

**PUBLIC ENTERPRISES BILL, 2022**

*(Bill No. 32 of 2022)*

**OBJECTS AND REASONS**

The object of this Bill is to provide for the continuation of the Public Enterprise Monitoring Commission (hereinafter referred to as “the Commission”); to establish its governing body and to provide for its composition, functions, powers, management and governance.

The Bill makes provision for the efficient governance of public enterprises and the monitoring of their performances and provides a harmonised and coherent framework for their establishment, governance, and operation.

In addition, the Bill seeks to clarify the accountability and the relationships between board members and those charged with governance and management of the public enterprises, responsible Ministers, the Minister responsible for finance and the Commission.

Finally, the Bill seeks to repeal and replace the Public Enterprise Monitoring Commission Act (Act No 3 of 2013), and to provide for other connected matters.

**Dated this 21<sup>st</sup> day of November, 2022.**

**NAADIR HASSAN  
MINISTER OF FINANCE,  
NATIONAL PLANNING AND TRADE**

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## **PUBLIC ENTERPRISES BILL, 2022**

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## **PUBLIC ENTERPRISES BILL, 2022**

*(Bill No. 32 of 2022)*



### **A BILL FOR**

**AN ACT TO PROVIDE FOR THE CONTINUATION OF THE PUBLIC ENTERPRISE MONITORING COMMISSION, TO PROVIDE FOR ITS COMPOSITION, FUNCTIONS, POWERS, MANAGEMENT AND GOVERNANCE; TO MAKE PROVISION FOR THE EFFICIENT GOVERNANCE OF PUBLIC ENTERPRISES AND THE MONITORING OF THEIR PERFORMANCES; TO PROVIDE A HARMONISED AND COHERENT FRAMEWORK FOR THEIR ESTABLISHMENT, GOVERNANCE, OPERATIONS, TO CLARIFY ACCOUNTABILITY RELATIONSHIP BETWEEN PUBLIC ENTERPRISES, BOARD MEMBERS, RESPONSIBLE MINISTERS, THE COMMISSION; TO REPEAL THE PUBLIC ENTERPRISE MONITORING COMMISSION ACT; AND TO PROVIDE FOR OTHER INCIDENTAL OR CONNECTED MATTERS.**

**ENACTED** by the President and the National Assembly.

### **PART I - PRELIMINARY**

#### **Short title and commencement**

1. This Act may be cited as the Public Enterprises Act, 2022 and shall come into operation on such date as the Minister may, by notice published in the Gazette appoint.

## Interpretation

2.(1) In this Act, unless the context otherwise requires —

“accounting officer” means a Chief Executive Officer, or any other officer whose duties involve being responsible for the management of moneys, stores, and the assets of a public enterprise;

“asset” means any item of economic value owned by a public enterprise;

“associate” means the company which holds, by itself or its nominees, shares in another company, which entitles the holder of such shares to exercise at least one-fifth of the unrestricted voting rights exercisable at any general meeting of that other company;

“Board” means the Board of directors or other governing body of the public enterprise, by whatever name called, holding positions comparable with those of the Board of directors of a company;

“Chief Executive Officer” means —

- (a) in relation to the Commission, the person who is responsible under the direct authority of the Commissioners to administer this Act;
- (b) in relation to a public enterprise, the person who is responsible under the direct authority of the Board for the conduct of the business of the public enterprise;

“Commission” means the Public enterprise Monitoring Commission continued under section 5;

“Commissioner” means a member of the Commission appointed under section 9;



“Controlling power” means the power effectively used by the Government to direct the activities and guide the operation of a public enterprise;

“Court” means the Supreme Court;

“Director” means a person appointed as Director, trustee or a member of the Board of a public enterprise;

“exceptional circumstances” means a situation which is not ordinary and that could not be reasonably foreseen;

“governing law” means the Act or Decree which establishes and provides for the objectives, purposes, and governance of a public enterprise;

“independent” means to be self-governing, neutral and not subject to the direction or control of any person or authority;

“internal audit” means a process to measure, evaluate and report to the Board on the adequacy and effectiveness of the system of internal control, risk management strategies and governance of the organisation used to ensure the validity of financial and other information;

“major decision” means a course of action purposely chosen from a set of alternatives to achieve organisational or managerial objectives or goals;

“minority shares” means a partial ownership stake in a company that is less than 50 percent of the total shares in terms of voting rights;

“Minister” means the Minister responsible for finance;

“organisation” includes a company, a body corporate, a statutory corporation, a statutory body, a trust, a partnership, or a joint venture;

“parent” means a parent company that owns more than 50 percent of the outstanding voting shares in another company.

“public corporation” means any corporation, board or any other body which was or is established by or under any written law other than the Companies Act, with capital wholly or partly provided by the Government by way of grant, loan or other form;

“public enterprise” means any public Corporation, board or other body, which was or is established under any written law, including the Companies Act, where the Government has the controlling interest; and is specified in Schedule 1;

“principal officer” means a member of a Board, Chief Executive Officer, senior manager, chief financial officer, financial controller, internal auditor, auditor, Board Secretary; and includes a person however designated holding similar position and responsibilities;

“responsible Minister” means the Minister for the time being responsible for the relevant public enterprise, specified in column 2 of Schedule 1;

“Secretary” means a person appointed by the Board of a public enterprise to discharge the duties of a Board Secretary;

“share” means a share in the capital of a company and includes stock;

“shareholder” means a person who agrees to become a member of a company, and whose name is entered in its register of members, or a person who is a subscriber to the memorandum to whom shares have been issued;

“significantly affecting events” means the occurrence of events that may negatively impact the achievement of the objectives of the public enterprise and its subsidiaries;

“subsidiary” means a company in which 50 percent or more of the outstanding voting shares are owned by another company;

“special reviews or investigations” means any matter that the Commission reviews that is not included in the annual audit or investigation plan of the Commission;

“Standard Scale” means the standard scale of fines specified under the Criminal Offences (Standard Scale of Fines) Act, 2021.

### **Purpose of the Act**

3. The purpose of this Act is to provide a framework for governance, operations, performance monitoring and financial oversight of public enterprises and to clarify accountability relationship between public enterprises, their governing bodies, their responsible Ministers, the Commission and to —

- (a) specify the role of the Government as the owner and a shareholder of public enterprises;
- (b) specify the role and powers of the responsible Minister;
- (c) specify the role and powers of the Minister responsible for finance;
- (d) specify the functions, powers, duties of the Commission;
- (e) specify the rights, powers, duties, and responsibilities of the members of the Board in respect to the governance and operation of public enterprises, including their duty to ensure the financial stability of public enterprises;
- (f) specify the rights, powers, duties, and responsibilities of the management of public enterprises, including their duty to ensure the sound management of public enterprises;
- (g) set reporting and accountability requirements;

- (h) facilitate the reasonable and efficient use of public enterprise resources and reserves; and
- (i) specify provisions for the investigation of the affairs of public enterprises.

### **Application of Act**

4.(1) This Act applies to all public enterprises in which the government has majority ownership of investment.

## **PART II - PUBLIC ENTERPRISE MONITORING COMMISSION**

### **Establishment of the Commission**

5.(1) The Commission established under section 5 of the Public Enterprises Monitoring Commission Act, 2013 shall continue to exist as if established under this Act and is a body corporate.

(2) Notwithstanding any other laws, the Commission shall have full administrative autonomy in discharging its functions under this Act.

(3) Each organ of State shall assist the Commission to perform its functions effectively.

### **Object of the Commission**

6. The principal object of the Commission is to —

- (a) act as the principal agent for the Government to monitor all aspects of the affairs of the public enterprises to ensure that the shareholder's wealth is being protected and maximised through the conduct of business by public enterprises;
- (b) agree on performance targets and, to monitor and evaluate the overall performance of the public enterprises;
- (c) promote the efficient operation of public enterprises,

taking into consideration the fiscal and benefit monitoring aspects;

- (d) promote ethics of good governance in all business affairs of the public enterprises, including financial matters such as, investment and budget;
- (e) give recommendations to improve performance and affairs of the public enterprises and thus increase shareholder's wealth; and
- (f) report on the risk management strategies and governance of the public enterprises.

### **Funds of the Commission**

7.(1) The Commission shall have its own Fund.

(2) There shall be paid into the Fund all sums of money or assets as may be —

- (a) voted upon by the National Assembly in an appropriation Act for the use of the Commission;
- (b) received by the Commission in the exercise, performance and discharge of its powers, duties, and functions; and
- (c) received by the Commission as grants or donations through procedures laid-down in the Public Finance Management Act, 2013.

(3) There shall be paid out of the Fund all such sums of money as may be required to defray any expenditure incurred by the Commission in the exercise, performance and discharge of its powers, duties, and functions.

### **Relations with other regulatory authorities**

8.(1) The Commission may —

- (a) liaise with any regulatory authority on matters of common interest, and without limiting the generality of this power, may require the necessary information from, exchange information with, and receive information from any authority relating to
  - (i) matters of common interest;
  - (ii) a specific complaint or investigation; or
  - (iii) the discharge of its objects and functions specified under this Act;
- (b) negotiate and enter into agreements with any regulatory authority, so as to —
  - (i) co-ordinate and harmonise the exercise of jurisdiction over such matters within that industry or sector;
  - (ii) ensure the consistent application of this Act;
  - (iii) participate in the proceedings of any regulatory authority; and
  - (iv) advise, or receive advice from any regulatory authority.

(2) The Commission may submit or request any report or information from a regulatory authority related to the activities of that regulatory authority, in order to discharge the mandate of the Commission under this Act.

(3) The Commission may liaise with the Auditor General and exchange such information as may be deemed necessary for effective delivery of the mandate of the Commission.

### **PART III - COMMISSIONERS OF THE COMMISSION**

#### **Appointment of Commissioners**

**9.(1)** The Commission shall consist of —

- (a) a Chairperson and Vice-Chairperson;
- (b) a minimum of five and a maximum seven other Commissioners; and
- (c) the Secretary to the Commission.

(2) The President shall, upon the recommendation of the Minister appoint the Chairperson, Vice-Chairperson and Commissioners from amongst persons with proven integrity, relevant cognitive experience and demonstrated capacity in matters relating to industry, trade, finance, law, corporate governance and administration.

(3) The Chief Executive Officer shall be an ex officio member of the Commission.

#### **Disqualifications to be a Commissioner**

**10.** A Person is disqualified from appointment as a Commissioner where that person —

- (a) is the Chief Executive Officer, or a member of Staff of the Commission;
- (b) is serving as a chief executive officer or member of a board of any public enterprise, its subsidiaries, joint venture or associate;
- (c) is having a conflict of interest under section 12;
- (d) has been convicted of any offence under this Act;
- (e) has been convicted of any offence involving dishonest or fraudulent acts within or outside the Republic;

- (f) has been adjudged insolvent under the Insolvency Act;
- (g) has been adjudged to be of unsound mind;
- (h) was terminated from public office due to poor performance, misconduct, or disciplinary proceedings;
- (i) has been disqualified by the Court to serve as a public officer;
- (j) is under eighteen years of age; or
- (k) is a person who is or would be prohibited from being a Director of or being concerned or taking part in the promotion, formation or management of any commercial activity.

### **Remuneration and other benefits**

**11.** The salaries, allowances, benefits and other terms and conditions of service of the members of the Commission shall be determined by the Minister.

### **Disclosure of interest by Commissioners**

**12.(1)** A Commissioner who has a direct or indirect, personal or financial interest in any matter relating to the public enterprises or with the affairs of the Commission which explicitly or implicitly could impair the objectivity of the Commissioner shall be considered to have a conflict of interest for the purpose of this Act.

(2) Any form and nature of conflict of interest linked to a subject matter being discussed at a meeting of the Commission shall be disclosed by the Commissioner concerned and that Commissioner shall not further attend that meeting nor participate in any deliberations or decisions of the Commission in relation to the matter.

(3) A disclosure of interest in accordance with subsections (1) and (2) shall be noted in the minutes of the concerned meeting of the Commission.



### **Tenure of office**

13. A person appointed under section 9 shall hold office for a period of five years and shall be eligible for re-appointment.

### **Termination, resignation, removal and vacancy of Commissioners**

14.(1) The office of a Commissioner shall become vacant —

- (a) upon resignation by the Commissioner, resigns by giving not less than twenty-eight days' notice in writing to the President;
- (b) upon removal from the office by the President;
- (c) upon disqualification from being a Commissioner under the section 10;
- (d) upon recommendation for removal from office by the responsible Minister;
- (e) where the holder is found guilty of an offence committed under this Act;
- (f) when the holder dies;
- (g) upon continuous absence by the holder from office for 3 consecutive meetings without the consent of the Chairperson; or
- (h) the tenure of office expires.

(2) Where a vacancy occurs on the Commission, the President shall, with the recommendation of the responsible Minister appoint a person to replace the member for the remainder of the term of the member who resigned or was removed.

### **Proceedings of the Commission**

15.(1) There shall be a charter of the Commission which shall govern the proceedings of the Commission.

(2) The Commission may, in its discretion, invite members of the Board, management and other representatives of a public enterprise and any other persons or entities who or which, in the opinion of the Commission, may have an interest in the matter to be considered by the Commission to —

- (a) make representations to the Commission in relation to the matter in the manner and form as the Commission may determine, and
- (b) to attend a meeting or part of a meeting of the Commission as observers and to take part in the deliberations at the meeting of the Commission, but a person so attending has no vote at the meeting.

### **Committees of the Commission**

**16.(1)** The Commission may establish committees —

- (a) to advise the Commission in relation to any matter which the Commission refers to it; or
- (b) to exercise any of the powers or perform any of the duties of the Commission which the Commission delegates or assigns to it.

(2) The Commission may, at any time dissolve or reconstitute a committee.

### **Directives by the President, Minister or responsible Minister**

**17.(1)** The President may give to the Commission such directives as appear to him to be just and proper for the effective discharge of the functions of the Commission under this Act and it shall be the duty of the Commission to comply with those directives.

(2) The Minister, or the responsible Ministers with the consent of Minister, may request the Commission to prioritise or undertake functions within the mandate of the Commission when and where need arises.

### **Protection for action taken under this Act**

18.(1) No Commissioner shall assume any management responsibility or be involved in the day-to-day administration of the Commission or any public enterprise, and any Commissioner who fails to comply with this provision shall be personally liable for any loss or damage caused.

(2) No suit shall be instituted against a member of the Commission, an employee or servant of the Commission for any act done or purported to be done in good faith by such member, officer or servant under this Act or upon the direction of the Commission.

(3) Any expenses incurred by the Commission in any suit or prosecution brought by or against it before any court, shall be paid out of the Fund of the Commission, and any costs paid to, or recovered by the Commission in any such suit or prosecution shall be credited to the Fund of the Commission.

(4) Any expenses incurred by any person referred to under subsection (2) in any suit or prosecution brought against him or her before any court shall be paid out of the Fund of the Commission.

### **Secretary of the Commission**

19.(1) The Chairperson in consultation with the members of the Commission shall appoint a person to be the Secretary to the Commission.

(2) The secretary shall, subject to the general control of the Commission be responsible for —

- (a) keeping proper records of the proceedings and decisions of the Commission;
- (b) communicating decisions of the Commission;
- (c) Submitting documents on behalf of the Commission; and
- (d) subject to the approval of the Chairperson of the Commission, represent the Commission in his or her capacity as the Secretary.

## **PART IV - CHIEF EXECUTIVE OFFICER OF THE COMMISSION**

### **Appointment of the Chief Executive Officer**

**20.(1)** The President shall, upon the recommendation of the Commission and in consultation with the Minister appoint the Chief Executive Officer.

(2) A person appointed under subsection (1) shall be qualified by reason of having had experience of, and having shown capacity in matters relating to industry, trade, finance, law, management and administration.

(3) The President shall, upon recommendation of the Commission determine the terms and conditions of service of the Chief Executive Officer.

(4) The President shall, upon the recommendation of the Commission and in consultation with the Minister appoint a Deputy Chief Executive Officer to the Commission and all the provisions relating to the Chief Executive Officer shall with the necessary modifications be applicable to the Deputy Chief Executive Officer.

### **Disqualifications to be the Chief Executive Officer**

**21.** A person shall be disqualified from being appointed a Chief Executive Officer where that person —

- (a) serves as a Chief Executive Officer or member of a Board of any public enterprise, its subsidiaries, joint ventures or associates;
- (b) has a conflict of interest under section 22;
- (c) has been convicted of any offence under this Act;
- (d) has been convicted of an offence involving dishonest or fraudulent acts within or outside the Republic;
- (e) is adjudged insolvent under the Insolvency Act;
- (f) is adjudged to be of unsound mind;

- (g) has been terminated from public office due to poor performance, misconduct, or disciplinary proceedings;
- (h) has been disqualified by the Court to serve as a public officer;
- (i) is under eighteen years of age; or
- (j) is a person who is or would be prohibited from being a Director of or being concerned or taking part in the promotion, formation or management of any commercial activity.

### **Disclosure of conflict of interest by Chief Executive Officer**

**22.(1)** When the Chief Executive Officer has a direct or indirect, personal or financial interest in any matter relating to the public enterprises or with the affairs of the Commission which explicitly or implicitly could impair his or her objectivity, that situation shall be considered a conflict of interest for the purpose of this Act.

(2) Any form of such conflict of interest linked to subject matter being handled by the Commission shall be disclosed to the Commission and appropriate action shall be taken by the Commission to prevent any form of impairment of the objectivity and independence of the Commission.

(3) A conflict of interest under this section shall be disclosed to the Commission and shall be documented by the Commission.

### **Tenure of office**

**23.** The Chief Executive Officer shall be appointed for a term of three-years and shall be eligible for re-appointment.

### **Termination, resignation, removal and vacancy of the Chief Executive Officer**

**24.(1)** The Office of a Chief Executive Officer shall become vacant when he or she —

- (a) resigns from office by giving not less than two months' notice in writing to the President through the Commission and the Minister;
- (b) is removed from the office by the President upon recommendation of the responsible Minister or the Commission;
- (c) becomes disqualified from being a Chief Executive Officer under section XX;
- (d) is found guilty for an offence committed under this Act;
- (e) dies; or
- (f) completes his or her contract period.

(2) Where a vacancy occurs in the post of Chief Executive Officer, the President shall, with the recommendation of the responsible Minister appoint a person as the new Chief Executive Officer, and until such time, the Deputy Chief Executive Officer shall assume the duties of the Chief Executive Officer.

### **Functions and powers of the Chief Executive Officer**

**25.** The Chief Executive Officer is responsible for the general administration of this Act and the Commission; and for carrying out any functions assigned to him or her in this Act, and shall —

- (a) manage and direct the day-to-day activities of the Commission for the effective administration of this Act;
- (b) be in charge of the administration, management and control of the employees and staff of the Commission;
- (c) be the accounting officer of the funds of the Commission;
- (d) implement decisions of the Commission;

- (e) sign documents and correspondences on behalf of the Commission;
- (f) delegate any function of the Chief Executive Officer to any employee of the Commission or an expert appointed by the Commission; and
- (g) handle such other matters as he or she may consider necessary or expedient for the proper administration of this Act.

## **PART V - POWERS, FUNCTIONS AND REPORTING OBLIGATIONS OF THE COMMISSION**

### **Functions of the Commission**

- 26.** The functions of the Commission are to —
- (a) implement the provisions of this Act;
  - (b) monitor compliance with the governing laws by the public enterprises;
  - (c) promote generally accepted common principles for good corporate governance and leading practices on governing the public enterprises;
  - (d) monitor compliance with the code of corporate governance by the public enterprises;
  - (e) undertake due diligence analysis on major decisions of the public enterprises upon request by the Board or the responsible Minister prior to implementation;
  - (f) contribute to the due diligence of nominated persons for office of directors to the Boards and Chief Executive Officers of the public enterprises and advise the appointing authority on such persons;

- (g) advise the responsible Minister on the performance of members of the Boards and the Chief Executive Officers of the public enterprises;
- (h) monitor and recommend to the responsible Minister the removal of any Board member of a public enterprise from office or for non-compliance with this Act;
- (i) evaluate and assess criteria for the performance measurement of the public enterprises; and monitor and evaluate the performance of the public enterprises against such agreed targets;
- (j) undertake investigation or inspection into the affairs of a public enterprise;
- (k) provide guidance in relation to performance agreements to be entered into between a responsible Minister and the individual members of a Board of a public enterprise, and between such Board and its Chief Executive Officer, and between its Chief Executive Officer and senior management staff of the public enterprise;
- (l) analyse the proposed annual budget of a public enterprise and advise the Minister, the responsible Minister, and the appropriate Board as to its adequacy or suitability in compliance with the governing law;
- (m) monitor the implementation of actions laid out in the annual plans of the public enterprises and identify and report on factors inhibiting the realisation of the set targets;
- (n) assess the investment proposals of the public enterprises to ensure long-term viability;
- (o) monitor and report on risks management strategies of the public enterprises;



- (p) identify issues relating to the operational and fiscal risks of the public enterprises that may have material impact on the public enterprises and the economy as a whole;
- (q) assist the appropriate authorities in the evaluation of policies and strategies so as to ensure sound and efficient management of the public enterprises; and
- (r) facilitate the provision of programmes for the training and development of members of the Boards and management staff of the public enterprises on corporate governance and leading management practices.

### **Powers of the Commission**

**27.** For the performance of its functions under this Act, the Commission shall have power to —

- (a) compel any member of a Board, a Chief Executive Officer or any other officer of a public enterprise to appear before the Commission to clarify any issues regarding the finance, operations, governance or any other matter under this Act;
- (b) request any information on the affairs and operation of the public enterprise on matters provided for under this Act;
- (c) compel the production of books, records, papers, minutes of meetings, documents and records as the Commission may consider necessary or proper for any proceedings or investigation;
- (d) make copies of books, records, papers, minutes of meetings and documents as it may consider necessary or proper for any proceedings or investigation;
- (e) carry out on-site and off-site inspections or investigation as deemed necessary for the purpose of carrying out its functions;

- (f) monitor any matter to the extent that it affects the functions of the Commission;
- (g) participate in strategic discussions as an observer to the extent that it affects the functions of the Commission;
- (h) formulate a framework for a sustainable and stable public enterprise performance strategy;
- (i) make recommendations to the Government or make suggestions to the public enterprises on any matter to secure and enhance the shareholder's interest and wealth;
- (j) make rules and decisions in respect of the effective management of the affairs of the Commission and deliver its mandate;
- (k) enter into such contracts as are deemed necessary for the discharge and performance of its functions and duties;
- (l) issue circulars or mandatory guidelines to the public enterprises;
- (m) enter into agreements for co-operation with educational and other institutions, whether in Seychelles or abroad, for the exchange of information, personnel, advisory services and the training of personnel;
- (n) undertake all such activities as in the opinion of the Commission are necessary to facilitate the discharge and performance of its functions and duties under this Act.

### **Reporting obligations of the Commission**

**28.(1)** With respect to the fiscal risks analysis report for public enterprises, the Commission shall, after the end of each calendar year, or within such longer period as the Minister may approve, submit to the Minister a report containing and quantifying the fiscal risks emanating from such enterprises throughout the preceding calendar year.

(2) Regarding the financial analysis report for public enterprises, the Commission shall submit to the Minister at such time during a financial year as the Minister may determine, a summary of the public enterprise's financial positions that applies to the current financial year and for two preceding financial years.

(3) With respect to the report on statements of corporate intent of public enterprises, the Commission shall submit to the Minister at such time during a financial year as the Minister may determine, a summary analysis of updates to the statements of corporate intent of all public enterprises.

(4) Regarding the performance report of the public enterprises, the Commission shall submit to the Minister its annual report showing targets and status of performance of the public enterprises up to the reporting date.

(5) The Commission shall submit to the Minister its annual report showing the status of risk management and governance of the public enterprises.

(6) A copy of the reports submitted under this section shall be laid before the National Assembly as provided for in regulation 25(e) of the Public Finance Management Regulations, 2014.

(7) The Commission shall not later than two months after the end of each quarter, submit to the Minister, a report on the financial and operational performance of the public enterprises and any emerging issues pertaining to the public enterprises.

(8) The Commission shall, not later than three months after the end of each year, submit to the President a report on the activities and the administration of the Commission during the immediately preceding year.

(9) The Minister may, at any time request from the Commission or direct the Commission to submit a special report on any subject matter within the mandate of the Commission.

## **PART VI - AUDIT, ACCOUNTS AND RECORDS OF THE COMMISSION**

### **Annual estimates, accounts and records**

**29.** The Commission shall —

- (a) cause to be prepared in each year an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared, they shall be submitted in accordance with the provisions made in the Public Finance Management Act and regulations;
- (b) keep and maintain proper accounts of the Commission and accounting records for a minimum 7 years, and write-off or disposal of any accounting documents shall be done in accordance with the Public Finance Management Act, and regulations made under that Act.

### **Audit of accounts**

**30.** The accounts of the Commission shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

### **Confidentiality of information**

**31.(1)** A member of the Commission, an employee, consultant, expert or any other person required or permitted to be present at a meeting of the Commission shall not publish or communicate or in any other way disclose any information relating to the affairs of —

- (a) any public enterprise;
- (b) a director of the Board of a public enterprise; or
- (c) a person being considered or recommended as a candidate for appointment as a director of a Board of a public enterprise, that has come to such person's knowledge —

- (i) in the exercise of any power or performance of any duty or function in connection with the functions of the Commission; or
- (ii) as a result of such person's attendance at a meeting of the Commission.

(2) Subsection (1) does not apply to information disclosed —

- (a) for the purpose of the proper administration or enforcement of this Act or the performance of a function of the Commission; and
- (b) by way of an order of the Court;

(3) A person who contravenes subsection (1) shall be disqualified to be a member of the Commission, a member of a Board of a government agency, or of a public enterprise.

(4) A person who contravenes subsection (1) shall be personally responsible for the non-compliance.

## **PART VII - STAFF OF THE COMMISSION**

### **Appointment of staff**

**32.(1)** The Commission shall have power to appoint such officers and employees as it may deem necessary for the administration and management of the affairs of the Commission.

(2) The officers and staff of the Commission appointed under subsection (1) shall report to and be under the control of the Chef Executive Officer.

(3) The Commission shall, in consultation with the Minister determine the remuneration payable to, and the conditions of service of officers and employees of the Commission.

(4) All the staff and officers of the Commission and other persons employed in the Commission shall in respect of their service in the Commission be treated as public servants.

### **Appointment of consultants and experts**

33.(1) The Commission may engage under contract of service, persons with appropriate qualifications, skills, or experience to render professional, technical, or other assistance as the Commission may consider necessary.

(2) The Commission shall engage a consultant or expert under subsection (1) only after a selection competitive tender process as provided by law.

(3) A person appointed or engaged under subsection (1) shall receive such remuneration and allowances as the Commission may determine.

### **Conflict of interest and duties**

34.(1) The personal interest of any staff, employee, consultant or expert hired by the Commission shall not conflict with any of his or her duties under this Act.

(2) Any staff, employee, consultant or expert hired by the Commission shall not —

(a) in the course of performing his or her duties with a public enterprise; or

(b) in the utilisation of the property of the public enterprise or the Commission,

make any secret profit or obtain other improper benefits.

(3) Any indirect or direct conflicts shall be disclosed by any staff, employee, consultant or expert hired by the Commission to the Chief Executive Officer.

## **PART VIII - SPECIAL INVESTIGATIONS BY THE COMMISSION**

### **Power to direct special investigations**

**35.(1)** The Minister may direct the Commission to investigate any matter relating to the affairs of a public enterprise.

(2) The Commission shall, notwithstanding subsection (1) have the powers to initiate special investigations relating to the affairs of a public enterprise.

### **Powers of investigators**

**36.** An investigator shall have the power to —

- (a) recruit, hire or acquire any resources required to perform the investigation;
- (b) bring to the attention of the Commission any matters deemed necessary to be brought to the attention of the Commission;
- (c) recover the fees or charges which may have agreed upon with the Commission and to reimburse expenditures incurred in addition to the fees agreed exclusively for the purpose of the investigation on grounds agreeable by the Commission;
- (d) delegate its powers to a third party, subject to having prior written approval from the Commission;
- (e) enjoy the rights and benefits specified in the engagement agreement signed under the section 37(1);
- (f) issue notice in writing to the public enterprises, Directors or an officer of the public enterprise —
  - (i) to produce to the investigator such documents relating to a matter to which the investigation relates

as are in the custody or under the control of the officer;

- (ii) to give to the investigator all possible and reasonable assistance in connection with the investigation;
  - (iii) to appear before the investigator for examination and to answer questions;
- (g) make copies or extracts of any documents relating to the investigation and, with the approval of the Commission to preserve any original documents where deemed necessary for the nature of its works.

### **Reports of investigation**

**37.(1)** Subject to the terms agreed in the written agreement, the special investigator shall make written or oral reports to the Commission in the course of an investigation.

(2) The final report to the Commission may include recommendations as the special investigator thinks fit.

(3) A special investigator shall not, in the absence of malice, be liable to an action in respect of any statement made, whether orally or in writing, in the course of carrying out the functions of the special investigator.

(4) A special investigator may with the written consent of the Commission and the responsible Minister, refer any matter arising in an investigation to the relevant enforcement agencies.

(5) Any criminal offences reported by the investigator to the Commission shall immediately be reported to the responsible Minister and the relevant law enforcement agencies.

(6) The Commission shall communicate the report of an investigation to the responsible Minister or the Board of the public enterprise for implementation of the recommendations in the report.



(7) Any person aggrieved by the contents of the report of an investigator shall have the right to provide an opinion or defence against the findings made by the investigator.

### **Exemptions for special investigations**

**38.** The following matters shall be exempted from special investigation —

- (a) matters before the court;
- (b) matters of which the subject matter became non-existent or no longer applicable;
- (c) matters the Court has ruled on; and
- (d) any matter which is already a case before any other enforcement agency.

### **Offences in relation to special investigations**

**39.(1)** A person shall not —

- (a) fail to comply with a lawful direction of a special investigator;
- (b) refuse or fail to produce documents or answer questions sought or asked by a special investigator;
- (c) hinder or obstruct a special investigator;
- (d) destroy documents or any other thing relevant to an investigation.

(2) Any person who contravenes subsection commits an offence shall be liable upon conviction to a fine not exceeding Level six of the Standard Scale or 2 years imprisonment or both.

**40.** Upon the receipt of reasonable grounds from the investigator, the Commission has the power to suggest to the Board of the respective public enterprise or responsible Minister to suspend any official from office not more than one month until the investigation is concluded.

### **Appeal procedures**

**41.** Any officer or person not in agreement with the report of the investigator shall have the right to make an appeal against the disputed subjects to the responsible Minister.

### **Withdrawal or termination of special investigation**

**42.** The Minister shall have the powers to withdraw, terminate, suspend or cancel a special investigation lodged at the Commission and reasons for such action shall be documented by the Commission.

## **PART IX - ESTABLISHMENT OF PUBLIC ENTERPRISES**

### **Application of Part**

**43.(1)** This Part applies to all the public enterprises, despite the absence of any provision to the contrary, in their enabling laws or establishing documents.

(2) Any provision contained in an enabling law or establishing document of a public enterprise or in any other written law which is contrary to a provision of this Part shall be deemed to have been amended correspondingly with the provisions of this Part.

### **Declaration of public enterprise**

**44.(1)** The Minister may, by order published in the Gazette declare a statutory corporation to be a public enterprise.

(2) A declaration under this section may be made for the purpose of a budget dependent entity becoming a public enterprise.

### **Determination of initial capital and shares**

**45.** The market value of net assets of a public enterprise shall be

determined by an independent valuer and treated as the initial capital of the public enterprise under section 44.

### **Shareholding and capital structure**

46. The Companies' Act shall apply to the shareholding and capital structure of the public enterprise under section 44.

### **Continuous guarantees**

47. Despite a budget dependent entity being declared to be a public enterprise, a guarantee or indemnity given by the Minister by or under an Act or otherwise before the date of the declaration in respect of the performance, satisfaction or discharge of obligations or liabilities of the budget dependent entity under an instrument issued or entered into by the budget dependent entity before the date of that declaration, continues as a like guarantee or indemnity.

### **Transfer of assets and liabilities**

48. The Government and the public enterprise referred to in section 44 may enter into an agreement for the transfer of assets and liabilities of the Government to the company for an agreed consideration, whether by assumption of liabilities or otherwise.

## **PART X - GOVERNANCE OF PUBLIC ENTERPRISES**

### **Ownership of public enterprises**

49. Ownership and governance of all the public enterprises shall be within the ownership policy framework for the public enterprises.

### **Code of Corporate Governance for Public Enterprises**

50. The public enterprises shall apply the Code of Corporate Governance for Public Enterprises.

### **Policies and strategic priorities**

51.(1) The government shall provide policy directives for the governance of the public enterprises.

(2) The government may intervene with setting of strategic priorities in exceptional circumstances for the national interest or during a national emergency.

(3) Every public enterprise shall define its priorities in its strategic plans and statement of corporate intent in line with the mandate of such public enterprise.

### **Strategic plan**

**52.(1)** The Board of each public enterprise shall prepare a 5 year strategic plan and shall obtain the approval of the responsible Minister before implementing the strategic plan.

(2) A copy of the approved strategic plan shall be submitted to the Commission.

### **Statement of corporate intent**

**53.(1)** The Board of each public enterprise shall prepare and submit to the responsible Minister, the Minister and the Commission, a statement of corporate intent for its public enterprise and its subsidiaries if any, not later than two months before the commencement of its first financial year, and thereafter not later than one month after the commencement of each consecutive third financial year, an updated statement of corporate intent in respect of the financial year in which it is delivered and in respect of each of the immediately following two financial years.

(2) The statement of corporate intent shall be approved by the Board.

(3) The statement of corporate intent shall be publicly available and shall contain —

- (a) a description of the main business of the public enterprise;
- (b) a statement of business goals of the public enterprise, demonstrating how those goals are consistent with its primary objective;

- (c) a description of the nature and scope of the activities that the public enterprise intends to undertake;
- (d) a statement of the strategies of the public enterprise for achieving its business goals and primary objectives;
- (e) a statement or summary of the targets or benchmarks that the public enterprise will use to measure its performance against its business;
- (f) goals and primary objective;
- (g) a statement of the current or anticipated borrowing status of the public enterprise;
- (h) where a public enterprise has a share capital, the ratio of the shareholders' funds to the value of the total assets of the public enterprise;
- (i) a statement of the accounting policies that the public enterprise will apply for financial records and reporting;
- (j) a summary indicative balance sheet and profit and loss statement for the public enterprise, or if it has any subsidiaries, a statement for the group consisting of the public enterprise and its subsidiaries;
- (k) a statement of the proposed dividend and distribution policy of the public enterprise;
- (l) a description of any public service obligations, if any, and their impact on the forecasted financial outcomes of the public enterprise; and
- (m) any other matter that the responsible Minister, the Minister and the Commission directs to be included in the statement.

(4) The following are standard performance targets and other measures by which the performance of the public enterprise may be judged in relation to its objectives —

- (a) percentage increase in turnover;
- (b) percentage increase in return on assets;
- (c) percentage increase in return on capital employed;
- (d) percentage increase in profit after tax; and
- (e) the underlying assumptions on which the objectives are based.

(5) An estimate of the amount intended to be distributed as dividends for each year shall be covered by the statement of corporate intent together with an estimate of the amount or proportion of annual tax paid earnings from both capital and revenue sources that is intended to be distributed to Government.

(6) An estimate of the Net Present Value of the investments in the public enterprise and the manner in which, and the time at which, this value is to be reassessed using a percentage cost of capital applicable to the enterprise shall be indicated by the statement of corporate intent.

(7) The Board shall receive prior approval and consent from the responsible Minister, in relation to the draft statement of corporate intent prior to its approval.

(8) The Board shall approve the statement of corporate intent.

(9) The approved statement of corporate intent shall be submitted to the responsible Minister, and the Commission within ten working days of approving or adopting it.

(10) The Board may, subject to changes in its core operational strategy amend its statement of corporate intent at any time, provided the Board —

- (a) submits to the responsible Minister, the Minister and the Commission a final draft of the amendment not less than two months before the Board adopts it;
- (b) shall not approve or adopt the amendment without first taking into account any comment by the responsible Minister, the Minister and the Commission;
- (c) submits the amendment to the responsible Minister, and the Commission within 10 working days of approving or adopting it.

(11) A public enterprise shall not deviate from its corporate plan as outlined in the statement of corporate intent unless written approval to that effect is obtained from the responsible Minister.

### **Annual business plan**

**54.(1)** Each public enterprise shall prepare its annual business plan and submit it to the Commission at least two months prior to the commencement of each financial year.

- (2) The business plan shall contain —
  - (a) information regarding the operations, strategic directions of the public enterprise for the financial year and the following two financial years; and
  - (b) estimates of the profit and loss, capital expenditure including procurement plans and cash flow and balance sheet projections of the public enterprise in respect of the next financial year of the public enterprise.

(3) The information required under subsection (2) (a) and (b) shall be sufficient for the Commission to advise the Board, the responsible Minister, and the Minister.

- (4) The Board shall —

- (a) not approve or adopt the business plan without first taking into account any comments by the Commission and the responsible Minister in relation to the draft business plan; and
- (b) submit to the Commission and the responsible Minister, a copy of the business plan within ten working days of approving it.

(5) The Commission shall submit a copy of the approved business plan to the responsible Minister and the Minister within seven days after receiving it from the public enterprise

### **Performance indicators and performance reporting**

**55.(1)** The Commission shall, in consultation with the Board, the responsible Minister, and the Minister establish and define performance indicators and a performance monitoring strategy for the public enterprises which shall be included in the annual business plan.

(2) The performance targets are measures by which the performance of the public enterprise and of its subsidiaries shall be measured in relation to the mandate of the respective public enterprise.

### **Duty to act within the scope**

**56.(1)** The Board shall be responsible for the operations of business enterprises within its mandate and the principal objectives defined in the respective establishment statutes, and in the event of resolutions passed by the shareholders of the public enterprise during its annual general meeting for any deviations, a full report of the such resolutions shall be submitted to the responsible Minister for approval.

(2) Any deviations approved under subsection (1) shall be incorporated into the statute through a statutory instrument or by making a revision to the governing law to the extent determined by the responsible Minister.



(3) The members of the Board shall be personally liable for the promotion, approval, ratification or consultations for any operations outside the mandate and principal objectives defined in the respective governing law.

## **PART XI - BOARD OF DIRECTORS**

### **Appointment of members of Boards**

**57.(1)** The President shall, in consultation with the National committee responsible for the nomination of senior corporate executive and non executive officials and the responsible Minister appoint —

- (a) the members of the Board of a public enterprise; and
- (b) the Chairperson and Vice-Chairperson of the Board of a public enterprise.

### **Composition of the Board**

**58.(1)** The Board of Directors of every Public enterprises shall consist of —

- (a) a Chair person;
- (b) a Vice-Chairperson;
- (c) one representative or nominee from the Ministry of Finance;
- (d) one representative or nominee from the parent Ministry; and
- (f) not less than five and not more than seven persons, who shall be non executive directors.

(2) A member of the Board shall be a person with proven integrity, relevant cognitive experience and demonstrated capacity in matters relating to economics industry, trade, finance, law, corporate governance and administration.

(3) The Chief Executive Officer of that public enterprise shall be an ex-officio member of the Board;

(4) The Chief Executive Officer of that public enterprise shall not be the Chairperson of the Board;

### **Disqualifications to be a member of a Board**

**59.** A Person is prohibited from being a Board member where that person —

- (a) holds office of Commissioner or any office of the Commission;
- (b) serves as the Chief Executive Officer or an official or staff of the particular public enterprise;
- (c) has a conflict of interest under section 63;
- (d) has been convicted of any offence under this Act;
- (e) has been convicted of an offence involving dishonest or fraudulent acts within or outside the Republic;
- (f) is adjudged insolvent under the Insolvency Act;
- (g) is adjudged to be of unsound mind;
- (h) has been terminated from public office due to poor performance, misconduct, or disciplinary proceedings;
- (i) has been disqualified by the Court from serving as a public officer;
- (j) is under eighteen years of age;
- (k) is a person who is or would be prohibited from being a director of or being concerned or taking part in the promotion, formation or management of any commercial activity;

- (1) is a person who already serves as a Board member of other two Boards of public enterprises, unless the President, after consultation with the responsible Minister and the Commission specifically authorises the appointment.

### **Board Charter**

**60.(1)** The Board of every public enterprise shall have its Board charter which constitute the governance of that public enterprise and defines the respective roles, responsibilities and authorities of the Board, both individually and collectively, and also provides matters relating to code of conducts of the operations of the public enterprise.

(2) The Board charter shall be approved by the responsible Minister.

### **Duties and powers of members of the Board**

**61.(1)** Without limiting the duties of directors in managing the affairs of a public enterprise as specified in the Board charter, members of the Board shall —

- (a) have regard to the interests of its stakeholders, including its consumers of goods and services;
- (b) ensure adequate internal controls and adoption of strategies, policies, processes, and procedures in accordance with principles of sound corporate governance and risk management;
- (c) monitor compliance with this Act, other relevant laws and regulations, and directions of the Commission and with the controls, strategies, policies, processes, and procedures referred to in paragraph (b);
- (d) set up such committees as they deem necessary to discharge their responsibilities effectively;

- (e) approve measures for the maintenance of the public enterprise in a sound financial condition;
- (f) establish and maintain procedures for —
  - (i) identifying and resolving situations of, or potential situations of conflict of interest;
  - (ii) restricting the use of confidential information;
  - (iii) the disclosure of relevant information to the Commission for the administration of this Act;
  - (iv) dealing with complaints from employees or members of the public in general; and
  - (v) ensuring the sound and sustainable conduct of business.

(2) The Board shall determine the clear responsibilities and reporting duties of the Chief Executive Officer and the senior managers.

(3) Every member of a Board shall, in performing the responsibility entrusted into him or her abide by the code of ethics issued by the responsible Minister.

(4) A non-executive member of the Board shall not involve himself or herself in any way in the day-to-day administration of a public enterprise.

(5) Non-executive members of the Board shall be paid such allowances and fees as may be prescribed by the Minister.

(6) The Board shall have the powers to overrule any decision made by the Chief Executive Officer or senior management of the public enterprise where it is deemed necessary and for the best interest and for the protection of shareholder's wealth.

(7) The Board shall make recommendations to the responsible Minister for the appointment and removal of the Chief Executive Officer of

a public enterprise and set terms and conditions in that regard as specified under Schedule 4.

### **Directors' duty for care and skills**

**62.(1)** A person exercising powers or performing duties as a Director of a public enterprise shall —

- (a) act honestly and in the best interests of the public enterprise;
- (b) not act in a manner which is reckless or grossly negligent; and
- (c) exercise the degree of skill and care that may reasonably be expected of a person of his or her knowledge and experience.

(2) The duties and liabilities of Directors are specified under Schedule 4.

### **Conflict of interest and duties**

**63.(1)** A Board member who has a direct or indirect personal or financial interest in any matter relating to the public enterprise or with the affairs of the public enterprise which explicitly or implicitly could impair the objectivity of the member shall be considered a conflict of interest for the purpose of this act.

(2) Any form of such conflict of interest linked to a subject matter being discussed at a Board meeting shall be disclosed with the nature of that interest and the concerned member of the Board shall not further attend that meeting nor participate in any deliberations or decision of the Board in relation to the matter.

(3) A disclosure of interest in accordance with subsection (1) shall be noted in the minutes of the meeting concerned and shall be documented by the Board.

**Tenure of office**

- 64.** A person appointed under section 57 shall —
- (a) hold office for a period of three years and is eligible for re-appointment.
  - (b) not assume automatic reappointment at the end of term of office.

**Termination, resignation, removal and vacancy of office**

**65.(1)** The office of a member of the Board shall become vacant when a member —

- (a) resigns from office by giving not less than twenty-eight days' notice in writing to the responsible Minister;
- (b) is removed from the office by the President upon recommendation of the responsible Minister;
- (c) becomes disqualified from being a Director under section 59;
- (d) has been found guilty for an offence committed or non-compliance under this Act;
- (e) dies;
- (f) is continuously absent from office for 3 consecutive meetings without the written consent of the Chairperson;  
or
- (g) completes his or her tenure in office.

(2) Where a vacancy occurs on the Board, the President shall, upon the recommendation of the Responsible Minister, appoint a person to replace the member for the remainder of the term of the member who resigned or was removed.

## **Procedures of the Board**

**66.** The Board Charter shall define the procedures in respect of the meetings, quorum, and proceedings of the Board of a public enterprise as specified in Schedule 2

## **Performance agreements with the Board**

**67.(1)** The responsible Minister shall, within ninety days from the date on which a Board is constituted, enter into written performance agreements with the members of the Board in relation to —

- (a) the shareholders' expectations in respect of the public enterprise's scope of business efficiency, financial performance and achievement of its objectives;
- (b) the responsible Minister's obligations in relation to any function conferred or imposed by the establishing law or document of the public enterprise;
- (c) the principles to be followed by the public enterprise for business planning;
- (d) the measures which are necessary to protect the financial soundness of the public enterprise; and
- (e) key performance indicators in terms of which the public enterprise's performance will be evaluated.

(2) The responsible Minister and the Board may in writing amend the performance agreement.

(3) A copy of the performance agreement entered into under this section shall be accessible to the public.

(4) Failure by the Board to sign the performance agreement within a time determined by the responsible Minister is a ground for the removal of the Board.

(5) A copy of the signed performance agreement shall be submitted by the responsible Minister to the Commission.

### **The Board Secretary**

**68.(1)** The Chairperson shall, in consultation with the Board appoint a person to be the Secretary to the Board.

- (2) The Secretary shall be responsible for —
- (a) convening meetings of the Board;
  - (b) guiding the Board on the principles of the code of corporate governance for public enterprises;
  - (c) guiding the Board on compliance with the laws and regulations;
  - (d) keeping records of meetings and decisions of the Board;
  - (e) communicating the decisions of the Board;
  - (f) submitting minutes of the meetings of the Board to the Commission; and
  - (g) submitting documents on behalf of the Board.

### **Protection for actions in good faith**

**69.** A member of the Board, a Secretary or an officer of a public enterprise shall not be criminally or civilly liable in respect of an act done or omission made by the public enterprise, the Board, the Secretary or officer in good faith in the execution or purported performance of a function under this Act or any other law.

### **Validity of decisions**

**70.** No act or decision of the Board is invalid by reason only —



- (a) of a defect or irregularity in connection with the appointment of a Director;
- (b) of an irregularity in the convening of a meeting of the Board;
- (c) that a person, who is disqualified from being appointed as a Director under this Act or any other law had been appointed Director; or
- (d) that a Director who was disqualified from voting at or participating in a meeting of the Board had voted at or participated in the meeting at which the decision or the decision in relation to the act was made.

### **Confidentiality of information**

71.(1) A member of the Board, a staff member and any other person required or permitted to be present at a meeting of the Board, shall not publish or communicate or in any other way disclose any information relating to the affairs of the public enterprise that has come to such person's knowledge —

- (a) in the exercise of any power or performance of any duty or function in connection with the functions of the Board; or
  - (b) as a result of such person's attendance at a meeting of the Board.
- (2) Subsection (1) does not apply to information disclosed —
- (a) for the purpose of compliance with this Act or the performance of a function of the Board; or
  - (b) for the proper administration of justice.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding the loss occurred due to

such disclosure or a fine not exceeding level 6 of the Standard Scale, or to imprisonment not exceeding 2 years or both.

### **Other committees of the Board**

72.(1) The Board may appoint one or more committees to effectively carry out its duties or any of its functions on behalf of the Board under this Act.

(2) A committee appointed by the Board under this section shall consist of such number of persons as the Board may determine.

### **Restriction for receiving, gifts, benefits etc.**

73. A member of the Board shall not accept —

- (a) a gift, commission or any other benefit in cash or kind; or
- (b) a share in the bribe, gift, commission or any other benefit in cash or in kind, from any person or a share in the profit of that person in respect of any transaction involving the public enterprise.

### **Restriction for grant of loans for Directors**

74.(1) The powers of a public enterprise do not include a power, whether directly or indirectly to —

- (a) make a loan to a Director of the public enterprise, a spouse, relative of the Director or of the spouse of such Director; or
- (b) to give a guarantee or provide security in connection with a loan made or to be made by another person to a Director, spouse or relative referred to in paragraph (a).

(2) Nothing in subsection (1) prohibits a public enterprise from entering into an agreement or arrangement with a person referred to in

subsection (1) if similar agreements or arrangements are entered into by the public enterprise with its ordinary customers or members of the public on the same terms and conditions.

(3) Any transaction made in contravention of subsection (1) shall be void.

## **PART XII - CHIEF EXECUTIVE OFFICER**

### **Appointment of the Chief Executive Officer**

75.(1) The Board of Directors shall, in consultation with the President through the responsible Minister appoint the Chief Executive Officer or the Deputy Chief Executive Officer for the public enterprise.

(2) A Chief Executive Officer, or deputy Chief Executive Officer shall hold office on a full-time basis and on such other terms and conditions may be determined by the Board and specified in the instrument of appointment.

(3) A Director is not eligible to be appointed as, or to act as Chief Executive Officer or Deputy Chief Executive Officer of the public enterprise, except with the approval of the President.

(4) The Chief Executive Officer shall be appointed through a competitive recruitment process.

### **Powers of the Chief Executive Officer**

76.(1) The Chief Executive Officer shall, subject to the direction of the Board —

- (a) exercise supervision over the day-to-day affairs of the public enterprise and for the control and administration of the employees and staff of the public enterprise;
- (b) sign documents and correspondences on behalf of the public enterprise and

- (c) be the accounting officer of the funds of the public enterprise.

(2) The Chief Executive Officer may, subject to the direction of the Board delegate any of the powers assigned to him or her to the Deputy Chief Executive Officer or to any employee of the public enterprise.

### **Performance agreements**

77.(1) Board shall require the Chief Executive Officer and the Deputy Chief Executive Officer to enter into a performance agreements with the Board.

(2) The Chief Executive Officer shall require all senior management staff of the public enterprise to enter into performance agreements with the Chief Executive Officer.

(3) If a Chief Executive Officer, Deputy Chief Executive Officer or senior management staff member fails to comply with any provision of a performance agreement which he or she concluded under this section, such failure shall constitute a ground for his or her dismissal from the service of the public enterprise, subject to compliance with the rules of natural justice.

(4) Where it is established that a failure under subsection (3) has been caused by unforeseen circumstances outside the control of the Chief Executive Officer or staff member, such non compliance shall not constitute such a ground.

(5) The Chief Executive Officer shall —

- (a) act honestly, with integrity and in the best interests of the public enterprise;
- (b) not act in a manner which is reckless or grossly negligent; and
- (c) exercise the degree of skill and care that may reasonably be expected of a person of his or her knowledge and experience.

### **Conflict of interest and duties**

78.(1) A Chief Executive Officer or any officer in the public enterprise who has a direct or indirect personal or financial interest in any matter relating to the public enterprise or with the affairs of the public enterprise which explicitly or implicitly could impair his or her objectivity, shall be considered a conflict of interest for the purpose of this Act.

(2) Any form of conflict of interest linked to any subject matter shall be disclosed and his or her term may end in the event that the Board concludes that the emerged conflict of interest cannot be tolerated or safeguards cannot re-state the independency and objectivity of such officer.

(3) A disclosure of interest in accordance with subsection (1) shall be noted and recorded in the minutes of the Board.

(4) The Minister may make regulations to give effect to this section.

### **Termination, resignation, removal and vacancy of the Chief Executive Officer**

79.(1) The Office of a Chief Executive Officer becomes vacant when he or she —

- (a) resigns from office by giving not less than two months notice in writing to the Chairperson of the Board or to the responsible Minister;
- (b) is removed from the office by the Board of Directors with the approval of the responsible Minister;
- (c) becomes disqualified from being a Chief Executive Officer under this Act;
- (d) is found guilty of an offence committed or a non-compliance under this Act;
- (e) fails to perform his or her duties under this Act or regulations made under this Act;

- (f) dies;
- (g) is continuously absent from office for 4 consecutive weeks without the written approval from the Board; or
- (h) completes the tenure in office and is not re-appointed.

(2) Where a vacancy occurs in the office of the Chief Executive Officer, the Board shall, upon the recommendation of the responsible Minister appoint a person to replace the Chief Executive Officer, and until such time, the Deputy Chief Executive Officer shall hold the Office.

### **PART XIII - BUDGET, ACCOUNTS AND RECORDS**

#### **Annual budget**

**80.(1)** Every public enterprise shall prepare its budget forecast as a part of its business plan.

(2) The draft financial estimates shall be submitted to the Commission and the responsible Minister 4 months prior to the commencement of the preceding financial year, and any comments received from the Commission and the responsible Minister shall be incorporated in its financial estimates prior to submission for the approval of the Board.

(3) The Chairperson of the Board shall, with the approval of the Board submit a copy of the approved budget to the Commission 3 months prior to the commencement of the preceding financial year.

#### **Financial statements and annual reports**

**81.(1)** Every public enterprise shall prepare its financial statements for its own, its subsidiary if any, and group in accordance with the International Financial Reporting Framework where applicable.

(2) Any deviation from subsection (1) shall be approved by the shareholders in the annual general meeting.

(3) The Board shall, within 5 months from the end of every financial year through the Commission, furnish the Minister and the

responsible Minister with an annual report covering the operations of the financial affairs of the public enterprise as specified in Schedule 3

(4) The responsibilities of the Board under this section include submission to the Minister and the responsible Minister, through the Commission, the audited financial statements for each financial year prepared within 5 months from the end of the financial year.

(5) The Minister shall submit the report and statements referred to in subsections (3) and (4) and lay them before the National Assembly within six months after the end of the financial year.

(6) The Chairperson of the Board and the Chief Executive Officer or any other person who is duly authorised by the Board shall attend the Finance and Public Accounts Committee of the National Assembly to present the annual and financial report of their respective public enterprise.

### **Maintenance of accounting and financial records**

**82.(1)** Notwithstanding anything to the contrary contained in any law or enactment, every public enterprise shall cause accounting records to be kept in accordance with this Part.

(2) The accounting records shall be sufficient to show and explain the transactions of the public enterprise and shall be such as to —

- (a) disclose with reasonable accuracy, the financial performance, financial position and cash flow statements of the public enterprise; and
- (b) enable the Directors of the public enterprise to ensure that any financial statement prepared under this Part complies with the requirements of this Act, as to the form and content of the financial statement of the public enterprise.

(3) The accounting records of a public enterprise shall be kept at its head office or such other place approved by the Board, and shall at all times be open to inspection by such officers of the Commission as may be authorised.

(4) Subject to any direction relating to the disposal of records which may be given by the Auditor General, accounting records which a public enterprise is required to keep under this Act shall be preserved by it for a period of not less than 7 years from the date on which they were made.

## PART XIV - AUDIT

### Internal audit function

**83.(1)** Every public enterprise shall establish —

- (a) an audit committee at the Board level to oversee the internal control and management of the public enterprise; and
- (b) an internal audit unit functionally reporting to the Board and administratively reporting to the management to perform internal audit functions of the public enterprise.

(2) Where a Public enterprise has not established an audit committee keeping in view of its annual turnover, the Board shall request the approval of the Commission for assistance.

(3) The public enterprise referred to in subsection (2) may, with the approval of the Board engage any private auditor, not being its external auditor or a partner of its external auditor, to perform the functions of the internal audit unit in accordance with the provisions of the Public Finance Management Act.

(4) The audit committee referred to in subsection (1) shall —

- (a) establish an audit charter for the system of internal audit implementation in the public enterprise;
- (b) approve the annual risk-based audit operation plan;
- (c) examine the audit report and annual report;
- (d) monitor the settlement of external and internal audit observations; and



- (e) ensure the operation of an adequate and effective system of internal control and risk management.

(5) The internal auditor of each public enterprise shall be appointed by the Board and be subject to the direction of the audit committee.

(6) The internal audit unit of the public enterprise shall —

- (a) carry out the audit of the public enterprise in accordance with the international standards; and
- (b) produce at least once every year, a report on the internal control and any matter requiring attention of management based on the audit.

(7) An internal auditor shall in the performance of a duty under this Act and any other law —

- (a) at all times have unrestricted access to accounts, records, books, vouchers, financial and non-financial management systems, and documents relating to the accounts of the public enterprise;
- (b) require from the accounting officer of the public enterprise any information and explanation that may be necessary; and
- (c) investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient, and effective management of the funds of the public enterprise.

(8) The internal audit unit of the public enterprise shall prepare an audit plan and on being approved by the audit committee, submit it to the Commission for information.

(9) The internal audit report of the public enterprise shall contain —

- (a) the internal audit strategy;
- (b) the available internal audit resources;
- (c) a comparative statement on the audit carried out during the year and the audit plan for the year;
- (d) a statement on the result of the audit;
- (e) recommendations based on the audit findings made during the year;
- (f) a statement on the implementations made in the previous years; and
- (g) the audit plan for the following year.

(10) The audit committee shall examine the annual audit report under subsection (9) and furnish its findings to the Commission.

(11) An internal auditor shall submit the reports to the audit committee and such reports shall be copied to the Commission for information.

### **Audit of accounts**

**84.(1)** Pursuant to the Article 158 of the Constitution, The Auditor-General shall audit the accounts of the public enterprises established as statutory corporations.

(2) Accounts of the public enterprises not falling under subsection (1) shall be audited by auditors appointed by the Boards with the approval of the shareholders.

(3) Services of approved external auditors may be sought by the Board to cause its accounts audited, with the written approval of the Auditor general.

(4) The external auditor's report shall nevertheless be reviewed, endorsed and acknowledged by the Auditor General.

### **External auditor**

**85.(1)** A public enterprise shall appoint and have at all times an external auditor.

(2) An appointment made under subsection (1) shall not be effective unless it is approved by the Auditor General.

(3) All terms and conditions relating to the appointment of external auditors shall be documented and submitted to the Auditor General and the Commission for information.

(4) An external auditor appointed under subsection (1) shall not exceed a period of 5 consecutive years working with the same public enterprise.

### **False information or statements to auditors**

**86.(1)** An officer commits an offence and is personally liable if he or she knowingly or recklessly makes to the auditor, a statement which is misleading, false or deceptive in a material particular, and conveys or purports to convey any information or explanation which the auditor requires or is entitled to require as the auditor of the public enterprise.

(2) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 6 of the Standard Scale or to imprisonment not exceeding 2 years or both.

## **PART XV - PUBLIC ENTERPRISES REPORTING AND ACCOUNTABILITY**

### **Annual general meeting**

**87.(1)** The Board shall ensure that shareholders meetings are held at least once in every financial year.

- (2) The Board shall ensure that the Commission is notified of the date of the annual general meeting.
- (3) The Commission may be represented at the annual general meeting.
- (4) The annual general meeting shall be held in public.
- (5) At the shareholders meeting referred to in subsection (1) —
- (a) the external auditors shall present to the shareholders an audit opinion on the financial statements for the preceding financial year; and
  - (b) the Board shall submit to the shareholders proposed dividends, if any, for approval.

### **Protection of assets of public enterprises**

- 88.**(1) The Board shall take such steps as are necessary to protect the assets of the public enterprise against theft, misuse, loss, or any other risk.
- (2) A public enterprise shall not pledge any of its assets as collateral without the written authority of the Board and the Minister.
- (3) The Board shall ensure that adequate measures and controls are taken and implemented to safeguard the assets and optimum utilisation of resources is done in the best interest for the public enterprise.

### **Disposal of assets and liabilities by public enterprises**

- 89.**(1) Every public enterprise shall establish a disposal committee as and when need arises for the purpose of disposal of unserviceable, obsolete, obsolescent, or surplus stores, equipment, or assets.
- (2) The disposal committee is responsible for verification and processing of disposal recommendations.
- (3) The disposal committee shall consist of the following persons appointed by the Board —

- (a) the head of human resource and administration;
- (b) the head of accounts; and
- (c) two members from within or outside the public enterprise with skills, knowledge, and experience relevant to the asset, valuation and disposal.

(4) Any proposed list of assets to be disposed whose purchase value exceeds one million Rupees shall be submitted to the Minister for prior approval.

(5) Upon the approval of the Minister under subsection (4), the Board may proceed with the disposal.

(6) The public enterprise shall submit to the Commission a disposal of assets report within thirty days after conclusion of the disposal process.

### **Distributions of dividends**

**90.(1)** A dividend is a distribution out of the profits of the public enterprise, other than an acquisition by the public enterprise of its own shares or a redemption of shares by the public enterprise.

(2) The Board shall —

- (a) annually, at such time as the Minister may determine or as resolved in its annual general meeting, submit to the Minister a proposal on the distribution of its profits for the past financial year and the declaration of dividends; and
- (b) declare and pay such dividends —
  - (i) as is agreed between the Board, the Minister and the responsible Minister, provided that the Minister concurs with the agreement in question; or
  - (ii) as is directed in writing by the responsible Minister with the concurrence of the Minister, if an agreement

referred to in subparagraph (i) has not been concluded;

- (c) communicate details of such decisions for distribution of profits in writing to the Commission by the Chairperson of the Board of the public enterprise within 14 days of such decision.

(3) The Board shall not authorise payment of dividends in respect of some shares in a class and not others of that class or of a greater amount in respect of some shares in a class than other shares in that class, except where —

- (a) the amount of the dividend is reduced in proportion to any liability attached to the shares under the Memorandum or Articles of Association of the public enterprise; or
- (b) a shareholder has agreed in writing to receive no dividend or a lesser dividend than would otherwise be payable.

### **Quarterly reporting**

**91.(1)** The Chief Executive Officer of each public enterprise shall, within 20 days after the end of every quarter of the financial year, submit to the Commission in such form as the Commission may determine, a statement of the financial position, showing changes in cash position and operational performance of the public enterprise during that Quarter, including details of debt performance.

(2) A Chief Executive Officer of a public enterprise who fails to comply with subsection (1) without written consent from the Commission for an extension or exception, may be subjected to an administrative penalty not exceeding SCR50,000 payable to the Commission for such non-compliance.

### **Submission of other information**

**92.** A public enterprise shall provide the Commission with —

- (a) the minutes of the meetings of its Board and minutes of the committees of the Board; and
- (b) any other information, not specified in this Act, but necessary for the implementation of this Act as may be requested in writing by the Commission.

## **PART XVII - OFFENCES AND NON-COMPLIANCE**

### **Offences and penalties**

**93.** Any person who —

- (a) fails to furnish any returns or information in compliance with any requirement, imposed on him or her by this Act;
- (b) knowingly makes any false statement in any return or information furnished by him or her in compliance with any requirements imposed on him or her by this Act;
- (c) wilfully omits any matter in any return or information furnished by him or her in compliance with any requirement imposed on him or her by this Act;
- (d) contravenes the provisions of this Act;
- (e) fails to comply with a lawful direction of a special investigator or refuses or fails to produce documents or answer questions sought or asked by a special investigator or hinder or obstruct a special investigator or destroys documents or any other thing relevant to an investigation;
- (f) wilfully obstructs any member of the Commission or an officer or servant of the Commission in the performance of his or her duties under this Act,

commits an offence and is liable on conviction to a fine not exceeding Level 6 on the Standard Scale or imprisonment not exceeding 2 years or both.

### **Effect of non-compliance**

94. In the event of non-compliance by a public enterprise or any officials or Board members of the public enterprise with any of the obligations under this Act, the Commission may issue a notice specifying a timeframe for compliance with the obligations and any further directives as the Commission considers necessary or appropriate.

## **PART XIX - ENFORCEMENT**

### **Enforcement powers of the Commission**

95. The Commission, in the performance of its functions under this Act —

- (a) shall at all reasonable times have access to, but not limited to, accounts, records, books, vouchers, financial and non-financial management systems, and documents relating to the accounts of any public enterprise;
- (b) may require from an accounting officer of a public enterprise any information and explanation that the Commission may consider necessary; and
- (c) may investigate whether there are adequate measures and procedures for the proper application of sound economic, efficient and effective management of the funds of the public enterprise;
- (d) shall have the powers to impose administrative penalties for non-compliance with the provisions of this Act;
- (e) make recommendations to the Minister on any decision which the Commission has reasonable grounds to conclude that decisions are not for the best interest of the public enterprise or the shareholder's wealth;
- (f) shall have the right to monitor the implementation of recommendations made by regulatory authorities, the Auditor General or external auditors, investigators or any other authorised authority or person.



### **This Act to prevail over certain laws**

**96.(1)** Subject to subsection (2) and notwithstanding the provisions of any law to the contrary, this Act shall apply to every public enterprise.

(2) This Act shall prevail if a conflict relating to any matter provided for in this Act arises between this Act and the provisions of the law or document establishing a public enterprise.

### **Returns and information**

**97.(1)** For the purpose of enabling the Commission to exercise, perform and discharge any of its powers, duties and functions under this Act, the Commission or any person authorised in that behalf by the Commission may, by notice in writing, require any person to furnish to the Commission or to the person authorised, within such period as shall be specified in the notice, all such returns or information, including auditors management letters pertaining to any business affairs or transactions of any public enterprise as are known to or in the possession of any person as shall be specified in such notice.

(2) It shall be the duty of any person who is required to furnish any return or information by a notice under subsection (1) to comply with such requirement within the time specified in such notice, except where such person is precluded from making such return or divulging such information under the provisions of any law.

(3) The Commission or any member of the Commission or any officer or servant of the Commission shall not disclose to any person or use any returns or information furnished under subsection (1), except when required to do so by a court of law or for the purposes of achieving the objects of the Commission.

### **Inefficient operations of public enterprises**

**98.(1)** The Commission shall, where the Commission considers that the operations of a public enterprise are not being carried out in an efficient manner, review the operations and recommend to the Board for appropriate action.

(2) The Commission shall refer the matter to the Minister and the responsible Minister, who may refer the matter to the President, recommending for suspension, dissolution, or dismissal of the Board, if despite bringing the matter to the notice of the Board, there is, within twelve months, no improvement in the operations of the public enterprise.

(3) Where a responsible Minister fails to act as prescribed in subsection (2), the President may —

- (a) dissolve the Board;
- (b) issue an order for a total review of the public enterprise to improve its performance and operations.

### **Powers of Ministers**

**99.(1)** The Minister and the responsible Minister shall have the powers to over-rule, dictate, ratify or approve the decisions made by the Board of the public enterprises on reasonable grounds.

(2) The Minister or the responsible Minister shall have the powers to call for meetings, give policy directives and discuss with the Board at reasonable notice in relation to the affairs of the public enterprise.

## **PART XVIII - MISCELLANEOUS**

### **Publication of information**

**100.** The Commission shall not permit any person to access information submitted to the Commission by a public enterprise, unless the Commission deems such access necessary for the purposes of this Act.

### **Settlement of disputes**

**101.(1)** Any dispute arising among public enterprises may be settled amicably by agreement among those public enterprises.

(2) A dispute among public enterprises which cannot be settled by agreement shall be referred to the responsible Minister or responsible Ministers whose decision shall be final.

### **Liability for decisions made**

**102.** No person engaged in carrying out any provision of this Act is liable in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or performance of a duty or function under or by virtue of this Act or in respect of anything that may result from the performance of that duty or function.

### **Regulations**

**103.** The Minister may make regulations —

- (a) for the purpose of giving effect to the objects and purposes of this Act, including prescribing any matter which is to be or may be prescribed under this Act;
- (b) for prescribing sanctions, penalties and fines to public enterprises and individuals for contravening this Act or regulations made under this Act and prescribing the manner of enforcing such penalties against the individual or entity;
- (c) for prescribing circumstances under which a contravention of this Act or regulations made under this Act or failure to comply with this Act or regulations made under this Act will be a ground for the removal of a member of the Board or other officer of the public enterprise;
- (d) for prescribing matters relating to human resources, assets and finance;
- (e) for prescribing any matter relating to the performance measurement and evaluation of public enterprises;
- (f) for prescribing any duty or obligation that is necessary to promote or enforce good corporate governance;
- (g) for prescribing governance agreements between the State and the Boards of public enterprises;

- (h) for prescribing performance agreements between the Board and individual members of the Board, between the Board and its Chief Executive Officer, and between its Chief Executive Officer and senior management staff of the public enterprise concerned;
- (i) in relation to or with respect to any matter required or permitted by this Act to be prescribed or necessary or expedient to be prescribed to give effect to this Act; and
- (j) to amend any Schedule.

### **Repeal and savings**

**104.(1)** The Public enterprise Monitoring Commission Act, 2013 is repealed.

(2) Any statutory instrument made under the repealed Act shall continue in force as if made under this Act until it is amended or repealed under this Act.

(3) Anything made, established or done under the repealed Act, which could have been made, established or done under this Act shall continue in force and be deemed to be made under this Act until it is amended or revoked under this Act or cease to have effect by effluxion of time.

**SCHEDULE 1***(Section 2)***LIST OF PUBLIC ENTERPRISES**

<b>Column 1</b>	<b>Column 2</b>
Seychelles Public Transport Corporation	Minister responsible for Land Transport
Property Management Corporation	Minister responsible for Housing
Air Seychelles Limited	Minister responsible for Civil Aviation
Seychelles Civil Aviation Authority	Minister responsible for Civil Aviation
Seychelles Ports Authority	Minister responsible for Ports
Island Development Company Limited	Minister responsible for Islands
Green Island Construction Company Limited	Minister responsible for Islands
Green Tree Investment Company Limited	Minister responsible for Islands
Seychelles Petroleum Company Limited	Minister responsible for Finance
Seychelles Progress Limited	Minister responsible for Finance
Seychelles Patriot Limited	Minister responsible for Finance
Seychelles Pioneer Limited	Minister responsible for Finance
Seychelles Prelude Limited	Minister responsible for Finance
Petro Seychelles Limited	Minister responsible for Blue Economy
LUnion Estate Company Limited	Minister responsible for Industry
Public Utilities Corporation	Minister responsible for Environment, Energy and Climate Change
Seychelles Parks and Gardens Authority	Minister responsible for Environment
Seychelles Postal Services Limited	Minister responsible for Trade
Seychelles Trading Company Limited	Minister responsible for Trade
Societe Seychelloise dInvestissement Limited	Minister responsible for Finance
Bois De Rose Investment Limited	Minister responsible for Trade
Paradis Des Enfant Limited	Minister responsible for Culture
Seychelles Pension Fund	Minister responsible for Finance
Financial Services Authority	Minister responsible for Finance
2020 Development Company Limited	Minister responsible for Investment
National Information Services Agency	Minister responsible for Information
Seychelles Fishing Authority	Minister responsible for Fisheries

**SCHEDULE 2***(Section 66)***RULES RELATING TO BOARD MEETINGS****1. Every Board—**

- (a) shall hold an Annual Meeting not more than 3 months after the close of the financial year of the public enterprise —
  - (i) to consider and approve the report of the Board, the audited financial statements and the auditor's report for the financial year;
  - (ii) to make recommendations on the payment of dividends by the public enterprise; and
  - (iii) to deal with any financial or other matters of the public enterprise.
- (b) shall hold a special meeting not less than 3 months prior to the close of each financial year of the public enterprise in order to consider and approve the budget and the calendar of ordinary meetings, of which there shall be at least one every 2 months, of the next following financial year; and
- (c) shall in addition to the meetings referred to in paragraphs (a) and (b), hold ordinary meetings —
  - (i) in accordance with the calendar of meetings approved under paragraph (b) but the Board may at any of its meetings amend the calendar provided that it holds at least one meeting every 2 months;
  - (ii) when directed in writing (stating the reason for the calling of the meeting) by the Responsible Minister; or
  - (iii) at the request in writing (stating the reason for the calling of the meeting) of any Directors.
- (a) Where a meeting is convened in accordance with paragraph (c), the notice of the meeting shall state the purpose of the meeting.

**2. The quorum for a meeting of the Board of the Public enterprise shall be as follows—**

Total Number of Members	Quorum
Five	Three
Six	Four
Seven to Eight	Five
Nine	Six

1. The Chairperson or in the absence of the Chairperson, the Vice-Chairperson or, in the absence of both the Chairperson and the vice-Chairperson, a Director elected by the other Directors for this purpose at the meeting, shall preside at a meeting of the Board.

2. At a meeting of the Board each Director has one vote in respect of any matter which is before the Board for its decision but in the event of an equality of votes, the person presiding at the meeting shall, in addition, have a casting vote.

3. Decisions of the Board shall be by a majority of votes of the Directors present and voting at a meeting.

4. A Director who has a direct or indirect interest in any matter to be decided by the Board of a public enterprise shall disclose the nature of the interest at a meeting of the Board and shall not vote on the matter nor take part in any discussion in respect of that matter.

5. All orders, directions or decisions of a Board of a public enterprise shall be given or notified under the hand of the Chairperson, or such other Director as the Board may appoint for this purpose.

6. Subject to this Schedule, the Board may regulate its own proceedings.

**SCHEDULE 3***[Section 81 (3)]***MINIMUM REQUIREMENTS FOR ANNUAL REPORT  
OF PUBLIC ENTERPRISES**

1. The annual report of each public enterprise shall contain the following particulars in addition to the requirements set out in the governing law —

- (a) the audited financial statements, including a statement of —
  - (i) financial position;
  - (ii) profit and loss;
  - (iii) changes in financial position;
  - (iv) the dividend payable;
  - (v) cash flow and such other statements as may be necessary to show the financial results of the public enterprise during that financial year; and
- (b) the auditor's report on those financial statements which —
  - (i) identifies those to whom it is addressed and the financial statements to which it relates;
  - (ii) states whether the accounts have been audited in accordance with the International Standards on Auditing (ISA);
  - (iii) states whether it is prepared in accordance with the International Financial Reporting Standards (IFRS) as set by the International Accounting Standards Board (IASB);
  - (iv) details any transactions which the auditor has made for or on behalf of the public enterprise;
  - (v) states whether in the opinion of the auditor the accounts have or have not been prepared in accordance with the provisions of applicable laws;



- (vi) states whether in the opinion of the auditor the accounts do or do not give a true and fair view of the state of affairs of the public enterprise and, in the case that they do not, state the reasons for such opinion;
  - (vii) states whether in the opinion of the auditor the accounts do or do not give a true and fair view of the state of affairs of the public enterprise and, in the case that they do not, state the reasons for such opinion;
  - (viii) states whether the auditor has received all the information necessary for the purposes of audit and whether the auditor is or is not satisfied with the information received;
  - (ix) states whether in the auditors' opinion the information given by the Directors in the annual report in relation to the financial year under reference is or is not consistent with the accounts;
  - (x) states any other matter which in the opinion of the auditor needs to be stated;
- (c) a statement of the performance of the public enterprise in relation to the performance targets detailed in the statement of corporate intent;
  - (d) a statement that presents an objective, balanced and understandable commentary on the public enterprise's financial performance and position, its non-financial performance, and on its future ability to meet its liabilities and commitments;
  - (e) details of any changes in the composition of the Board during the year, including the appointment of new members, reappointments and any removals;
  - (f) the number of meetings of the Board and of committee meetings held and the committee's composition;
  - (g) brief statement of any significant complaints which have been made against the public enterprise;

- (h) judicial proceedings filed or likely to be filed against the public enterprise;
- (i) where non-financial information was subject to external validation, details in this regard;
- (j) brief details of the background of any member of the Board who served at any time during the year;
- (k) a statement of issues raised and recommendations proposed on the public enterprise by the Commission during the period and consecutive action taken by management, which shall include reasons for not doing so if no follow up action is taken;
- (l) a description of any social service obligations performed during the year;
- (m) a statement explaining (as a minimum) its responsibility for —
  - (i) approving the budget to provide authorisation for the acquisition and use of financial resources;
  - (ii) preparing and providing financial statements that fairly present the state of affairs of the public enterprise as at the end of the financial year and the results of its operations for that year;
  - (iii) maintaining an effective framework of internal control, risk management and appropriate governance procedures;
  - (iv) maintaining adequate accounting records and ensuring the consistent use of appropriate accounting policies, supported by reasonable and prudent judgements and estimates and ensuring adherence to applicable accounting standards unless fully disclosed, explained and quantified.
- (n) the public enterprise's financial statements providing —
  - (i) the amounts paid to the external audit for auditor and separately for non-audit services, including a description of the nature and amounts paid for each of the services undertaken;

- (ii) an outline of the structure of the public enterprise;
- (iii) a review of the financial performance;
- (iv) internal and external factors influencing the public enterprise's performance;
- (v) significant events which may affect the public enterprise's future performance;
- (vi) significant post-balance sheet events;
- (vii) discussion of relations with stakeholders, referring to significant change;
- (viii) financial and other effects of directions from the Commission.

2. (a) An Annual Meeting shall be held not later than one month after signing of the audited financial statements at which the annual report will be presented. Members of the Board, the Chief Executive Officer, the Chief Finance Officer and the external auditor shall attend the meeting and be available to answer questions.

(b) The approved annual report of a Public enterprise shall be published and made available to all stakeholders.

#### **SCHEDULE 4**

*[Section 61 (2)]*

#### **DUTIES AND LIABILITIES OF DIRECTORS**

1. It shall be the duty of the Directors of a public enterprise —
  - (a) to exercise their powers in accordance with this Act and within the limits and subject to the conditions and restrictions established by the public enterprise's Memorandum, Articles or the governing law;
  - (b) to obtain the authorisation of the Board before doing any act or entering into any transaction for which the authorisation or

consent of a general meeting is required by this Act or by the public enterprise's Memorandum or Articles, or the governing law;

- (c) to exercise their powers in good faith in what they reasonably consider to be the interests of the shareholders of the public enterprise as a whole and for the respective purposes for which such powers are explicitly or impliedly conferred;
- (d) to declare to the public enterprise for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as Directors, except remunerations, pensions, provisions and compensation for loss of office in respect of their directorship of any public enterprise which are lawfully authorised or approved by a Board resolution and, where necessary, by the Cabinet;
- (e) not to make use of any information received by them respectively as Directors otherwise than for the benefit of the shareholders of the public enterprise as, a whole, either during their respective terms of office or thereafter;
- (f) not to compete with the public enterprise or become a Director or officer of a competing company that operates in the same line or activity;
- (g) if Directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the public enterprise, to disclose each of their respective interests to the Board of the public enterprise at which the contract or transaction is first taken into consideration, and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction; and
- (h) not to use any assets of the public enterprise for any illegal or improper purpose, and not to do, or knowingly allow to be done, anything by which the public enterprise assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);

- (i) to transfer forthwith to the public enterprise all cash or 'assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the public enterprise and to use it only for the purposes of the public enterprise;
- (j) to attend Board meetings with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse.

2. The duties imposed by this section shall be owed to the public enterprise, and not to the Board members, shareholders; officers or creditors of the public enterprise, but —

- (a) an application may be made to the court by any shareholder for a declaration that any act or transaction, or proposed act or transaction, by the involves a breach of any of their said duties, and if the court makes such a declaration it may issue an injunction to restrain the Directors or any Director or former Director from doing any such proposed act or entering into any such proposed transaction; and
- (b) an action for damages for breach of the said duties may be brought in the name of the public enterprise by the Board.

3. For the purpose of this section, a general notice given to the Board by a responsible Minister or Director to the effect that he or she is a member, shareholder, or officer of a specified public enterprise and is to be regarded as interested in any contract which may, after the date of the notice, be made with that public enterprise, shall be deemed to be a sufficient declaration of interest in relation to any contract so made, except that no such notice shall be of effect unless it is given at a Board meeting.

4. Any person who commits a breach of a duty imposed on him by paragraphs (d), (e), (f), (h) or (j) of subsection (1) shall, without prejudice to the generality of the expression, be deemed to have committed a serious breach of duty.

5. A person who —

- (a) knowingly commits a breach of any duty imposed on him by subsection (1) of this section; or

- (b) commits a breach of a duty imposed on him by paragraphs (d), (e), (g), (h) or (i) of subsection (1); shall be guilty of an offence punishable and hence be held liable as per the legal proceedings of the Penal Code.

**6.** If a public enterprise has a subsidiary, Directors of the public enterprise and subsidiary shall owe the same duties under subsection (1) to the public enterprise in respect of the affairs of the subsidiary and their conduct in relation to the subsidiary as though the public enterprise and subsidiary were one, and the public enterprise owned the subsidiary's assets and undertaking, and the whole of this section shall then be applied accordingly, provided that nothing in the subsection shall affect the duties of the Directors of the subsidiary toward the subsidiary and the remedies conferred by this section for the breach of any such duties.