

Tanzania

Tanzania Telecommunications Corporation Act, 2017

Act 12 of 2017

Legislation as at 1 December 2017

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Tanzania

Tanzania Telecommunications Corporation Act, 2017

Act 12 of 2017

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An Act to make provisions for the establishment of Tanzania Telecommunications Corporation, management of Strategic telecommunications infrastructure, commercial and economic viability of telecommunications services, repeal of the Tanzania Telecommunications Company Incorporation Act, and to provide for other related matters.

ENACTED by Parliament of the United Republic of Tanzania

Part I – Preliminary provisions

1. Short title and commencement

- (1) This Act may be cited as the Tanzania Telecommunications Corporation Act, 2017.
- (2) This Act shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

2. Application

This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar.

3. Interpretation

In this Act, unless the context otherwise requires—

“**access network**” means a portion of telecommunications infrastructure used to connect end users or devices for the purpose of delivering telecommunications services, and the access network can be in the form of wire line or wireless;

“**Board**” means the Board of Directors of the Corporation established pursuant to section 7;

“**core network**” means the central network control system of a telecommunications network that provides control, interconnection, exchange and transfer of information;

“**Corporation**” means the Tanzania Telecommunications Corporation whose establishment and continued existence are referred to in section 4;

“**Data center**” means a facility composed of networked computer servers, storage and associated components such as telecommunications systems, redundant power supply, environment controls and security equipment; and is used by government, organizations and businesses to store, process and distribute large amounts of data;

“**defunct company**” means the Tanzania Telecommunications Company Ltd established in terms of the Tanzania Telecommunications Company Incorporation Act;

“**Director General**” means the Director General of the Corporation appointed under section 15;

“**Minister**” means the Minister responsible for telecommunications matters;

“**National Data center**” means Data center facility owned by the government;

“**passive infrastructure**” means the elements which enable active equipment to operate as required, and includes towers and buildings;

“**strategic telecommunications infrastructure**” means Transport Core Infrastructure, Data center and such other telecommunications infrastructure;

“**support infrastructure**” means a portion of electronic communication network infrastructure that provides operation support services including billing function;

“**transport core network**” also referred to as Transmission backbone, means a portion of telecommunications infrastructure that provides transmission capacity to facilitate high speed transfer of information in the form of voice, data, video and other electronic formats within the same local service area, or nationally, or internationally, and the transport core network may be in the form of wire line, that is optic fiber and wireless, and includes Satellite and microwave.

Part II – Tanzania Telecommunications Corporation

4. Establishment of Corporation

- (1) There is hereby established a public telecommunications corporation known as the Tanzania Telecommunications Corporation.
- (2) The Corporation shall be a body corporate and shall:
 - (a) have perpetual succession and an official seal;
 - (b) in its corporate name be capable of suing and being sued;
 - (c) subject to this Act or any other written law, be capable of holding, purchasing or acquiring in any other way, and of disposing of, any movable or immovable property for the purposes of carrying out the functions conferred upon it by or under this Act or any other written law;
 - (d) subject to section 6(2), have powers to invest;
 - (e) be capable of borrowing and lending; and
 - (f) be capable of entering into any contract or other transaction.
- (3) Notwithstanding the preceding provisions of this section, the Attorney General shall have the right to intervene in any suit or matter instituted for or against the Corporation.
- (4) Where the Attorney General intervenes in any matter pursuant to subsection (3), the provisions of the Government Proceedings Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

[Cap 5]

- (5) For the purpose of subsection (4), the Corporation shall have the duty to notify the Attorney General of any impending suit or matter by, or against the Corporation.

5. Application of Cap. 257

- (1) Save as otherwise provided for in this Act, the provisions of the Public Corporations Act shall apply in respect of general operations and management of the Corporation.
- (2) The Treasury Registrar may, for the purposes of giving effect to subsection (1) and in terms of the Treasury Registrar (Powers and Functions) Act, issue specific or general directives to the Corporation.

6. Functions of the Corporation

- (1) The functions of the Corporation shall be to—
 - (a) enhance safety, security, economic and commercial viability of national telecommunications services and telecommunications infrastructure through—
 - (i) promotion of effective management and operations of telecommunications services;
 - (ii) development, maintenance, promotion and management of telecommunications services; and
 - (iii) maintenance of safety and security of telecommunications infrastructure specified or determined in accordance with section 20 of this Act;
 - (b) in consultation with the Minister, plan, build, operate and maintain the strategic telecommunications infrastructure as determined by the Government;
 - (c) carry out financial payment system in relation to telecommunications services;
 - (d) operate telecommunications services in accordance with the laws and prescribed procedures governing telecommunications services;
 - (e) operate and maintain all types of telecommunications networks, including Information and Communications Technology (ICT) systems and services within and outside the United Republic of Tanzania;
 - (f) provide incidental services which are necessary and proper for the purpose of the Corporation and its objectives;
 - (g) provide services relating to audio and video content, multi-media, data storage and transmission, electronic payment, value added services (VAS), equipment repair and maintenance;
 - (h) provide technical support services to customers of the Corporation;
 - (i) introduce or manage other services that are similar or complementary to the services of the Corporation in the field of telecommunications and Information and Communications Technology (ICT) for the purpose of developing or integrating these services;
 - (j) provide consultancy and engineering or technical support services on matters relating to Information and Communications Technology (ICT) to government institutions, large and small corporate and Small and Medium Enterprises (SME) as well as local authorities or other bodies;
 - (k) promote local and foreign investments in telecommunications services; and
 - (l) undertake such other functions incidental to, or necessary for the purpose of giving effect to the provisions of this Act.
- (2) In the course of performance of its functions, the Corporation shall operate on sound commercial principles.
- (3) For the purpose of this section, “sound commercial principles” means the attainment of a real rate of return on capital employed, of at least 5% or such other figure as the Government may from time to time approve and includes the achievement of any standards of service which may be agreed upon between the Government and Corporation.

7. Board of Directors

- (1) There shall be a Board of Directors of the Corporation which shall, subject to this Act, carry out the functions and manage the affairs of the Corporation.

- (2) The Board shall consist of a chairman to be appointed by the President and six other members to be appointed by the Minister from amongst citizens of the United Republic with good moral character and of proven integrity and professional competency as follows—
 - (a) a law officer nominated by the Attorney General; and
 - (b) five members two of whom shall be a representative from Zanzibar;
- (3) Save for the member referred to in subsection 2(a), in appointing members, account shall be taken of gender consideration and appointment of person's who possess qualifications and experience in the fields of telecommunications, engineering, law, business administration, economics, Finance or such other relevant field.
- (4) A person shall not be qualified for appointment as a member of the Board if owing to the nature of office the person serves, that person is likely to exert influence on the Corporation.
- (5) The members of the Board shall be paid allowances and remunerations as may be approved by the relevant authority.
- (6) The provisions of the Schedule to this Act shall have effects as to the tenure of office, termination of appointment of members of the Board, proceedings of the Board and other matters in relation to the Board and its members.
- (7) The Minister may, by an Order published in the *Gazette*, amend, vary or replace all or any of the provisions of the Schedule.

8. Duties of the Board

- (1) The Board shall oversee the functions of the Corporation provided for under section 6.
- (2) Without prejudice to the generality of subsection (1) and subject to the other provisions of this Act, the Board shall—
 - (a) approve the annual budget of the Corporation;
 - (b) in consultation with the Minister, approve the investment plans of the Corporation;
 - (c) recommend for approval by Treasury Registrar the appropriation of surplus funds generated by the Corporation;
 - (d) recommend to the Minister policies relating to the construction of new telecommunications infrastructure;
 - (e) recommend to the relevant authority for approval of the organisational structure of the Corporation; and
 - (f) recommend for approval by the Treasury Registrar the Corporation's financial regulations.

9. Minister may direct Board

- (1) The Minister may give to the Board directions of a general or specific character regarding the performance by the Corporation of any of its functions under this Act.
- (2) The Corporation shall, within six months after each end of its financial year, make a full report to the Minister on the conduct of the business of the Corporation during the past year.
- (3) The report under subsection (2), shall set out every direction given by the Minister under this section and under any other provisions of this Act during that year, and indicate the stage and results of implementation.

10. Powers of the Board

- (1) Subject to the provisions of this Act, the Corporation may carry on such activities which are advantageous, necessary or convenient for carrying on or in connection with the discharge of its functions and duties under this Act or any other written law, and in particular, may exercise any of the powers specified in this Act.
- (2) This section shall not be construed as limiting any powers of the Corporation conferred by this Act or any other written law.

11. Committees of the Board

The Board shall, for the purposes of efficient performance of its functions and by resolution in writing appoint such number of committees to perform functions as may be directed by the Board.

12. Delegation of functions of Board

- (1) The Board may, subject to such terms, conditions and restrictions as it may specify, delegate to any Committee of the Board or to the Director General some of the functions of the Corporation, its powers or duties conferred or imposed by or under this Act on the Board, and where any delegation is so made, the delegated function, power or duty may be performed or exercised by the delegate, subject to the terms, conditions and restrictions specified by the Board.
- (2) The delegation made under this section shall not prevent the Board from itself performing or exercising power or duty delegated.
- (3) Notwithstanding the foregoing provisions, the Board shall not have power to delegate its powers of
 - (a) delegation;
 - (b) approval of annual budget or any supplementary budget;
 - (c) approval of annual balance sheet or any statement of account; and
 - (d) exercise of disciplinary authority over the staff of the Corporation.

13. Conflict of interest

- (1) A member of the Board or an employee of the Corporation shall be considered to have a conflict of interest for the purpose of this Act, if the member or employee has or acquires any pecuniary or other interest that would conflict with the proper performance by that person of the functions or exercise of powers as a member of the Board or employee of the Corporation.
- (2) Where at any time a member of the Board or employee of the Corporation has a conflict of interest in relation to any matter—
 - (a) before the Corporation for consideration or determination; or
 - (b) that the Corporation would reasonably expect to be likely to come before it for consideration or determination, that member or employee shall immediately disclose the interest the person holds to other members of the Board or the Director General in the case of an employee, and shall refrain from taking part or any further part, in the consideration and determination of the matter.
- (3) Upon the Corporation becoming aware of any conflict of interest, a determination shall be made by a competent organ of the Corporation as to whether that conflict is likely to interfere with the proper and effective performance of the functions of the Corporation, and the person against whom a conflict of interest is determined shall not vote or partake on the matter for which the conflict of interest relates.

- (4) A member of the Board or employee of the Corporation shall be considered to have conflict of interest if that person fails without reasonable cause to declare his interests as required in terms of this section.

Part III – Staff of the Corporation

14. Appointment of Director General

- (1) There shall be a Director General of the Corporation who shall be appointed by the President.
- (2) The Director General shall be the chief executive officer and accounting officer of the Corporation.
- (3) A person shall be eligible for appointment as Director General if such person—
 - (a) is a holder of a post graduate degree from a recognized university; and
 - (b) possesses at least eight years experience in senior managerial position in any of the fields of marketing, management, law, economics, finance, engineering information communication technology or such other relevant fields.
- (4) The Director General shall be appointed to serve for a term of five years and may, subject to satisfactory performance as determined by the Board of Directors in consultation with the Minister and approval of the appointing authority, serve for further term.
- (5) A person shall not be appointed to serve as Director General if that person is:
 - (a) a shareholder of any entity operating in, or providing services to the Corporation;
 - (b) a member of the Board;
 - (c) an undischarged bankrupt;
 - (d) convicted of an offence under this Act or convicted of an offence involving fraud or dishonesty by a competent court in Tanzania or outside Tanzania;
 - (e) convicted for an offence and sentenced to imprisonment for a term of six months or more by a competent court in Tanzania or outside Tanzania; or
 - (f) proven to be unable to perform functions of his office arising from infirmity of body or mind.

15. Duties of Director General

- (1) The Director General shall, subject to the directions of the Board, be responsible for the day-to-day operations of the Corporation.
- (2) Without prejudice to the generality of subsection (1), the Director General shall—
 - (a) exercise supervision and control over the acts and proceedings of all employees in matters of operation and administration of the Corporation;
 - (b) acquire on behalf of the Corporation relevant operating licenses to establish business for adding value to corporation core functions;
 - (c) on behalf of the Corporation, carry out any trade, business or activity and do anything of any nature which can, in the opinion of the Board, be advantageous to the Corporation; and
 - (d) be the Secretary to the Board.

16. Directions on execution of functions

Save as otherwise provided in this Act, the Board may give directions to the Director General in relation to the carrying out of any of the functions of the Corporation.

17. Delegation of functions of the Director General

The Director General may, subject to such conditions as he may impose, delegate to any senior officers of the Corporation his duties conferred or imposed under this Act.

18. Other officers and staff of Corporation

The Board may, subject to the Public Service Act, engage or employ such number of officers and staff in such categories and levels to the service of the Corporation as it thinks fit for better implementation of its functions.

[Cap.298]

Part IV – Management of, and access to strategic infrastructure services

19. Prudent management of infrastructure

Consistent with the functions provided for under section 6, the Corporation shall manage infrastructural facility in a manner that ensures the safety, economic and commercial viability of the strategic telecommunications infrastructure.

20. Accessibility

The Corporation may, on the basis of contractual obligations with other operators, afford access to an operator for the provision of telecommunications services via the strategic telecommunications infrastructure referred to under this Act.

Part V – Financial provisions

21. Funds of the Corporation

- (1) The principal source of funds and resources of the Corporation shall consist of—
 - (a) such monies as may be appropriated by the Parliament;
 - (b) fees and charges levied for the goods and services provided by the Corporation as may be determined from time to time;
 - (c) rentals;
 - (d) grants, donation, bequests or other contributions made to the Corporation;
 - (e) monies received from commercial activities such as consultancy, lease of any asset, infrastructure or any other devices;
 - (f) any monies borrowed or grants made available for purposes of the Corporation's functions; and
 - (g) any sums or property which may become payable to the Corporation under this Act or any other written law or which may vest in the Corporation in any manner in the performance of its functions.
- (2) The Corporation shall disclose details of the sources of funds in the annual report.

22. Budget Approval

Subject to provisions of the Budget Act, the Director General shall in not less than three months before the end of financial year, prepare and submit to the Board a budget estimate of income and expenditure for the following year.

[Cap.439]

23. Accountability of the Corporation

The provisions of the Public Corporations Act relating to annual reports, accounts and dividend, half-year reporting, Audit, financial supervision of the Corporation and laying of information before the National Assembly shall apply, *mutatis mutandis*, to the Corporation.

[Cap. 257]

Part VI – Miscellaneous provisions

24. Regulations

The Minister may make Regulations which are necessary or desirable to give effect to the provisions of this Act.

25. Repeal

The Tanzania Telecommunications Company Incorporation Act is hereby repealed.

[Cap 304]

Part VII – Transitional and savings provisions

26. Savings of instruments and administrative directives

Notwithstanding the repeal of the Tanzania Telecommunications Company Incorporation Act, and the subsequent winding up of the defunct Company, any license, certificate and any other administrative order, circular, instrument, directive and guideline made, given or issued to or by the defunct Company under or in pursuance of the provisions of respective Acts which are in force on the commencement of this Act, shall be deemed to have been made, given or issued under or in pursuance of the provisions of this Act, and shall remain in force until revoked, replaced or rescinded by subsidiary legislation or another license, certificate or any other administrative order, directives or instructions made under this Act.

27. Transfer of assets and liabilities

- (1) For the purpose of facilitating the transfer of property, rights and obligations from the defunct Company to the Corporation, the Minister may, by an Order effective on such date and on such terms as he may specify, transfer the property, rights and obligations specified in such Order from the defunct Company to the Corporation.
- (2) On the date of coming into force of an Order under subsection (1), the property, rights and obligations that are the subject of the Order shall be transferred and vested in accordance with the Order.
- (3) A transfer Order may define the property, rights and obligations to be transferred by specifying the property, rights or obligations in question or by referring to all the property, rights and obligations comprised in the whole or any specified part of the undertaking of the defunct Company.

- (4) The defunct Company and the Corporation shall receive a title free of any encumbrance save as otherwise provided in the transfer Order.
- (5) For the avoidance of doubt, no stamp duty or other tax shall be chargeable on a transfer made under this section.

28. Certificates

- (1) For the avoidance of doubt, the Minister may issue a certificate in respect of any property or class of property certifying that the property referred to in the certificate was, at the time the Certificate was issued, the property of the defunct Company and such certificate shall be conclusive evidence of the certified facts.
- (2) Every property or class of property certified in accordance with subsection (1) may be sued upon and recovered or enforced by the defunct Company or the Corporation and it may not be necessary for the defunct Company or the Corporation to give notice to the person who is bound by the chose in action of the transfer if effected.

29. Public officers and employees of defunct Company

- (1) Subject to the provisions of the Tanzania Telecommunications Company Incorporation Act, the public officers and employees who, immediately before the effective date, are serving under the defunct Company shall, with effect from the date of coming into operation of the Tanzania Telecommunications Corporation Act be transferred to the Corporation.
- (2) With effect from the date of coming into operation of this Act a public officer or employee of the defunct Company shall be transferred to the Corporation on terms not less favourable than those applicable to him before his transfer.
- (3) Subject to subsection (2), until such time when new scheme of service and terms and conditions of service are drawn up by the Corporation, the scheme of service and terms and conditions of service in the defunct Company shall continue to apply to every public officer or employee transferred to the service of the Corporation.
- (4) A public officer or employee transferred to the service of the Corporation who is a member of any statutory or voluntary pension scheme or provident fund, shall, for the purposes of this section, continue to be governed under that pension scheme or provident fund.

30. Outstanding remunerations

The Corporation shall continue to pay out all outstanding remunerations to a public officer or employee of the defunct Company, including any unpaid salaries and allowances.

31. Transfer of records and documents

All documents and records of the defunct Company relating to public officers and employees transferred to the Corporation shall, from the effective date, be transferred to the Corporation.

Schedule(Made under section 7(6))

1. Tenure of office of Board members

- (1) A member shall, unless his appointment is sooner terminated by the appointing authority, or he ceases in any other way to be a member, hold office for the period specified by the appointing authority in the instrument of his appointment or, if no period is so specified for a period of three years from the date of his appointment, and shall be eligible for reappointment for another term.

- (2) Any member may, at any time resign from his office by giving notice in writing addressed to the appointing authority, and from the date specified in the notice or, if no date is so specified, from the date of the receipt of the notice by the appointing authority, he shall cease to be a member.

2. Casual vacancies

Where any member ceases to be a member before the normal expiration of his term of office, the President or Minister as the case may be, may appoint another person in his place to hold office until the time when such first-named person's term of office would have expired had he not so ceased to be a member.

3. Termination of appointment

The Minister may remove a member of the Board:

- (a) if information relating to the conduct of a member, which could have precluded his appointment if it had been made available to the Minister, is brought to the attention of the Minister;
- (b) for incompetence;
- (c) for misbehavior or misconduct;
- (d) for absence from or non attendance of three consecutive meetings of the Board;
- (e) for failure to disclose, at a Board meeting, a matter in which he has an interest;
- (f) for inability to perform the functions of his office arising from infirmity of body or mind;
- (g) who has been convicted of an offence and sentenced to imprisonment by a competent court in Tanzania or outside Tanzania.

4. Meetings

- (1) The Board shall ordinarily meet for the transaction of business at the times and at the places decided upon by the Board, but shall meet at least once every three months.
- (2) The Chairman, or in his absence any other member elected by members to preside on behalf of the Chairman, may at any time call a special meeting of the Board, and shall call a special meeting upon a written request by a majority of the members in office.
- (3) The Chairman, or in his absence the member elected amongst the members, shall preside at every meeting of the Board.

5. Co-opted member

The Board may, for efficient execution of its functions and where it considers necessary, co-opt any person to attend its meeting except that, such person shall not have a right to vote.

6. Quorum, procedure and decision of the Board

- (1) The quorum at any meeting of the Board shall be four members.
- (2) Questions proposed at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and in the event of an equality of votes the person presiding shall have a second or casting vote.
- (3) Notwithstanding subparagraph (2), a decision may be made by the Board without a meeting by circulation of relevant papers among the members, and the expression of the views of the majority of the members in writing, but any member shall be entitled to require that the decision be deferred and the subject matter be considered at a meeting of the Board.

7. Minutes of the Meeting

- (1) The Board shall cause to be recorded and kept minutes of all proceedings of its meetings, and the minutes of each meeting shall be confirmed by the Board at the next meeting and signed by the chairman of the meeting.

- (2) When confirmed pursuant to subparagraph (1), the minutes shall be *prima facie* evidence in any court or inquiry that the proceedings as recorded in the minutes were the proceedings and decision of that meeting.

8. Decision of the Board

At any meeting of the Board a decision of the majority of the members present and voting shall be deemed to be a decision of the Board. In the event of an equality of votes the Chairman of the meeting shall have a casting vote in addition to his deliberative vote.

9. Vacancies not to invalidate proceedings

- (1) Subject to paragraph 6(1) as to quorum, the Board may act notwithstanding any vacancy in the membership.
- (2) The validity of any act or other proceedings of the Board shall not be affected by any vacancy among its members, or by any defect in the appointment of any of them.

10. Board may regulate its own procedure

Subject to the provisions of this Schedule and to any directions given by the Minister, the Board may regulate its own procedure.