

REPUBLIC OF THE GAMBIA



MINISTRY OF FINANCE AND ECONOMIC AFFAIRS

CODE OF GOOD CORPORATE GOVERNANCE FOR STATE-OWNED ENTERPRISES IN THE GAMBIA

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PREFACE

This Code of Good Corporate Governance aims to define the responsibilities and accountabilities of the Board of Directors and Officers of State-Owned Enterprises (SOEs). It is the primary source of guidance on all aspects of governance including statutory guidance under which the SOEs operate if not conflicted with Acts of Parliament. The focus is on commercial SOEs at the national level in which government has significant control through full, majority, or substantial minority ownership.

The following results are predicted from the adoption of this manual:

- Improved oversight responsibilities of Boards;
- Enhanced strategic outlook of SOEs;
- Increased recognition of a Board's duties and responsibilities;
- Greater responsibility, openness, accountability, productivity, and effectiveness;
- Better relationship between Boards and Management and staff;
- Improve risk management and minimise wastage within the SOE;
- Manage the SOE effectively and efficiently to achieve set goals;
- Comply with established rules and regulations;
- Increased and sustained stakeholder satisfaction; and
- Improve the overall effectiveness of the SOEs.

This Code which is made up of fourteen chapters covers the following topics:

- *Setting the Context*
- *Understanding Corporate Governance*
- *Board Appointment, Induction and Tenure*
- *Responsibilities, Duties and Liabilities of Directors*
- *Meetings of the Boards of SOEs*
- *Committees of Boards*
- *Remuneration for the Board of Directors*
- *Reporting and Compliance*
- *Distinction Between the Board and Management Duties*
- *Evaluation of the Board*
- *Performance Contract*
- *Ethical Standards*
- *Risk Management*
- *Social Responsibility*
- *Environmental, Social and Governance (ESG)*

Finally, operational issues in SOEs are obvious indications that the concepts and practices of effective corporate governance in SOEs have not been adequately grasped and complied with. All stakeholders must share responsibilities for promoting excellent company governance.

LIST OF ABBREVIATIONS

AM	-	Annual Meeting
MD	-	Managing Director
CACG	-	Commonwealth Association for Corporate Governance
CEO	-	Chief Executive Officer
GoTG	-	Government of the Gambia
INED	-	Independent Non-Executive Directors
MoFEA	-	Ministry of Finance and Economic Affairs
PAC	-	Public Accounts Committee
PEC	-	Public Enterprise Committee
PSC	-	Public Service Commission
SOEs	-	State-Owned Enterprises
SOE Act	-	State-Owned Enterprises Act, 2023

CHAPTER ONE - SETTING THE CONTEXT

1.1 Introduction

The fairness and transparency of the business environment, the accountability of institution directors for their activities, and the enforceability of all business agreements signed by the institution are all ensured by good corporate governance procedures.

Strong board procedures and dedication, efficient internal controls, open disclosure, and clearly defined shareholder rights are all characteristics of an SOE that adheres to sound corporate governance.

This Code of Good Corporate governance therefore aims to provide the structure for defining, implementing, and monitoring an SOE's goals and objectives and for ensuring accountability to appropriate stakeholders. This code also aims to build on current corporate governance regulations regulating SOEs.

Compliance with the provisions of this Code is mandatory.

1.2 State-Owned Enterprises

Section 175(1) of the Constitution of the Republic of the Gambia defines an SOE as any corporate body or other body or institution, wholly owned or controlled by the government.

1.3 Corporate Governance Challenges of SOEs

SOEs confront unique governance problems that have a direct impact on their performance as compared to private sector businesses. The traditional division between the interests of a company's owner (also known as the principal) and its management (often known as the agents) provides a suitable framework for analysing these discrepancies. Setting the goals that the agent is to pursue and managing the moral hazard issues related to giving responsibility to someone whose private motives are likely to differ from those of the principal are two independent responsibilities that the principle must manage in any principal-agent relationship.

For private businesses, the difficulty of goal setting is very simple: the owners' top priority is to achieve the best financial performance.

As a result, the majority of the focus of corporate governance in the private sector is on matching managers' incentives with the owners' and shareholders'. Aligning manager and owner incentives is an issue for SOEs as well. However, they may also run into additional governance challenges due to a variety of factors:

- a) Multiple principals
- b) Multiple and often competing goals and objectives.
- c) Protection from competition
- d) Politicized boards and management
- e) Low levels of transparency and accountability
- f) Weak protection of minority shareholders

The creation of a Corporate Governance Code for SOEs to direct Boards, Management, and the SOE Commission on their governance activities, roles, and obligations was required as a result of these challenges and the numerous complaints that were received.

CHAPTER TWO - UNDERSTANDING CORPORATE GOVERNANCE

2.1 Definition of Corporate Governance

Corporate governance may be defined as a set of relationships between an institution's management, board of directors, shareholders, citizens and other stakeholders. It further provides the systems and structures through which the institution is directed, and its objectives set, and the means of attaining those objectives and monitoring performance are determined.¹

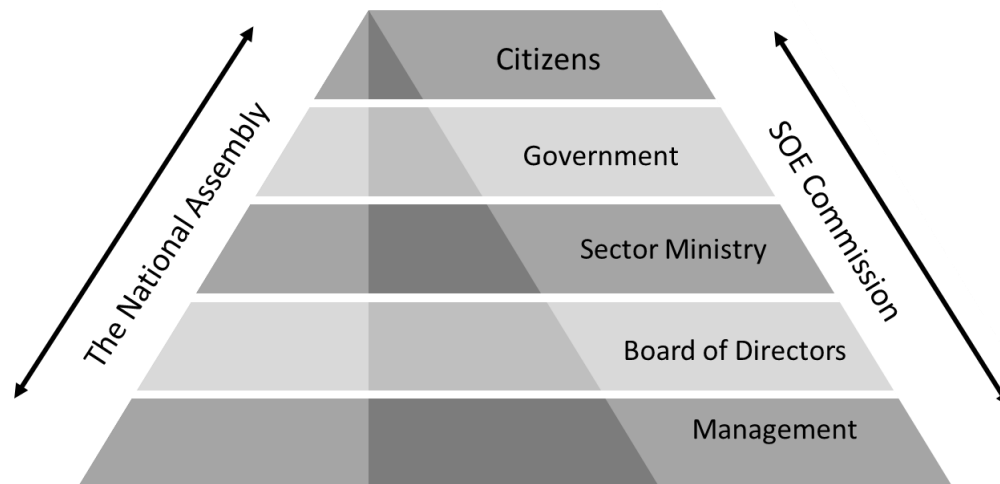
2.2 Good Corporate Governance and its Relevance

Good corporate governance in SOEs is relevant as it:

- a) ensures that the business environment is fair and transparent;
- b) ensures that directors of SOEs are held accountable for their actions;
- c) requires that all business contracts made by the SOE can be enforced;
- d) encourages global investors to invest in various sectors of the economy;
- e) facilitates efficient and effective allocation of resources;
- f) assures stakeholders, including the citizens that their welfare is of primary concern to the Government and that the SOEs will be managed efficiently and effectively;
- g) creates an enabling environment where the citizens are empowered to voluntarily participate in governance to contribute towards national development; and
- h) assures stakeholders that those who mismanage or abuse the trust reposed in them shall be sanctioned in accordance with relevant laws, rules, and regulations.

2.3 SOE Corporate Governance Framework

The SOEs present a complex and challenging corporate governance architecture or structure made up of the following:



2.3.1 Citizens

They are recognised as the owners of the SOEs. The SOEs provide services for the benefit of citizens to improve their quality of life. Citizens, as owners of the SOEs, have the right to know how the SOEs are run, their objectives and output. SOEs are accountable to the citizens. The preamble of the Constitution of the Republic of the Gambia highlights the sovereignty of the people of the Gambia from who all power emanates.

¹ [G20/OECD Principles of Corporate Governance](#)

2.3.2 Government

Chosen by the citizenry through elections the head of government holds “shares” in trust for the citizens of Gambia. The government is given the mandate and empowered by the constitution to appoint directors in line with stipulated guidelines contained in the SOE Act. The government often delegates this responsibility to respective ministries. The board members of SOEs are appointed by the President, in consultation with the Public Service Commission, and may be removed by the President on appropriate grounds.

2.3.3 Sector Ministry

A specialised executive branch of the Government that focuses on specific areas or sector of public policies. The Ministry is responsible for the oversight and implementation of policies, regulations and services related to its specific sector. They ensure that SOEs within its sector operate in alignment with the objectives and policies of the Government.

2.3.4 Boards of Directors

They are appointed by the President on the recommendation of the SOE Commission and the Public Service Commission (PSC). Among other things, they are in charge of defining goals, assessing managerial performance, and providing strategic direction.

2.3.5 Management

The Chief Executive Officer is appointed by the President after consultation with the Board of Directors of the SOE or other governing body of an SOE, the PSC, and the SOE Commission. The responsibility of putting plan into practice and evaluating performance falls to management.

2.3.6 The National Assembly

They are also chosen by the citizens through elections. The National Assembly passes legislation which supports and strengthens the operating framework, including laws and regulations relating to SOEs. SOEs are expected to submit an annual report to the National Assembly through the SOE Commission. The National Assembly acts as fiduciaries of the citizens. Chapter 5 of the Gambian Constitution focuses on the representation of the people and elaborates on the constitutional right of the people to elect members of the National Assembly who are their representatives.

2.3.7 SOE Commission

They have strategic control consistent with the responsibility of the National Assembly and the public. The functions of the Commission as provided for in the SOE Act include their duty to monitor and have oversight of the SOEs, coordinate and monitor the operations of the SOEs in alignment with national development programs and support the President and the Public Service Commission in making appointments to the Boards of SOEs. The SOE Commission, together with the Sector Minister and the Minister of Finance enter into performance contracts with the SOEs to encourage maximum performance of the enterprise.

2.4 Protection of Public Servants

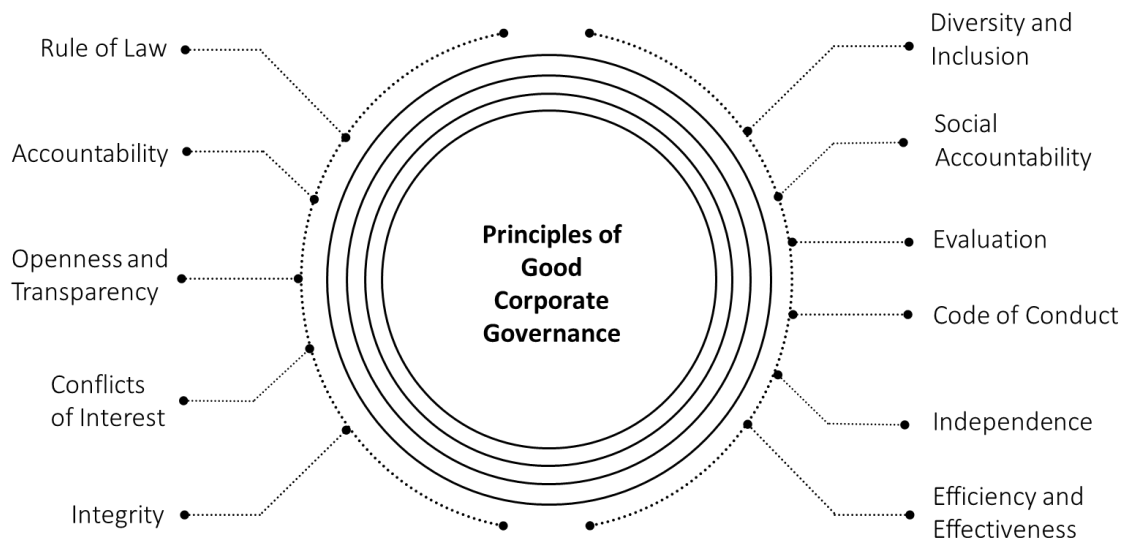
Section 169(1) of the Constitution gives protection to public servants to enable them to perform their functions. It states as follows:

“No public servant shall be:

- a) victimized or discriminated against directly or indirectly for having discharged his or other duties faithfully and according to law or
- b) be removed from office or reduced in rank or otherwise punished without just cause. “

2.5 Principles of Good Corporate Governance

Directors of the Board and Senior Management shall abide by the following guidelines for excellent corporate governance to enhance governance practices in SOEs:



2.5.1 Rule of Law

Section 222(1) of the Constitution of the Republic of Gambia, 1997 provides that “A public officer shall respect the law and shall conduct himself or herself at all times in a manner which promotes confidence in the integrity of public office.”

Directors of SOEs must always follow laid down laws, rules and due process. Boards must ensure that mechanisms are in place as well as proper accountability for the respect and promotion of rule of law. In the discharge of their responsibilities such as in procurement, staff misconduct and investigation, disclosure and transparency etc. the principle of the rule of law must be respected.

This means that throughout the course of an investigation into an offence, employee rights must be respected. Therefore, the worker shall be given the chance to speak up. The punishment will be appropriate for the offence or misconduct that has been established.

2.5.2 Accountability

Section 175(4) of Constitution states that public “...enterprises shall be accountable to the National Assembly and shall conduct their affairs in order to promote efficiency, transparency and probity in all their undertakings.”

Section 42(4) of the State-Owned Enterprises Act, 2023 states that “A Director being the trustee of the moneys and properties of the State-Owned Enterprise and who stands in a fiduciary relationship to it shall:

- a) account for all the moneys over which the Director exercises control; and
- b) refund any moneys improperly paid.”

Board members of SOEs are accountable for the moneys, properties, and all resources within their control. They are also accountable and answerable for their actions, inactions, roles, and responsibilities by virtue of the positions they hold. Board members must perform their duties in the interest of the SOE, stakeholders, and citizens and not in their own interests. They are accountable to their appointing authority, citizens and all stakeholders and must carry out their activities in a transparent manner.

Directors have a duty of care to ensure that they undertake their duties with such reasonable care, competence, and skill as is expected of the board member of an SOE as they will be accountable for their actions. They also have a duty of loyalty to ensure that they work in the interest of the SOE and not in their own interest or that of another party. They must avoid conflict of interest. Accountability also requires that actions of the board follow the law and directors exercise their duty of compliance.

The political, administrative, and financial spheres of formal accountability need to be reconsidered in light of the significant changes in the responsibilities of citizens, public officials, and politicians. These initiatives include citizen journalism and open data projects. In line with promoting accountability of SOEs, the Access to Information Act, 2021 shall be applicable where necessary.

2.5.3 Openness and Transparency

It is the duty of the Board and board members to ensure that there exists a transparent environment for good corporate governance. All transactions must be conducted using an open, fair and transparent approach. There must be full disclosure of transactions using the right channels and laid down rules and Board members shall fully disclose any interest they may have in transactions before the Board. Policies on transparency, disclosure and conflict of interest must be developed by the Board.

Section 42(1)(h) of the SOE Act 2023 provides that Directors of SOEs are to “...ensure that all contracts entered into by the State-Owned Enterprises are done through a process that is transparent and fair, and that where possible proper requests for proposals are issued before contracts are let...”

2.5.4 Conflicts of Interest

Section 222(10) of the Constitution states that “A public officer shall not put himself or herself in a position where his or her personal interest conflicts with his or her duties or responsibilities.” Section 53 of the SOE Act further throws more light on the duty of Directors of SOEs in relation to conflict of interest. Furthermore, all other laws, guidelines, directives, and codes relating to code of conduct and conflict of interest for public officers are applicable to Board members of SOEs. All directors shall assiduously avoid conflict of interest situations in the discharge of their fiduciary responsibilities to SOEs. Should any director be in a perceived and/or actual conflicting situations, the directors shall disclose the conflict and follow laid down conflict of interest procedures.

2.5.5 Integrity

Section 175 (2) of the 1997 Constitution states that “The members of the Board of directors or other governing body of a Public Enterprise shall be appointed by the President after consultation with the PSC and shall be selected from amongst persons of integrity, competence and maturity of judgment.”

Board members of SOEs must exhibit personal integrity, honesty, and high moral values. Board members must avoid abuse of power and authority, lack of diligence, dishonesty, insincerity, and contradictory standards. Board members must ensure that their actions and their words align as they represent the SOEs on whose board they serve. Board members must boldly oppose corrupt and fraudulent practices. They must not be found to be involved in any form of corruption.

2.5.6 Diversity and Inclusion

Governments may actively design, implement, and evaluate participation and equality in governance and decision-making to make communities more cohesive and resilient, and democracies more vibrant. To that aim, governments are to incorporate inclusion as a key component of policymaking. The use of a gender-equality and inclusion assists governments in better understanding the needs of all society groups and how to successfully react to them. In the appointment of senior management of the SOEs, the Directors of the Board should promote gender equality, inclusion and diversity in the SOEs and give equal opportunity for career and professional growth and development. Diversity and inclusion requires the involvement of the youth, persons living with disability, the private sector and gender-balance at Board levels as well as other positions in the SOEs.

Section 35 of the SOE Act requires that at least three (3) Board members of each SOE shall be women. Furthermore, the vetting and appointment process to the Board shall be skills-based, ensuring that the successful candidate possesses the right skills, knowledge and experience required to fill the gap identified pursuant to Section 36 of the SOE Act.

2.5.7 Efficiency and Effectiveness

Efficiency and effectiveness demonstrate that resources must be used as effectively as possible to yield the greatest possible results. Board members shall prevent from wasting SOE resources. Board members shall take part in all board

discussions in order to make decisions and maintain complete authority over the SOE. To prevent or decrease waste in SOEs, relevant internal controls shall be implemented and closely maintained. Directors must ensure value for money in the operations of the SOE. The SOE should operate at relatively low costs while ensuring efficiency and high productivity and valued results. There must be a balance between economy, efficiency and effectiveness.

Section 222(2) of the Constitution states that “A public officer shall acquire such professional competence to enable him or her to perform the functions of his or her office with efficiency...”

Section 25 of the SOE Act also mentions that one of the primary objectives of an SOE “...shall be to provide quality public service delivery that is accessible to all citizens in an effective and efficient manner.”

The manner in which the SOE provides services to the public must be in an efficient and effective manner. The SOE must also be run with the aim of being effective and efficient in line with their mandate.

2.5.8 Social Responsibility

Board members must follow any applicable international standards on:

- a) human rights: these are universal, fundamental and inalienable. The human rights of the staff, senior management and directors of the SOE must be protected;
- b) labour: forced labour, child labour, discrimination etc must be eliminated, labour laws must be respected and employees must work under healthy working conditions;
- c) environment, health and safety: the impact of the SOEs operations on the environment and the public must be monitored. The SOEs should implement policies on Environmental, Social and Governance (ESG) and Corporate Social Responsibility (CSR) to highlight on such matters ; and
- d) corruption: SOEs should clearly document ethical business conduct and ethics in their code of ethics which will guard against corruption and unethical business practices. A stance against corruption should be taken by all SOEs and consequences for engaging in corrupt practices by the directors, senior management and staff of the SOE should be spelt out. Persons convicted of crimes involving fraud and dishonesty are ineligible to be appointed to the Board of an SOE under the SOE Act.

Therefore, board members must:

- a) be concerned with more than just economic events;
- b) not be primarily engaged in financial difficulties;
- c) be accountable to a larger set of stakeholders;
- d) understand that the performance of their institutions extends beyond only reporting financial success.

2.5.9 Code of Conduct

- a) Board members shall impose on themselves a Code of Conduct that establishes:
 - i. members' personal conduct;
 - ii. their interactions with the organisation and its employees, particularly Management;
 - iii. their relationships with stakeholders;
 - iv. their attendance and active participation at meetings;
 - v. and their adherence to the oaths of office and of secrecy and against the unauthorised disclosure of information.
- b) Sanctions are necessary for conduct codes to be effective.
- c) The code of conduct spelt out in the Constitution and all regulations, directives and codes on the conduct of board members, management and staff of SOEs shall be applicable to members of the boards of SOEs.

2.5.10 Independence

All board members of SOEs are expected to exemplify independence in character, mind, thought and judgment. The Boards may request independent external and professional expertise in the performance of their responsibilities. The members shall not seek favours and allow themselves to be pressured by third parties to conduct dubious business for the profit of others. The members shall always act in the best interest of the SOEs.

Self-confidence is the first step to independence. When unsure about the results of their action, especially when a third party requested that they carry out the transaction or activity, members shall seek a second view or legal counsel. A member's independence is more likely to be guaranteed if he doesn't ask for favours from management or other people.

2.5.11 Evaluation

The Boards shall evaluate both their collective performance and member effectiveness on an annual basis, including the Board Chair and the Chief Executive Officer through an internal evaluation process. This is in keeping with good corporate conduct. Through suitable capacity development programmes and other behavioural changes, weaknesses noted will be rectified.

Therefore, corporate governance principles should encompass:

- a) Facilitating meaningful communication among the board, management, as well as both external and internal stakeholders of the State-Owned Enterprise (SOE).
- b) Ensuring that board members recognize their primary role in safeguarding the SOE's interests, while also taking into account the concerns of other stakeholders.
- c) Ensuring that the board is aware that its principal duties revolve around providing guidance, direction, and evaluation of the CEO, formulating and overseeing the SOE's strategy, and monitoring risks and control mechanisms within the SOE.

2.6 Characteristics of an Efficiently Organized and Governed System

An efficiently organized and governed system should be characterized by the following:

- a) Coherent allocation of tasks and responsibilities that clearly define the roles of individuals and units.
- b) Flexible grouping of individual positions into units, units into departments, and ultimately into a management hierarchy.
- c) Proper functioning of mechanisms designed for top-down coordination.
- d) Effective mechanisms for promoting coordination across different units and departments.
- e) Efficient monitoring and control mechanisms.
- f) Prudent management of the SOE's finances without any misappropriation or mismanagement of funds.

The absence of any or all of the above, calls for organizational review, including the governance system.

This Code would ensure:

- a) the planning and execution of public governance reforms that have the potential to enhance the Gambia's prosperity and the long-term well-being of its people;
- b) the planning and execution of reforms in SOEs by considering public governance methods for efficient policymaking, which will enable reforms to more successfully address intricate, multifaceted issues;
- c) that the presence of competent and streamlined management to attain the designated objectives of the State-Owned Enterprises (SOEs);
- d) to prevent the occurrence of catastrophic organizational failures that have plagued numerous global entities;
- e) implementing measures to prevent financial inefficiencies and misappropriations within all sectors of the SOEs;
- f) that stakeholder contentment is achieved as and maintained.

CHAPTER THREE – BOARD APPOINTMENT, INDUCTION AND TENURE

3.1 Board Structure, Composition and Balance

- a) SOEs shall be headed by an effective Board composed of qualified individuals that are conversant with its oversight functions.
- b) In line with international best practice, non-executive directors' resident in The Gambia shall form the majority in the Board.
- c) A maximum board size shall be seven (7) members.
- d) There must be diversity, including gender balance, the youth and persons living with disability on the SOE board.
- e) The current CEO/MD of an SOE shall not be the board's chair. A former CEO/MD shall not be appointed the Board Chair of an SOE until after a minimum period of three (3) years following the end of his/her tenure as CEO/MD of that SOE.
- f) No two members of the same immediate family shall serve in the board of an SOE at the same time.
- g) Board must be balance of skill, professional qualifications, business experience and talent, from several specializations relevant to the SOEs situation.
- h) There shall be, as a minimum, the following board committees: Audit & Finance Committee, Governance Committee and Risk Management Committee.
- i) The Board Chairperson/MD shall not serve simultaneously as chairperson of any of the board committees.
- j) No Director shall serve on the Board of two (2) or more SOEs.

3.2 Board Qualifications

In accordance with Section 37 of the SOE Act, a person shall qualify to serve as a Director of a Board of an SOE if he or she has -

- a) a high level of integrity and maturity of judgment;
- b) a minimum of a university degree or fifteen years work experience; and
- c) knowledge, professional competence and expertise relevant to the profile of the State-Owned Enterprise.

3.3 Disqualifications of Directors and Senior Management

Per Section 38 of the SOE Act, a person is not eligible to be appointed to the Board of an SOE if he or she-

- a) is a member of the National Assembly;
- b) is the holder of a political office or an officer of a political party;
- c) is an employee of the SOE Commission;
- d) except for the chief executive officer, is an employee of the SOE to which the person is being appointed;
- e) has been convicted of an offence involving fraud, dishonesty, or violence;
- f) is of unsound mind;
- g) is an undischarged bankrupt; or
- h) is disqualified or suspended, otherwise than at his or her request, from practicing his or her profession by the order of a competent authority made in respect of him or her personally.

3.4 Appointment

- a) Section 34(1) of the SOE Act provides that "the business and affairs of the State-Owned Enterprise shall be managed by its Board of Directors."
- b) Section 36(e) of the SOE Act states that "the President on the recommendation of the SOE Commission and PSC makes an appointment of a candidate with the skills closest to the skills, knowledge and experience identified by the Board..."
- c) Appointments to the Board of SOEs shall be done in accordance with Section 36 of the SOE Act.
- d) The GoTG shall establish a clear formal procedure, based on merit, diversity, and objective criteria, for appointing new directors (i.e., fit and proper person test).
- e) Appointment letters shall be accompanied by a clear Terms of Reference.
- f) Acceptance of the appointment shall be in writing.

3.4.1 Personal Qualities

The subsequent characteristics shall be considered when appointing Board members:

- a) **Strategic acumen** – As the Board's primary role involves strategy, it shall serve as a strategic "think-tank" directing the organization's strategic course.
- b) **Financial literacy** – Boards are accountable for scrutinizing and sanctioning financial statements prepared by management. Members must possess analytical acumen, interpret financial statements, and provide intelligent commentary to ensure that all managerial actions lead to the organization's sound financial well-being.
- c) **Proficiency in communication and interpersonal skills** – Board members must possess the ability to effectively express their viewpoints and engage in empathetic listening.
- d) **Professional qualifications, knowledge, and experience shall encompass:**
 - i. Expertise in human resource management.
 - ii. Proficiency in law.
 - iii. Competence in financial management.
 - iv. Aptitude in general management.
 - v. Proficiency in information and communication technology.
- e) **Sectoral experience, qualifications, and knowledge** – at least a third of members of the board of each SOE shall have relevant and recent professional experience in relation to the sector/industry in which the SOE on whose board the individual has been nominated and appointed as director operates.
- f) **Skills equilibrium** – It is imperative to assemble a Board with a blend of individuals whose proficiencies and deficiencies complement one another.
- g) **Integrity** – Board members must be individuals who have consistently demonstrated exemplary moral and ethical values in society. Thorough and comprehensive due diligence must be conducted on all persons to be appointed as Board members of SOEs to ensure that they are persons with high moral character and integrity.
- h) **Dedication** – The willingness to actively participate in Board meetings and other requisite undertakings is fundamental.
- i) **Gender balance shall be mandatory** – Section 35 of the SOE Act states that the Board of Directors of an SOE shall be made up of at least 3 women.

3.5 Appropriate Information on potential Board members & Due Diligence

Upon nomination, the appointing authority shall diligently procure all pertinent information concerning the prospective Board member.

The database of the SOE Commission from which recommendations for appointments may be made to the board must be updated regularly. This will ensure that information gathered and relied upon for recommendations are up to date.

Extensive due diligence shall be carried out on all nominees to ensure that no reputational risks which may adversely affect the SOEs exists. (See Appendix 8 for Due Diligence Considerations).

3.6 Tenure

Per Section 39 of the SOE Act "Subject to Section 35, a Director shall hold office for a term not exceeding three years and may be reappointed for a further term."

Section 62 of the SOE Act states that "the CEO shall be appointed for a term of five (5) years and may be reappointed for one further term".

The appointment tenure of directors of SOEs shall be staggered to ensure that majority of the members do not end their tenure on the board at the same time. This will prevent vacancies from occurring on the board during the end of tenure of directors and ensure board continuity and implementation of the SOEs strategy.

3.7 Induction

Board members are required to undergo an induction program before convening for their inaugural Board meeting.

3.7.1 The induction program shall encompass:

- a) An induction package, and
- b) A training regimen.

3.7.2 The induction package shall encompass the following documents:

- a) Audited Annual Report and Accounts of the SOE for the preceding three- four years;
- b) The Strategic Plan (or, at minimum, its Executive Summary);
- c) An organizational chart (organogram);
- d) Minutes of previous Board meetings (for the last six months);
- e) A description of Board procedures;
- f) The Corporate Governance Code;
- g) A schedule of dates for Board and Committee meetings;
- h) The names, addresses, and telephone numbers of other Board members and the secretary;
- i) The legal document establishing the organization;
- j) Matters Reserved for the Board (or Authorization Limits);
- k) Any other document deemed essential for new Board members.

3.7.3 The training program shall be dedicated to:

- a) Elucidating the structure and role of the SOE;
- b) Providing a sector overview and outlook for Board members;
- c) Delivering a management briefing tailored to the SOE's specific needs;
- d) Addressing matters related to corporate governance;
- e) Focusing on risk management;
- f) Explaining the procurement process;
- g) Covering aspects of performance management;
- h) Clarifying the policy decision-making process;
- i) Detailing the budgeting process;
- j) Describing the government machinery;
- k) Exploring strategic planning;
- l) Providing insight into financial management;
- m) Any other topic or matter that may be deemed necessary for the fulfilment of their responsibilities as Board members.

3.8 Familiarization visit

As a component of the induction program, Board members shall undertake visits to the business locations and facilities of the SOE. These visits serve the purpose of acquainting members with the workforce, ascertaining the conditions under which they operate, and the equipment they utilize.

3.9 Capacity Development

3.9.1 In addition to the initial induction program, SOEs must allocate resources for the ongoing capacity development of Board members. During internal and external evaluations of the Board, Directors are expected to individually and collectively identify areas requiring development or capacity enhancement for their personal growth and

the overall improvement of the Board. SOEs shall allocate financial resources to meet these capacity development needs.

- 3.9.2** Regardless of a Board member's experience, academic qualifications, or professional background, the imperative for continuous capacity development remains an essential requirement.

3.10 Termination

3.10.1 Modes of Termination

- a) The tenure of Board members shall conclude upon the expiration of their appointment period.
- b) A Board member who wishes to resign shall do so in accordance with Section 41 of the SOE Act.
- c) The membership of a Director shall naturally cease upon their demise.
- d) The President, upon the recommendation of the SOE Commission, may remove a Director at any time from office for inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or for misconduct. In line with best practice, the member shall be notified of the grounds for his/her removal.
- e) A Director who contravenes Section 53(1) of the SOE Act on disclosure of conflict of interest may be removed from the Board by the SOE Commission on the recommendation of the other Board members.
- f) The board may recommend to the SOE Commission that a person be removed as a Director of the Board if the said Director has engaged in any of the prohibited activities listed in Part VII of the SOE Act.

3.10.2 Board Dissolution

An individual serving on a Board shall be regarded as having terminated their membership if the appointing authority dissolves the Board and subsequently reconstitutes it without their inclusion.

3.10.3 Removal Recommendations

The Board of an SOE possesses the authority to suggest to the SOE Commission the removal of a person from their position as a Director on the Board when that Director has been involved in any prohibited activity as delineated in Part VII of the SOE Act.

3.11 Vacancy

Vacancies on the Board shall be filled in line with Section 45 of the SOE Act.

CHAPTER FOUR - RESPONSIBILITIES, DUTIES AND LIABILITIES OF DIRECTORS

4.1 The SOE Board

A. Responsibilities

The main areas of responsibilities of a Board are:

4.1.1 Give Strategic Direction

- a) Exercising proficient leadership to realize the vision, mission, values, and organizational framework of the SOE.
- b) Demonstrating leadership in the establishment and endorsement of the strategic plan, yearly budgets, and other pertinent documents.
- c) Guaranteeing the punctual submission of statutory and recurring reports to the relevant authorities.
- d) Hiring independent consultants to advise the boards on pertinent issues.
- e) Ensuring sufficient resources are available.
- f) Ensuring obligations to shareholders are met.
- g) Preparing an annual calendar for Board meetings.
- h) Ensuring the annual report explains how the board operates and give details of members and attendance.

4.1.2 Policies Formulation

- a) Crafting corporate policies and overseeing their execution.
- b) Regularly review relevant rules and policies required for the SOE's operations.

4.1.3 Risk Management Oversight

- a) Understanding the risks confronting the organization and establishing admissible risk thresholds.
- b) Development of risk management strategy and framework for ensuring all significant risks are regularly assessed and managed.
- c) Regularly assess, monitor and upgrade risk management, compliance and internal control arrangements.

4.1.4 Management oversight

The Board's supervisory duties encompass the following:

- a) Safeguarding and upholding the long-term interests of the shareholders.
- b) Collaborating with the management to define the organization's mission and enduring strategy.
- c) Advocating for sustainable and economically efficient practices within the organization.
- d) Instituting and advocating for the organization's goals, operations, and ethical standards.
- e) Ensuring the punctual nomination and validation of senior management positions within the organization.
- f) Regular assessment, review and approval of SOE structure(s) that reflect clearly defined and acceptable lines of responsibility and hierarchy.
- g) Establishing a framework of prudent and effective controls.
- h) Implementing internal controls for financial reporting and evaluating the organization's risk landscape and strategies for risk mitigation.
- i) Overseeing the management's performance in the pursuit of the organization's established objectives.
- j) Soliciting relevant reports from the management.
- k) Ensuring the integrity of systems and overseeing disclosure.
- l) Establishing formal processes for evaluating the work of the board and individual directors.

4.1.5 Compliance Oversight

Boards are required to guarantee adherence to all relevant laws and regulations of the country and sector of focus.

4.1.6 Trainings and Development

The Boards of the SOEs shall be responsible for establishing regular training and education of board members on issues pertaining to their oversight functions and budget for it annually.

4.1.7 Appointments of Key Officers

The Board holds the responsibility of designating the necessary officers essential for the effective execution of the SOE's activities, contingent upon successful annual performance assessments, and under terms of compensation or other arrangements as it deems fit. They are responsible for the hiring and appointment of key roles such as the Chief Internal Auditor, Chief Risk Officer and any other senior management role.

4.1.8 Auditing

Boards shall ensure:

- a) Conducting routine internal and external audits of the organization's business transactions, operations, and financial statements.
- b) Ensuring the expeditious implementation of audit recommendations.
- c) The provision of direct oversight of the internal audit function.

4.1.9 Human Resource Management

- a) Boards must be responsible for the establishment of suitable systems, policies, procedures, and practices in human resource management to encourage and maintain high levels of productivity.
- b) Boards shall set the standards, values, and culture of the SOE.
- c) The appointment and removal of the SOE board secretary.
- d) Boards shall be responsible for identifying the needed skills for their Boards and advise the SOE Commission of the skills, knowledge and experience required of a successful candidate to ensure succession of the Board.

4.1.10 Procurement & Transactions

Boards are obligated to guarantee the organization's fulfilment of all contractual responsibilities in accordance with the pertinent procurement regulations.

Boards and the management of SOEs must exercise their prescribed powers, adhering to the constraints established by the Constitution, Acts of the National Assembly, and any other lawful directives.

B. Responsibilities of Board Members

The major duties of Board members are to:

- a) act at all times and at the best interest of the SOE as a whole so as to preserve its assets, further its activities, and promote the purposes for which it is established and in such manner as a faithful, diligent, careful and ordinarily skilful Director would act in the circumstances;
- b) observe the utmost good faith towards the SOE in any transaction with it or on its behalf;
- c) in the performance of his or her duties, consider the interest of the employees of the SOE;
- d) shall exercise his or her powers for the purpose for which it is specified and shall not do so for a collateral purpose, and the power, if exercised for that purpose shall not constitute a breach of duty, if it incidentally affects the SOE adversely;
- e) shall not fetter his or her discretion to act in a particular way;
- f) ensure that all business decisions of the Board support the primary objective of the State-Owned Enterprise to the degree that is possible in the circumstances;
- g) ensure that all decisions of the board are within the law;
- h) ensure that all contracts entered into by the SOE are done through a process that is transparent and fair, and that where possible proper requests for proposals are issued before contracts are let;
- i) ensure that the decisions of the Board do not create any undue financial risk or loss to any creditors of the SOE;
- j) ensure that the SOE can, with reasonable certainty, perform any obligation that is placed on it by the board;
- k) ensure that all decisions of the Board are consistent with the statement of corporate intent of the SOE;
- l) ensure that financial plans and reports are submitted on time as required under the SOE Act;
- m) are to ensure that Board committees are set up to support the board in the performance of its duties.
- n) keep themselves abreast with the organization's business.
- o) Maintain current awareness of the organization's business operations.
- p) Ensure the implementation of sound corporate governance principles.

- q) Fulfil their fiduciary duty of care by avoiding any potential conflicts between their personal interests and their obligations to the organization.
- r) Guarantee the meticulous review of all proposals and other matters presented to the Board.
- s) Prepare for Board meetings, thoroughly review working documents, and be ready to pose relevant questions during meetings.
- t) Uphold the principles of accountability, efficiency, integrity, and transparency.
- u) Possess the general knowledge, skills, and experience that can reasonably be expected of a Board member fulfilling specific duties regarding the organization.
- v) Undertake to act on behalf of the organization in a relationship characterized by trust and confidence.
- w) Ensure that:
 - i. Decisions are made in a systematic and timely manner.
 - ii. Rationale for such decisions are documented, and when necessary, seek expert advice.

4.2 The Board Chairperson

4.2.1 The responsibilities of a Board chairperson include:

- a) leading the board and ensuring it is effective;
- b) choosing the date, location, and agenda for board meetings after consulting with the board secretary and the chief executive;
- c) convening Board meetings and ensuring there is sufficient time for discussion, particularly on strategic matters;
- d) chairing Board meetings and ensuring the Board operates seamlessly in accordance with established corporate governance standards;
- e) promoting openness and generating effective debate and discussion about current operations, potential risks, and proposed developments;
- f) offering comprehensive leadership to the Board while upholding the principle of collective responsibility without constraints;
- g) Serving as the primary liaison between the Board and the SOE Commission, as well as between the Board and the Chief Executive Officer;
- h) promoting constructive relations between executives and non-executives;
- i) ensuring that the board receives accurate, timely and clear information;
- j) Spearheading the Board's efforts in formulating the strategy of the SOE and overseeing the realization of its objectives.
- k) Ensuring the appropriate establishment and composition of Board committees with well-defined mandates.
- l) Promoting a favourable public perception of the SOE.
- m) Leading the evaluation and supervision of compliance with SOE policies and governance procedures.
- n) Ensuring effective communication with shareholder.

4.3 The Chief Executive Officer

4.3.1 The Head of the Executive

The Chief Executive Officer is the executive head of the SOE. The CEO may also be referred to as the Managing Director (MD).

4.3.2 Appointment of Chief Executive Officer (CEO)

The President, following consultations with the Board of Directors or an equivalent governing body of a State-Owned Enterprise, the Public Service Commission, and the SOE Commission, and in accordance with the provisions set out in sections 36 and 37 of the SOE Act, is empowered to designate an individual as the Chief Executive Officer of the SOE, with a tenure lasting for five years, extendable for an additional term.

The Chief Executive Officer is considered an employee of the State-Owned Enterprise and also holds a position as a member of the Board.

4.3.3 Term

In alignment with the stipulations contained in Section 35 of the SOE Act, Directors are to serve a term not exceeding three years and may be eligible for reappointment for an additional term.

4.3.4 Vetting process for appointment of Boards of Directors

The applications of candidates for appointment as Members of Boards of Directors of State-Owned Enterprises shall be vetted through the following step by step skills-based selection and appointment process:

- a) The State-Owned Enterprise's Board identifies any skill gaps on its board and informs the Commission about the requisite skills, knowledge, and experience necessary to address these gaps.
- b) The Commission initiates a selection process to pinpoint individuals possessing the suitable skill set, knowledge, and experience needed to fulfil the identified skill gap.
- c) The Commission publishes advertisements in local media and conducts a search within its own database.
- d) The Commission undertakes a selection process to identify the candidate most closely aligned with the skill set specified by the Board.
- e) The President, upon the Commission's and Public Service Commission's recommendation, appoints the candidate whose skills most closely align with those defined by the Board.
- f) The Commission disseminates a notice of the appointment in a local newspaper, alongside the skill set outlined by the Board.

4.3.2 Responsibilities

The fundamental responsibilities of the Chief Executive Officer involves the following:

- a) responsible for the day-to-day administration and operation of the SOE, subject to the supervision and direction of the Board;
- b) providing strategic leadership for the management of the SOE;
- c) providing leadership in achieving goals and objectives;
- d) Offering strategic guidance for the administration of the SOE.
- e) Furnishing leadership in the attainment of goals and objectives.
- f) Formulating operational plans and budgets for the initial endorsement of the Board and final approval by the SOE Commission.
- g) Overseeing the activities of the SOE to guarantee the achievement of targets.
- h) Preserving the assets of the SOE.
- i) Cultivating a constructive and ethical work environment.
- j) Supplying the Board with timely, pertinent, and precise information for decision-making purposes.
- k) acting as an advisor to the board during its meetings and assisting the chairperson or vice-chairperson with the agenda for meetings of the board and with matters of policy to be brought before the Board;
- l) Executing Board resolutions expeditiously.
- m) Serving as the principal disciplinary authority within the SOE.
- n) Guaranteeing that managerial personnel are duly apprised of Board decisions that impact their respective departments.

4.4 The Board Secretary

4.4.1 Appointment of Board Secretary

- a) The Board shall appoint a secretary to the Board from within the State-Owned Enterprise.
- b) The Board shall not appoint a person as a Board Secretary unless the person possesses any of the following:
 - i. qualifications as a Chartered Secretary; or
 - ii. is a licensed lawyer in good standing within the Republic of the Gambia.
- c) In addition to 4.4.1b above, the Board Secretary may also:
 - i. hold a professional qualification that imparts the necessary knowledge and abilities to carry out the duties of a Board Secretary; and/or
 - ii. be a member of the Gambia Institute of Chartered Accountants in good standing.

4.4.2 Responsibilities of the Board Secretary

The core responsibilities of the Secretary include the following:

- a) convening on the authority of the Chairperson meetings of the Board;
- b) preparing meeting agendas in coordination with the chairperson and other participants;
- c) recording the minutes of all meetings of the Board and such other meetings as the Board may direct;

- d) acting as secretary to any committee of the Board;
- e) maintaining and keeping minute books;
- f) keeping in safe custody the common seal of the SOE;
- g) keeping in safe custody all title documents relating to the SOE's properties;
- h) keeping in safe custody all agreements entered into by the SOE;
- i) Offering collective and individual guidance to the Board concerning their obligations and responsibilities.
- j) Ensuring that Board members are well-informed about all pertinent regulations and legislations pertinent to their roles.
- k) Keeping and upholding statutory registers.
- l) Contributing to the formulation of the Board's work plan (schedule of activities).
- m) Managing the compilation of management reports for Board deliberation.
- n) Orchestrating induction programs for Board members and stakeholders.
- o) carrying out such other duties and responsibilities as may be assigned to him or her, from time to time, by the Board.

An effective operational rapport between the secretary and the Board Chairperson is pivotal for the efficient functioning of the Board.

4.5 Directors and their Liabilities

- 4.5.1** A provision, whether contained in any contract or otherwise, shall not relieve any Director from the duty to act in accordance with the SOE Act or relieve that Director from any liability incurred as a result of any breach of the duties conferred on the Director under the Act.
- 4.5.2** An action or other proceeding for damages shall not be brought against a director, officer, or employee of a State-Owned Enterprise as a result of any act done in good faith in the performance or intended performance of any duty under the SOE Act, or in the exercise or intended exercise of any power under the Act, or as a result of any neglect or default in the performance or exercise in good faith of such duty or power.
- 4.5.3** A director is not relieved of any liability to which he/she would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to above.

CHAPTER FIVE - MEETINGS OF THE BOARDS OF SOEs

5.1 Meetings

The term "meeting" encompasses, except in cases where it conflicts with any applicable legal statute:

- a) In-person attendance of members;
- b) Utilization of video conferencing or a similar electronic medium enabling simultaneous visual and auditory participation;
- c) Telephone conferencing; and
- d) Written resolutions endorsed by all Board members.

5.2 Convening meetings

Meetings shall be convened in adherence to the provisions of the SOE Act. Generally, the initiation of a Board meeting shall be the responsibility of the Board chair or a majority of the Directors. The Board secretary shall disseminate a notification of a Board meeting, specifying the proposed date, time, venue, and agenda. The notice shall be sent to board members and all required to be at the meeting at least two (2) weeks to the proposed date for the meeting.

5.3 Frequency of meetings

The Board shall meet at least once every quarter. The Board shall also hold emergency meetings at the call of the Chairperson or a majority of the Directors. The Board shall establish a schedule/calendar for holding its meetings. The Board shall avoid holding meetings too frequently to allow members dedicate sufficient time to board matters and duties.

5.4 Effective meetings

Effective meeting is characterized by:

- a) An appropriate meeting agenda.
- b) A high level of attendance by members, surpassing the minimum quorum requirement.
- c) Punctuality in the commencement and conduct of meetings.
- d) Timely distribution of Board materials to members.
- e) Thorough preparation by members prior to the meeting.
- f) Effective management and oversight of the meeting by the chairperson.
- g) Open and candid discussions among members.
- h) Decisions being made during the meeting without postponement.
- i) Accurate and duly recorded meeting proceedings/minutes, which are properly signed.
- j) Subsequent follow-up on action taken regarding decisions to ensure full implementation.

5.5 Duration of Meetings

The length of Board meetings shall be determined by the agenda to be addressed and the frequency of Board meetings. The duration is also influenced by the organizational culture, efficient time management, effective committee work, and the timely distribution of documents to members.

5.6 Meeting Agenda

The Chairperson and the Secretary, in consultation with the CEO and other Board members, shall formulate the meeting agenda.

The agenda shall comprise a list of items to be discussed during a particular meeting, including:

- a) Confirmation of minutes from the previous meeting.
- b) Discussion of matters arising from decisions taken at the preceding meeting.
- c) Formal approval of matters necessitating limited discussions.
- d) Reports from key management staff such as the CEO, finance director, and human resource director.
- e) Reports from Board committees.
- f) Consideration of operational policy matters.
- g) Discussion of strategic issues.

- h) Any other business to be addressed during the meeting.

5.7 Relevant Documentation for Board Meetings

The Board shall determine the form and structure of all papers required for the meeting including the notice, agenda, reports, meeting packs etc. All relevant documentation required for the meeting shall be sent at least 2 weeks before the proposed date for the meeting. To make good decisions, a Board must receive the right information from the board secretary and senior management at the right time and in the right form.

5.8 Quorum

Four of the Directors, which shall include the Chairperson or Vice- Chairperson, constitute a quorum.

In instances where a quorum is not met, the meeting may be adjourned automatically for a specific period, allowing members to reconvene at a later time when a quorum can be achieved.

5.9 The Chairperson's Role

The Chairperson's duties concerning Board meetings shall involve the following:

- a) ensuring that the Secretary has diligently dispatched the meeting notice, agenda, and accompanying documents in a timely manner, adhering to Board policy, and confirming that the information is precise and comprehensible;
- b) ensuring that the items listed on the agenda can be addressed within the designated meeting duration.
- c) leading meetings and ensuring its effectiveness;
- d) signing the minutes of the previous meeting once they have been approved;
- e) serving as a facilitator to ensure that no single member unduly monopolizes discussions, that relevant discussions occur, adequate time is allocated for deliberations, particularly concerning strategic and pertinent issues, and that pertinent decisions are reached.;
- f) providing members with the opportunity to express their views on each agenda item and encouraging their active participation in discussions pertaining to current operations, potential risks, and proposed developments.
- g) ensuring the implementation of decisions made by the Board.

5.10 The Secretary's Role

The Board Secretary shall perform the following functions especially in relation to meetings:

- a) convening Board meetings on the authority of the Chairperson by giving notice to members of the time, date and place of meeting;
- b) formulating the meeting agenda and disseminating it along with the accompanying documents.
- c) organizing the meeting venue;
- d) securing the necessary logistical support for the meeting;
- e) sending reminders to management staff responsible for making presentations;
- f) ensuring there are extra copies of all essential meeting documents;
- g) confirming that the meeting is properly convened, including the presence of a quorum;
- h) refrains from speaking on matters other than procedural issues or when specifically asked to provide an opinion;
- i) offers advice, even without formal request or invitation from the chairperson, in case any action proposed for consideration by the Board is in violation of the law, contravenes the governing document, or conflicts with any other legal statutes;
- j) records proceedings at the meetings of the Board and its committees;
- k) maintaining and keeping of minute books;
- l) communicates and oversees the implementation of the Board's decisions;
- m) maintains custody of the official documents of the Board; and
- n) keeps custody of official documents of the Board.

5.11 Conducting Meeting

The conduct of meetings shall adhere to the following procedure:

- a) The chairperson calls the meeting to order.
- b) The agenda is presented and ratified.
- c) Apologies, if any, are received.
- d) The minutes of the previous meeting are read and confirmed.
- e) Matters arising from the minutes are considered.
- f) The report of the CEO is received and deliberated upon.
- g) Specific management reports are received and reviewed.
- h) Reports from board committees are received and examined.
- i) New business and any other matters are considered.

5.12 Emergency Meetings

Emergency meetings may be convened when necessary to address urgent matters that cannot wait until the regular meeting. An emergency meeting shall exclusively address the matters that necessitated its convening. The Board shall refrain from convening an excessive number of emergency meetings and shall hold them solely when pressing issues emerge.

5.13 Minutes of proceedings

It is a legal obligation to maintain detailed records of all Board meetings and those of its committees. Minutes represent public documents and form an integral part of the historical records of an organization; thus, their accuracy is imperative.

The minutes shall record:

- a) The exact wording of any resolution.
- b) Summarized details of the discussions on each business item.
- c) The information upon which the decision was founded.
- d) Specifics of the decision.
- e) Required actions.
- f) Date, time, and venue for the subsequent meeting.

The minutes shall be authenticated by the chairperson and board secretary. The chairperson and board secretary shall initial each page and affix their signatures on the final page.

The minutes shall serve as the primary evidence of the proceedings of the Board members.

The Board and its committees shall promptly produce and distribute minutes of their meetings to the directors, serving as a record of the decisions made during those sessions. At their subsequent meeting, the Board or Board committee members shall formally examine and approve these minutes.

5.14 Decisions of the Board

Board decisions shall be by simple majority. In the event of equal votes, the Chairperson or Vice Chairperson presiding shall have a casting vote.

5.15 Shared Responsibility

Board members bear joint and individual responsibility for the resolutions made by the Board and the subsequent actions carried out by the organization's management. Thus, Board members are expected to embrace collective responsibility as devoted members of the Board.

Nonetheless, in cases where a member finds themselves in disagreement with their colleagues regarding the decisions made, they should contemplate any or all of the subsequent courses of action:

- a) Express their dissent unequivocally and elucidate the underlying reasons.

- b) Solicit a secondary professional opinion on the matter.
- c) Request that the decision be deferred to allow for additional research, contemplation, and consultation.
- d) Record their dissent and seek the inclusion of their stance in the meeting minutes.
- e) Propose a special Board meeting to discuss the matter.

In instances where a member remains dissatisfied after exploring the aforementioned alternatives, they may opt for the following courses of action:

- a) Notify the appointing authority about the developments.
- b) Tender their resignation as a member of the Board.

CHAPTER SIX - COMMITTEES OF BOARDS

6.1 Board Committees

The Boards of the SOEs shall establish committees and each committee must have Terms of Reference.

A committee may be divided into sub-committees.

The Board may establish such other committees in addition to those established under Section 58(1) of the SOE Act as the Board may from time to time consider necessary.

6.2 Advantages

The advantages associated with the utilization of the committee system encompass the following:

- a) Committees are of a more compact size, affording them additional time for the tasks at hand.
- b) They possess the capacity to investigate intricate matters.
- c) Committees can operate as intermediaries between the Board and Management, thereby alleviating significant responsibilities from Management.
- d) Committees expedite the decision-making process of the entire Board.

6.3 Types of Board Committees

In line with Section 58 of the SOE Act, the Board shall establish the following committees –

- a) Governance committee;
- b) Audit, risk management and finance committee; and
- c) Quality assurance and safety committee.

To facilitate effectiveness and efficiency in the discharge of their duties, the committees may be sub-divided into:

- a) Governance committee;
- b) Audit and finance committee;
- c) Risk management committee; and
- d) Quality assurance and safety committee (if required by the Board for the running of specific SOEs).

Other committees that the board may establish include:

- a) Information Technology (IT) committee to oversee IT policies, digitization of the SOE to have a competitive edge in IT space and protect the SOE from IT attacks and failures.
- b) Technical committee to assist the board on technical issues and provide technical guidelines (if the SOE is engaged in technical sectors or industries)
- c) Ethics committee to ensure compliance with laws, regulatory requirements and the SOEs internal policies, rules etc.

6.3.1 Details of Board Committees

6.3.1.1 Governance Committee

The function of this committee is to aid the Board in the supervision of endeavours and initiatives pertaining to governance, nominations, remuneration, board and committee assessments, performance evaluations, and related subjects.

This committee shall consist of Board members, with an independent non-executive director (INED) serving as the committee's chairperson.

The committee should convene at least once every quarter, or as deemed necessary to fulfil its responsibilities.

The Committee shall be responsible for the following:

a) Human Resource Management

The committee is tasked with the following responsibilities:

- i. Ensure that the organization possesses suitable human resource policies encompassing recruitment, capacity development, career advancement, succession planning, compensation, and reward systems.
- ii. Oversee the execution of these policies.
- iii. Evaluate the terms of employment for management and staff and propose pertinent recommendations to the Board.
- iv. Take the lead in conducting performance assessments of senior management.

b) Governance

- i. identify the skill gap on its board, determine and advise the SOE Commission of the skills, knowledge, competence, qualification, and experience that should be possessed by a successful candidate to address that skill gap;
- ii. establishing a transparent formal procedure for making their identification, selection and recommendation of Board members;
- iii. Supervise all preparations for the orientation of incoming Board members.
- iv. Manage Board assessments, including both internal and external evaluations.
- v. Guarantee the organization's adherence to best practices across all facets of Board operations.
- vi. Provide the Board with updates on corporate governance developments.
- vii. Propose strategic guidance for the organization.
- viii. Develop policies aimed at enhancing Board-Management interactions.
- ix. Establish and maintain a succession plan for all management roles in compliance with the SOE Act provisions.

c) Ethical Standards

- i. Review and provide recommendations to the Board on all issues related to professional standards and practices.
- ii. Ensure the existence of a code of conduct for Board members, management, and employees, and oversee its enforcement.
- iii. Establish organized systems to foster transparency.
- iv. Establish unambiguous procedures for whistle-blower protection, guaranteeing confidentiality and the prompt investigation of all claims.
- v. Address ethical violations and arrange for periodic training on ethical conduct.

d) Remuneration

- i. Examine and propose to the Board for endorsement the remuneration of staff and management, including compensation schemes.
- ii. Oversee management's adherence to the stipulations within their employment contracts.
- iii. Suggest pertinent criteria for staff performance evaluation, recognition, and disciplinary measures.
- iv. Ensure that the SOE remunerates its personnel fairly, responsibly, and transparently, aiming to enhance the achievement of strategic objectives and favourable outcomes over the short, medium, and long terms.
- v. Ensure that the remuneration policy is designed to attract, motivate, compensate, and retain highly effective human resources.

6.3.1.2 Audit and Finance Committee

The Committee is designated to:

- a) Support the Board in fulfilling its responsibilities concerning audit reports and regulatory compliance.
- b) Exercise supervision over the internal and external audit functions of the SOE.
- c) Act as a platform for communication between the Board and both internal and external auditors.
- d) Aid the Board in guaranteeing sound and efficient financial management.
- e) Comprise Non-Executive Directors (NEDs), with a majority of the members being Independent Non-Executive Directors (INEDs).

- f) Have an INED and a Chartered Accountant as the Committee Chairperson.
- g) have members with skills, competencies and qualifications relevant to audit, finance, economics and accounting;
- h) Ensure that the Committee Chairperson is not the Board Chairperson and does not preside over any other committee.
- i) Convene Audit and Finance Committee meetings at least on a quarterly basis and as required at other times.

Responsibilities

The responsibilities of the Committee are as follows:

a) External audit functions of the committee:

- i. Review the Auditor-General's report of the SOE's financial statement and his/her comments or supplement to the report.
- ii. Clarify matters arising in the management letter and satisfy itself that they are being followed up;
- iii. Obtain assurance from the external auditor that adequate accounting records are being maintained.
- iv. Have access to external auditors to seek for explanations and additional information without management presence.
- v. Consider the external auditors independence and objectivity;
- vi. Consider the effectiveness of the audit and whether the external auditor should provide non-audit services;
- vii. Engage in dialogues with Auditors concerning any substantial issues emerging during the audit.
- viii. Examine the audit report and any management correspondences from External Auditors.

b) Internal audit functions of the committee:

The Committee shall meet with the internal auditor to review:

The Committee shall have meetings with the internal auditor to assess:

- i. The objectives, plans, and policies of the internal audit department.
- ii. The competence of the internal audit staff and their training requirements for skill updates, as well as the activities or operations of the Internal Auditors.
- iii. Financial accounts, internal financial controls, and other risk and internal control systems.
- iv. Hiring or termination of the Head of Internal Audit.
- v. Issue quarterly audit reports to the Audit and Finance Committee.
- vi. Internal audit program and the significant findings of internal auditors.
- vii. The financial statements and any interim audit reports issued.

The Audit and Finance Committee shall have unrestricted access to the internal auditors for inquiries and supplementary information without the presence of management.

The Head of Internal Audit should directly report to the Board Audit and Finance Committee, while providing a copy of the report to the MD/CEO of the SOE.

c) Finance functions of the committee:

- i. the Committee's role is to assist the Board/Council to ensure sound and effective financial management;
- ii. the Committee is responsible for providing the Board with advice and guidance on all issues affecting the financial policies, strategy, and performance of the SOE;
- iii. in performing its functions, the committee should be given unrestricted access (to the extent permitted by law) to the SOE's financial and operational documents, reports, and any information considered useful/important for carrying out their tasks;
- iv. management should make available monthly, quarterly, and annual financial statements to the Board (Board Audit and Finance Committee);
- v. MD, CFO (Director of Finance), other employees or consultant of the SOE may be invited by the Committee to a meeting of the Committee if deemed necessary; each invitee must undertake to keep the communications of the proceedings of the committee meeting confidential.

- vi. the MD, CFO (Director of Finance), Board/SOE Secretary shall have direct access to the Committee on a needs basis.

d) Financial Management Reporting Functions

- i. The Committee bears the responsibility of examining the financial statements and together with management, developing and managing the organization's budget. It's responsibility also includes assisting in implementing the budget, ensuring that allocations made in the budget are used for intended purposes, checking the actual spending against projected spending for any deviations and taking corrective action where necessary . In this assessment, the committee shall pay attention to:
 - Any alterations in accounting policies and practices.
 - Any atypical or unusual transactions.
 - Any proposed adjustments that were not implemented, along with the rationale for their non-implementation.
 - Different approaches to disclosure.
 - The introduction of any new accounting system.
 - Conformity with accounting standards.
 - Discrepancies in revenue and expenditure, along with the underlying reasons.
- ii. The Committee is responsible for supervising compliance with legal obligations pertaining to financial reporting.
- iii. Investment:
 - The Committee shall scrutinize all investment propositions and provide recommendations to the Board.
 - It shall establish suitable investment policies and make recommendations to the Board.
 - The Committee shall oversee and evaluate all investments to ensure that the organization is obtaining value for its funds.
 - It shall offer guidance on the allocation of surplus funds or the acquisition of funds to meet operational requirements.

6.3.1.3 Risk Management Committee

The Risk Management Committee holds the duty of providing guidance to the Board of the State-Owned Enterprise (SOE) regarding its comprehensive present and future risks, risk tolerance, risk recognition, risk evaluation, risk surveillance, and risk reduction, which may impact the organization's activities, fiscal stability, reputation, and overarching objectives.

The Committee's Chairperson must be an Independent Non-Executive Director (INED) possessing pertinent and up-to-date expertise in risk management and internal controls.

Meetings of the Risk Management Committee should occur at a minimum of once per quarter and at additional instances when such gatherings are deemed essential.

Responsibilities

The responsibilities of the Committee are as follows:

a) Risk Management

- i. Establishment of policies pertaining to risk oversight and management.
- ii. State-Owned Enterprises (SOEs) shall establish a comprehensive risk management framework, incorporating a designated risk management unit, to be led by a qualified and experienced senior manager.
- iii. Risk management reports must be submitted to the Risk Management Committee and made available to inspectors during on-site visits.

- iv. The Risk Management Committee holds the responsibility for establishing and upholding the organization's enterprise risk culture, risk appetite, and risk threshold, as well as ensuring adherence to approved risk policies, procedures, and practices.
- v. Examination and endorsement of the risk management policy, encompassing risk appetite and risk strategy.
- vi. Evaluation of the adequacy and effectiveness of risk management and associated controls.
- vii. Supervision of management's process for identifying substantial risks throughout the SOE and the sufficiency of mechanisms for prevention, detection, and reporting.
- viii. Assessment of the SOE's compliance level with pertinent laws and regulatory requirements that may influence the SOE's risk profile.
- ix. Routine review of changes in the economic and business landscape, including emerging trends and other factors relevant to the SOE's risk profile.
- x. Appraisal and recommendation for Board approval of risk management procedures and controls for new products and services.

b) Internal Control

The Committee shall:

- i. Assess the sufficiency of the organization's internal control systems to deal with fraud and other related control deficiencies.
- ii. Solicit reports from the management concerning specific matters related to internal control.
- iii. Request an annual report from the Chief Executive Officer on this subject.
- iv. Engage in discussions with both internal and external auditors regarding the extent and nature of operations.
- v. Ensure the establishment of a comprehensive internal control framework, receive annual assurances (internal and/or external), and annually report within the audited financial statements on the effectiveness of the SOE's internal controls pertaining to financial reporting.
- vi. Examine the entirety of the internal control system, encompassing financial control and risk management.

6.3.1.4 Quality Assurance and Safety Committee

The Quality Assurance and Safety Committee shall have the responsibility of supervising the quality of products or services of the SOE and ensuring strict adherence to safety regulations. The committee shall oversee the implementation of quality assurance measures, conduct risk assessments, monitor compliance with safety standards, handle associated complaints, and regularly provide reports to the board concerning safety and quality matters.

The Chairperson of the Committee shall be an Independent Non-Executive Director (INED), and the majority of the committee's members shall be Non-Executive Directors (NEDs).

Members of the committee shall possess competence and relevant experience in quality assurance, safety, compliance, and risk management.

Meetings of the Quality Assurance and Safety Committee shall occur at least quarterly, and additional emergency meetings may be convened when necessary.

Responsibilities

Below are the responsibilities of the Quality Assurance and Safety Committee:

- i. The committee shall establish safety protocols that the SOE must adhere to.
- ii. The committee shall put in place measures to ensure that the products and services offered by the SOE meet the required quality standards.
- iii. The committee shall actively oversee and enforce compliance with safety regulations and quality standards in the delivery of products and services.
- iv. The committee is responsible for conducting regular risk assessments to identify potential safety and quality concerns.
- v. The committee shall receive and review reports on incidents and take necessary corrective actions.

- vi. The committee shall ensure that employees receive safety training.
- vii. The committee will assess the SOE's performance in terms of quality and propose opportunities for improvement.
- viii. The committee shall regularly report safety and quality matters to the Board.
- ix. The committee will periodically review safety and quality policies as necessary.
- x. The committee shall address any complaints related to the safety and quality of the products and services provided by the SOE.

6.4 Appointment of Board Committee Members

6.4.1 Composition of the Committees

- a. The committees shall be made up of Board members.
- b. The Board may designate the chairperson of a Committee; however, this responsibility may also be delegated to the Committee members.
- c. Non-Board members may be co-opted as committee members.
- d. The Board Chairperson shall not serve as the chairperson of any Board committee.

6.4.2 Secretary to the Committees

The Secretary to the Board shall serve as secretary to all board committees, unless otherwise prescribed by the enabling Act.

6.4.3 Terms of Reference (TOR)

The Board shall define the Terms of Reference (TOR) for the Board Committees unless they are explicitly provided for in the enabling Act. These TORs shall undergo an annual review.

6.4.4 Committee Meetings

Committees shall adhere to the same rules of conduct and procedures as the full Board.

Meetings shall be convened by providing prior notice and an agenda. Committee members shall receive necessary documents at least two weeks before each meeting to ensure adequate preparation.

6.4.5 Management Participation

Senior Management may be invited to Committee meetings to offer technical or professional advice as required. However, they shall not possess voting rights on decision-making matters and may be excluded from certain aspects of the meeting as determined by the Committees.

6.4.6 Committee Recommendations

Committees shall submit written recommendations to the Board for deliberation and approval. Committees do not possess the authority to make binding decisions unless specifically empowered to do so by the Board.

6.4.7 Authority of the Board Committees

For the purpose of fulfilling their respective mandates, Board committees may be granted the authority to:

- a. Consider all issues within their defined terms of reference.
- b. Seek professional advice and opinions as necessary.
- c. Consult and request information from the organization's employees when deemed necessary.

6.4.8 Quorum

The minimum attendance required to constitute a quorum for committee meetings shall be specified in the Terms of Reference (TOR) of the committees.

6.4.9 Board Committees Evaluation

Committees shall undergo an annual performance assessment as part of the overall evaluation of the Board. The results of this evaluation shall be presented to the Board for their consideration and guidance.

CHAPTER SEVEN - REMUNERATION FOR THE BOARD OF DIRECTORS

The remuneration for the Board/Directors shall be based on the following stipulations:

- a) The SOE, in consultation with the Ministry of Finance and Economic Affairs (MoFEA), shall determine and provide remuneration and benefits to its Directors, as set by the SOE Commission.
- b) The Government of The Gambia (GoTG) shall establish a formal, unambiguous remuneration policy and procedures that outline specific and agreed-upon performance metrics for both individual directors and the board as a whole.
- c) GoTG shall publicly disclose remuneration policies and compensation structures, particularly performance metrics, with explanations for annual awards in the context of yearly performance.
- d) Members of sub-committees shall receive an honorarium for each sub-committee meeting they attend.
- e) All remunerations shall be paid in the local currency, the Dalasi.
- f) The remuneration and compensation benefits for each board should be transparently disclosed as a distinct item in the annual accounts.
- g) The Board shall periodically verify that the implementation and execution of the remuneration policy effectively fulfils its objectives.
- h) The SOE's Remuneration Policy, as well as the remuneration of all Directors, should be disclosed in the SOE's annual report.
- i) The remuneration of the Managing Director/Chief Executive Officer (MD/CEO) and Executive Directors (EDs) should be structured to correlate rewards with both corporate and individual performances, including a substantial component linked to long-term corporate performance, such as bonuses. Mechanisms may be explored to align the payment of certain elements of MD/CEO and ED remuneration with the attainment of longer-term goals.
- j) The MD/CEO and EDs shall not participate in determining their own remuneration.
- k) Non-Executive Directors (NEDs) shall not receive performance-based compensation, as it may lead to bias in their decision-making and compromise their objectivity.

CHAPTER EIGHT - REPORTING AND COMPLIANCE

The Board shall exercise its oversight authority over the State-Owned Enterprise (SOE) concerning reporting and compliance. This oversight includes ensuring the SOE conducts its activities in compliance with all relevant laws, rules, regulations, standards, conventions, and policies.

8.1 Financial Reporting

the responsibilities of Board members shall align with the provisions of the Public Finance Act, 2014, Financial Regulations 2016, Financial Reporting Act, 2013, the SOE Act, and any other pertinent laws and policies.

In pursuit of these responsibilities, the Board shall:

- a) Ensure that the SOE hires capable and appropriately skilled accounting personnel.
- b) Confirm that the SOE's management upholds strong and effective internal control systems.
- c) Ensure that the SOE creates financial statements promptly and in compliance with authorized accounting standards.
- d) Secure the timely completion and submission of external audits for the SOE's financial statements.
- e) Verify the precision and adequacy of the financial statements.
- f) Oversee the development of the SOE's annual budget.

The Board shall require that Management prepares and submits the following reports, in adherence to relevant laws, regulations, and policies:

- a) Financial Statements;
- b) Internal Audit Reports;
- c) Annual Budget;
- d) Audited Financial Statements; and
- e) Any other relevant reports

The Board shall apply sanctions to Management for non-compliance, in line with relevant procedures and policies.

8.2 Strategy

- a) The Board shall oversee the formulation and execution of the SOE's Strategic and other plans.
- b) The Board shall evaluate the progress in implementing these plans.

8.3 Operational Reports

- a) The Board shall ensure the preparation of quarterly and Annual Operational Reports.
- b) Operational Reports shall encompass the core business operations of the SOE.
- c) These Reports shall delineate the necessary resources required to optimize results, along with the means of acquiring these resources in light of financial or other constraints.

8.4 Human Capital

The Board shall ensure that Management carries out approved human resource plans and submits relevant reports.

8.5 Legal and Regulatory Compliance

The Board shall ensure that applicable laws, rules, regulations, codes, and standards are identified, documented, and complied to.

CHAPTER NINE - DISTINCTION BETWEEN BOARD AND MANAGEMENT DUTIES

9.1 Accountability of the CEO

The Chief Executive Officer (CEO) holds the responsibility to the Board for the efficient and effective administration of the organization. It is the CEO's duty to ensure that the Board is furnished with all pertinent information concerning any matter that requires a decision.

9.2 Duties

The Chief Executive Officer of a State-Owned Enterprise bears the responsibility for its day-to-day operations, while operating under the supervision and guidance of the Board.

9.3 Absence of Chief Executive Officer from meetings

In the event that the position of Chief Executive Officer is unoccupied or the incumbent is unable to attend a board meeting, the individual currently performing their duties shall attend the meeting and engage in discussions but shall not have voting rights.

9.4 CEO's Authority

The authority of the CEO is derived from both the Board and the enabling Act.

9.5 Exclusive Board Approval

The Board shall grant its approval, in accordance with the current SOE Commission regulations, for the following matters:

- a) The appointment or promotion of senior staff
- b) Conditions and service schemes
- c) Accounting policies
- d) The establishment of authorization limits
- e) Financial statements (both audited and unaudited)
- f) The annual budget
- g) The strategic plan
- h) The opening and closing of bank accounts
- i) Investments
- j) CEO's international business trips and training
- k) The annual report

9.6 Exclusive Powers of the CEO

9.6.1 The following matters are reserved for the CEO:

- a) Day-to-day administration of the organisation
- b) Operation of bank accounts
- c) Appointment or promotion of junior staff

9.6.2 It is essential to recognize that CEOs are not tasked with policy formulation and, as such, they must act in a manner that facilitates the Board in carrying out their policy-making responsibilities in good faith.

9.7 The Board and CEO Co-operation

The collaborative relationship between the Board and the Chief Executive Officer (CEO) should be characterized by mutual respect and cooperation, aimed at fostering organizational growth and success. The Board and CEO must work together to fulfil their respective roles in the following domains:

- a) Formulating and implementing policies.

- b) Appointing or promoting senior management.
- c) Determining and providing advice on compensation.
- d) Reviewing the organizational structure.
- e) Establishing internal control mechanisms.
- f) Formulating and implementing organizational strategies.
- g) Managing and mitigating risks.
- h) Ensuring corporate oversight and internal control.

However, it is important to note that Boards do not possess administrative or executive functions, except as explicitly defined in the enabling Act. The Board should act in good faith to allow the CEO to fully execute administrative functions.

9.8 Conflict Avoidance

To prevent or minimize the potential for conflicts between the Board and the Chief Executive Officer (CEO), the following should be avoided:

- a) Lack of clearly defined authorization limits.
- b) A lack of a clear understanding of the distinct roles of the Board (governance) and the CEO (management).
- c) Situations where the Board attempts to overly involve itself in operational details, often referred to as "micromanagement," due to a misunderstanding of roles or an abuse of power.
- d) Misconceptions by CEOs that the Board and the CEO share the same authority for appointments, resulting in a belief that CEOs are not accountable to the Board.
- e) Instances where the Board seeks to allocate corporate resources like vehicles and office space for its own use.
- f) Power struggles among certain Board members and the CEO.
- g) Personality conflicts between the CEO, chairperson, or among Board members.
- h) A lack of mutual respect between the CEO and Board members.

Board members are not entitled to the allocation of permanent office space and vehicles for their personal use. They are also not entitled to free fuel coupons, free services from the SOE in which they serve as Board members (e.g. free electricity and water), use of SOE facilities for personal use, seasonal gifts, free hajj/pilgrimage packages etc.

9.9 Conflict Resolution

Conflicts between the Board and the CEO should be promptly resolved to prevent any detrimental impact on the organization. The SOE Commission shall be involved in the resolution of conflict between the Board and the CEO. When necessary, the assistance of the Public Service Commission (PSC) may be sought. Generally, conflicts should be resolved within a month.

CHAPTER TEN - EVALUATION OF THE BOARD

10.1 Advantages

Performance evaluation or appraisal offers several advantages, including the following:

- a) It aids in the clarification of individual and collective roles of members.
- b) It enables the Board to concentrate on its responsibilities to enhance its overall effectiveness.
- c) It identifies areas of weakness among members, facilitating the implementation of remedial actions by the Board.
- d) It fosters motivation among the management team by setting a leadership-by-example precedent.

10.2 Principles

The Performance Evaluation process shall conform to the following principles:

- a) Members shall be aware of the criteria in advance.
- b) The process shall be conducted with fairness, transparency, and objectivity.
- c) Confidentiality shall be maintained throughout.
- d) Tact, understanding, and maturity shall be exercised.
- e) The evaluation process shall be constructively utilized.

10.3 Internal Evaluation

An annual evaluation shall be conducted to assess the following:

- a) The overall performance of the entire Board by the SOE Commission.
- b) The performance and commitment of individual directors, evaluated by the Board Chair and the respective Board committees.
- c) All aspects of the Board's structure, composition, responsibilities, processes, and relationships, as well as the competencies of individual members and their respective roles in contributing to the Board's effectiveness.
- d) The Board's identification and adoption of critical success factors or key strategic objectives, aligning with the State-Owned Enterprise's future strategy.
- e) The extent to which the Board functions effectively as a cohesive team in pursuit of the strategic objectives.
- f) The evaluations should be conducted by an external consultant.
- g) The resulting evaluation report should be provided to the nomination committee for further consideration.

10.4 External Evaluation

An external evaluation shall be conducted at least once every three years. This shall be in collaboration with the SOE Commission and an External Consultant to ensure objectivity and independence of the evaluation.

10.5 Evaluation Modes

Evaluation of the Board shall be through a peer review mechanism, questionnaires and interviews.

Peer Review

The Board shall conduct peer review annually at three (3) levels as follows:

- i. Evaluation of performance of the collective board by members**
 - The collective performance of the Board shall be evaluated by all members.
- ii. Evaluation of the Chairperson**
 - All Members shall evaluate the Chairperson.
- iii. Evaluation of Members**
 - The Board Chairperson shall evaluate all Board Members.

10.6 Procedure

The structured process of conducting a performance evaluation may include the following:

- a) The Board shall explicitly define its functions, duties, and responsibilities.
- b) The Board or the authority responsible for appointments shall establish its major goals, objectives, key performance indicators, and targets.
- c) The Board shall assess its capabilities and resources, including the utilization of committees, the quality of meetings, the quality of decision-making, and the skills and knowledge possessed by members for performing their roles.
- d) The Board shall develop comprehensive criteria against which performance can be evaluated.
- e) The Board shall assign weights to key performance indicators and targets.
- f) The Board shall specify what constitutes acceptable performance.
- g) Members of the Board shall individually appraise the Board's performance using the established criteria.
- h) The results of the appraisals shall be collected and organized by the governance committee.
- i) A report summarizing the evaluation results shall be presented to the Board for its consideration.
- j) The assessment report shall be subsequently submitted to the relevant Minister or appointing authority.

10.7 Results Review

The review of the Board evaluation may uncover the following identified deficiencies:

- a) Insufficient capacity;
- b) Absence of dedication and a negative disposition toward Board affairs;
- c) Deficiencies in internal controls and risk oversight;
- d) Fragile governance structures, systems, procedures, and processes.

10.8 Recommendations

Appropriate recommendations to address the identified weaknesses shall be identified in the report with realistic timelines for implementation.

10.9 Implementation of Recommendations

In order to ensure timely implementation of recommendations the Board shall conduct a follow up action at each board/committee meeting or earlier if necessary.

10.10 Review

The criteria used for evaluation must be reviewed at least biennial in order to render them challenging and useful.

CHAPTER ELEVEN - PERFORMANCE CONTRACT

11.1 Performance Contract of the SOE

11.1.1 As stated in Section 81 of the SOE Act, the SOE Commission, Sector Minister and the Minister of Finance shall enter into contracts with SOEs. The purpose will be to formally document the responsibilities of the SOEs for to enhance maximum performance consistent with their roles and objectives as a publicly owned company.

11.1.2 The duration, review, scope and contents of the performance contract shall conform with the provisions as provided in the SOE Act.

11.2 Performance Contract of the CEO

The Board shall sign an Annual Performance Contract with the CEO. The contents of the Performance Contract shall include:

- a) key performance indicators and targets agreed upon;
- b) scoring or measurement system;
- c) rewards and sanctions.

11.3 Advantages

The benefits of the CEO evaluation may be summarized as follows:

- a) helps the Board to determine the rewards and sanctions of the CEO
- b) assists the Board to determine whether the CEO should be recommended for renewal of contract on annual basis
- c) strengthens Board – CEO relationship
- d) gives an early signal as to whether or not the performance of organisation is on track
- e) reveals strengths and weaknesses of the CEO so that the Board can take appropriate steps to assist the CEO overcome weaknesses.

11.4 Procedure

11.4.1

- a) The Board and CEO shall agree on key objectives, performance expectations, indicators and targets for the evaluation;
- b) The Board shall assign weights to the Key Performance Indicators and targets;
- c) The Board shall inform the CEO of what shall be considered as acceptable performance;
- d) The Board and CEO shall negotiate and agree on outcome of results, in particular:
 - i. any increase in salary and quantum;
 - ii. if performance incentive, such as bonus should be paid and the quantum;
 - iii. sanctions;
- e) Every Board member shall evaluate the CEO based on the acceptable criteria;
- f) The governance committee of the Board shall consolidate the evaluation, noting areas of strengths, weaknesses, and recommendation;
- g) The governance committee shall discuss the draft report with the CEO and obtain his comments;
- h) A final evaluation report shall be forwarded to the Board for discussions and approval;
- i) The CEO shall be notified by the Board of any decisions taken on his performance;
- j) The Board shall draw a Performance Improvement Plan for the purpose of correcting weaknesses identified;
- k) The Board shall continuously monitor implementation to ensure that success is achieved.

11.4.2 Boards may also request the CEO to do a self-evaluation. His evaluation shall be used to compare with the Board's own evaluation.

11.5 Results Review

The review may result in the following outcomes:

- a) CEO accepting the decision of the Board;
- b) Improved governance processes;
- c) Improvement in Board – CEO relationship;
- d) Board members begin to understand the challenging role of the CEO; or
- e) General improvement in the performance of the CEO because his/her efforts are recognized and rewarded/sanctioned.

11.6 Review

The evaluation criteria shall be reviewed every two years, where necessary.

CHAPTER TWELVE - ETHICAL STANDARDS

12.1 Code of Ethics

The formation of business ethics and professionalism emphasizes the ideals for protecting and enhancing the SOE's reputation while fostering good behaviour and investor trust.

12.2 Board Responsibilities

In relation to ethical standards, the Board shall:

- a) establish a code of ethics that guides the behaviour of directors, officers and employees and demonstrate a strong commitment to uphold ethical practices;
- b) be well inducted on the provisions of the code and each must sign a consent/binding form to acknowledge understanding and commitment to live by it or be penalized/dismissed;
- c) ensure that the SOE is, and is seen to be, a responsible corporate citizen;
- d) clearly demonstrate a top-down dedication to ethical and professional business standards by creating and evaluating the SOE's code of conduct on a regular basis;
- e) the Board shall be in charge of keeping an eye on compliance with the code of conduct to make sure infractions are appropriately penalized;
- f) formulate core values aligned with the organizational vision and mission;
- g) institute ethical business principles and standards throughout the organization;
- h) guarantee the dissemination of ethical standards to all employees;
- i) provide requisite training on ethical standards;
- j) oversee employees' ethical conduct through established reporting mechanisms;
- k) reject any form of unethical behaviour and set a leadership example;
- l) ensure that all instances of employee misconduct contrary to ethical standards are subject to appropriate sanctions.

12.3 Professional Ethics of Board

The ethical behaviour of Board can be assessed with regard to their relationship with the following:

- a) organization
- b) employees
- c) government
- d) clients/service providers
- e) civil society

12.3.1 The Board members and Management of the SOEs must:

- a) Demonstrate unwavering personal integrity.
- b) Express loyalty to the organization.
- c) Safeguard the confidentiality of information.
- d) Avoid misusing corporate resources, such as vehicles and accommodation.
- e) Avoid the misuse of authority.
- f) Refrain from appropriating office spaces for personal use.
- g) Limit their requests to the stipulated terms and conditions of employment.

12.3.2 Employees

Board members must:

- a) treat employees with respect;
- b) provide fair and adequate compensation;
- c) provide employees with safe working conditions;
- d) respect rights of employees regardless of their ethnicity, gender, religion, disability, experience, or educational background.

12.3.3 Stakeholders

- a) The Board and Senior Management must consistently demonstrate honesty and good faith in their interactions with stakeholders, which include government entities, clients, service providers, and the broader society.
- b) The Board must conduct a thorough assessment of all proposals and contracts presented for the purpose of skilfully advancing the interests of the State-Owned Enterprise (SOE) and not for personal gain.
- c) The Board shall promote equitable transactions within the SOE, among its personnel, and among the Directors, clients, suppliers, and service providers, among others.
- d) The Board shall establish and maintain a whistle-blower system within the SOE, actively advocating for its utilization in reporting unethical and illegal conduct. Whistle-blower identities must be protected.

12.4 Abusive Conduct

In no circumstances shall a Board member engage in abusive behaviour (physical, verbal, or psychological) towards any individual, including but not limited to employees, fellow Board members, or service providers. Such behaviour will be subject to zero tolerance.

12.5 Sexual Harassment

Sexual harassment is strictly prohibited and will not be condoned. Board members are expressly prohibited from participating in any manner that facilitates or is complicit in acts of sexual harassment.

12.6 Unacceptable Gifts

Section 106 of the SOE Act prohibits a Director of an SOE from accepting or receiving bribes, gifts, commissions or any other benefit relating to business involving the SOE.

A member of the Board of an SOE, management and staff shall not:

- a) engage in any form of solicitation, whether direct or indirect, for gifts, whether tangible or intangible, from individuals with whom they have contact in the course of their official duties.;
- b) accept gifts, whether tangible or intangible, that may present, or have the potential to create the appearance of, an influence on the performance of their official functions, the proper execution of their duties, or their judgment, whether such acceptance occurs directly or indirectly from individuals with whom the member interacts in the context of their official duties;
- c) accept monetary funds, regardless of the amount, from any individual in connection with the discharge of their official duties, whether such acceptance transpires directly or indirectly.

12.7 Acceptable Gifts

A member of the Board of an SOE, management and staff may accept the following gifts when such acceptance does not create the appearance of influencing or actually influencing the execution of their official responsibilities:

- a) unsolicited gifts or souvenirs;
- b) gifts from family members on the basis only of that relationship;
- c) reduced membership or other fees/dues for being members of professional bodies/activities offered generally to members of the SOE known to the public;
- d) social invitations from persons other than prohibited sources;
- e) awards, honorary degrees and honoraria if such gifts are bona fide awards or incident to the bona fide awards or honoraria given for meritorious public service or professional achievement by a member of the Board, management or staff provided that the award, degree or honoraria is made part of an established program of recognition and is funded wholly or in part to ensure its continuation on a regular basis and the selection of recipients is made pursuant to a transparent criteria; and
- f) gifts/benefits from the business or employment of a spouse if such gifts/benefits are being extended to families and which has not been offered based on the member's position.

12.8 Disposal of Unacceptable Gifts

Where gifts are offered or accepted in violation of this Code, a member of the Board, management, or staff shall promptly disclose the nature of the gift and relinquish it for requisite action, which may involve:

- a) immediate return to the sender if delivered without prior notice; or
- b) donating the items to a suitable charitable organization.

All gifts surrendered and disposed of to a suitable charitable organization shall be recorded in a Gift Register maintained by the SOE.

12.9 Destruction

Section 107 of the SOE Act provides that “A person shall not destroy, mutilate, alter, falsify or make any fraudulent entry in or on any book, any electronic record in or outside The Gambia, or other document of a State-Owned Enterprise.”

12.10 Unprofessional Conduct

Conduct that demonstrates lack of integrity, dishonesty, abuse of power and authority, and lack of concern for the welfare of others, should be avoided.

12.11 Conflict of Interest

Conflict of interest may arise in several forms including:

- a) using organizational funds or assets for one’s own personal gains;
- b) exploiting confidential information or specialized knowledge acquired in one’s capacity as a Board member for personal advantage;
- c) maintaining a direct or indirect interest in any enterprise that competes with the organization; and
- d) holding a direct or indirect interest in any contract or other transactions executed by the organization.

Some other forms of conflict of interest may include but not limited to:

- a) A Director of the Board of an SOE exploiting their official position for personal gain instead of fulfilling their fiduciary duties in the best interests of the SOE.
- b) A Director exerting influence over fellow Board members through the provision of favours, manipulative tactics, or other means, resulting in certain Directors displaying loyalty to the influential Director rather than the best interests of the SOE.
- c) Misappropriation of company assets and resources.
- d) Self-dealing

12.12 Addressing Conflict of Interest

Measures to address conflicts of interest shall include the following:

- a) disclosure of interest – a member who has an interest in a matter being dealt with by the Board shall disclose in writing to the Board the nature of that interest and the disclosure shall be recorded in the conflict of interest register of the Board.
- b) The Board member shall abstain from engagement in any discourse pertaining to the subject matter in which they have exhibited a vested interest.
- c) In cases where conflict of interest matters is entrusted to a committee, the conflicted member shall abstain from exerting influence on the committee's members, either covertly or overtly.
- d) The resolution of conflicts of interest shall be undertaken by members who do not have a personal stake in the matter.
- e) Board members with sustained conflicts of interest must tender their resignation from the Board.
- f) Members who fail to disclose their interest shall be removed from the Board.

12.13 Sanctions

Where a member breaches the Code of Ethics, the Board shall be responsible for ascertaining the suitable disciplinary procedures to address violations of code of conduct and unethical behaviour following the extant directives established by the SOE.

CHAPTER THIRTEEN - RISK MANAGEMENT

13.1 Risk Assessment

SOEs exist for a purpose and to achieve determined objectives. Achieving these objectives is surrounded by much uncertainty which poses threats to success and at the same time offers opportunities for increasing success provided the risks are properly managed.

The Board shall oversee the identification of the organization's risks, analysis, evaluation and the implementation of measures aimed at their management.

13.2 Effects of Inefficient Risk Management

The consequences include the following:

- a) Ambiguities in operational procedures/guidelines;
- b) Poor/lack of management control;
- c) Negative publicity;
- d) Escalating stakeholder demands;
- e) Diminished reputation;
- f) Litigation;
- g) Loss in brand value;
- h) Organization failure or closure;
- i) Challenges related to health, safety, environment; and
- j) Premature termination of Board's tenure.

13.3 Benefits of Efficient Risk Management

Efficient risk management yields the following benefits:

- a) Augmented stakeholder confidence in the attainment of envisioned objectives;
- b) Mitigation of threats to the lowest feasible level;
- c) Seizure of potential opportunities;
- d) Elevated stakeholder trust in the Board and Management;
- e) Reinforced trust; and
- f) Augmented reputation.

13.4 Board and Management Responsibilities

13.4.1 The Board

- a) Approve risk management policy;
- b) Establish the parameters of risk appetite;
- c) Define the organizational mandate;
- d) Ask the right questions;
- e) Acquire the requisite information;
- f) Scrutinize and appraise the risk management procedures;
- g) Implement corrective measures as necessary;
- h) Have a single view of the risk universe and top risks of the SOE;
- i) Ensure all significant risks are regularly assessed and managed;
- j) Regularly monitor, assess and upgrade risk management and internal control arrangements.

13.4.2 Management

- a) Implement Board risk management policies;
- b) Identify and assess primary risks;
- c) Ensure capability and commitment is resented for effective implementation;
- d) Develop, execute, and oversee the internal control system;
- e) Provide periodic reports to the Board on internal control/ risk management activities.

13.5 Exposures

Risk assessment should address the organization's exposure to the following:

- a) Strategic risk
- b) Operational risk;
- c) Human Resource risk;
- d) Financial risk;
- e) Compliance risks;
- f) Business Continuity and Disaster risk;
- g) Cyber and information security risk; and
- h) Environmental risk.

It is imperative to emphasize that the Board bears full responsibility for the comprehensive framework of risk management policy. Management, in turn, is answerable to the Board for the execution of risk policies.

CHAPTER FOURTEEN - SOCIAL RESPONSIBILITY AND ACCOUNTABILITY

14.1 Definition

It is the measure of an organization's level of awareness regarding the evolving societal issues and preferences of both internal and external stakeholders, including the community, employees, government and non-governmental organizations, management, and owners.

14.1.1 This is evident through the organization's demonstrable dedication to specific factors, (which may or may not have a direct correlation to its operations) such as:

- a) Voluntary adherence to government regulations, health, hygiene, safety, and environmental statutes;
- b) Upholding fundamental civil and human rights;
- c) Advancement of the well-being of the community and the surrounding environment.

14.2 Principal Factors

The principal factor pushing the agenda for social responsibility are:

- a) A change in the attitude of society – society is now very much concerned about:
 - i. the pollution of water bodies (sources of drinking water for many communities);
 - ii. destruction of the environment and many of the negative impacts of business activities and are therefore demanding greater social responsibility from corporate leaders.
- b) A change in the attitude of executives towards social responsibility.
- c) Pressure groups – activities of pressure groups, consumer associations, not-for-profit organizations have hurt businesses and corporate leaders are now compelled to listen to these groups.

14.3 Practicality

Good social responsibility in practical terms means that Board members and managers must:

- a) demonstrate a keen awareness of the concerns impacting the communities in which they reside and operate;
- b) deliberately evaluate the societal repercussions that emanate from their fiscal and commercial choices, encompassing an array of stakeholders and environmental factors;
- c) exhibit a comprehensive comprehension of the circumstances within society where they can exert a beneficial influence;
- d) exercise diligence not only in determining the nature of services rendered but also in deciding the timing and methodology of service delivery.

14.4 Measuring Social Responsibility

Evaluation of an SOE's social responsibility is based on the following:

- a) The extent to which child labour laws are adhered to;
- b) The level of compliance with and endorsement of forced or compulsory labour regulations;
- c) Conformity with workplace Occupational Health and Safety standards;
- d) Preservation of the freedom of association and the right to engage in collective bargaining;
- e) Adherence to laws, directives, and regulations concerning non-discrimination based on factors such as social origin, birth, religion, disability, and gender, among others;
- f) Observance of disciplinary rules and procedures;
- g) Conformance with regulations governing working hours and other terms and conditions of employment.

14.5 Advantages

Organizational commitment to social responsibility yields positive results both in quantitative and qualitative terms. The benefits of social responsibility can be assessed in a number of ways including the following:

- a) Enhanced client satisfaction;

- b) Diminished operational expenses;
- c) Increased productivity;
- d) Improved quality of service;
- e) Substantial revenue growth;
- f) Improved customer engagement;
- g) Augmented brand reputation;
- h) Enhanced capacity to attract and retain talent;
- i) A more motivated and dedicated workforce;
- j) Enhanced environmental processes or reduced environmental footprint.

14.6 Guidelines and Policies

- a) SOEs shall develop policies on social responsibility and be guided by them.
- b) Social responsibility shall be geared towards achieving long-term competitive advantages, rather than being perceived as a mere public relations strategy.

14.7 Impact Assessment

SOEs must establish mechanisms of measuring the impact of social responsibility policies on the communities in which they operate.

CHAPTER FIFTEEN - ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

15.1 ESG Policy

The Board shall, in all its dealing, ensure that ESG factors and sustainability of the business are given due consideration. It is imperative to establish comprehensive evaluation and intervention strategies to identify, manage, and quantify the potential impact of SOE operations and investments on the environment and society.

In pursuit of the above objectives, the Board shall, among other responsibilities, ensure that:

- a) Due regard is accorded to the concerns of all stakeholders.
- b) Full compliance with all applicable laws pertaining to fundamental human rights, health, hygiene, safety, and environmental matters is upheld.
- c) The organization demonstrates corporate social responsibility.

To achieve the aforementioned objectives the:

- a) SOEs shall formulate internal policies and guidelines concerning ESG and strictly adhere to them.
- b) ESG policies shall seek to enhance the sustainable operation of the SOE and its constituents and environment.

15.2 Criteria

Evaluation of SOE's ESG may, among others, be based on the following where applicable:

15.2.1 Environment

- a) Issues out carbon emission or sustainability reports;
- b) Limits harmful pollutants and chemicals;
- c) Reduction of greenhouse gas emissions;
- d) Adoption of renewable energy sources;
- e) Compliance with environmental laws including Strategic Environmental Assessment (SEA)/Environmental Impact Assessment (EIA) and climate change management interventions such as greenhouse gas emissions, waste management and energy efficiency measures.

15.2.2 Social

- a) Operates an ethical supply chain;
- b) Issues policies and provides support to protect against sexual misconduct;
- c) Payment of fair wages;
- d) Adherence to non-discrimination laws, rules and regulations relating to social origin, birth, religion, disability and gender amongst others;
- e) Active support for community development.

15.2.3 Governance

- a) Embraces diversity within the board;
- b) Embraces corporate transparency and accountability;
- c) Compliance with child labour laws;
- d) Adherence to Occupational Health and Safety at the workplace;
- e) Freedom of association and right to collective bargaining;
- f) Compliance with code of conduct and regulatory procedures;
- g) Compliance with rules and regulations relating to conditions of service.

15.3 Measurement of ESG

SOEs must reach a consensus on and gauge the consequences of their ESG policies and interventions on the communities in which they operate, in collaboration with relevant authorities including the National Environment Agency where applicable.

15.4 Sustainability

SOEs shall adopt policies that address present needs while safeguarding their capacity to satisfy future development needs and objectives. The goals and objectives of the SOE shall be firmly oriented towards its long-term sustainability.

15 .4.1 Sustainability Goals

The Board shall:

- a) Integrate sustainability plans into the SOE's strategy and management practices;
- b) Focus on the future sustainability of the SOE;
- c) Embrace a comprehensive approach to economic, social, and environmental concerns within their fundamental business strategy;
- d) Take into account in their decision-making, the impact of the SOE's operations on the community and the environment;
- e) Work closely with management to ensure the well-structured formulation and subsequent attainment of long-term objectives;
- f) Concentrate on the continuous development of leadership capabilities and the establishment of a succession plan for the long term; and
- g) Ensure continuous innovation of its processes, products and services through various means including research and development.

APPENDICES

APPENDIX 1

Template for Performance Contract

[Insert DSOE performance contract evaluation]

APPENDIX 2

SAMPLE BOARD CHARTER OF THE STATE-OWNED ENTERPRISE

INTRODUCTION

- a) This charter sets out the key values and principles of the Board of Directors of State-Owned Enterprises in the Gambia.
- b) It provides a concise overview of the roles and responsibilities of the Board of Directors; powers of the Board and Board committees; separation of roles between the Board and Management; and the practice of the Board in respect of corporate governance matters.
- c) This board charter is subject to the provisions of the State-Owned Enterprise Act of the Gambia, the Code of Good Corporate Governance of the Gambia and other applicable laws and regulatory provisions.

1.1 PURPOSE OF THE BOARD CHARTER

The purpose of the board charter is to provide a concise overview of:

- a) The powers, roles, responsibilities, and functions of the Board of SOEs, Directors, Shareholders and the Officials and Executives of the SOE Commission;
- b) The allocation of authority to the respective Committees of the Board;
- c) The relevant principles of the Commission's limits and delegations of authority and matters reserved for final decision-making or pre-approval by the Board; and
- d) The policies and practices of the Board in respect of matters such as corporate compliance, corporate governance, declarations and conflicts of interests, Board meeting documentation and procedures, composition of the Board and the appointment, induction, training and evaluation of Directors and members of the Board Committee.

1.2 THE SHAREHOLDERS, BOARD AND OTHER OFFICERS OF THE SOE

- a) Shareholders should actively participate in governance by:
 - Appointing 'fit and proper' directors and auditors;
 - Satisfy themselves that appropriate governance structures are in place;
 - Major changes affecting the equity, economic interest or share ownership rights of existing shareholders should not be made without prior shareholder approval;
 - Institutional shareholders should effectively discharge their fiduciary duties to vote; and
 - All classes of shareholders should be treated equally. The interest of minority shareholders should be protected from all forms of abuse.
- b) The Board shall convene quarterly meetings and may convene special meeting where necessary.
- c) The MD, and board chair shall be present and prepared to respond to inquiries during the Annual Meeting.
- d) Papers/ documents shall be sent to the national assembly not less than ten (10) working days prior to the Annual Meeting.

2. THE BOARD

2.1 THE ROLE & RESPONSIBILITIES

- a) The primary role of the board is to provide effective leadership.
- b) The responsibilities of the Board shall include the following:
 - providing entrepreneurial leadership/setting the strategic aims;
 - setting SOE's values/culture and standards;

- regular assessment, review and approval of the SOE's structure(s) that reflect clearly defined and acceptable lines of responsibility and hierarchy;
- establishing regular training and education of board members on issues pertaining to their oversight functions and budget for it annually;
- hiring independent consultants to advise the board on certain issues;
- ensuring the integrity of systems and overseeing disclosure;
- establishing a framework of prudent and effective controls;
- ensuring the systematic evaluation and management of all substantial risks;
- regularly monitor, assess, and enhance risk management and internal control arrangements;
- review and approve all policies relevant to the operational framework of the SOE;
- ensuring the availability of adequate resources;
- upholding the obligations to shareholders;
- convening at regular intervals, in accordance with a formalized agenda of reserved matters;
- ensuring the annual report explains how the board operates and give details of members and attendance;

2.2 BOARD STRUCTURE/ COMPOSITION & BALANCE

- SOEs should be headed by an effective Board composed of highly qualified individuals well-versed in their responsibilities for oversight;
- conforming to international best practice, a majority of non-executive directors residing within The Gambia shall constitute the composition of the Board;
- the Board shall be constrained by a maximum size of seven (7) members;
- the Board must adhere to principles of diversity, including gender representation;
- neither the current nor a former CEO/MD of an SOE assume the role of the Board's Chairperson;
- no two members of the same immediate family shall serve in the board of an SOE at the same time;
- the Board shall be comprised of individuals possessing a balanced array of skills and talents relevant to the unique circumstances of the SOE;
- as a fundamental requirement, the Board shall establish, at a minimum, the following committees: Finance Committee, Nomination Committee, and Audit & Risk Management Committee;
- the Board Chairperson/MD shall not serve simultaneously as chairperson of any of the board committees.

2.3 BOARD CHAIRMAN & RESPONSIBILITIES

- Section 46 of the SOE Act states that the members of a Board shall choose a Chairperson and Vice Chairperson from amongst themselves.

As a minimum, the chairperson shall be responsible for the following:

- Leading the board and ensuring it is effective;
- establishing the board's agenda and ensuring there is sufficient time for discussion, particularly of strategic matters;
- promoting openness and generating effective debate and discussion about current operations, potential risks, and proposed developments;
- promoting constructive relations between executives and non-executives;
- agreeing training and development needs with each director;
- ensuring that the board receives accurate, timely and clear information;
- ensuring effective communication with shareholders;
- in consultation with the MD, call up board meetings.

2.4 THE SECRETARY

- (1) The Board shall appoint a secretary to the Board from within the State-Owned Enterprise.
- (2) The secretary shall be responsible for:

- a) convening upon the authority of the Chairperson, meetings of the Board.
- b) recording the minutes of all meetings of the Board and any other meetings as directed by the Board.
- c) acting as the secretary to any committee established by the Board.
- d) maintaining and preserve minute books in an organized and secure manner.
- e) securing custody of the common seal of the State-Owned Enterprise.
- f) safeguarding all title documents pertaining to the properties owned by the State-Owned Enterprise.
- g) safekeeping of all agreements executed by the State-Owned Enterprise.
- h) executing such other duties and responsibilities as may be assigned by the Board, from time to time.
- i) delivering the annual accounts to the Ministry of Finance and Economic Affairs/PPP Directorate, the relevant Line Ministry's Public Accounts Committee (PAC) or Public Expenditure Committee (PEC), and the Companies Registry at the Ministry of Justice.

2.5 MEETING OF BOARD

The convening of meetings of the Board of Directors shall be undertaken either upon the directive of the Chairperson or upon the consensus of a majority of the Directors. In all cases, such meetings shall occur at least on a quarterly basis.

2.6 PROCEDURES FOR MEETING

- 2.6.1 The Chairperson of the Commission is vested with the authority to determine the time and location for the convening of meetings.
- 2.6.2 The Board of Directors shall convene at the behest of the Chairperson or upon request by a majority of the Directors, and, in any circumstance, such meetings shall occur no less frequently than once every quarter.
- 2.6.3 Annual meetings (AM) must be conducted on an annual basis, not exceeding a duration of one year, at the designated venue, which is the Public Accounts and Public Enterprise Committee (PAC/PEC).
- 2.6.4 Any Commission may summon an extraordinary meeting, subject to the provision of three (3) days' prior written notice to be distributed to each member of the Commission.
- 2.6.5 During the course of a Commission meeting:
 - 2.6.5.1 either the Chairperson or, if the Chairperson is absent, the Vice Chairperson, may assume the role of presiding officer.
 - 2.6.5.2 A quorum for the meeting shall be constituted by the presence of four members, including either the Chairperson or the Vice Chairperson.
 - 2.6.5.3 Decisions of the Commission shall be made by a simple majority vote, and the presiding Chairperson or Vice Chairperson shall possess the authority to cast a decisive vote in the event of a tie.
 - 2.6.5.4 A resolution of the Commission, documented in writing and signed by all Commission members, shall be deemed a valid decision of the Commission, as though it were passed during an official Commission meeting.
 - 2.6.5.5 Whenever a matter is to be discussed or considered at a meeting of the Commission in relation to a State-Owned Enterprise or the board of a State-Owned Enterprise, the Commission shall invite the Minister to attend the meeting.
- 2.6.6 The Commission-
 - 2.6.6.1 may regulate its own proceedings; and
 - 2.6.6.2 shall ensure that comprehensive minutes are maintained, detailing the proceedings of Commission meetings.

2.7 QUORUM

Four of the Directors, which shall include the Chairperson or Vice-Chairperson, constitutes a quorum.

2.8 EVALUATION OF BOARD & MEMBERS

- 2.8.1 **Internal evaluation:** there should be annual evaluation of the board as a whole by the line Ministry,
 - individual directors (effective contribution and commitment) by the board chair and board committees.

- covering all aspects of the Board's structural composition, responsibilities, processes, and relationships, as well as individual members' competencies and their respective roles in enhancing the Board's performance.

2.8.2 **External evaluation:** there should also be external evaluation at least once every three years;

- the Board must identify and align its critical success factors or key strategic objectives in accordance with the State-Owned Enterprise's future strategy;
- a Board should function as an effective team to achieve these strategic goals;
- the reviews should be carried out by an external consultant; and
- the review report shall be submitted to the governance committee.

2.9 APPOINTMENT OF MEMBERS

- (1) The appointment of Commission members shall be carried out by the President following consultations with the SOE Commission and the Public Service Commission.
- (2) Commission members appointed by the President must possess integrity, competence, and a mature judgment, with a minimum of fifteen years of experience in fields such as industry, commerce, law, finance, or economics.
- (3) The Commission is empowered to enlist the assistance of individuals possessing expertise in matters related to State-Owned Enterprises to aid in the execution of its functions, provided the Commission is satisfied with their qualifications.

2.10 TENURE OF OFFICE OF MEMBERS

A Commission member shall serve a term of three years and may be eligible for re-appointment for one additional term.

2.11 SUCCESSION PLANNING

The Committee shall oversee the process of succession planning concerning the Chief Executive Officer (CEO) and the Board Chairperson, and shall examine, in conjunction with the Chairperson and CEO, succession strategies pertaining to other executive roles within the State-Owned Enterprise (SOE).

2.12 ACCESS TO ADVISORS TO THE BOARD

The Chief Executive Officer is obligated to serve in an advisory capacity to the board during its meetings and is authorized to provide support to the Chairperson or Vice-Chairperson in formulating the meeting agenda for board sessions and in addressing policy-related issues to be presented before the Board.

2.13 REPORTING OBLIGATION

The Committee shall maintain minutes of its meetings and shall give regular reports to the Board, including on the Committee's actions, conclusions and recommendations and such other matters as the Board shall from time to time specify. Reports to the Board may take the form of oral reports by the Chairperson of the Committee or any other member of the Committee designated by the Committee to give such report.

2.14 BOARD ROTATION

With the exception of the Chief Executive Officer, the designated representative from the Ministry overseeing financial matters, and the representative from the Ministry, all other members of the Board are deemed eligible for reappointment, a measure intended to facilitate the preservation of institutional continuity within the Board.

2.15 QUALITY OF MANAGEMENT

- 2.11.1 Appointments to top management positions should be based on merit and retentions based on performance;
- 2.11.2 Track record of appointees should be an eligibility requirement. Such records should cover both integrity ('fit and proper') and past performance (visible achievements in previous place(s) of work); and
- 2.11.3 Officers should be held accountable for duties and responsibilities attached to their respective offices.

2.16 RESIGNATION

- A member of a Board may resign from his or her appointment by notice in writing under his or her hand, addressed to the President.
- If a Director resigns from office prior to the conclusion of their term, they shall continue to serve as a Director until the earlier of—
 - (a) the appointment of a successor Director, who will fulfil the remaining term; and
 - (b) the expiration of forty-five days after the Director submitted his or her resignation to the President, provided that such resignation shall take effect from the moment it is officially received by the President, should the grounds for resignation align with the constraints specified in Section 38 of the SOE Act.

2.17 REMUNERATION

- The State-Owned Enterprise shall pay remuneration and provide benefits to its Directors as determined by the Commission.
- The GoTG should establish a formal and clear remuneration policy and procedures detailing defined and agreed performance metrics for both individual directors and the board collectively;
- GoTG should disclose remuneration policies and pay structures, in particular performance metrics. Disclosure should also include justification of annual awards in the context of annual performance;
- Non-executives' remuneration should be limited to monthly allowances;
- Sub-committee members shall be paid an honorarium for each meeting of the subcommittee;
- All remunerations should be effected in local currency, the Dalasi; and — the remuneration and compensation benefits of each board director should be disclosed as a line item in the annual accounts.

3. COMMITTEES

3.1 Membership

- 3.1.1 SOEs should be headed by an effective Board composed of qualified individuals that are conversant with its oversight functions;
- 3.1.2 In line with international best practice, non-executive directors' resident in The Gambia shall form the majority in the Board;
- 3.1.3 A maximum board size should be limited to seven (7) members;
- 3.1.4 Neither the current nor a former CEO/MD of an SOE should be the board's chair;
- 3.1.5 There should be, as a minimum, the following board committees- Finance Committee, Nomination Committee, and Audit& Risk Management Committee;
- 3.1.6 The Board Chairperson/MD should not serve simultaneously as chairperson of any of the board committees.
- 3.1.7 The secretary of the Committee shall act as secretary to the Committee and deliver the annual accounts to the MOFEA/PPP Directorate, Line Ministry PAC/PEC, and Companies Registry at the Ministry of Justice.

3.2 The following shall be the committees of the Board:

- a) Audit and Finance Committee
- b) Risk Management Committee
- c) Governance Committee
- d) Quality Assurance and Safety Committee

3.2.1 The Board may establish such other committees in addition to the mandatory committees as it deems necessary.

1.0 CODE OF ETHICS

- The board should establish a code of ethical conduct that serves as a guiding framework for the conduct of directors, officers, and employees, demonstrating an unwavering dedication to the maintenance of ethical standards;
- SOE staff should be well inducted on the provisions of the code, and each must sign a consent/binding form to acknowledge understanding and commitment to live by it. Failure to adhere to the code may result in disciplinary actions, including potential dismissal;
- The Board should ensure that the SOE is, and is seen to be, a responsible corporate citizen.

5.0 CONFLICTS OF INTEREST

(1) A Director possessing a direct or indirect interest in any contract or arrangement either currently executed or in the planning stages involving the State-Owned Enterprise, or encountering a conflict of interest as stipulated, must expeditiously, upon becoming aware of the circumstances, make a full disclosure regarding the nature of their interest during a convened Board meeting.

(2) A disclosure under this section shall be recorded in the minutes of meeting of the Board and the Director shall

- (a) not take part after the disclosure in any deliberation or decisions of the Board with regard to the subject matter in respect of which his or her interest is disclosed; and
- (b) be excluded for the purpose of constituting a quorum of any meeting of the Board for any such deliberation or decision.

(3) In the event that a Director violates the provisions set forth in subsection (1), the Commission, acting upon the recommendation of the remaining members of the Board, retains the authority to effect the removal of said Director from their position on the Board.

6.0 REVIEW OF THE CHARTER

The Charter shall be reviewed by the Board on an annual basis or as and when the need arises.

This charter was approved by the Board on2023, and is signed on its behalf by:

.....
CHAIRPERSON/DIRECTOR

.....
DATE

.....
BOARD SECRETARY

.....
DATE

APPENDIX 3

SAMPLE BOARD AUDIT & FINANCE COMMITTEE CHARTER FOR THE STATE-OWNED ENTERPRISES, THE GAMBIA

Introduction

This Audit and Finance Committee Charter for the SOE Commission complies with current best practices and includes the legal requirements outlined in the SOE Act of 2023. It is intended for use by committee authorities as a reference when creating or updating their own charters. It's important to note that no single charter can cover all possible activities that may be suitable for a particular authority's Audit and Finance Committee. Since public authorities vary in their objectives and resources, not all the activities outlined in this charter may be applicable to every authority's Audit and Finance Committee. Therefore, it is recommended to adjust this charter to align with the specific needs and regulatory framework of each individual authority.

Purpose/Objective

The primary function of the Audit and Finance Committee is to independently supervise the audit-related governance, risk management, and internal control practices of the State-Owned Enterprise (SOE). In doing so, the committee aids the board of directors in fulfilling their audit responsibilities with due care, diligence, and skill concerning the following matters:

- a) Oversight of annual financial statements and financial reporting
- b) Maintenance of the independence of the SOE's auditors
- c) Oversight of the SOE's Internal Audit activities, external auditors and other providers of assurance
- d) Internal Control Framework
- e) Risk Management

1. Membership

The Audit and Finance committee will consist of Non-Executive Directors from the State-Owned Enterprise's Board of Directors. The majority of its members must be Independent Non-Executive Directors.

The Board of Directors of the State-Owned Enterprise will appoint a Chairperson for the Audit and Finance Committee. This Chairperson must be a Chartered Accountant with the necessary experience to effectively carry out their duties. All committee members must possess the appropriate qualifications and experience required to fulfil their assigned duties and responsibilities.

A by-law that creates a committee shall outline its composition, which may include individuals who are not Directors of the State-Owned Enterprise.

2. Responsibilities

The responsibilities of the Audit and Finance Committee is to:

- a. Examine the Auditor-General's assessment of the financial statements of State-Owned Enterprises (SOEs) along with any remarks or additional information provided by the Auditor-General.
- b. Address any issues raised in the management letter and ensure that they are being appropriately addressed or investigated.
- c. Seek confirmation from the external auditor that proper accounting records are being maintained.
- d. Have access to external auditors to seek for explanations and additional information without management presence.
- e. Consider the external auditors independence and objectivity;
- f. Consider the effectiveness of the audit and whether the external auditor should provide non-audit services;
- g. Engage in conversations with External Auditors regarding noteworthy audit issues.
- h. Examine the audit report and any communications from External Auditors.
- i. Set the goals, strategies, and guidelines for the internal audit department.
- j. Assess the competence of internal audit personnel and identify training requirements for skill enhancement, as well as evaluate the actions of Internal Auditors.

- k. Monitor the accounts, review internal financial controls and other risk and internal controls systems.
- l. Recommend to the board recruitment and dismissal of the Head of Internal Audit.
- m. The Head of Internal Audit should report directly to the Board Audit and Finance Committee but forward a copy of the report to the MD/CEO of the SOE;
- n. Review of quarterly Audit reports from the Internal Audit Department.
- o. Examination of the internal audit program and notable discoveries made by internal auditors.
- p. Examination of the financial statements and any interim audit reports generated.
- p. Advice and guide on all issues affecting the financial policies, strategy, and performance of the SOE and ensure sound and effective financial management;

3. Authority

The committee operates under the authority granted by the board, as outlined in these terms of reference. It possesses the ability to examine activities within its purview and holds decision-making power concerning its responsibilities, for which it is answerable to the board.

The committee:

- a) May request information from the chairperson of other board committees, executive directors, company officers, or assurance providers, following a process approved by the board.;
- b) Can freely access the company's records, facilities, and resources as needed to fulfil its responsibilities, in accordance with a process approved by the board and;
- c) Is entitled to seek independent professional advice (at the company's expense) to support its duties after informing the chairperson, as long as this access, information, and advice are obtained in accordance with a process approved by the board.

The committee has the authority to establish sub-committees and delegate power to them or specific committee members. Any recommendations related to its areas of responsibility within its defined scope should be presented to the board for consideration.

4. Meeting and Procedures

a. Frequency

The Audit Committee must convene at least once every quarter, with additional meetings organized by the committee's chairperson as needed to fulfil their responsibilities. Meetings can be conducted electronically.

b. Attendance

- i. Committee members are required to make every effort to participate in all regularly scheduled meetings, which may include additional meetings convened for specific purposes. Members are expected to attend a minimum of 75% of these regular meetings. Failure to meet this attendance requirement will prompt the Committee's chairperson to assess the reasons for the member's absences and determine the appropriate course of action.
- ii. If a committee member cannot attend a particular meeting, they must notify the chairperson of the Audit and Finance Committee or the committee secretary in advance, along with an explanation for their absence.
- iii. In the absence of the appointed chairperson, the committee may choose a temporary chairperson for the duration of that meeting.
- iv. The Committee's secretary is responsible for maintaining meeting minutes and other pertinent records documenting the Committee's proceedings and activities.

c. Agenda and minutes

- i. Each fiscal year, the committee is required to establish an annual work plan. This plan should encompass all necessary matters as outlined in the terms of reference. The work plan will specify the number of meetings needed, their timing, duration, and agendas.
- ii. Meeting minutes should be promptly prepared and shared with the committee chair for review. Once approved by the chair, the minutes must be formally endorsed at the subsequent scheduled meeting and signed by the chair as an accurate account of the prior meeting's proceedings.

d. Quorum

A quorum is achieved when a majority of the committee members currently serving are present at meetings. Invitees may participate in discussions but do not count toward the quorum.

5. Evaluation

The committee is obligated to conduct an annual self-assessment of its effectiveness and, additionally, undergo a thorough performance evaluation with external facilitation every two years.

6. Amendment

The committee is responsible for annually reviewing and assessing the sufficiency of this Charter and recommending any proposed changes to the Board for approval.

APPENDIX 4

SAMPLE RISK MANAGEMENT COMMITTEE CHARTER FOR THE STATE-OWNED ENTERPRISES, THE GAMBIA

1. Purpose

The Risk Management Committee, as established by the Board, shall be tasked with supporting the SOE Commission in the preservation of its established reputation achieved through the effective conduct of board meetings. To do this, it will:

- a) Assess and continuously oversee the overall risk levels within the commission, evaluating the effectiveness of risk mitigation and control measures across all areas of risk pertaining to the SOE Commission.
- b) Provide recommendations to the board regarding areas of risk that pertain to the SOE Commission.
- c) Inform the board of any actions taken to implement improvements as suggested in item (b) above.

2. Objectives

The mandate of the Board Risk Management Committee shall encompass the impartial evaluation and examination of the following aspects:

- a) The risk management policies and protocols implemented by the Committee.
- b) The configuration of the risk portfolio and associated concentrations.
- c) The execution of any other tasks pertinent to risk oversight within the Committee, as may be entrusted by the Board.

3. Membership

SOEs are mandated to establish a Board Risk Management Committee primarily composed of independent non-executive directors;

Members of the Board Risk Management Committee shall be knowledgeable in Risk Management and internal control processes. Furthermore, one of the designated directors should assume the role of Chairman of the committee. A by-law establishing a committee shall specify the committee's composition, which may include individuals who do not hold the status of Directors within the State-Owned Enterprise.

4. Responsibilities of the Risk Management Committee

The responsibility of the Risk Management Committee include:

- a) Establish policies concerning the oversight and management of risks;
- b) SOEs are required to establish a framework for managing risks, including a dedicated risk management unit led by a qualified and experienced senior manager;
- c) Examine risk management reports and provide them to the Risk Management Committee, and make available to inspectors, the reports on field visits;
- d) Set the enterprise risk culture/appetite/level and ensure compliance with approved risk policies, procedures and practices;
- e) Review and approve the risk management policy including risk appetite and risk strategy;
- f) Review the adequacy and effectiveness of risk management and controls;
- g) Provide oversight of management's process for the identification of significant risks across the SOE and the adequacy of prevention, detection and reporting mechanisms;
- h) Perform review of the SOE's compliance level with applicable laws and regulatory requirements which may impact the SOE's risk profile;
- i) Conduct periodic review of changes in the economic and business environment, including emerging trends and other factors relevant to the SOE's risk profile;
- j) Review and recommend for approval of the Board risk management procedures and controls for new products and services;

- k) Evaluate the adequacy of the organization's internal controls;
- l) Request reports from management on specific internal control issues;
- m) Request an annual report from the Chief Executive Officer on the subject;
- n) Engage in discussions with internal and external auditors regarding the scope and nature of operations;
- o) Ensure the development of a comprehensive internal control framework and obtain annual assurance (internal and/or external) and report annually in the audited financials on the design and operating effectiveness of the SOE's internal controls over financial reporting;
- p) Review the entire system of internal control, including financial control and risk management.

5. Vacancies in Committees

If one or more vacancies arise within the composition of a committee, the committee shall persist as a legally constituted body, provided that the number of remaining members remains equal to or in excess of the quorum required for the committee's functioning.

6. Secretary

The secretary of the Board shall act as secretary to the Committee.

7. Duties of the Secretary

- a) Giving a notice of scheduled meetings;
- b) Disseminating the order of business to the committee in a timely manner prior to the meeting;
- c) Formulating and disseminating the minutes of committee proceedings.
- d) Documenting the minutes of all gatherings held by the committee and any additional sessions as directed by the committee;
- e) Being present at meetings and overseeing the adherence to established procedural protocols;
- f) Communicating the decisions of the SOE to the staff or to external entities and conducting follow ups;

8. Functions

In accordance with the governing by-law, the establishment of an advisory committee necessitates provisions detailing the committee's duties and the terms governing the appointment, compensation, and reimbursement of expenses for its members.

9. Quorum

A quorum for committee meetings shall be majority of committee members duly appointed at the relevant time. Attendees who are invited to participate in discussions during these meetings, while encouraged, shall not be counted as part of the quorum.

10. Evaluation

An annual self-evaluation concerning the committee's efficacy is mandatory. Furthermore, a comprehensive performance evaluation of the committee, conducted with external facilitation every two years, is also imperative.

11. Amendment

The Committee shall annually review and assess this Charter's sufficiency and is responsible for forwarding any proposed amendments to the Board for their consideration and approval.

APPENDIX 5

SAMPLE GOVERNANCE COMMITTEE CHARTER OF THE STATE-OWNED ENTERPRISE, THE GAMBIA

1.0 Introduction

This Governance Committee Charter of the SOE Commission is a testament to the current prevailing standards and the incorporation of the legal mandates prescribed by the SOE Act, 2023. It is expressly devised for the utilization of committee authorities as an instructive instrument to create or amend their respective charters. It is imperative to acknowledge that no template charter can fully encompass the entirety of activities suitable for a particular authority's governance committee. In light of the diverse objectives and resources that exist among public authorities, not all the activities outlined in this charter may be relevant to every authority's governance committee. Consequently, this charter should be adjusted, tailoring it to conform with the regulatory principles of each specific authority.

2.0 Purpose/ Objective

The purpose of this charter is to;

- Maintain regular communication with the Board to provide updates regarding prevailing standards in corporate governance.
- Offer guidance to the individuals tasked with the appointment of directors to the Board concerning the requisite skills, attributes, and professional or educational qualifications essential for the efficacy of Board members.
- Examine the State-Owned Enterprise's management succession planning.
- Assess the performance of the Board.
- Supervise and establish remuneration for the directors and committee members of the State-Owned Enterprise.

3.0 Membership

A Governance Committee shall comprise of members from;

- Office of the President
- Ministry of Finance and Economic Affairs
- The concerned SOE and its Line Ministry

4.0 Committees

4.1 The Board shall establish the following committees –

- (a) A governance committee;
- (b) An audit, risk management and finance committee; and
- (c) A quality assurance and safety committee.

4.2 A committee may be divided into sub-committees.

4.3 The Board is authorized to institute additional committees, apart from those established pursuant to subsection (1), as and when the Board deems it requisite.

5.0 Composition

A by-law establishing a committee shall include provisions addressing the composition of the committee, with the possibility of including individuals who do not hold the position of Director within the State-Owned Enterprise.

6.0 Vacancies in committees

In the event of one or more vacancies arising within the membership of a committee, the committee shall remain constituted as long as the number of remaining members is not insufficient to form a quorum for the committee.

7.0 Responsibilities

The Governance Committee is responsible for;

- a. Implementing a clear and formal procedure for the identification, selection and recommendation of candidates for board membership;
- b. conducting an annual assessment at the conclusion of each fiscal year of the individuals appointed to the Board and its committees to ensure the highest standards of integrity, diversity, and performance in State-Owned Enterprise (SOE) Boards;
- c. Overseeing matters related to corporate governance;
- d. Ensuring that the desired composition of SOE Boards is maintained;
- e. Managing succession plans for critical Board positions, such as the Chairman.

8.0 Ethics

- a. The board is obligated to establish a code of ethics that provides guidance for the conduct of directors, officers, and employees and must demonstrate a firm commitment to upholding ethical principles;
- b. SOE staff should receive comprehensive training on the provisions of this code, and each individual shall be required to sign a consent/binding document to confirm their understanding and commitment to abide by it, subject to penalties or dismissal for non-compliance;
- c. The Board is responsible for ensuring that the SOE conducts itself as a responsible corporate citizen and is perceived as such.

9.0 Procedure for Meeting

9.1 The Committee will convene on a quarterly basis throughout the year, at times and locations determined by the Committee Chairperson. Additional meetings or actions by unanimous written consent may be convened as deemed necessary or desirable by the Committee or its Chairperson. Special meetings may be convened upon the request of the Board or CEO. The Committee is responsible for developing and approving the annual meeting schedule.

9.2 Committee meetings may be conducted in the presence of members in a physical setting or through the utilization of either video or audio-conferencing methods.

9.3 Notification and details of meetings shall be provided to Committee members no less than five business days in advance, unless otherwise mutually agreed upon.

9.3 Committee Members shall constitute a quorum. In instances where more than two members are in attendance, decisions made by a majority of such members during a meeting with a quorum in place shall represent the actions of the Committee. When only two members are present, the unanimous vote of both members shall constitute the Committee's actions. Furthermore, a written resolution signed by all Committee members shall carry the same validity and efficacy as if it were passed during a duly convened and held Committee meeting.

9.4 The Committee shall maintain records of its meetings, which shall be distributed to members for review and approval and subsequently forwarded to the Board for informational purposes.

10 Board and Committees Performance Evaluation

10.1 The Committee shall oversee the annual assessment of the Board's performance and its various committees.

10.2 The Committee shall ensure the existence of a review or other evaluation mechanism for the Board and the submission of written reports detailing the results of these evaluations to the Board, including any recommendations for potential enhancements.

SAMPLE

APPENDIX 6

SAMPLE QUALITY ASSUARANCE & SAFETY COMMITTEE CHARTER OF THE STATE-OWNED ENTERPRISE, THE GAMBIA

1.0 Purpose

1.1 The Quality Assurance & Safety Committee of the Board of Directors (Board) of the SOE is formed pursuant to the SOE Act, 2023. The Governance Committee, in consultation with the Board Chair and members of the Quality Assurance & Safety Committee, shall recommend to the Board for approval, the election of a Quality Assurance & Safety Committee Chair to lead the fulfilment of the Terms of Reference of the Quality Assurance & Safety Committee and the fulfilment of the Position Description of the Quality Assurance & Safety Committee Chair herein.

1.2 The Quality Assurance & Safety Committee Chair is the principal link between the Board and the Quality Assurance & Safety Committee.

2.0 Key Responsibilities and Duties

2.1 The Quality Assurance & Committee Chair shall:

2.1.1 Act with integrity and honesty consistently prioritizing the best interests of the SOE.

2.1.2 Serve as the key liaison between the Quality Assurance & Safety Committee and the Board.

2.1.3 Oversee the composition, membership, framework and responsibilities entrusted to the Quality Assurance & Safety Committee.

2.1.4 Establish the agenda for each meeting of the Quality Assurance & Safety Committee, in collaboration with fellow committee members, the Board of Directors, the Governance Committee, and other members of Management, as deemed appropriate. This agenda shall be based on the Quality Assurance & Safety Committee's Annual Work Plan, the strategic blueprint of the SOE, unresolved issues, and an evaluation of the prevailing operational context by the Chair of the Quality Assurance & Safety Committee.

2.1.5 Chair all meetings of the Committee, including both confidential and in-camera sessions. In the event that the Committee Chair is unavailable, the present members of the Quality Assurance & Safety Committee shall designate a fellow committee member to assume the role of Chair.

2.1.6 Take all reasonable measures to ensure that the Committee members comprehend and fulfil the responsibilities and obligations as outlined in the Committee's Terms of Reference, striving for effective execution.

2.1.7 Ensure that the decisions of the Committee strike a balance between the effective and efficient utilization of public resources while delivering a superior standard of service to the SOE Commission.

2.1.8 Implement protocols to guarantee the timely provision of information, materials, and resources to Committee members and, reciprocally, from the Quality Assurance & Safety Committee to the Board. This is to enable both entities to meticulously undertake their review processes, make recommendations, and arrive at decisions, ensuring efficiency in their respective undertakings.

2.1.9 Propose quality standards to the Committee for approval and offer advice on areas that need enhancement or improvement.

2.1.10 Ensure the proper maintenance of inspection records for future reference.

2.1.11 The specific training requirements for inspectors, designed to facilitate their effective assessment of Committee members should be recommended to the committee.

3.0 Additional powers of the committee

- a) The Commission has conferred upon the committee the authority to conduct inquiries to any matter within its terms of reference.
- b) The Committee is authorized to request any supplementary information from any staff member, and it is mandatory for all committee constituents to comply with request put forth by the Committee.
- c) The Commission has given authority to the committee to obtain legal counsel or engage the services of other independent professionals, as well as secure individuals with relevant knowledge and experience, if necessary.

4.0 Competences

4.1 Members of this committee shall possess the following qualifications;

- a. Proficiency in understanding the ethical code of conduct that regulates the behaviour of State-Owned Enterprises (SOEs).
- b. A thorough grasp of the standards that oversee the operations of the SOE Commission.
- c. Familiarity with the guidelines that dictate the procedural practices within the committee.
- d. Proficiency in the understanding of the guidelines, protocols, and statutory instruments governing the practice and training within the SOE Commission.
- e. Demonstrated ability to exemplify excellence in their respective employment domains.
- f. Possession of knowledge and expertise in policy guideline comprehension, review, and development.

APPENDIX 7

SAMPLE CODE OF CONDUCT FOR THE BOARD OF THE STATE-OWNED ENTERPRISE

1.0 Introduction

- a) This Code of Conduct Sample is designed as a guide for use by the Board of the State-Owned Enterprise.
- b) It is part of a suite of resources to help SOE Commission put in place effective practices and procedures for the Board.
- c) This Code of Conduct is subject to the provisions of the State-Owned Enterprise Act of the Gambia, the Code of Good Corporate Governance of the Gambia and other applicable laws and regulatory provisions.

2.0 Purpose of the Code

- a) The Board of Directors of the SOE Commission has adopted the following Code of Conduct Policy for the board committee members, effective as of _____, 20__.
- b) This policy outlines the rules and responsibilities regarding the fiduciary duties of Board members. It aims to ensure that every Board member behaves with trustworthiness, diligence, honesty, and ethics while serving on the Board or a committee.
- c) This code ensures being elected or appointed to the Board or a committee, all Board and Committee members must adhere to this policy. Current directors of the SOE Commission will receive a copy of this policy.

3.0 Board Duties and Standard of Care

3.1 The general fiduciary duties of the Board of Directors include, but are not limited to the following:

3.1.1 Always act and in the best interests of the State-Owned Enterprise by safeguarding its assets, advancing its operations, and promoting its intended objectives. This should be done with the same care, diligence, and skill that a responsible and skilled Director would exercise in similar circumstances.;

3.1.2 Exercise the highest level of good faith when engaging in any dealings or transactions involving the State-Owned Enterprise;

3.1.3 When carrying out his/her responsibilities, shall take into account the welfare of the State-Owned Enterprise's employees;

3.1.4 Shall use powers for their designated purpose and avoid using them for unrelated reasons. If using such powers incidentally impacts the State-Owned Enterprise negatively, it won't be considered a breach of duty;

3.1.5 Shall not restrict their freedom to make decisions in a particular way;

3.1.6 Ensure that all decisions made by the Board align with the State-Owned Enterprise's primary objective, given the circumstances;

3.1.7 Ensure all board decisions comply with the law.

3.1.8 Ensure that State-Owned Enterprise's contracts are awarded through a transparent and equitable process, and, whenever possible, follow proper request for proposals procedures;

3.1.9 Prevent the Board's decisions from causing undue financial risk or loss to any of the State-Owned Enterprise's creditors;

3.1.10 Ensure that the State-Owned Enterprise can reasonably meet any obligations imposed by the board:

3.1.11 Verify that all decisions made by the Board align with the State-Owned Enterprise's corporate intent statement; and

3.1.12 Ensure that financial plans and reports are submitted in a timely manner as required under this Act.

4.0 Professional Conduct

In general, directors and committee members must conduct all dealings with third parties in good faith, in the best interests of the Commission and in a manner that safeguards information that belongs to the Commission.

4.1 The Board of Directors must:

- a) Exhibit character of personal integrity;
- b) Show loyalty to the organization;
- c) Handle information with confidentiality;
- d) Avoid abuse of corporate resources (e.g., vehicles, accommodation);
- e) Avoid abuse of power;
- f) Refrain from allocating to themselves offices;
- g) Limit their demands to terms and conditions of appointment.

4.2 A provision in any contract or other agreement cannot exempt a Director from their obligation to adhere to this Act, nor can it absolve the Director of any legal responsibility arising from a violation of their duties as outlined in the Act.

4.3 Director, in their capacity as a custodian of the funds and assets of a government-owned company, and owing a fiduciary duty to the company, shall:

- (a) Provide a record of all funds under the Director's authority.
- (b) Repay any funds that were incorrectly disbursed.

4.4 A Director must diligently use their authority for the benefit of the State-owned company and its shareholders, rather than for personal gain or the benefit of a specific group.

5.0 Conflict of Interest

5.1 A director with a direct or indirect interest in any agreement made or about to be made by the State-Owned Enterprise, or who has a conflict of interest as specified, must promptly reveal the nature of their interest during a Board meeting when they become aware of the relevant facts.

5.2 A disclosure under this section shall be documented in the Commission's meeting minutes, and the member shall-

- (a) abstain from participating in any discussions or decisions related to the matter where their interest is disclosed; and
- (b) not be counted as part of the quorum in Commission meetings when discussing or deciding matters related to their disclosed interest.

5.3. A Director who violates subsection (1) can be removed from the Board by the Commission based on a recommendation from the other Board members.

6.0 Addressing Conflict of Interest

6.1 Measures to address conflicts of interest shall include the following:

- a. Disclosure of Interest - A Board member with a vested interest in a matter under consideration by the Board shall provide written disclosure to the Board, outlining the specific nature of said interest and the disclosure shall be recorded in the conflict of interest register of the Board;

- b. the Board member shall not participate in any deliberations concerning the matter in which he/she has shown interest;
- a. In cases where conflict of interest matters are delegated to a committee, the conflicted member shall refrain from exerting any influence on committee members, either overtly or covertly.
- b. Conflict of interest matters shall be addressed and resolved by members who are not subject to any conflict.
- c. Board members with ongoing conflicts of interest must tender their resignation from the Board.
- d. members who fail to disclose their interest shall be removed from the Board.

7.0 Improper conduct

7.1 The Chairperson is authorized to remove or bar from any meeting any individual, including a director, for inappropriate behaviour during the meeting as defined in the by-laws.

8.0 Abusive Conduct

8.1 Any form of inappropriate behaviour (physical, verbal, or psychological) displayed by a Board member towards any person, such as an employee, fellow Board member, or service provider, will not be accepted.

9.0 Sexual Harassment

9.1 Sexual harassment, in any manifestation, will not be tolerated, and Board members must not be involved in or supportive of any form of sexual harassment.

10.0 Director prohibited from receiving bribes, gifts

10.1 A director of a Board shall not accept, in respect of any transaction involving a State-Owned Enterprise –

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

11.0 Destruction

11.1 A person shall not destroy, mutilate, alter, falsify or make any fraudulent entry in or on any book, any electronic record in or outside The Gambia, or other document of a State-Owned Enterprise.

12.0 Disgraceful, Dishonourable and Unprofessional Conduct

12.0 Any behaviour that showcases a deficiency in integrity, dishonesty, misuse of authority, and a lack of consideration for the well-being of others should be avoided.

13.0 Preservation of secrecy

13.1 It is prohibited for any individual to disclose, communicate, or publish information pertaining to: (a) the affairs of a State-Owned Enterprise or its Board, or the Commission; or (b) an individual under consideration or recommendation for appointment to a State-Owned Enterprise or its Board.

13.2 Subsection (1) of the SOE Act applies to information acquired by an individual:

- (a) while carrying out a duty associated with the Commission's functions; or
- (b) by attending a Commission meeting or committee meeting.

13.3 Subsection (1) of the SOE Act shall not be applicable to information revealed:

- (a) for the proper implementation or enforcement of this Act or the Commission's functions;
- (b) for the just administration of justice; or
- (c) at the request of any Commission member or any other individual authorized in writing by a Commission member.

14.0 Penalty

14.1 When a member breaches the Code of Ethics, the Board shall determine suitable disciplinary procedures to address violations of the code of conduct and unethical behaviour, following the existing guidelines of the State-Owned Enterprise.

15. Disqualifications for holding office

15.1 An individual shall not be eligible to serve as a member of the Commission or shall cease to hold such a position if they: –

- (a) are declared legally incapacitated or of unsound mind;
- (b) have been convicted of a criminal offense involving dishonesty, fraud, or violence;
- (c) have been dismissed from employment within the public or private sector due to misconduct;
- (d) have had their appointment terminated under circumstances indicative of dishonesty;
- (e) if the individual possesses professional qualifications, they are disqualified or subject to suspension from practicing their profession through a directive issued by a competent authority solely concerning them;
- (f) are a member of the Cabinet, the National Assembly, a disciplined force, a local government authority, or hold any public office; or
- (g) hold a political office or hold an official position within a political party.

SAMPLE

APPENDIX 8

KEY CONSIDERATIONS DURING DUE DILIGENCE FOR APPOINTMENT TO THE BOARD OF AN SOE

- a) Conducting background searches through close friends, colleagues and other online searches.
- b) Conducting a European Union (EU) Sanction List search for information on possible sanctions of nominees.
- c) Conducting interviews with nominees to obtain salient information regarding their competence, knowledge, skills, experience, and the like, as well as to evaluate their suitability.
- d) Ensuring minutes from the interviews are accurately and comprehensively documented.
- e) Conducting legal examinations, inclusive of scrutinizing superior court records for information pertaining to any ongoing or past and/or ongoing legal proceedings.
- f) Undertaking of credit assessments to evaluate the financial credibility of the nominees.
- g) Conducting Fit & Proper Tests on nominees to ensure nominees are in compliance with regulatory prerequisites.
- h) Verifying nominees academic and professional certifications
- i) Contacting nominees' references for additional information and validation.
- j) Conducting due diligence inquiries and examinations through law enforcement agencies.
- k) Documenting a comprehensive report based on the conducted due diligence. The SOE Commission is to maintain a copy of the report on file for purpose of future reference. If the SOE Commission does not have the in-house capability to conduct the due diligence, they may engage a competent external consultant to conduct the exercise.

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