareholder shall be pronounced by decree of the President of the Republic, on the joint recommendation of the minister in charge of finance and the minister in charge of the technical supervision and on the recommendation of the college of the General Assembly.

(2) Dissolution shall, within 8 (eight) clear days of the decision, be published in a legal notices newspaper and in the national press. The liquidation procedure shall be open from the date of such publication.

From such date and unless otherwise decided by the dissolution instrument, the following measures shall be taken:

- the board of directors and the general management shall be relieved of their duties;
- all ongoing contracts shall be suspended, subject to the pursuance of certain contracts under Section 84 below.

(3) In any case, failing regularization, advance dissolution shall be pronounced at the close of the second financial year following that during which the losses were established. The auditor(s) shall be bound to inform the minister in charge of finance or the deliberative organ which appointed them at the close of the first financial year in which the losses were established.

Section 84: The instrument pronouncing the dissolution of the public corporation shall specify whether or not operations shall continue during the liquidation period.

CHAPTER II **LIQUIDATION**

Section 85: The total or partial disposal of a public corporation shall be undertaken in accordance with the regulations on privatization, OHADA Uniform Act relating to the Law on Commercial Companies and Economic Interest Groups and the provisions of this law.

Section 86: (1) The liquidation of public enterprises and semi-public enterprises shall be voluntary in accordance with the provisions of this law.

(2) The publication of the instrument pronouncing the dissolution of the public corporation shall stay or bar any principal action or counter-claim, summary procedure or any other out-of-court settlement, any ongoing action against the enterprise as well as any execution on its assets.

However, creditors who have a security or preferential right may, once their debts have been declared, exercise their personal right of action where the liquidator has not undertaken liquidation of the encumbered assets within 12 (twelve) months of their appointment by the minister in charge of finance.

(3) Where the liquidation is terminated due to insufficiency of assets, the creditors whose claims have been verified and accepted shall, in case of fraud affecting their rights, recover their personal right of action against managers of the public corporation or the liquidator.

Section 87: (1) The debts and claims of the dissolved public corporation shall fall due, where applicable, through forfeiture of corporate term upon publication of the instrument pronouncing the dissolution of the public enterprise.

(2) The dissolution shall freeze legal and contractual interest on the debts of the enterprise as well as all interest in arrears and as supplemental charges.

(3) The publication shall, as of right, entail the prohibition, under pain of nullity, to pay any debt contracted prior to the publication of the instrument dissolving the public enterprise. However, the liquidator may pay pre-existing debts in order to redeem the security or item that was legitimately withheld where the continuation of liquidation transactions justifies such redemption.

(4) The securities and preferential rights as well as legal transactions and decisions transferring or constituting chattels real may not be registered after the publication of the instrument dissolving the public corporation.

Section 88: (1) Public corporations under liquidation shall be exempted from making any deposit with the registries of courts.

(2) Decisions rendered against them under the debt contention procedure shall be registered free of charge.

(3) Decisions rendered in their favour shall be registered as debit balance.

Section 89: (1) By decision of the minister in charge of finance, a liquidator that may be a natural or legal person shall be appointed concomitantly with the instrument dissolving the public enterprise wherein the State is sole shareholder without prejudice to any incompatibilities.

(2) Where a legal person is appointed liquidator, the name of its representative shall be indicated.

(3) The instrument appointing the liquidator, its form notwithstanding, shall be published within 1 (one) month of appointment in a legal notices journal.

(4) The liquidator, in the execution of its mandate, may consult any person by reason of their special knowledge.

(5) The ceiling of the monthly fees or emoluments of the liquidator shall be fixed, as the case may be, by decision of the minister in charge of finance or by the deliberative organ of the legal person that appointed them.

Section 90: (1) The liquidator shall be appointed for a maximum period of 1 (one) year renewable. However, the liquidation period shall not exceed 3 (three) years. The instrument appointing the liquidator shall define their duties and powers, the scope of their mandate and the date when they shall assume duty.

(2) The duties of liquidator shall cease in particular due to non-renewal of the term or dismissal. They shall be replaced under the same conditions applied for their appointment.

Section 91: (1) Subject to compliance with the regulations on privatization, the liquidator shall have the widest powers to realize the assets, settle the debts of the dissolved public corporation and, where

applicable, share the remaining net assets among the partners or revert same into the Treasury.

(2) However, during their mandate, some transactions by the liquidator and the option to compromise or settle matters out of court may be subject to authorization by the minister in charge of finance. The list of such transactions shall be specified by decision of the minister in charge of finance.

Section 92: (1) Upon assuming office, the liquidator shall prepare a draft budget and a programme of action which they shall submit to the organ that appointed them for approval. The draft budget shall comprise in particular the liquidation expenses as defined in this law.

(2) The liquidator shall prepare a liquidation opening balance sheet which they shall submit to the organ that appointed them.

(3) A decision by the minister in charge of finance shall, where necessary, lay down the conditions for executing the liquidation budget.

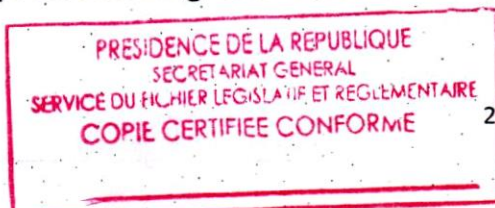
Section 93: (1) The liquidator shall submit a quarterly report on their activities to the organ that appointed them.

(2) The liquidator shall keep an account of the liquidation transactions. Upon the closure of the liquidation transactions, they shall submit a report and the liquidation closing accounts to the organ that appointed them.

(3) Approval of the liquidation accounts shall release the liquidator.

Section 94: (1) Upon assuming office, the liquidator shall, within a period of 15 (fifteen) days, make a physical and accounting inventory of the assets of the dissolved public corporation. He shall draw up an adversarial report thereon with the general manager as well as personnel in possession of the property of the corporation.

(2) The general manager, under pain of assuming liability, shall hand over to the liquidator, by any means leaving a paper trail, the financial statements as well as the list of creditors and the total amount of debts as at the date of the instrument pronouncing the dissolution of the public corporation.



Section 95: (1) Once in office, the liquidator shall be bound to request for or, as the case may be, himself issue all instruments needed to protect the rights of the public corporation against its debtors and to preserve its assets and, where necessary, to ensure continuation of operations during the liquidation period.

(2) In general, the liquidator shall expedite the taking of the necessary precautionary measures which may include:

- freezing bank accounts, limiting the powers of sitting officials, sealing stores or designating new caretaker officials, identifying personnel necessary for maintaining the property of the public corporation as is and limiting access to sensitive areas;
- registering, on behalf of the corporation, all securities or all liens which may not have been taken or renewed;
- pursuing on-going contracts;
- restoring some assets for a more profitable disposal; and
- requesting assistance from the authorities to take any security measures likely to protect the property of the enterprise.

PART VII **TRANSACTIONS RELATING TO ASSETS AND LIABILITIES**

CHAPTER I **TRANSACTIONS RELATING TO ASSETS**

Section 96: Assets shall be realized mainly in 2 (two) ways:

- debt recovery; and
- transfer of assets.

Section 97: (1) The liquidator shall recover debts owed to the public corporation by amicable agreement, judicial process or by the treasury preferential claim procedure where the enterprise enjoyed such preferential right prior to his liquidation.

(2) General recovery notices shall be put out through the press.

(3) Specific notices may be put out through the press or served through personal letters on the basis of the schedules of assets and liabilities. Notices shall be given out even for secured debts.

(4) Only debtors whose debts are established through the accounting procedure shall be served with notices and warnings prior to recovery proceedings.

(5) The recovery of some debts may, by virtue of their specificity, be entrusted to a debt recovery entity.

Section 98: (1) The realization of assets shall contribute towards settling liquidation costs and liabilities.

(2) Movable and immovable property may be sold by auction. The liquidator shall invite tenders by publication in a journal of legal notices and fix the deadline for receiving same.

(3) Production units forming part of the immovable property may be included in a package deal.

Section 99: (1) In order to determine their reserve price, the liquidator shall organize the sale of movable and immovable property on the basis of:

- physical inventories establishing the existence and state of the property; and
- valuations assessing the purchase value, depreciation and salvage or book value of each property.

(2) An appraisal by an expert registered with the competent court of appeal may also determine any appreciation in value depending on the state of the property or its possible use.

Section 100: (1) The unencumbered movable and immovable property owned by the public corporation may be:

- sold by auction; or
- assigned against payment or through the assumption of liabilities equivalent to the cost of the property to any regional or local authority or legal person entrusted with all or part of the mission that originally devolved upon the dissolved entity.



(2) The unencumbered movable and immovable property owned by the public enterprise may be:

- assigned free of charge by the minister in charge of finance, upon the recommendation of the technical supervisory ministry, to any regional or local authority or corporate body entrusted with all or part of the mission that originally devolved upon the dissolved entity; or
- re-incorporated into the property of the State where the value of such property cannot be expected to yield significant proceeds from their sale or where the Government's economic, social and cultural policy requirements so warrant.

Section 101: (1) In the case of sale of encumbered assets, the share of the price corresponding to the secured debts of the enterprise shall be paid into a special liquidation account and the creditors paid following the established order of preference in accordance with the rules of ordinary law. The liquidator shall obtain or ensure a write-off of the corresponding mortgage.

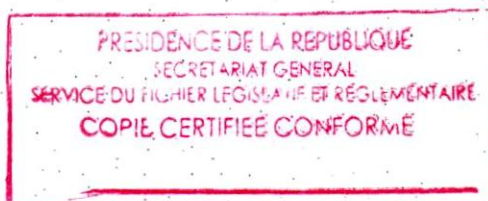
(2) The liquidator may propose acquisition of the encumbered assets to the mortgage or secured creditor in due proportion to his claim. Where the value of the asset assessed in accordance with this Law exceeds the claim, the creditor must make an equalization payment; otherwise, he shall remain a creditor of the liquidator.

Section 102: (1) The liquidator shall deposit any sums received by him in the discharge of his duties into a special liquidator account.

(2) Any sale of property forming part of the assets of the public corporation to the liquidator, his employees or their spouse, ascendants or descendants shall be null and void.

CHAPTER II **TRANSACTIONS RELATING TO LIABILITIES**

Section 103: The liquidator shall be responsible for listing and arranging the debts due in order of preference for settlement purposes.



Section 104: (1) With effect from the date of publication of the dissolution instrument, all creditors whose claims were due prior to the opening of liquidation shall forward their statements to the liquidator. This shall not apply to employees of the corporation whose statements of claims shall be drawn up and forwarded to the personnel representative and the labour inspectorate by the liquidator.

(2) Creditors resident in Cameroon shall have 2 (two) months from the date of publication of the instrument opening liquidation to produce their claims together with supporting documents and in particular statements of claims.

(3) Where beyond such deadline, creditors known to the liquidator fail to produce their claims, the liquidator shall serve on them, notice to do so within 15 (fifteen) days, otherwise they shall be barred from producing the claims through the press. Such time-limit shall be extended by 3 (three) months for creditors resident outside Cameroon who shall be notified by the liquidator by registered letter against acknowledgement of receipt.

(4) Only reported debts shall be considered, after verification, in the distribution of the liquidation proceeds.

Section 105: (1) The liquidator shall, within 4 (four) months of assumption of duty, draw up a provisional list of claims after checking the validity of the claims.

(2) The list of claims shall specify the order of preference of each creditor according to the rules of ordinary law and subject to the provisions of this law.

(3) The list of claims shall be made available to creditors who shall be notified thereof through the press. Non-resident creditors shall be notified individually by registered letter against acknowledgement of receipt.

Section 106: (1) Disputes relating to claims shall be forwarded to the liquidator by registered letter against acknowledgement of receipt within 1 (one) month of the notification referred to in Section 105 above. Failure to submit objection within such time-limit shall bar subsequent objection to the liquidator's proposal.

(2) The liquidator shall be bound to take a decision within 10 (ten) days of receipt of the registered letter referred to in the

preceding subsection; beyond such time-limit, no response on his part shall mean acquiescence.

(3) The decision of the liquidator shall be subject to appeal by simple application lodged with the President of the High Court of the place where the enterprise is headquartered.

(4) The President of the court shall take a decision, after hearing both parties, by order issued in chambers within 15 (fifteen) days of referral of the matter to him. He shall give a first ruling solely on matters relating to claims and shall not act ultra vires.

Section 107: (1) The order of settlement of claims on the public corporations under liquidation shall be as follows:

- wage claims shall be preferred claims having topmost priority over other priorities regarding compensation for termination of contract of employment and the percentage of wages not liable to attachment as provided for by the laws and regulations in force;
- follow the other preferential claims according to the order provided for by ordinary law after prior and mandatory offsets, wherever possible, of claims between the State and the public corporation under liquidation, on the one hand, and between the public corporation under liquidation and other public enterprises, on the other hand. The amount of assets remaining shall be distributed to the creditors in proportion to their verified and accepted debts, in accordance with the rules of ordinary law.

(2) An order of the minister in charge of finance shall lay down the conditions for the settlement of the debts referred to in (1) above.

(3) The liquidation dividend, if any, shall be paid by the liquidator to shareholders proportionally to their share capital contributions, as the case may be.

Section 108: (1) The liquidation costs or expenses resulting directly from liquidation transactions shall be paid as the transactions are effected. They shall have priority over debt redemption costs, irrespective of preferential rights.



(2) Liquidation costs shall be reduced to their lowest value and shall comply with the rules governing the management of public funds.

(3) All increases in liquidation cost compared to the initial budget must first be forwarded by the liquidator to the authority which appointed him, for approval.

(4) Liquidation costs shall notably include:

- debt recovery- related expenses;
- fees and allowances of liquidators;
- charges for legal notices;
- expenses resulting from the performance of contracts, in particular contracts of employment that remain valid after the publication of the liquidation decision;
- expenses incurred as part of interim measures.

CHAPTER III

CLOSURE OF LIQUIDATION

Section 109: The liquidation may be terminated at any time by decision of the authority which appointed the liquidator in the following cases:

- where there are no further debts due;
- where the liquidation transactions cannot continue owing to insufficient assets.

Section 110: (1) Prior to closure of liquidation, the liquidator shall draw up a liquidation statement which shall be attached to his final report.

(2) The liquidation statement shall be forwarded by the liquidator to the authority which appointed him, for approval. However, the Minister in charge of finance shall in any case receive, for information, the liquidation statement where the reason for closure of liquidation is insufficiency of assets.

(3) The decision to terminate the liquidation shall be taken by the same authorities and under the same conditions, in particular of publication, as the decision to liquidate.

Section 111: (1) Under this law, where the liquidation is terminated by reason of insufficiency of assets, the creditors whose claims have been verified and accepted shall recover their individual prosecution rights in case of fraud affecting the rights of creditors and committed by the manager of the company or liquidator.

(2) The persons who during the liquidation process and in good faith acquired all or part of the property of the public enterprise cannot, unless otherwise agreed to by them, be individually or collectively liable for any of the debts of the enterprise under liquidation. In like manner, the employees of the public enterprise under liquidation who may be hired back by the purchaser of such property shall be recruited on the basis of a new contract of employment.

PART VIII **MANAGEMENT OF ASSETS OF PUBLIC ENTERPRISES**

Section 112: (1) Under the supervision of the board of directors, the management of the assets of a public enterprise shall come under the authority of the general manager.

(2) The management of the assets referred to in (1) above, shall concern the acquisition of property and their disposal.

Section 113: (1) In case of disposal of moveable and immoveable property of the public corporation, the general manager shall require the prior authorization of the board of directors. He shall update the board of directors on the situation of assets, which shall be reviewed during one of its sessions.

(2) The authorization of the board of directors shall be obtained through a resolution adopted by at least 2/3 of its members.

PART IX **PENALTY CLAUSES**

Section 114: The following acts by managers of public corporations shall constitute misappropriation of public funds, provided for and punishable under Section 184 of the Penal Code:



- knowingly sharing among shareholders sham dividends without an inventory or using a fictitious inventory;
- using, in bad faith and for personal material or moral purposes, the property and credit of the public corporation contrary to its interest, or to favour another legal person wherein they hold interests directly or indirectly.

Section 115: (1) The following acts by the liquidator shall constitute misappropriation of funds provided for and punishable under Section 184 of the Penal Code:

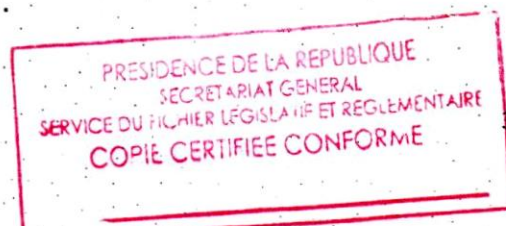
- using the property or credit of the company under liquidation for purposes contrary to its interest for personal, material and moral reasons or to favour another corporate body in which he owns interests directly or indirectly;
- transferring all or part of the assets of the public corporation under liquidation to a person who had occupied the position of board chair or auditor of the corporation, without the prior unanimous express consent of partners or, failing that, the authorization of the competent court.

(2) The following acts by the liquidator shall also constitute misappropriation of public funds as provided for and punishable under Section 184 of the Penal Code:

- paying or authorizing the payment of a creditor in violation of the provisions of this law;
- misappropriating or concealing part of the property of the enterprise;
- using the funds recovered for purposes other than those provided for.

Section 116: (1) Any liquidator who keeps or causes to be kept irregularly the accounts of the public corporation under liquidation shall be punished with imprisonment for from 5 (five) to 10 (ten) years and fine of from CFAF 100 000 (ten thousand) to 1 000 000 (one million).

(2) The forfeitures provided for in Section 30 of the Penal Code may further be applied to him.



Section 117: (1) The auditor of a public corporation who knowingly gives or confirms misleading information on the situation of to the said corporation or who fails to report criminal offences he is aware of the competent organs shall be punished with imprisonment for from 1 (one) to 5 (five) years and with fine of from CFAF 1 000 000 (one million) to 10 000 000 (ten million).

(2) The forfeitures provided for in Section 30 of the Penal Code may further be applied to him.

PART X

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

Section 118: Without prejudice to the tax waivers granted to public corporations, the tax and customs regime of public corporations shall be laid down by the General Tax Code, the Customs Code and the Finance Law.

Section 119: (1) Public corporations shall not be subject to the provisions of the Public Contracts Code. However, the board of directors shall ensure that the rules on competition, equal treatment of candidates, transparency and fair price are observed.

(2) A resolution of the board of directors shall stipulate the terms and conditions of the organization and functioning of internal tenders boards, appointment of its members and evaluation of bids.

Section 120: Public corporations shall be subject to private accounting rules.

Section 121: Special provisions regarding the submission of the organization charts and appointments of strategic public enterprise directors and personalities ranking as such for approval by the President of the Republic shall be laid down in the articles of association of such enterprises.

Section 122: The allocation of results in public enterprises shall be subject to the prior approval of the President of the Republic.

Section 123: Separate instruments shall, as and when necessary, lay down the terms and conditions for implementing this law.

Section 124: Public corporations existing at the date of the enactment of this law shall have a period of 1 (one) year to comply with its provisions.

Section 125: This law repeals Law No. 99/16 of 22 December 1999 on General Rules and Regulations Governing Public Establishments and Enterprises of the Public and Semi-public Sector.

Section 126: This law shall be registered, published according to the procedure of urgency and inserted in the Official Gazette in English and French./-

YAOUNDE, 12 JUL 2017

