

1062/2010

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Act on Unincorporated State Enterprises

By decision of Parliament:

Chapter 1

General provisions

Section 1

Status and duties

Unincorporated state enterprises provide services for central government agencies and bodies, for off-Budget funds and for other unincorporated state enterprises as well as for Parliament and units operating under its mandate, in its supervision and in connection with it as provided in this Act.

Unincorporated state enterprises may also provide services to corporate entities whose activities are mainly funded by appropriations from the Budget.

Section 2 Unincorporated state enterprise

Pursuant to this Act, under the administrative branch of the Ministry of Finance, Senate Properties operates in the capacity of an unincorporated state enterprise. The purpose of Senate Properties is to provide facilities services and other services closely connected with these services to agencies, bodies and units specified in section 1, and to attend to government real estate assets in its possession. Senate Properties shall also be disposed to perform its functions under emergency conditions as referred to in section 2 of the Emergency Powers Act (1080/1991) as provided by the Ministry of Finance and, with regard to defence and security properties, as provided by the Ministry of Defence.

Section 3

Operational principles of unincorporated state enterprises

Unincorporated state enterprises shall operate according to sound business principles. Government assets under the management of unincorporated state enterprises serve to meet these commitments. To the extent that an unincorporated state enterprise is unable to fulfil its commitments, the State shall be responsible for them.

Chapter 2

Finances of unincorporated state enterprises

Section 4

Equity capital

Unincorporated state enterprises possess equity capital consisting of original own funds, other equity capital and revaluation reserves.

Original equity capital consists of capital entered into the unincorporated state enterprise as the basis of income.

Other equity derives from equity appropriated from the profits of unincorporated state enterprises or capital that has been assigned to them as other equity capital. The revaluation reserves show the revalued amount

of fixed assets. Other equity capital may be transferred to the original own funds.

Section 5

Loans and guarantees of unincorporated state enterprises

Unincorporated state enterprises are entitled, within the allocation specified by Parliament in connection with Budget discussions, to draw loans to finance their operations.

By parliamentary consent, unincorporated state enterprises may grant guarantees on loans of limited liability subsidiaries as referred to in chapter 1, section 5 and 6(1) of the Accounting Act (1336/1997). However, unincorporated state enterprises may not grant guarantees on loans of subsidiaries that control, alone or together with other subsidiaries, another company.

A guarantee fee, as referred to in the Act on State Lending and State Guarantees (449/1988), is charged by the State for loans drawn and guarantees granted by unincorporated state enterprises.

Further provisions on raising loans, the terms and conditions for borrowing and the purpose of loans as referred to in subsection 1, and on determining and charging the fee referred to in subsection 3 may be given by government decree.

Chapter 3

Governance of unincorporated state enterprises

Section 6

Power of oversight by Parliament

Parliament, in connection with the Budget proceedings:

- 1) approves any increase or decrease in original own funds and takes decisions on Budget appropriations for capitalisation of the original own funds of unincorporated state enterprises;
- 2) gives approval to unincorporated state enterprises to raise loans to finance their operations;
- 3) approves the maximum amount of investment for the financial year for unincorporated state enterprises and endorses investment authorisations for commitments which will generate expenditure over later financial years.

Once Parliament has approved the Budget, the designated ministry establishes the unincorporated state enterprise's service and performance targets as well as its objectives for profit to be released as income.

Chapter 4

Administration in unincorporated state enterprises

Section 7

Board of directors

Each unincorporated state enterprise has a board of directors with a maximum of eight members.

The designated ministry appoints the board members for a period of one year maximum and nominates a chairman of the board of directors and a vice-chairman from the board members. At least one of the board members must represent the staff of the unincorporated state enterprise. The staff representative must be employed by the unincorporated state enterprise. Further provisions on the composition of the board of directors may be given by government decree, which is enacted specifically for the individual enterprise.

The board of directors or individual board members are relieved of their duties by the designated ministry.

Decision-making by the board of directors, disqualification of board members, board meetings, minutes of the board and transfer of decision-making are governed by the pertinent provisions laid down in the Limited

Liability Companies Act (624/2006).

Section 8

Duties of the board of directors

The board of directors oversees and supervises the operation of the unincorporated state enterprise. The board of directors sees to the administration of the unincorporated state enterprise and the appropriate organisation of its operations, and takes particular care to ensure that the enterprise operates in accordance with the decisions and instructions issued by Parliament and other authorities and that control of the unincorporated state enterprise's accounts and finances are properly organised.

In particular, the board of directors shall:

- 1) present a budget proposal for the unincorporated state enterprise;
- 2) propose performance targets and objectives for profit to be released to income;
- 3) make decisions on the development of the unincorporated state enterprise within the parameters of the financial targets set by the designated ministry and monitor and report on the achievement of the targets;
- 4) select and discharge the managing director;
- 5) make decisions on raising loans for the unincorporated state enterprise;
- 6) make decisions on major investments and other expenditure with a long-term impact;
- 7) determine the use of shareholder rights associated with shares controlled by an unincorporated state enterprise as referred to in section 6 on government agencies and public bodies in the State Shareholdings and Ownership Steering Act (1368/2007);
- 8) draw up the unincorporated state enterprise's financial statement, including an annual report and, in this context, propose measures related to the unincorporated state enterprise's profits and losses and present the financial statement, annual report and said proposal for Government ratification;
- 9) make decisions on representatives for the unincorporated state enterprise and on those entitled to sign on behalf of the enterprise;
- 10) within the limits of ministerial decisions taken on the basis of section 6 of the Personnel Fund Act (934/2010), make decisions on a profit commission scheme as referred to in said Act for the unincorporated state enterprise and on the application of such a scheme;
- 11) make decisions on the acquisition of real estate assets for the unincorporated state enterprise and, as laid down in the Act on the Right to Transfer State Real Estate Assets (973/2002), decide on the disposal of State real estate assets and the lease of State land;
- 12) handle and resolve other matters of wide-ranging or significant import.

Further provisions on the duties of the board of directors may be given by government decree, enacted individually for each organisation.

Section 9

Managing director

Each unincorporated state enterprise has a managing director, who is responsible for the executive management and development of the unincorporated state enterprise's operations, for taking care of its routine administration and for ensuring that its accounts are in compliance with the law and that its financial

affairs have been arranged in a reliable manner. The provisions on managing directors of companies in chapter 6, sections 17 to 20 of the Limited Liability Companies Act apply to the managing director.

The managing director is responsible for the execution of the decisions taken by the board of directors and for adhering to the stipulations of the board of directors and for informing the board of directors of any measures or events of import to the operation of the unincorporated state enterprise.

Section 10 **Staff participation**

The staff representative in the board of directors is endowed with the same rights and obligations as the rest of the board members. However, the staff representative does not have the right to take part in selection of or dismissal of the management of the unincorporated state enterprise, or matters related to the management's terms of contract, the terms of contract of the personnel or issues related to industrial action.

Instead of applying the Act on Cooperation within Central Government Agencies and Public Bodies (651/1988), unincorporated state enterprises may decide to apply the Act on Co-operation within Undertakings (334/2007).

Unincorporated state enterprises that apply the Act on Co-operation within Undertakings may contract an agreement as referred to in section 61 of the said Act.

Section 11 **Board of directors' and managing director's duty of care**

The board of directors and managing director of unincorporated state enterprises are expected, through careful management, to promote the interest of the unincorporated state enterprise.

Chapter 5 **Accounting and financial statements of unincorporated state enterprises**

Section 12 **Accounting and financial statement**

Unincorporated state enterprises are required to keep accounting records. The legislative provisions on accounting and financial statements for limited liability companies in the Accounting Act and the Auditing Act apply to the accounting and financial statements of unincorporated state enterprises. The period covered by the accounts for unincorporated state enterprises is one calendar year.

Unincorporated state enterprises must present financial statements for each accounting period by the end of February. The financial statement of the unincorporated state enterprise is signed by the board of directors and managing director of the enterprise. Each unincorporated state enterprise must submit the financial statement records to the designated ministry.

The Government endorses the financial statements of the unincorporated state enterprises. Based on the financial statements, the Government makes decisions on the profit to be entered as income in the Budget and on other measures required in terms of the operation and finances of the incorporated state enterprises.

Section 13 **Balance sheets of unincorporated state enterprises**

Where an unincorporated state enterprise commences operations, in connection with the parliamentary Budget proceeding, the Government decides, by authority of Parliament, on the government assets to be transferred to the unincorporated state enterprise and determines which portion of the assets is to be entered as original own funds, other equity capital or loan capital for the unincorporated state enterprise. The assets are valued at current value.

Where assets are transferred to unincorporated state enterprises already in operation or where assets of an unincorporated state enterprise are transferred into on-budget entities, the provisions in subsection 1 apply

to the decisions on transfers and on the formulation of balance sheets.

Where individual items or whole entities of government real estate assets whose current value is no more than EUR 30 million are transferred to an unincorporated state enterprise or from an unincorporated state enterprise into on-budget entities, the Government shall make the decision on the transfer. The transfer is entered into the unincorporated state enterprise's other equity capital as an appreciation or depreciation or as loan capital.

The auditors of the unincorporated state enterprise must assess the assets and liabilities and their value and present a statement on the assessment before any decisions referred to in subsections 1 to 3 are taken.

Section 14 **Audit**

Each designated ministry annually appoints two auditors to audit the administration, finances and accounts of the unincorporated state enterprises. One of the auditors must be a CPFA auditor or a CPFA corporation as referred to in the Act on Chartered Public Finance Auditors (467/1999) and the other a KHT auditor or KHT firm as referred to in the Auditing Act (459/2007).

The auditors of the unincorporated state enterprise shall, for the accounting period, audit the administration of the unincorporated state enterprise, its accounting and financial statement as referred to in the Auditing Act. In addition, the auditor's report must specify whether the administration and management of the unincorporated state enterprise complies with legislature and legal provisions, decisions issued by Parliament, Government and the ministries and other governance decisions.

The provisions in the Act on Chartered Public Finance Auditors on auditors, the disqualification of auditors and the confidentiality duty of auditors apply to auditors of unincorporated state enterprises.

The operation of unincorporated state enterprises is audited by the National Audit Office.

Chapter 6 **Miscellaneous provisions**

Section 15

Liability in damages

Members of the board of directors and the managing directors of unincorporated state enterprises are liable in damages for the loss that they, deliberately or out of negligence, might cause to the enterprise when executing their duties, as laid down in chapter 22 of the Limited Liability Companies Act on the liability in damages of the management. The liability in damages of auditors is laid down in section 51 of the Auditing Act and in section 24 of the Act on Chartered Public Finance Auditors.

The designated ministry shall take decisions on any action brought by an unincorporated state enterprise for liability for damages as referred to in subsection 1 above. The provisions in chapter 22, section 8 of the Limited Liability Companies Act apply to the statute of limitations for the right of action.

Section 16

Role as interested party

Unincorporated state enterprises bear responsibility and are accountable for the interest and rights of central government and oversee matters related to the unincorporated state enterprise in courts of law, before authorities and in other proceedings.

Section 17

Pensions and other benefits and remuneration

All staff pensions and other staff benefits and remuneration which are disbursed in a centralised manner based on employment relationships as well as family pensions of dependents deriving from employment relationships of staff members are disbursed from central government resources subject to separate provisions regarding such

benefits and remuneration.

Unless otherwise specified by agreement with the managing director, the managing director's pension entitlement and other benefits and remuneration referred to in subsection 1 above are determined on the same basis as comparable staff benefits and remuneration.

The benefits and remuneration referred to in subsections 1 and 2 above and the handling fees for them as stipulated in the Act on Criteria for Charges Payable to the State (150/1992) are collected from the unincorporated state enterprises, unless otherwise provided elsewhere in legislation for benefits and remuneration or for the collection of fees or for charges on the handling of benefits and remuneration.

Section 18

Subsidiaries

Unincorporated state enterprises may, on separate grounds granted by Government, have control of the shares of limited liability companies as referred to chapter 1, section 5 and section 6(1) of the Accounting Act. The said limited liability companies are subsidiaries of the unincorporated state enterprises.

Unincorporated state enterprises may not grant group contributions to their subsidiaries.

By way of derogation from subsection 1, unincorporated state enterprises may acquire and control shares of subsidiaries as referred to in section 3(1c) of the Act on the Right to Transfer State Real Estate Assets (973/2002).

Section 19

Certain Senate Properties conveyances and disposals

By way of derogation from section 13(3), the Ministry of Finance makes decisions on the conveyance of individual items or whole entities of real estate assets to Senate Properties or from it to on-budget entities, the current value of which is at most EUR 10 million.

Besides the provisions laid down in the Act on the Right to Transfer State Real Estate Assets, real estate assets controlled by Senate Properties and leased to the Finnish Defence Forces may not be disposed of without the consent of the Ministry of Defence unless otherwise provided by the Government.

Chapter 7

Transitional provisions and entry into force

Section 20

Entry into force

This Act enters into force on 1 January 2011.

This Act repeals:

- 1) the State Enterprise Act (1185/2002), henceforth *repealed act*, and
- 2) the Senate Properties Act (1196/2003), henceforth *prior act*.

Actions necessary for the implementation of this Act may be undertaken before the Act's entry into force.

Section 21

Transitional provisions

The repealed act and provisions issued by virtue of said act are applicable to Metsähallitus until otherwise provided with respect to it.

The repealed act is applicable to Finnpiilot Pilotage Ltd until otherwise provided, but only until 31 December 2013. The repealed act and legislative decrees issued by virtue of said act will be applied to the Senate Properties' financial statement and audit for the accounting period terminating on 31 December 2010 and the Finnpiilot Pilotage's financial statement and audit for the final accounting period terminating on 31 December.

The rights and obligations of Senate Properties under the prior act will be transferred to Senate Properties as referred to in this Act once this Act has entered into force. The staff of Senate Properties will be transferred into the service of Senate Properties as referred to in this Act and will retain the rights and obligations from their earlier employment relationships.

Once this Act has entered into force, guarantees granted by Senate Properties as referred to in section 4(1) of the prior act and loans as referred to in section 4(3) of the prior act will remain subject to the provisions in force under the prior act until the termination of the contractual period for the loan period.

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In Helsinki, 10 December 2010

President of the Republic
TARJA HALONEN

Minister for Public Administration
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