

THE EXECUTIVE AGENCIES (AMENDMENTS) ACT, 2009

ARRANGEMENT OF SECTIONS

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THE UNITED REPUBLIC OF TANZANIA



NO.13 OF 2009

I ASSENT,

Jakaya Mriko Kikwete
.....

President

29th June 2009
.....

**An Act to amend the Executive Agencies Act, Cap.245 with
a view to enhancing efficiency of executive agencies.**

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Executive Agencies (Amendments) Act, 2009 and shall be read as one with the Executive Agencies Act, hereinafter referred to as the "principal Act".

Short title
Cap.245

PART II

GENERAL AMENDMENTS

2. The principal Act is amended in section 2 by inserting in appropriate alphabetical order, the following definition:

Amend-
ment of
section 2

"appropriate authority" means the consent of the Chief Secretary to establish an executive agency;"

Amend-
ment of
section 3

3. The principal Act is amended in section 3 by-
- (a) inserting the word "and" between the words "authority" and "by" appearing in subsection (1);
 - (b) deleting subsection (3) and substituting for it the following:
 - "(3) An order made under subsection (1) shall specify-
 - (a) the department in relation to which the Agency is established, and may be made in respect of more than one department of the same ministry or, with the approval of another Minister concerned, be made so as to include a department of another ministry having similar functions;
 - (b) in the Framework Document, the functions, aims, roles, objectives, authoritative and performance standards; and
 - (c) any other particulars as approved by the Chief Secretary which is permitted under any other written laws."
 - (c) deleting the word "If" appearing at the beginning of subsection (4) and substituting for it the word "Where"; and
 - (d) inserting the word "written" between the words "other" and "law" appearing in the opening words of subsection (6).

Amend-
ment of
section 5

4. The principal Act is amended in section 5 -
- (a) in subsection (1), by -
 - (i) deleting the phrase "the strategic management" and substituting for it the phrase "overseeing implementation of ministerial policies";
 - (ii) deleting the letter "a" appearing between the words "of" and "general"; and
 - (b) in subclause (2), by deleting the words "Permanent Secretary" and substituting for it the word "Minister".

Amend-
ment of
section 6

5. The principal Act is amended in section 6 by -
- (a) deleting subsection (1) and substituting for it the following:
 - "(1) Each of Executive Agency shall have a Ministerial Advisory Board to be composed of a Chairman and other members being not more than five."
 - (b) adding immediately after the new subsection (1) the following subsections:

"(2) The Chairman of the Ministerial Advisory Board shall be appointed from outside the Ministry under which the Agency is established.

(3) An officer of a position of Assistant Director or above from the Ministry under which the Agency is established shall be an ex-officio member of the Board.

(4) The Minister shall appoint the Chairman and other members of the Ministerial Board among persons who are well versed with the functions of the Agency or matters of similar nature.

(5) The Chief Executive under which the Agency is established shall be the Secretary to the Board.

(6) Notwithstanding any provisions of this section:

(a) a Chief Executive Officer from a Government;

(b) any persons holding political post; or

(c) a director or a head of any department under which an agency is established,

shall not be members of the Ministerial Advisory Board."

(c) renumbering subsections (2), (3) and (4) as subsections (7), (8) and (9).

6. The principal Act is amended in section 7 by -

(a) deleting the opening words and substituting for them the following phrase:

"The function of the Ministerial Advisory Board shall be to give advice to the Minister on-

(b) deleting the word "and" appearing at the end of subparagraph "(f)"; and

(c) deleting subparagraph "(g)" and substituting for it the following paragraphs:

"(g) salaries, wages and allowances of the employees of the Agency"; and

(h) any other matter in the promotion and furtherance of the objectives and functions of this Act."

7. The principal Act is amended by repealing section 9 and replacing it with the following:

Amend-
ment of
section 7

Repeal
of
section 9

“Appoint-
ment of
Chief
Executive

9.-(1) The Minister shall, upon advice of the Public Service Recruitment Secretariat, appoint a Chief Executive of an Executive Agency among persons with necessary qualifications, experience and competence to manage effectively and efficiently the affairs of the Agency in accordance with modern management standards.

Cap.298

(2) Subject to subsection (1), the Public Service Recruitment Secretariat shall conduct the process of appointing or replacing the Chief Executive in accordance with the provisions of the Public Service Act.

(3) Without prejudice to the provisions of subsection (2), in such process, the Government shall be represented by-

- (a) one person from the ministry responsible for public service; and
- (b) one person from the ministry under which the Agency is established.”

Addition
of section
9A, 9B
and 9C.

8. The principal Act is amended by adding immediately after section 9 the following new sections-

“Tenure
of office
of the
Chief
Execu-
tive”

9A.-(1) The Chief Executive shall hold office for a period of five years or for any other period not exceeding five years as may be specified in an instrument of his appointment and shall be eligible for re-appointment.

(2) Without prejudice to any other written law, where the Chief Executive intends to continue with his post after the expiry of the period provided for under subsection (1), he shall apply for the post and compete with other applicants for the post.

Termina-
tion of
Appoint-
ment

9B.-(1) The Minister may, upon the recommendation of the Permanent Secretary, terminate the appointment of the Chief Executive for-

- (a) misconduct;

- (b) failure or inability to perform the functions of this office arising from infirmity of body or mind; or
- (c) incompetence.

(2) where the Chief Executive is aggrieved by the decision of -

- (a) the Permanent Secretary, made under section 5(2) in respect of any disciplinary action against him; or
- (b) the Minister, made under subsection (1) to terminate his appointment, he may, within thirty days, appeal to-
 - (i) the Minister, in case of the decision of Permanent Secretary; or
 - (ii) the President through the Chief Secretary in case of the decision of the Minister.

(3) The provisions of Public Service Act shall apply in the process of terminating the Chief Executive.

9C.-(1) The Chief Executive shall be the Accounting Officer of the Agency with financial responsibilities as may be provided for in its Framework Document and the Order establishing the special fund for the agency under the Public Finance Act.

Functions
of the
Chief
Executive

(2) In performing his functions under subsection (1), the Chief Executive shall abide to the Annual Performance Agreement concluded between him and the Permanent Secretary.

9. The principal Act is amended in section 10 by-

- (a) deleting the word "Minister" appearing in subsection (1) and substituting for it the word "ministry";
- (b) deleting the words "as affecting" appearing in subsection (2) and substituting for them the words "to affect";
- (c) deleting subsection (3) and substituting for it the following new subsection:

"(3) The Chief Executive of the Agency shall be responsible for the day to day operations of the Agency, the proper management of its funds, property and business and for the

Amend-
ment of
section
10

personnel management, organisation, control and discipline of the employees of the Agency." and

(d) adding immediately after subsection (4) the following new subsections:

"(5) Where the employee under subsection (4) is aggrieved by the decision of the Chief Executive, he may appeal to the Public Service Commission.

(6) The President shall be the final appellate authority in the matter under subsection (5)".

Amend-
ment of
section
12

10. The principal Act is amended in section 12 by -

(a) deleting paragraph (c) appearing in subsection (1) and substituting for it the following:

"(c) any other moneys legally acquired for purposes of promotion and furtherance of the objectives and functions of the Agency."; and

(b) deleting subsection (3) and substituting for it the following:

"(3) All receipts, earnings and accruals of the special fund shall become the property of the Agency."

(c) adding a new subsection (4) as follows:

"(4) The Minister may -

(a) having regard to -

(i) the capacity of the Agency to generate income from its own operations;

(ii) the financial implications of the strategic plan, annual business plan and budget of the Agency; and

(b) upon consultation with the Minister responsible for finance,

determine, in respect of each Agency, the amount of revenue which shall remain the property of the Agency and the amount of revenue which shall be treated as public funds and credited to the Exchequer Account."

Amend-
ment of
section
17

11. The principal Act is amended in section 17 by -

(a) inserting the word "shall" between the words "property" and "except"; and

(b) deleting the word "shall" appearing in the fourth line of that section.

PART III

CONSEQUENTIAL AMENDMENTS

12. The Parastatal Organisations Pensions Scheme Act is amended in the Second Schedule to that Act by deleting paragraph "1(a)" and substituting for it the following -

Amendment of the Parastatal Organisations Pensions Scheme Act

Cap 372

"(a) The Chairman who shall be appointed by the President."

13. The Local Authorities Pensions Fund Act is amended in the First Schedule to that Act by deleting paragraph "(1)(a)" and substituting for it the following -

Amendment of the Local Authorities Pensions Fund Act
Cap.417

"(a) the Chairman who shall be appointed by the President."

14. The Provident Fund (Government Employees) Act is amended by:

Amendment of the Provident Fund (Government Employees) Act
Cap.51

(a) by inserting immediately after section 3(3) a new subsection (4) as follows:

"(4) Notwithstanding subsection (2), the Chairman and the members of the Board shall not be persons holding any political post, or being Chief Executives of the Government."

(b) renumbering subsections (4), (5), (6), (7), (8) and (9) as subsections (5), (6), (7), (8), (9) and (10).

15. The National Social Security Fund Act is amended in the Second Schedule by:

Amendment of the National Social Security Fund Act
Cap.50

(a) inserting immediately after paragraph 3(3) a new paragraph (4) as follows:

"(4) Notwithstanding subparagraphs (2) and (3), the Chairman and the members of the Board shall not be persons holding any political post, or being Chief Executives of the Government."

(b) renumbering subparagraphs (4) and (5) as subparagraphs (5) and (6).

Passed in the National Assembly on the 10th June, 2009.

Dr. Thomas D. Kashiwila

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Clerk of the National Assembly