

GUYANA

BILL No. of 2007

GUYANA FORESTRY COMMISSION BILL 2007

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SCHEDULE Constitution of the Commission

A BILL

Intituled

AN ACT to repeal and replace the Guyana Forestry Commission Act 1979, re-establish the Guyana Forestry Commission, and provide for incidental matters.

A.D. 2007

Enacted by the Parliament of Guyana:-

PART 1**PRELIMINARY****Short title and commencement.**

1. This Act may be cited as the Guyana Forestry Commission Act 2007 and shall come into operation on a date appointed by order of the Minister.

Interpretation.

2. In this Act -

No. 6 of 2006

“Amerindian” has the meaning given to it by section 2 of the Amerindian Act 2006.

Constitution

“Auditor General” means the Auditor General appointed under **the Constitution**;

“Commission” means the Guyana Forestry Commission established by **section 3**;

“Commissioner” means the Commissioner of Forests appointed under **this Act**;

“financial year” means -

- (a) the calendar year; or
- (b) where the Commission’s accounts are kept by reference to a financial year different from the calendar year, that financial year;

No. of 2007 “forest” has the meaning given to it by section 2 of the Forests Act 2007;

No. of 2007 “forest produce” has the meaning given to it by section 2 of the Forests Act 2007;

No. 2 of 1979 “former Act” means the Guyana Forestry Commission Act 1979;

No. 2 of 1979 “former Commission” means the Guyana Forestry Commission established by section 3 of the former Act;

“member” means a member of the Commission.

PART 2

GUYANA FORESTRY COMMISSION

Establishment of Commission. 3. (1) There is hereby established a body corporate called the Guyana Forestry Commission.

(2) Subject to **this Act**, the Commission is the same body corporate as the former Commission.

Object of Commission. 4. The object of the Commission is to encourage the development and growth of forestry in Guyana on a sustainable basis.

Functions of Commission. 5. The functions of the Commission are -

- (a) to develop, advise the Minister on, and carry out

forestry policy;

- (b) to prepare plans, codes of practice, and guidelines for the conservation and management of forests;
- (c) to research, collate, analyse, prepare, and disseminate data, statistics, and other information about forests and all aspects of forestry, including forest ecology and the use of forest produce;
- (d) to make forest inventories;
- (e) to provide or facilitate education and training in forestry and forestry-related jobs;
- (f) to provide forestry extension services and give advice to persons and communities interested or involved in forestry;
- (g) to provide an inspection, certification, and accreditation service for quality control of forest produce;
- (h) to represent the Government in regional and international forestry meetings and negotiations, and in relation to Guyana's international obligations concerning forestry;
- (i) to administer the Forests Act 2007, including –
 - (i) carrying out the Commission's functions under **that Act**; and
 - (ii) collecting and recovering all fees, charges, levies, premiums, fines, penalties, costs, expenses, and other monies payable under **that Act**; and
- (j) to carry out any function given to it by or under any other written law.

No. of 2007

Restrictions on commercial operations.

6. (1) The Commission shall not enter into commercial operations or otherwise charge for its goods or services except –
- (a) as authorised or required by any other Act; or
 - (b) in accordance with **subsection (2) or (3)**.
- (2) The Commission may -
- (a) provide goods and services that are consistent with its functions; and
 - (b) with the approval of the Minister, charge a rate published in the *Gazette* for any goods or services provided.
- (3) The Commission may, with the consent of the Minister, enter into commercial operations with respect to -
- (a) any intellectual property developed in connection with or resulting from the exercise of any of its functions; or
 - (b) any land or building of the Commission.

Constitution of Commission.

7. (1) The Commission comprises the following members -
- (a) not less than nine and not more than thirteen members, including a chairman, appointed in writing by the Minister; and
 - (b) the Commissioner as an *ex officio* member of the Commission.

Cap. 2:01

- (2) Notwithstanding **section 29(3)** of the Interpretation and General Clauses Act -
- (a) no vice-chairman shall be appointed to the Commission; and
 - (b) no secretary shall be appointed to the Commission, except in accordance with **section 11**.
- (3) No person may be appointed a member unless qualified by reason of relevant knowledge and experience in forest management, forest industries,

manufacturing, marketing, business management, finance, economics, environmental management, Amerindian affairs, law, land use planning, education and training, human resources development, information systems, or research and development.

- Schedule
- (4) The provisions of the **Schedule** apply to the Commission and its members.
- Commission responsible to Minister.**
8. (1) The Commission is responsible to the Minister for the discharge of its functions.
- (2) The Commission shall provide the Minister with any information the Minister requests about the discharge of its functions.
- (3) The Minister may by notice published in the *Gazette* give to the Commission directions of a general character as to the policy to be followed by the Commission in the discharge of its functions.
- (4) The Commission shall give effect to those directions subject to any written law.
- Delegation by Commission.**
9. The Commission may by instrument in writing delegate the exercise of any of its functions under this Act to -
- (a) any committee appointed under **paragraph 4 of the Schedule**; or
- (b) any person.
- Schedule
- Commissioner of Forests.**
10. (1) The Commission shall from time to time appoint a person as Commissioner of Forests and employ that person on terms and conditions set by the Commission.
- (2) The Commissioner is the chief executive officer of the Commission and is responsible to the Commission for –
- (a) executing the policy of the Commission;

- (b) directing the day-to-day business of the Commission;
and
- (c) directing the other employees and the consultants and advisers of the Commission.

(3) The Commissioner may delegate to any officer or employee of the Commission the exercise of any of the Commissioner's functions under this Act, except a function delegated to the Commissioner under **section 9**.

(4) No person may be appointed Commissioner of Forests without the approval of the Minister.

Staff and consultants.

11. (1) The Commission may –
- (a) employ any person as an officer or employee of the Commission; and
 - (b) engage the services of any person as a consultant or adviser.
- (2) The Commission shall appoint a person as its secretary.
- (3) All officers (other than the Commissioner), other employees, consultants, and advisers shall be employed or engaged on terms and conditions set by the Commission on the advice of the Commissioner.

Human resources policy.

12. The Commission shall establish and carry out a human resources policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring -

- (a) safe and healthy working conditions that conform to the requirements of the Occupational Safety and Health Act 1997;
- (b) the impartial selection of suitably qualified persons for appointment;
- (c) opportunities for the enhancement of the abilities of individual employees; and

- (d) recognition of the special employment requirements of Amerindians, women, and people with disabilities.

Dealing with privileged information.

13. (1) Except in accordance with **subsection (2)**, no person who has obtained information in his capacity as a member, employee, consultant, or adviser of the Commission shall directly or indirectly –

- (a) make a record of that information;
- (b) disclose that information to any person; or
- (c) make use of or act on that information.

(2) A person may make a record of, disclose, make use of, or act on information -

- (a) for the purposes of the Commission;
- (b) where required by law; or
- (c) where authorised by the Commission in circumstances where the record, disclosure, use, or act in question is not likely to prejudice the Commission.

(3) As soon as practicable after authorising a record, disclosure, use, or act under **subsection (2)(c)**, the Commission shall enter its particulars in the Commission's register of interests.

PART 3

FINANCIAL PROVISIONS AND ACCOUNTABILITY

Funds and loan charges.

14. (1) The funds of the Commission comprise -

- (a) money appropriated by Parliament and paid to the Commission for the purposes of the Commission;
- (b) other money or property lawfully received by the Commission for the purposes of the Commission; and
- (c) income derived from any money or other property of the Commission.

(2) The Commission shall meet any charges (for example, interest) relating to any amount allocated to the Commission from money lent to the Government except where those charges are met by money appropriated by Parliament for that purpose.

(3) The Commission shall keep proper records of the general fund maintained under **section 15**, the reserve fund maintained under **section 16**, and the special funds maintained under **section 17**.

General fund.

15. (1) The Commission shall maintain a general fund and pay into it all money paid to the Commission for the Commission's purposes and all income except money kept in the reserve fund maintained under **section 16** or in a special fund maintained under **section 17**.

(2) All expenses incurred by the Commission in carrying out its functions and discharging all liabilities properly incurred by the Commission shall be paid out of the general fund.

Reserve fund.

16. (1) The Commission shall maintain a reserve fund and transfer into it from the net surplus for each year an amount not less than the amount fixed by the Minister and notified to the Commission.

(2) If the reserve fund is insufficient to cover any net loss of the Commission recorded in its profit and loss account for any financial year, the amount of the deficiency shall be charged on the Consolidated Fund.

(3) If in any succeeding financial year a net surplus accrues to the Commission, the Commission shall pay into the Consolidated Fund an amount agreed with the Minister responsible for finance until the amount charged on the Consolidated Fund, together with interest on that amount as determined by the Minister, is fully repaid.

(4) For the purposes of this section, net surplus is determined by deducting from gross income all expenses together with allowances for depreciation of assets, contributions to staff benefit funds, provision for bad and doubtful debts, and other contingencies and accounting provisions as are

usually made by comparable institutions.

Special funds.

17. (1) The Commission may create and maintain special funds to carry out its functions.

(2) Without limiting the generality of **subsection (1)**, any money granted to the Commission by foreign states, international organisations, multilateral funding agencies, foundations, corporations, other entities, or individuals may be earmarked for payment into a special fund, and the money shall not be used for any purpose other than that for which it was granted.

(3) With the approval of the Minister, the Commission may engage any financial institution (as defined by the Financial Institutions Act 1995) to -

No. 1 of 1995

- (a) administer and keep proper records of any special fund;
- (b) act as the agent of the Commission in making a grant or a loan;
- (c) recover any interest due to the Commission under any loan.

Rules for financial operations.

18. (1) As soon as practicable after the commencement of **this Act**, the Commission shall make rules for its financial operations, including rules on -

- (a) the manner in which and the employees by whom payments are to be approved;
- (b) the bank into which moneys of the Commission are to be paid and the designation of any account with that bank;
- (c) the amount to be retained by accounting officers to meet petty disbursements and immediate payments and the maximum amount that may be so disbursed for any one payment;
- (d) the method to be adopted in making payments out of the funds of the Commission; and

- (e) the proper keeping and control of the funds of the Commission.
- (2) No rule may be made except with the Minister's approval.
- (3) Every employee, consultant, and adviser of the Commission shall comply with the rules, and the Commission may apply disciplinary and other sanctions as it thinks fit against any employee, consultant, or adviser who breaches a rule.
- Guarantee of loans.** 19. The Commission shall be regarded as a Corporation for the purposes of the Guarantee of Loans (Public Corporations and Companies) Act.
Cap. 77:01
- Limits on borrowing powers.** 20. The Commission shall not borrow any money –
- (a) except for the purpose of meeting an obligation or carrying out its functions;
 - (b) exceeding any limit of borrowing fixed by the Minister responsible for finance and notified to the Commission;
 - (a) by way of an overdraft or unsecured loan, except for a period of less than 1 year;
 - (b) on the security of its assets, except with the approval of the Minister responsible for finance.
- Investment of funds.** 21. Except with the approval of the Minister, the Commission shall not –
- (a) invest any money in any securities; or
 - (b) sell or otherwise dispose of any of its securities.
- Power to make grants and loans.** 22. (1) The Commission shall not make any grant or loan except –
- (a) for the purpose of carrying out a function of the Commission;
 - (b) from money drawn out of a special fund maintained under **section 17**; and

(c) on terms and conditions it considers appropriate.

(2) In making a loan, the Commission shall charge interest at the rate it considers appropriate in the particular case.

Exemptions from taxes and duties.

23. The Minister responsible for finance may by order subject to affirmative resolution of the National Assembly exempt the Commission from liability for any tax, duty, rate, levy or other charge payable under any written law.

Accounts and audits.

24. (1) The Commission shall keep accounts of its transactions to the satisfaction of the Minister and the Auditor General shall audit these accounts annually.

(2) The Commission may at any time appoint an independent auditor to examine and report on its accounts.

(3) The Commissioner and each employee of the Commission shall on request give the auditor -

(a) full access to all books, documents, cash, and securities of the Commission; and

(b) any information within his or her knowledge relating to the operations of the Commission.

(4) The auditor may summon and examine any person to obtain information for the audit.

(5) Any person summoned under **subsection (4)**, other than a public officer or an employee of the Commission, is entitled to payment by the Commission for attendance on the auditor as if the person were a witness attending a legal proceeding in obedience to a subpoena issued by the High Court.

(6) No person summoned under **subsection (4)** shall fail or refuse to comply with the summons without reasonable excuse.

(7) In **subsections (3), (4), and (5)**, “auditor” means -

- (a) the Auditor General; or
- (b) an auditor appointed under subsection (2).

Reports.

25. (1) No later than six months after the end of each financial year, the Commission shall submit to the Minister a report containing -
- (a) an account of its activities during the financial year in the detail directed by the Minister; and
 - (b) a statement of the Commission's accounts audited under **section 24(1)**.
- (2) The Minister shall as soon as practicable, and in any event no later than eight months after the end of the financial year, cause to be laid before the National Assembly the report referred to in **subsection (1)** together with a copy of the auditor's report on the Commission's accounts following the audit under **section 24(1)**.

PART 4
MISCELLANEOUS

Status of minutes of meetings.

26. (1) The secretary of the Commission shall keep in a minute book proper minutes of the proceedings of each meeting of the Commission.
- (2) The Chairperson or other person presiding at the meeting shall certify and sign those minutes at the next meeting or as soon as practicable afterwards.
- (3) In the absence of proof to the contrary, -
- (a) a meeting shall be deemed to be duly convened where there is a quorum;
 - (b) all members of the Commission attending a meeting shall be deemed to be duly qualified to act; and
 - (c) minutes of any meeting that appear to be duly certified and signed shall be regarded as sufficient evidence of the matters stated in them.

Offences and penalties.

27. (1) Every person commits an offence who contravenes or fails to comply with –

- (a) **section 13(1) or paragraph 6(1) or (3) of the Schedule;**
- (b) **section 24(6).**

(2) Every person who commits an offence against **paragraph (a) of subsection (1)** is liable on conviction to a fine of \$1,000,000 and imprisonment for a term of 1 year.

(3) Every person who commits an offence against **paragraph (b) of subsection (1)** is liable on conviction to a fine of \$500,000 and imprisonment for a term of six months.

(4) Notwithstanding **subsections (2) and (3)**, where a person convicted of an offence referred to in **subsection (2) or (3)** is a body corporate, that person is liable to ten times the fine specified for the offence in **subsection (2)**, or, as the case may be, **subsection (3)**.

(5) A prosecution for an offence against **this section** may be brought either summarily or by indictment, at the election of the person bringing the prosecution.

Exclusion of Limitation Act.
Cap. 7:02

28. The Limitation Act does not apply to any proceedings instituted by the Commission -

- (a) to recover any money due and payable under this Act or any other written law; or
- (b) to claim any property.

Protection of members.

29. (1) No member shall be liable for any act done or omitted to be done by the Commission in the course of carrying out its functions, except where the member has acted in bad faith.

(2) Where a member is exempt from liability by reason only of **subsection (1)**, the Commission is liable to the extent that it would be if that member were an employee or agent of the Commission.

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| Approval or consent of Ministers. | 30. Any approval or consent given under this Act by the Minister or by the Minister responsible for finance may be given generally in respect of a class or description of matters or cases, or specifically in respect of a particular matter or case. |
| Regulations. | 31. The Minister may make regulations, subject to negative resolution of the National Assembly, providing for any matter necessary for giving full effect to the provisions of this Act and for the due administration of it. |
| Repeals.
No. 2 of 1979 | 32. The former Act is repealed. |
| Transitional provisions relating to members of Commission. | 33. (1) On the commencement of this Act, - <ul style="list-style-type: none"> (a) the person holding appointment as chairman of the former Commission immediately before the commencement of this Act is deemed to have been appointed chairman of the Commission under section 7(1)(a); (b) every person holding appointment as a member of the former Commission (other than the chairman) immediately before the commencement of this Act is deemed to have been appointed a member of the Commission under section 7(1)(a); (c) the person holding appointment as Commissioner of Forests immediately before the commencement of this Act is deemed to have been appointed Commissioner under section 10. |

- (2) A deemed appointment under **this section** expires on the earlier of -
- (a) the day on which the appointment would have expired had this Act not been passed; or
 - (b) the day six months after this Act comes into operation.

SCHEDULE

CONSTITUTION OF THE COMMISSION

Section 7(4)

- | | |
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| Gazetting of appointments. | <p>1. As soon as practicable, the Commission shall publish in the <i>Gazette</i> -</p> <ul style="list-style-type: none"> (a) the name of every member of the Commission on the commencement of this Act; and (b) every change in membership of the Commission. |
| Duration of office. | <p>2. (1) This paragraph applies to all members except the Commissioner.</p> <p>(2) Each member shall be appointed for a term not exceeding three years.</p> <p>(3) The Minister may at any time, by giving written notice to a member, and after affording the member natural justice, revoke the appointment of the member for incompetence, disability, bankruptcy, neglect of duty, or misconduct, proven to the satisfaction of the Minister.</p> <p>(4) A member may at any time resign by giving the Minister a signed notice of resignation.</p> <p>(5) A member is eligible for reappointment.</p> |
| Meetings. | <p>3. (1) Subject to subparagraphs (2) and (3), the Commission shall meet as often as it considers necessary for its purposes.</p> <p>(2) Once every year the Commission shall hold a special business meeting at which the Commissioner shall present to the Commission –</p> <ul style="list-style-type: none"> (a) the statement of accounts audited under section 24(1); and (b) an account of the Commission’s activities in the preceding financial year. <p>(3) The chairman may at any time summon a special meeting of</p> |

the Commission.

(4) Five members make up a quorum for transacting business at any meeting of the Commission.

(5) Where a decision of the Commission is taken by vote –

- (a) the decision shall be made in accordance with the votes of the majority of the members present and voting; and
- (b) the chairperson or other member presiding shall have a casting as well as an original vote.

(6) The Commissioner may participate in meetings but shall not vote on any decision of the Commission.

Committees.

4. (1) The Commission may at any time appoint a committee to examine and report to it on any matter connected with any function of the Commission.

(2) A committee shall consist of at least two members of the Commission together with any other person whose assistance or advice the Commission desires.

(3) Where non-members are appointed to a committee, the Commission shall pay to each of them, in respect of their membership of the committee, such remuneration and allowances as the Minister may determine.

Assent to resolution without meeting.

5. A resolution is a valid resolution of the Commission even if a meeting of the Commission is not convened, if -

- (a) at least 10 days' (or any other period prescribed by regulations) written notice of the proposed resolution was given to all members;
- (b) the resolution is signed or assented to by letter, telegram, telex, facsimile, or electronic mail transmission by a majority of members who are entitled to vote; and
- (c) where any member has assented by telegram, telex,

facsimile, or electronic mail transmission, that member's assent is subsequently authenticated by his or her signature.

Disclosure of interest.

6. (1) Any member whose interest is likely to be affected (directly or indirectly) by a decision of the Commission on any matter shall disclose to the Commission the nature of the interest as soon as the relevant facts have come to his or her knowledge.

(2) The secretary of the Commission shall record any disclosure under **subparagraph (1)** in the minutes of the Commission.

(3) The member making the disclosure shall not be present during and shall not take part in any deliberation or decision of the Commission on the matter.

(4) For the purposes of **this section**, the interests of a parent, spouse, child, or any other member of the family, of a member is deemed to be the interests of that member.

Remuneration and allowances.

7. The Commission shall pay to the Chairperson and every other member appointed to the Commission such remuneration and allowances as the Minister may determine in respect of the office held.

Seal of the Commission.

8. (1) The Commission shall have a common seal and may at any time alter or change that seal.

(2) The secretary of the Commission shall keep that seal in his or her custody.

(3) The seal may be authenticated –

- (a) by the signatures of the Chairperson and the secretary;
- (b) by the signatures of the Commissioner and the secretary; or
- (c) in any other manner authorised by the Commission.

(4) Every document purporting to be an instrument duly

authenticated under the seal of the Commission shall be regarded as so authenticated in the absence of proof to the contrary.

EXPLANATORY MEMORANDUM

This Bill seeks to re-establish the Guyana Forestry Commission and provide for its governance. It is divided into 4 Parts and one Schedule.

Part 1 (Preliminary) sets out the short title and defines expressions used throughout the Act.

Part 2 (Guyana Forestry Commission) establishes the Commission, which is the same body corporate as the Commission established under the Guyana Forestry Commission Act 1979 (No. 2 of 1979). The Constitution of the Commission is set out in the **Schedule**. The Commission is allowed to hire employees and engage consultants and other advisers, but restrictions are placed on commercial operations. **This Part** also imposes strict confidentiality requirements on the members, employees, and consultants and advisers of the Commission.

Part 3 (Financial Provisions and Accountability) deals with financial and accounting matters. The Commission is required to keep proper financial accounts and submit to the Minister audited accounts for each financial year together with an annual report on its activities. General, reserve, and special funds are required to be established, for different purposes. The Government will be able to guarantee approved loans taken out by the Commission under the Guarantee of Loans (Public Corporations and Companies) Act *Cap. 77:01*, but limits are set on the Commission's power to borrow and invest money, and to make grants or loans.

Part 4 (Miscellaneous) concerns minutes of meetings, offences, and exclusion of the Limitation Act from proceedings instituted by the Commission. It also protects every member of the Commission from civil liability, except if that member acts in bad faith. Ministers are allowed to give their consent or approval under the Act generally or specifically.

The Guyana Forestry Commission Act 1979 (No. 2 of 1979) is repealed. Transitional provisions are included to retain the existing members of the Commission for a time. The **Schedule** sets out the constitution of the Commission.

Minister of Agriculture with responsibility for Forestry