ACTS
SUPPLEMENT No. 2 **27th January, 2006.**

ACTS SUPPLEMENT

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Act 2 *Local Governments (Amendment) Act* **2006**

THE LOCAL GOVERNMENTS (AMENDMENT) ACT, 2006.

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Commencement
3. Replacement of sections 91 to 94 of Cap. 243
4. Consequential amendment of section 24 of the Public Procurement and Disposal of Public Assets Act, 2003

THE LOCAL GOVERNMENTS (AMENDMENT) ACT, 2006.

An Act to amend the Local Governments Act to provide for the replacement of Tender Boards of local governments with contract committees; to regulate the procurement procedures of local governments; to ensure accountability in the local government procurement system and to provide for other related matters.

DATE OF ASSENT: 27th December, 2005.

Date of commencement: (See section 2)

BE IT ENACTED by Parliament as follows:

1. Short title

This Act may be cited as the Local Governments (Amendment) Act, 2006.

2. Commencement

This Act shall come into force on a date appointed by the Minister by statutory instrument.

3. Replacement of sections 91 to 94 of Cap. 243

The Local Governments Act, in this Act referred to as the principal Act, is amended by repealing sections 91, 92, 93 and 94 and substituting for them the following—

"91. District contracts committees

(1) There shall be a district contracts committee in each district.

(2) The district contracts committee shall comprise a chairperson, a member representing the town councils and three other members, all of whom shall be nominated by the chief administrative officer from among the public officers of the district council and approved by the Secretary to the Treasury.

(3) A district contracts committee shall seek the services of the district legal advisor in the execution of its work.

(4) Members of the district contracts committee shall be appointed with due regard to their technical competence and skills for the discharge of the functions of the district contracts committee.

(5) Members of the district contracts committee shall hold office for three years and shall be eligible for reappointment for only one more term.

(6) The quorum at any meeting of the district contracts committee is three including the chairperson.

92. Functions of district contracts committee

A district contracts committee shall, in respect of the district council and lower local government councils and administrative units within the district, perform the functions specified in sections 28 and 29 of the Public Procurement and Disposal of Public Assets Act, 2003 (Act No. 1 of 2003).

93. Procurement and disposal unit

(1) Every district shall have a procurement and disposal unit staffed at the appropriate level and shall be headed by a procurement officer who shall be the Secretary to the district contracts committee and who shall have no right to vote at a meeting of the district contracts committee.

(2) The functions of the procurement and disposal unit shall be as specified in sections 31 and 32 of the Public Procurement and Disposal of Public Assets Act, 2003.

94. Regulation of procurement and disposing entities at the district by the Public Procurement and Disposal of Public Assets Authority

The Public Procurement and Disposal of Public Assets Authority under the Public Procurement and Disposal of Public Assets Act, 2003, shall regulate the functions of the procuring and disposing entities of the district, with a view to ensuring that the same standards are maintained as with procurement for the Central Government; and accordingly, the Public Procurement and Disposal of Public Assets Act shall, with the necessary modifications, apply to the procuring and disposing entities.

94A Municipal contracts committee

(1) A municipal council shall establish a municipal contracts committee to serve the municipality.

(2) A municipal contracts committee shall also cater for the procurement of municipal divisions and other lower local government councils within its jurisdiction.

(3) A municipal contracts committee shall comprise of a chairperson and four other members nominated by a Town Clerk from among the public officers of the district employed in the municipality and approved by the Secretary to the Treasury.

(4) A municipal contracts committee shall seek the services of the district legal advisor in the execution of its work.

(5) The quorum at any meeting of the municipal contracts committee is three including the chairperson.

(6) In the absence of the chairperson, the members present shall elect a person from among their number to preside over the meeting.

(7) Members of a municipal contracts committee shall hold office for three years and shall be eligible for reappointment for only one more term.

(8) Members of the municipal contracts committee shall be appointed with due regard to their technical competence and skills required for the discharge of the functions of the contracts committee.

94B Application of sections 92 - 94 to municipal contracts committee

Sections 92, 93 and 94 shall, with the necessary modifications, apply to a municipal contracts committee.

94C Certain officers not to qualify to be members of contracts committee

The following persons shall not be qualified to be members of a contracts committee—

(a) Chief Administrative Officer of a district;

(b) Chief Finance Officer of a district;

(c) Town Clerk of a town council or of a municipality;

(d) Finance officer of a municipality.

94D Reports of contracts committee

(1) Every district contracts committee and municipal contracts committee shall publish quarterly summary reports of all procurements made by it during the quarter concerned containing such particulars as may be prescribed by regulations made under section 175.

(2) Every contracts committee referred to in subsection (1) shall give a copy of the published quarterly report to the council for which the procurement was made, the Permanent Secretary of the ministry responsible for local government and the Public Procurement and Disposal of Public Assets Authority.

94E Delegation of powers of contracts committee

(1) A contracts committee may recommend to the Accounting Officer to delegate any of its functions of procurement to a user department.

(2) The Accounting Officer shall be responsible for supervising the operation of a user department to which procurement functions of the committee have been delegated under subsection (1).

(3) A user department to which procurement functions have been delegated shall, from time to time, submit to the Accounting Officer reports containing such information as may be prescribed by regulations.

(4) In this section "user department" means any department, division, branch, and a lower local government or section of the procuring and disposing entity, including any project unit or community groups working under the authority of the procuring and disposing entity, which initiates procurement and disposal requirements and is the user of the requirements; and includes such other body or bodies as may be prescribed by regulations made under section 175.

(5) For the avoidance of doubt the Minister shall make regulations under section 175 for the purposes of subsection (4).

94F Regulations concerning procurement

(1) Without prejudice to the general effect of section 175 of this Act, the Minister shall, under that section prescribe such sanctions for the contravention of the provisions of this Act or of regulations made under this Act relating to procurement as may be necessary for ensuring due compliance with this Act or with the regulations.

(2) The Minister may, without prejudice to the general effect of subsection (1), for the purposes of that subsection prescribe in connection with a contravention referred to in that subsection—

(a) a penalty not exceeding a fine of one hundred and twenty currency points or imprisonment not exceeding five years or both;

(b) a higher penalty for a second or subsequent contravention;

(c) a penalty not exceeding fifty currency points in respect of each day on which the contravention continues;

(d) a requirement that a court which convicts a person of a contravention referred to in subsection (1), orders the forfeiture to the state of anything in connection with which the contravention was committed or derived from the contravention; or

(e) a requirement that the court shall order the person convicted to pay compensation to any council which has suffered any loss as a result of the contravention.

(3) The Minister may, also by regulations prescribe in relation to the contravention of any of the provisions of this Act or regulations made under this Act relating to procurement, disciplinary penalties as follows—

(a) in respect of minor omissions, commissions and non-compliance specified in the regulations, a severe reprimand from the Accounting Officer;

(b) in respect of breach of the law involving major omissions, commissions and non-compliance specified in the regulations, interdiction for a period not exceeding six months from office with half pay;

(c) in respect of breaches of the law involving grave omissions, commissions and non-compliance specified in the regulations, dismissal from the Public Service and where necessary, criminal proceedings at the instance of the Accounting Officer through the Director of Public Prosecutions; and

(d) dissolution of the contracts committee in lieu of, in addition to, any of the foregoing.

(4) Any regulations to be made by virtue of this section shall be made after consultation with the Minister responsible for finance.

94G Use of contracts committee of another local government

Where in the case of any local government there is for the time being no contracts committee appointed, the Secretary to the Treasury may, in consultation with the Permanent Secretary of the Ministry responsible for local governments, allow the local government to use the services of another local government."

4. Consequential amendment of section 24 of the Public Procurement and Disposal of Public Assets Act, 2003

Section 24 of the Public Procurement and Disposal of Public Assets Act, 2003 is amended by substituting for paragraph (b) the following—

"(b) contracts committees".