

Tanzania

## Rural Energy Act, 2005

### Chapter 321

Legislation as at 10 June 2005

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# Tanzania

## Rural Energy Act, 2005

### Chapter 321

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**Assented to on 6 June 2005**

**Commenced on 1 July 2005 by Rural Energy (Date of Commencement) Notice, 2007**

*[This is the version of this document as it was from 10 June 2005 to 30 June 2007.]*

**An Act to establish the Rural Energy Board, Fund and Agency to be responsible for promotion of improved access to modern energy services in the rural areas of Mainland Tanzania and through a Fund within the Agency Board to provide for grants and subsidies to developers of rural energy projects and for related and consequential matters.**

Enacted by the Parliament of the United Republic of Tanzania.

### Part I – Preliminary provisions

#### 1. Short title and commencement

This Act may be cited as the Rural Energy Act, 2005 and 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 only.

#### 3. Interpretation

In this Act unless the context otherwise requires—

“**Agency**” means the Rural Energy Agency established under Section 14 of this Act;

“**Annual Report**” means the report on the operations of the Agency and Fund submitted by the Director General to the Board on an annual basis, and, once approved by the Board, submitted to the Minister;

“**Board**” means the Board of Directors established under Section 6 of this Act;

“**capital subsidy**” means financial support given to developers to reduce costs of capital investments;

“**Development Partner**” means governments, national and international, bilateral and multilateral institutions and organisations contributing to Tanzanian’s Development;

“**Developer**” means a developer of, or an investor in, or an operator of a project, that shall be in the form of a private or public entity, a co-operative, or a local community organisation;

“**Director General**” means the Director General appointed under the provisions of Section 25(1) of this Act to be the chief executive officer of the Agency;

“**EWURA**” means the Energy and Water Utility Regulatory Authority established under the Energy and Water Utilities Regulatory Authority Act, 2001;

*[Act No. 9 of 2001]*

“**Fund**” means the Rural Energy Fund established under Section 17 of this Act and includes financial resources set aside for rural energy development;

**“Grant contract”** means a contract between the Board and a qualified developer for the provision of a grant;

**“Grant payments”** means the set of payments as shall be stipulated in a Grant contract;

**“Grant”** means an award of money by the Fund to a qualified developer for the purpose of developing and implementing a project;

**“Member”** means a member of the Board and includes the Chairman;

**“Minister for Finance”** means the Minister for the time being responsible for finance;

**“Minister”** means the Minister for the time being responsible for energy;

**“Modern energy”** means energy that is based on petroleum, electricity or any other energy forms that have commercialized market channels, a higher heating or energy content value than traditional biomass fuel, and that which may be easily transported stored and utilized;

**“Priority projects”** means projects that are prioritised for development by the Agency in its work plans, as approved by the Board;

**“Project”** means the activities and investments associated with the provision of modern energy services in a locality in a rural area of Mainland Tanzania;

**“Qualified developer”** means a developer that satisfies the criteria for qualification as established by the Board;

**“Rural area”** means an area outside an urban authority;

**“Special Purpose Fund”** means a fund established as a funding instrument under the Fund by special agreement between the Minister and Development Partners;

**“Trust Agent”** means the agent appointed under the provisions of Section 23 of this Act.

## Part II – Principles of Rural Energy Development

### 4. Principles of Rural Energy Development

The principles of Rural Energy Development shall be as follows that—

- (a) modern energy supply to rural areas promotes growth in economic production and productivity as well as social welfare;
- (b) sustainable development shall be achieved when modern energy services in rural areas are promoted, facilitated and supported through private and community initiative and involvement;
- (c) the role of Government in rural energy service provision is that of a facilitator of activities and investments made by private and community entities;
- (d) the fulfilment of Government’s role shall be best managed through an institution that is independent of, but accountable to, the central organs of Government;
- (e) the public institution designed to facilitate rural energy service provision shall have a small core administrative capacity, and shall rely on the technical and financial capacity of qualified private sector entities; and
- (f) facilitation of rural energy service provision shall take the form of financial support for the capital costs of investments, technical assistance to project preparation, training and other forms of capacity building.

## 5. Role of the Minister

- (1) Subject to other relevant written laws of the United Republic, the duties of the Minister shall be:
  - (a) to determine and ensure the formulation, co-ordination and application of, the national energy policy as relates to rural Mainland Tanzania;
  - (b) to appoint the Board in accordance with this Act; and
  - (c) to provide guidance of a policy nature to the Board.
- (2) The Minister may, in consultation with the Minister of Finance, execute agreements for the purpose of providing resources to the Fund as provided for in sections 19 and 20 of this Act.
- (3) The Minister may amend the First and Second Schedules to this Act on the basis of recommendations made to him by the Board.
- (4) The Minister may make regulations for the carrying into effect the objects of this Act and for any matter or thing which by this Act is to be or may be provided for by regulations.

## Part III – Establishment of the Rural Energy Board

### 6. The establishment of the Board

- (1) There is hereby established a Board to be known as the Rural Energy Board whose objective shall be to promote rural socioeconomic development by facilitating extended access to modern energy services for the productive economic uses, health and education, clean water, civil security and domestic applications.
- (2) The Board shall strive to achieve the objective stipulated in subsection (1) above by:—
  - (a) supporting the provision of modern energy services through projects that are developed by private, public entities, co-operatives and local community organisations;
  - (b) facilitating the provision of technical assistance to qualified developers that contributes to the provision of modern energy services in rural areas;
  - (c) allocating grants in an efficient and competitive manner, to subsidize the capital costs of projects, taking into consideration a project's social and economic benefits, regional equity in the allocation of funding resources, and the project's sustainability.

### 7. Composition of the Board

- (1) The Board shall consist of the following members—
  - (a) a representative from the Ministry responsible for energy;
  - (b) a representative from the Ministry of Finance;
  - (c) a representative from the Ministry responsible for regional administration and local government;
  - (d) a representative of the Private Sector;
  - (e) a representative of the Tanzanian Bankers' Association;
  - (f) a representative of a civic society;
  - (g) a representative of the Development Partners;
  - (h) a representative of consumers.

- (2) There shall be no alternate members.
- (3) A member appointed under subsection (1)(g) shall have no voting power.

## 8. Criteria and appointment procedure

- (1) Members of the Board shall—
  - (a) have a strong interest in making the activities of the Board successful;
  - (b) be able to mobilise institutional and public support for the activities of the Board and Fund and have competence in rural development issues;
  - (c) have autonomy from institutional or corporate influence; and
  - (d) not have financial interests in any project supported by the Board.
- (2) The procedure for appointment of members of the Board shall provide that—
  - (a) the Minister shall invite recognized organizations and participants in the private and civic sectors to nominate their respective representative and the Minister shall select one each of the nominees to be the private and respectively civic sectors representative;
  - (b) the Development Partners representative shall be appointed from amongst the Development Partners active in the energy sector in Mainland Tanzania; and
  - (c) the Minister shall invite recognised organisations in civil society with an interest in consumer protection to nominate the consumer representative on the Board, and the Minister shall select one such nominee to be the consumer representative.
- (3) The Chairman of the Board shall be appointed by the Minister after receiving recommendations from the Board.

## 9. Tenure of office of Board Members

- (1) A member of the Board shall hold office—
  - (a) on such terms and conditions as may be specified in the instrument of his appointment and shall, in the first instance be for a period not exceeding three years; and
  - (b) shall be eligible for re-appointment only for a subsequent period not exceeding three years.
- (2) The provisions of subsection (1)(a) and (b) notwithstanding, nothing shall preclude members who hold office in their organisations beyond six years, from maintaining membership or being re-appointed to the Board.
- (3) The Minister may terminate or suspend the appointment of a member, including the Chairman—
  - (a) for the member's physical or mental inability to perform the functions of his office;
  - (b) for gross misbehaviour or incompetence;
  - (c) if the member is convicted of a criminal offence;
  - (d) if the member, in any particular case, fails to comply with the provisions of the Second Schedule to this Act relating to the disclosure of interest; or
  - (e) if the member is declared bankrupt.

## 10. Meetings and procedures of the Board

- (1) The provisions of the Second Schedule to this Act shall apply to the meetings of the Board and other matters provided for in that Schedule.

- (2) The Board may co-opt any person to participate in its deliberations, but a person so co-opted shall have no right to vote.
- (3) Members of the Board shall be entitled to payment of honoraria and sitting and other allowances determined by the Board and approved by the Minister, and which shall be funded from the operational budget of the Agency.
- (4) The Board shall appoint the Director General to be Secretary to the Board who shall be responsible for arranging the business proceedings of the Board and such other duties as the Board may direct.

## 11. Powers and functions of the Board

- (1) The Board shall—
  - (a) direct the Director General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;
  - (b) review and approve reports prepared by the Agency, including the Annual Report of the Agency, and the annual and medium-term work plan and budget of the Agency, as referred to in Section 27;
  - (c) approve criteria for eligibility of a developer of a project to apply for grants from the Fund;
  - (d) approve guidelines for the Agency to contract technical assistance, training and promotional support to qualified developers;
  - (e) execute grant contracts with qualified developers in accordance with the Second Schedule to this Act.
- (2) The Board shall be the governing body for the Fund and in that respect shall—
  - (a) appoint a Trust Agent who shall be responsible for the administration of the Fund;
  - (b) approve criteria for the eligibility of developers of projects to receive grants from the Fund;
  - (c) approve and set terms and conditions for grants from the Fund to developers;
  - (d) establish procedures for evaluation of projects eligible for grants from the Fund;
  - (e) establish model documents for application and approval for grants from the Fund;
  - (f) approve or reject applications from qualified developers seeking grants from the Fund, and determine the level of grants to be granted;
  - (g) approve the annual budget of the Fund, including provisions for the operating expenses of the Agency; and
  - (h) appoint the auditor of the Fund and approve the auditor's reports.
- (3) The Board shall be the governing body for the Agency and in that respect shall—
  - (a) approve the management, performance and operational policies of the Agency;
  - (b) approve the annual and medium-term work plan and budget of the Agency;
  - (c) approve general terms and conditions of employment for employees to the Agency;
  - (d) direct the Director General to submit reports and accounts as may be reasonably required by the Board;
  - (e) monitor the management and performance of the Agency and its staff; and
  - (f) appoint the auditor of the Agency and approve the auditor's reports.



- (4) The Board may delegate to any of its members its power and authority to carry out on its behalf such functions as the Board may determine provided that grant allocation shall not be subject of such delegation with the exception provided for in paragraph 7 of the First Schedule to this Act.
- (5) The Board may from time to time establish such number of committees to assist it to carry out its functions.

## **12. Board's Autonomy**

- (1) The Minister may, after consultation with the Board, give guidance of a policy nature to the Board regarding the execution of its functions, and it shall be the duty of the Board to give due consideration to such guidance.
- (2) The Board shall be independent in the performance of its duties and functions, within the mandate provided for by this Act.

## **13. Accountability of the Board**

- (1) The Board shall, within three months after the close of each financial year, submit an annual report to the Minister, including an audited report on the operating expenditure incurred by the Board and Agency, revenues collected, grants approved and grant payments disbursed by the Fund.
- (2) The Minister shall cause copies of each annual report to be laid before the National Assembly within two months after he has received them or at the next meeting of the National Assembly.
- (3) The Board shall cause to be kept and maintained a full record indicating—
  - (a) the names and number of persons in respect of grants awarded;
  - (b) the number, size and purpose of grants awarded; and
  - (c) where relevant, the period for which the grant is awarded.

# **Part IV – Establishment of the Agency**

## **14. Establishment of the Agency**

- (1) There is hereby established an agency to be known as the Rural Energy Agency with the purpose of facilitating the provision of modern energy services in rural areas of Mainland Tanzania.
- (2) The Agency shall be a body with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name and may borrow money, acquire and dispose of property and do all such other things as a body corporate may lawfully do.
- (3) The Agency shall be governed by a Board of Directors otherwise known as the Rural Energy Board.

## **15. Objectives of the Agency**

The objective of the Agency shall be to—

- (a) implement the Board's strategies and decisions in fulfilling the mandate of the Board;
- (b) facilitate provision of technical assistance, research and development, training and other forms of capacity building to qualified developers by suitably qualified experts related to the planning and preparation of a project prior to an application for a grant.

## 16. Functions of the Agency

- (1) The Agency shall—
  - (a) act as the executive body and Secretariat to the Board, and shall keep all records of the affairs and the meetings of the Board and ensure the implementation of its decisions and directives;
  - (b) propose criteria for selecting the Trust Agent of the Fund in accordance with section [23](#) and recommend such an agent to the Board following a competitive selection process;
  - (c) prepare and submit for Board's approval the application procedures, guidelines, selection criteria, standards and terms and conditions for grants.
- (2) The Agency shall select projects for evaluation, and shall contract suitably qualified persons to evaluate the social and economic impacts of these projects.
- (3) The Agency shall recommend to the Board projects for approval.
- (4) The Agency shall establish an information system to capture and store information on approved and executed projects and without prejudice to the foregoing it shall—
  - (a) prepare proposals to the Board for additional means and sources of finance to be used for the benefit of rural energy service provision;
  - (b) ensure the timely collection and deposit of all the funds to be collected from sources specified under this legislation in the account of the Fund;
  - (c) promote the Agency and the Fund to the appropriate local and national government authorities, and facilitate the co-ordination of the activities of the Agency with other rural development activities;
  - (d) facilitate provision of capacity building activities as appropriate in the preparation, installation, operation and management of rural energy systems;
  - (e) facilitate provision of technical assistance by qualified private entities related to technical design, management, financial analysis, project finance and sound business practices to qualified developers;
  - (f) facilitate the preparation and appraisal by qualified private entities of projects applying for grants;
  - (g) facilitate the preparation of bid documents for projects to be competitively tendered to prospective developers; and
  - (h) recommend to the Board award of grants and execution of grant contracts in accordance with established criteria.
- (5) The Agency shall keep accounts and records of its transactions and affairs and shall ensure that all moneys received are properly brought to account and all payments out of its moneys are correctly made and properly authorized and adequate control is maintained over its property and over the incurring of liabilities by the Agency.
- (6) The Agency in collaboration with the relevant authority shall ensure that the relevant applicable environmental standards, if any, are used in designing, constructing, operating and maintaining rural energy systems.

## **Part V – Establishment of the Rural Energy Fund**

### **17. Establishment of the Fund**

There shall be established a Fund to be known as the Rural Energy Fund for the purpose of providing grants to qualified developers of projects.

### **18. Mandate of the Fund**

- (1) The Fund shall represent the funding mechanism by which the Board shall fulfil its mandate to provide grants to subsidize the capital cost of projects that are developed by private and public entities, co-operatives, and local community organisations.
- (2) The Fund shall provide resources for—
  - (a) grants towards the capital costs of projects implemented by private and public entities, co-operatives, and local community organisations;
  - (b) the provision of technical assistance, training and other forms of capacity building to qualified developers by qualified experts related to the planning and preparation of a project prior to an application for a grant; and
  - (c) the provision of financial assistance.

### **19. Funding sources**

- (1) All contributions and other payments required by this Part shall be paid into the Fund, for the purposes of the Fund and for making other payments required by this Act.
- (2) The Board shall, from time to time in consultation with the Minister, fix the size of the Fund sufficient to achieve the objectives of this Act.
- (3) The sources of income for the Fund shall consist of monies as may be provided—
  - (a) by Government in an annual budgetary allocation, to be deposited in the account of the Board at the beginning of every month or as may be determined by the Minister for Finance;
  - (b) as contributions from international financial organisations, multilateral and bilateral agencies and other development partners;
  - (c) from levies of up to five percent on the commercial generation of electricity to the national grid, as determined by the Minister in consultation with the Minister of Finance, to be deposited in the account of the Fund at the end of every month;
  - (d) from levies of up to five percent on the generation of electricity in specified isolated systems, including systems for private consumption as determined by the Minister in consultation with the Minister of Finance, to be deposited in the account of the Fund at the end of every month;
  - (e) as fees in respect of programmes, publications, seminars, consultancy services and other services provided by the Agency.
- (4) The moneys constituting the Fund shall be placed in an account with a bank to be invested, in such manner as the Board shall deem appropriate, and any income from the investment shall be credited to the Fund.

## 20. Special Purpose Fund

- (1) The Minister may, in consultation with the Minister for Finance, execute agreements with development partners setting up Special Purpose Funds for rural energy detailing separate financing arrangements for the Fund.
- (2) The agreements made in subsection (1) above shall define the specific modalities for administering the Special Purpose Funds.
- (3) The modalities set out under the agreements made under this section shall not be contrary to the general principles established in the First Schedule of this Act for the use of the Fund.

## 21. Management of the Fund

- (1) The Board shall be responsible for policy formulation in connection with the Fund and for governance of the Fund.
- (2) Funds to be paid out of the Fund shall be so paid only with the approval of the Board.
- (3) The Agency shall make available to the Fund such facilities and services of such officers as are necessary for the proper and efficient exercise of the functions of the Fund.
- (4) Where it considers it desirable to reduce risk or avert threatened loss to the Fund, the Board may take any steps it considers necessary on such terms and conditions as it may prescribe.

## 22. Use of the Fund

- (1) The resources of the Fund shall be applied towards—
  - (a) grants to qualified developers;
  - (b) payment or discharge of the expenses or obligations incurred in connection with the performance of the functions of the Agency and the Board; and
  - (c) payment of any remuneration or allowances to the members of the Board and employees of the Agency.
- (2) Grants made by the Fund to developers may be used to co-finance—
  - (a) training and other forms of capacity building of qualified developers;
  - (b) the provision of technical assistance by suitably qualified experts related to the planning and preparation of a project prior to an application for a grant, including pre-investment studies for projects;
  - (c) the capital costs of a project implemented by a qualified developer; and
  - (d) investments in innovative pilot and demonstration projects and applications for renewable energy when development partners make special purpose funds available for that purpose.
- (3) The Fund may not make grants towards the operating or debt service costs of any project or developer.

## 23. Trust Agent

- (1) The Board shall appoint a Trust Agent who shall be responsible for disbursement of grant payments from the Fund and ensuring that any pre-conditions set by the Board for making a grant payment are met by the developer.

- (2) The Trust Agent shall be contracted by the Board through public tender for the procurement of the service where—
  - (a) banks, accounting firms or similar institutions acceptable to the Board may participate in the tender; and
  - (b) the contract with the Trust Agent shall not exceed a period of three years at a time.
- (3) The Trust Agent shall be responsible for the administration of grant payments, including financial disbursement, verification and monitoring activities.
- (4) Details of activities, manner, terms and conditions of grant payments shall be specified in the directives to be issued by the Board and contract documents establishing the relation of the Board and the Trust Agent.
- (5) Selection of the Trust Agent shall ensure that the Trust Agent—
  - (a) is in a position to provide services with a wide geographic coverage across the Mainland Tanzania;
  - (b) has good knowledge of project finance, including rural financing issues, as well as means to deliver, track and monitor finances;
  - (c) is able to make disbursements effectively, while ensuring proper use of funds, with ability to monitor the use of funds in an effective and transparent manner;
  - (d) is able to work closely with the Agency under the direction of the Agency and its delegated representatives;
  - (e) is able to set up and operate a management information system that enables key parties to access that information to track progress on disbursement and utilisation of funds.
- (6) The Trust Agent shall be paid for its services by the Board.
- (7) The Trust Agent shall be independent of the Fund, and shall prepare periodic financial reports at the request of the Director General.

## **24. Annual accounts**

- (a) The annual accounts of the Fund, including expenditures of the Agency, shall be audited by a competent and qualified external auditor appointed by the Board after receiving a recommendation from the Auditor General.
- (b) Donors to the Fund may appoint an auditor of their own choice and at their own expense to audit the accounts of the Fund and Agency if they have a provision of that effect in their agreements to fund the Fund.
- (c) The financial year of the Fund shall commence on the first day of July and shall end on the thirtieth day of June the following year.
- (d) The financial year of the Agency shall be the same as the financial year of the Fund.

## **Part VI – Appointment of Director General, Officers and Staff**

### **25. Appointment of Director-General officers, and staff**

- (1) The Director General of the Agency shall be appointed by the Board.
- (2) The recruitment of the Director General by the Board shall be on the basis of competitive selection.
- (3) The Director General shall, subject to the overall direction of the Board, be the chief executive officer of the Agency and of the Fund.

- (4) The Board shall appoint other officers and staff as may be required for the performance of the functions of the Agency and on such terms and conditions as it may determine, provided that the Director General shall subject to terms and conditions set by the Board, have power to appoint staff of the Agency identified under such regulations.
- (5) The Board shall ensure that the remuneration of the Agency personnel is competitive with that offered by the private sector for comparable responsibilities and shall not be bound by the terms established under the public service structure.

## 26. Functions of the Director General

- (1) Without prejudice to the generality of the foregoing the Director General shall—
  - (a) exercise the functions of the Agency provided for under section [16](#) of this Act;
  - (b) manage the budget, personnel and property of the Agency; and
  - (c) represent the Fund in its dealings with third parties.
- (2) The Director General may delegate his authority to employees of the Agency wherever he deems necessary for the efficient performance of the Agency's activities.

## 27. Reports

- (1) The Director General shall keep all records of the affairs and the meetings of the Board and shall ensure the implementation of its decisions and directives.
- (2) The Director General shall submit to the Board quarterly reports in respect of the revenue received and expenditure incurred by the Fund, incorporating expenditures incurred by the Agency.
- (3) The Director General shall, within three months after the end of each financial year submit to the Board an Annual Report in respect of that year, containing:—
  - (a) audited financial statements of the Fund, incorporating the expenditures of the Agency;
  - (b) performance indicators and any other related information;
  - (c) a report on the activities and operations of the Agency; and
  - (d) such other information as the Board may, before or after the completion of the annual report, direct.
- (4) The Director General shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval, a work plan and budget containing—
  - (a) identification of priority projects that the Agency should include in its work plans;
  - (b) a short-term work plan setting out the principal activities of the Agency planned for the coming year;
  - (c) a medium-term work plan setting out the expected activities of the Agency for the coming three years;
  - (d) estimates of the expenditures of the Agency for the coming year;
  - (e) estimates of the grant allocations to be made from the Fund, including all known commitments, anticipated commitments for the coming year, and estimates of longer term commitments; and
  - (f) estimates of the income of the Fund for the coming three years.
- (5) The Director General shall at any time before the end of a financial year, prepare and submit to the Board for approval any estimates supplementary to the budget.

- (6) The Director General shall prepare such financial and technical reports as requested by the Board.

## **28. Immunities**

An employee of the Agency shall not, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his functions under this Act.

### **First Schedule (Made Under section 21)**

#### **Guidelines for management of the Fund**

##### **Procedures and principles for Fund allocation**

- (1) Authorization of the use of the Fund by the Board shall be as follows—
  - (a) financial commitments from the Fund shall be made by signature of the Chairman of the Board co-signed by one other member of the Board and the Director General;
  - (b) financial commitments of the Agency within the annual budget shall be made by signature of the Director General co-signed by the officer of the Agency in charge of the accounting function.
- (2) The selection of projects for funding and the calculation of the level of grant to a project shall be done on the basis of published criteria at the beginning of each financial year, indicating:—
  - (i) schedules of grants for different categories of investments;
  - (ii) project and developer eligibility criteria; and
  - (iii) the procedures for the submission and processing of applications to the Fund.
- (3) For purposes of regional equity, the Board may differentiate grants by region and location.

##### **Processing of Fund applications from locally initialled projects**

- (4) At the beginning of each financial year, the Agency shall issue a notice by way of advertisement inviting developers to submit applications for grant support for projects.
- (5) The applications shall be assessed by the Agency against the published eligibility criteria and recommendations prepared on eligibility for grant funding and the level of grant that may be awarded.
- (6) The results of the assessment made under paragraph 5 above together with the Agency's recommendations, shall be submitted to the Board for approval.
- (7) The Board may delegate its authority with respect to grant allocations to the Director-General for award of grants below a level that is specified by the Board and revised on an annual basis.
- (8) Within five days of the Board entering into a grant contract with a Developer, the Director General shall send a copy thereof to the Trust Agent instructing the Trust Agent to make grant payments to the project developer in accordance with conditions set out in the grant contract.

##### **Tenders for national priority rural energy projects**

- (9) The Agency shall prepare pre-feasibility studies for priority projects identified by the Board.
- (10) The anticipated grant for a priority project shall be estimated by the Agency on the basis of the investment programme defined in the pre-feasibility study and the adopted schedule of grants for the particular year.

- (11) Priority projects shall be tendered to potential developers through an open and competitive tender process in which the evaluation criteria are specified in the tender documents.
- (12) The required investment program shall be included in the bidding documents for the tender.
- (13) The Agency shall review all proposals received from potential developers, and shall evaluate these proposals against the evaluation criteria published in the tender documents; and shall submit a recommendation on the selected developer to the Board.
- (14) Subject to the Boards approval, the Agency shall negotiate a grant contract with the preferred developer.

### **The grant contract**

- (15) The content of a grant contract shall be in accordance with any conditions established by the Board.
- (16) The information to be included in a grant contract shall include but not be limited to—
  - (a) a description of the project;
  - (b) the place of execution of the project;
  - (c) a report on the financial status of the developer;
  - (d) anticipated financing arrangements for the project including the developer's own equity contribution and sources and conditions of loan finance;
  - (e) the disbursement schedule for grant payments set against project development milestones;
  - (f) mechanisms for project supervision and control, including regular reporting requirements during the implementation of the investment programme;
  - (g) specification of any guarantees as required by the Board;
  - (h) a mechanism and process to transfer the grant contract to another entity where the ownership of the project is transferred to another entity during the period in which the grant contract is valid;
  - (i) description of consequences and procedures in case of non-fulfilment of the investment programme.
- (17) Where the developer is required to obtain a licence or authorisation from EWURA, the grant contract shall have the award of such a licence or authorisation as a condition precedent; and the Board shall be absolved from making any grant payments should the developer's licence be withdrawn or suspended.

### **Procedures for the Trust Agent**

- (18) The Trust Agent shall disburse payments according to the schedules established in the grant contracts.
- (19) The Trust Agent shall employ its own staff or consultants to verify the progress of the project against the milestones established in the grant contract for disbursement of funds to the developer.
- (20) The Trust Agent shall verify that the equipment, materials, installations and other activities set out in the grant contract have been installed and are in accordance with any terms, conditions and standards as set out in the grant contract.

### **Verification by the Agency**

- (21) Where directed by the Board, the Trust Agent shall undertake an independent verification of project completion at the time of commissioning and shall verify that the project is in compliance with any terms, conditions and standards set out in the grant contract



## **Second Schedule (Made under section 10(1))**

### **Proceedings of meetings of the Board**

#### **Meetings**

- (1) The Board shall meet at least four times a year and at such other times as may be necessary or expedient for the transaction of its business.
- (2) All meetings of the Board shall be convened by the Secretary to the Board or where the Secretary is incapacitated, the Chairman, who shall appoint a suitable time, place and date for the holding of each meeting.
- (3) The Secretary shall convene a special meeting of the Board on a request in writing signed by not less than five members of the Board for such a meeting and shall cause the meeting to be held within twenty-one days of the receipt by him of such request.
- (4) Except in the case of a special meeting, a Board meeting shall be convened with at least five days notice in writing, specifying the business to be transacted at the meeting, and written notice of the convening of the meeting shall be given to every member of the Board.
- (5) Any member of the Board with a Commercial interest in any business to be transacted at the meeting shall notify the Chairman and Secretary to the Board and shall excuse himself from that portion of the meeting where that business is discussed.
- (6) The Chairman shall preside at the meeting of the Board and in the absence of the Chairman the members present at the meeting shall elect one of their number to be an interim Chairman.
- (7) Minutes in proper form of each meeting of the Board shall be kept and shall be confirmed by the Board at its next meeting and signed by the Chairman of the meeting.

#### **Quorum and decision making**

- (8) Five members of the Board shall constitute a quorum at any meeting.
- (9) All acts, matters and items authorised by the Board shall be decided by resolution at a meeting of the Board at which there is a quorum.
- (10) A decision approved by voting by the majority of members present at a meeting of the Board shall be deemed to be a decision of the Board.
- (11) Every member of the Board, excluding *ex-officio* members, shall have one vote and in the event of an equality of votes the Chairman of the meeting shall have a second or casting vote in addition to his deliberative vote.
- (12) Notwithstanding the provisions of this Schedule, where the Chairman so directs a decision may be made by the Board without a meeting by circulation of the relevant papers among all the members and the expression in writing of their views, but any member shall be entitled to require that any such decision be deferred until the subject matter shall be considered at a meeting of the Board.
- (13) Subject to the provisions of this Schedule relating to quorum, the Board may act notwithstanding any vacancy in the membership thereof and no act or proceeding of the Board shall be invalid by reason only of some defect in the appointment of a member or a person who purports to be a member.

### **Power to regulate procedure**

- (14) The Board shall have power to regulate its own procedure and may from time to time make standing orders providing for all matters relating to the meetings of the Board and the proper conduct of its business.

### **Agency seal**

- (15) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Board—
- (a) if sealed with the seal of the Board and signed by the Chairman and the Secretary of the Board; or
  - (b) if sealed with the seal of the Board and signed by the Director General and two members of the Board; or
  - (c) if sealed with the seal of the Board and signed by one member of the Board and the Secretary both of whom have been authorised by the Board for the purpose.