

STATE-OWNED ENTERPRISES ACT, 2023
[Act No.5 of 2023]

STATE-OWNED ENTERPRISES REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

Regulation:

PART 1 - PRELIMINARY PROVISIONS

1. Citation
2. Interpretation
3. Application

PART 2 - STATE-OWNED ENTERPRISES COMMISSION

4. Extraordinary meetings of the Commission
5. Disclosure of material interest
6. Funds of the Commission
7. Policy Directives to the Board of the State-owned Enterprises
8. Vacation of Office
9. Consequences for Removal from Office
10. Monitoring Performance of the State-owned Enterprises

11. Special Examination and/or Investigation
12. Restructuring of State-owned Enterprises
13. Designating a Public Entity as a Commercial state-owned enterprise
14. Functions of the Executive Secretary
15. Public Service Obligations (Non-commercial activities)

PART 3 - STATE-OWNED ENTERPRISES

16. Eligibility of Board Members
17. Delegation of Board Powers
18. Vacation of office
19. Consequences for Removal from Office
20. Meetings of the Board of the State-Owned Enterprises
21. Disclosure of material interest
22. Establishment of branch offices
23. Business Plans for State-Owned Enterprises
24. Matters to be included in the Business Plan
25. Financial matters to be included in the Business Plan
26. Matters to be considered in the financial target
27. Variation to the Business Plans
28. Board to notify the Minister and Commission of significant event

29. Business plan to be followed
30. Funds of the State-Owned Enterprises
31. Budget
32. Accounts and records
33. Annual reports
34. Investments
35. Payment of dividends
36. Borrowing powers
37. Transfer of liabilities to Government
38. Dissolution and liquidation
39. Property of a State-Owned Enterprise
40. Corporate governance
41. Procurement rules
42. Data protection and privacy
43. Insolvency of the State-Owned Enterprises
44. Classes of State-Owned Enterprises
45. Consequences for non-compliance

SCHEDULES

Schedule1- List of Commercial State-Owned Enterprises in The
Gambia and their Subsidiaries

Schedule 2-Asset Management Plan and Register

Schedule 3 - Code of Corporate Governance for Boards of Directors
State-Owned Enterprises

Schedule 4- Classes of State-Owned Enterprises

STATE-OWNED ENTERPRISES ACT, 2023
[Act No. 5 2023]

STATE-OWNED ENTERPRISES REGULATIONS, 2024

IN EXERCISE of the powers conferred on the Minister responsible for finance by section 117 of the State-Owned Enterprises Act, 2023, these Regulations are made.

PART 1 - PRELIMINARY PROVISIONS

1. Citation

These Regulations may be cited as the State-Owned Enterprises Regulations, 2024.

2. Interpretation

In these Regulations-

“**Act**” means the State-Owned Enterprises Act, 2023;

“**chief executive officer, director general and managing director**” means a person appointed to primarily focus on operational management, be responsible for executing the strategy of the State-Owned Enterprise and to report to the Board of Directors of a State-Owned Enterprise; and

“**Director of a Board**” means a person appointed to primarily focus on governance and oversight, set strategy and report to the shareholders (or stakeholders) of a state-owned enterprise.

3. Application

- (1) Subject to section 3(1) of the Act, these Regulations apply to commercial State-Owned Enterprises established -
 - (a) prior to the coming into force of the Act; and
 - (b) after the coming into force of the Act.
- (2) Subject to section 3(2) of the Act, the commercial State-Owned Enterprises are listed in Schedule 1.

PART 2 - STATE-OWNED ENTERPRISES COMMISSION

4. Extraordinary meetings of the Commission

- (1) If a Commissioner calls up an extraordinary meeting under section 10 (3) of the Act, the Commissioner shall-
 - (a) call the meeting through the chairperson; and
 - (b) notify all Commissioners of the request made to the chairperson to call an extraordinary meeting.
- (2) The Chairperson shall call for the meeting as requested for under sub regulation (1) after he or she has considered and determined that the matter requires an extraordinary meeting as requested.
- (3) The quorum for the extraordinary meeting is three Commissioners.

5. Disclosure of material interest

- (1) Subject to section 12 of the Act, a member of the Commission is interested in a matter if the member –
 - (a) is a party to, or may derive a material financial benefit from, a transaction involving a state-owned enterprise or a business enterprise in which the state-owned enterprise has an interest;
 - (b) has a material financial interest in another party to a transaction involving a state-owned enterprise or a business enterprise in which the state-owned enterprise has an interest;
or
 - (c) has a close relation who is a party to, or who may derive a material financial benefit, or who has a material financial interest.
- (2) An item relating to disclosure of interest shall be maintained on the agenda for every meeting of the Commission.
- (3) If a member of the Commission discloses material interest, he or she shall not participate in the deliberations of the meeting relating to the specific agenda item for which that member has an interest.
- (4) The Secretary to the Commission shall keep a register of all disclosure made and recorded in the minutes of the meeting.

6. Utilisation of funds of the Commission

- (1) Subject to section 69(2) of the Act, the Commission may apply its funds to:

- (a) the cost of administering the Commission and for the purposes of any activity being undertaken by the Commission;
- (b) pay remuneration, allowances, benefits and expenses of officers, employees, and members of the Commission;
- (c) maintain property vested in the Commission or under its administration; and
- (d) pay for activities relating to the functions of the Commission.

7. Policy directives to the Board of a State-Owned Enterprise

- (1) The Commission may give written directions to the Board of a State-Owned Enterprise on matters of general policy, and the Board shall, subject to the Act and these Regulations-
 - (a) comply with the directions; and
 - (b) publish the directions in its annual report.
- (2) The Board may otherwise publish the directions under sub-regulation (1) in any manner it considers fit.
- (3) The directives issued under sub-regulation (1) shall be consistent with objectives of the State-Owned Enterprises in section 25 of the Act.

8. Vacation of office

- (1) Subject to section 9 of the Act, a member of the Commission or a person occupying a key position in the Commission shall vacate his office, with reasons for vacation, by notice in writing from the President.

(2) The reasons for vacation from office includes-

- (a) abuse of office;
- (b) corruption;
- (c) incompetence;
- (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
- (e) failure to attend three consecutive scheduled meetings without reasonable grounds;
- (f) conviction of an offence involving moral turpitude; or
- (g) being adjudged bankrupt by a court of law.

(3) For purposes of sub-regulation (2) (a), abuse of office means misuse of one's position, power, or authority for personal gain, benefit, or to harm others, and it involves:

- (a) illegal activities;
- (b) misuse of resources or funds;
- (c) conflict of interest;
- (d) nepotism;
- (e) harassment or discrimination;
- (f) violation of rules, policies, or laws;
- (g) failure to perform duties or responsibilities;
- (h) using authority to intimidate or coerce others; and

(i) breaching public trust or confidentiality.

(4) A member of the Commission shall also be removed from office where the member -

(a) is absent from duty without permission of the chairperson or without reasonable grounds for three consecutive meetings of the Commission or absent from The Gambia for more than 12 months;

(b) has been convicted of an offence involving dishonesty, corruption, fraud or violence within or outside The Gambia; or

(c) has been convicted of an offence and sentenced to imprisonment for six months or more without the option of paying a fine by a competent court in The Gambia or outside.

9. Consequences for removal from office under the Act

(1) If a person is removed from office in accordance with section 43 of the Act, the person is not entitled to any benefit under the Act except where that person has been removed from office as a result of physical or mental incapacity.

(2) A person removed from office shall not occupy any public office until the expiration of three years.

(3) Where a member has been removed from office, the President may, in accordance with section 6(1) of the Act appoint another person to replace the member and the new member shall be considered as having their first term in office as a new member of the Board.

10. Monitoring performance of State-Owned Enterprises

- (1) Subject to section 81 of the Act, the Commission shall undertake analysis on the financial, commercial and operational performance of State-Owned Enterprises, and on the basis of the analysis, submit recommendations to the Cabinet on matters related to the performance and governance of State-Owned Enterprises, including -
- (a) the overall performance of State-Owned Enterprises;
 - (b) the opinion of the Auditor General in relation to State-Owned Enterprises;
 - (c) performance of State-Owned Enterprises against their primary objectives, business goals, performance targets and benchmarks;
 - (d) investment in, loans to and guarantees of State-Owned Enterprises;
 - (e) the risks associated with the state-owned enterprise sector that could affect the investment of the Government in State-Owned Enterprises;
 - (f) proposals relating to major transactions by State-Owned Enterprises as and when required by the Government;
 - (g) best practice by State-Owned Enterprises for encouraging and enhancing efficiency, service delivery, and for improving performance;

- (h) agreements for public service obligations as required by the Government;
- (i) State-Owned Enterprises reform options as required by the Government;
- (j) analysis of the contents of the statements of corporate intent, business plans, annual reports and semi-annual reports; and
- (k) any other matter which the Government may require.

11. Special examination

- (1) Subject to section 13(2)(i) of the Act, the Commission may appoint officers of the Commission or consultants to examine the books and affairs of State-Owned Enterprises, under conditions of secrecy if the Commission is of the opinion that a State-Owned Enterprise -
 - (a) may be carrying on its activities in a manner that is detrimental to public interest;
 - (b) may have insufficient assets to cover its liabilities;
 - (c) may be contravening the provisions of the Act;
 - (d) is unable, persistently, to pay the salaries of its employees;
 - (e) where applicable, fails to post a profit for a period considered unreasonable by the Commission; or
 - (f) fails, persistently to provide the goods and services for which it was established.

- (2) The special examination shall be led by a Commissioner of the Commission who has relevant expertise in the area or subject of the examination.
- (3) The examiners appointed under sub-regulation (1) shall-
 - (a) periodically examine, under conditions of secrecy, the books and affairs of every State-Owned Enterprise;
 - (b) have a right to access the books, accounts and vouchers of State-Owned Enterprises;
 - (c) require and obtain information and explanations from the officers and directors of State-Owned Enterprises as may be considered necessary in the performance of their duties;
 - (d) have access to accounts, returns and information with respect to any State-Owned Enterprise which are in the possession of bank or financial information which State-Owned Enterprise keeps or operates in The Gambia; and
 - (e) have the right to inspect public works and other projects for which contracts have been awarded by State-Owned Enterprise.

12. Restructuring of State-Owned Enterprises

- (1) Subject to section 13(1)(b) and 103 of the Act, the Commission, in consultation with the Minister and the Board of a State-Owned Enterprise, may identify any State-Owned Enterprise to be considered for restructuring.

- (2) The Commission shall oversee a restructuring plan which shall be approved by Cabinet.
- (3) The restructuring plan in sub-regulation (2) may include-
- (a) in the case of a State-Owned Enterprise that is not a company, that the State-Owned Enterprise-
 - (i) be converted into a company registered under the Companies Act; or
[Act No.9 of 2013]
 - (ii) forms or acquires a company to which specified assets, liabilities and undertakings of the State-Owned Enterprise shall be transferred;
 - (b) that the share capital of a State-Owned Enterprise be reorganised and made available, either in full or in part, for disposal to members of the public;
 - (c) that the undertaking and assets of a State-Owned Enterprise, or part of its undertaking and some of its assets, be offered for disposal to members of the public;
 - (d) that a State-Owned Enterprise be liquidated;
 - (e) in the case of a proposal referred to in paragraph (a) or (b), the shares be distributed in the proposed enterprise, either to the State as sole shareholder, or to the State and members of the public or solely to members of the public;

- (f) any other method through which restructuring a State-Owned Enterprise should be effected; and
- (g) any measure, including any enacting or amending legislation, which may be required to restructure State-Owned Enterprise as proposed.

(4) In formulating a restructuring plan, the Commission shall-

- (a) consult with the Minister, the Board, the Chief Executive Officer, and any other relevant stakeholder;
- (b) take into account -
 - (i) the purpose for which the state-owned enterprise was established originally;
 - (ii) the risk performance of the state-owned enterprise since its establishment;
 - (iii) the reasons which prompted the identification of the state-owned enterprise for restructuring; and
 - (iv) representations made by any relevant stakeholder.

13. Designating a public entity as a Commercial State-Owned Enterprise

- (1) Subject to section 14(1)(f) of the Act, the Commission may designate a public entity as a Commercial State-Owned Enterprise.

- (2) The Commercial State-Owned Enterprise designated in sub-regulation (1) shall be established with a primary objective of making profits, in addition to other objectives, as stated in its Statute or Articles of Incorporation and -shall have the following broad business characteristics -
- (a) compete with other businesses in the market place;
 - (b) advertise and market its products or services to attract customers or increase market share;
 - (c) set prices for its products or services based on market demand or competition as applicable;
 - (d) have a goal to generate profits to pay dividends and make reinvestments;
 - (e) have a business plan or strategy to increase profitability or market share; and
 - (f) engage in partnerships or collaborations with other businesses to expand its market share, products or services.
- (3) The 11 State-Owned Enterprises listed in Schedule 1 are designated Commercial State-Owned Enterprises in accordance with sub-regulation (2).
- (4) For a new public entity or an existing State-Owned Enterprise whose mandate evolved has overtime, the Commission, in consultation with the public entity, will assess the business model of the entity and if it satisfied that sub-regulation (2) is met, the Commission shall apply the procedure in sub-regulation (5) to designate the entity as a Commercial State-Owned enterprise.

- (5) The Commission shall, in consultation a new public entity or an existing State-Owned Enterprise which mandate has evolved, assess the business model of the entity to determine that the entity has satisfied the requirements under sub-regulation (2).
- (6) The Commission shall designate an entity that satisfies the requirements under sub-regulation (2) by-
 - (a) engaging the Minister responsible for Finance and the Minister about the intention of the Commission to designate the public entity as a commercial state-owned enterprise providing all the reasons and justifications in accordance with the Act and these Regulations; and
 - (b) causing the Minister responsible for Finance and the Minister to prepare and submit a joint Cabinet Paper to designate a public entity as a Commercial State-Owned enterprise.
- (7) If Cabinet considers and approves the recommendation contained in sub-regulation (6)(b), the Minister responsible for Finance shall submit the revised regulation to the Ministry of Justice for *gazetting*.
- (8) The *Gazette* under sun-regulation (7) shall include the amendment of Schedule 1 of this regulation to include the new Commercial State-Owned Enterprise.

14. Functions of the Executive Secretary

- (1) Subject to section 16 of the Act, the Executive Secretary of the Commission shall-
- (a) handle communications on behalf of the Commission including drafting letters, sending emails, and other correspondence, and maintain contact with stakeholders;
 - (b) take charge of scheduling and organising meetings for the Commission, including setting agendas, booking venues, and arranging for any necessary materials or equipment, and coordinating travel for Members of the Commission;
 - (c) maintain accurate and up-to-date records of the activities of the Commission including minutes of meetings, agendas, and other documentation, archiving and organising these records for future reference;
 - (d) work closely with the chairperson of the Commission to provide administrative support and assistance with tasks or projects relating to conducting research, preparing reports, and handling other administrative duties as needed;
 - (e) serve as a point of contact between the Commission and other government agencies, and external stakeholders such as industry groups, trade unions and the public and liaising with these groups on behalf of the Commission and keeping them informed of relevant developments;
 - (f) oversee the budget and financial resources of the Commission, including tracking expenses, preparing financial reports, and ensuring compliance with relevant regulations and guidelines;

- (g) oversee the recruitment, training, and performance management of the staff of the Commission including handling human resources-related issues that may arise;
- (h) be involved in developing and implementing strategic plans and policies for the Commission, monitoring progress towards their achievement, conducting research and analysis to support these efforts;
- (i) ensure that the Commission operates in compliance with all relevant laws, regulations, and guidelines including staying up-to-date with changes to rules and regulations and making sure that the activities of the Commission are conducted in accordance with them; and
- (j) perform any other task that may be assigned to him or her by the Commission.

15. Public service obligations

- (1) Subject to section 27(1) of the Act, and in accordance with section 25(1)(b) of the Act, the Government of The Gambia may, require a Commercial State-Owned Enterprise in writing, to-
 - (a) provide a specific service or perform a specified activity; or
 - (b) cease providing a specified service or performing a specified activity.
- (2) A Commercial State-Owned Enterprise shall provide a public good or service based on-
 - (a) the need to improve access to essential goods and services;

- (b) the need to ensure the development of infrastructure;
 - (c) the need to prevent or manage national emergencies; and
 - (d) any other reason that as the Commission may determine with the approval of the Cabinet.
- (3) If the Government submits a proposal in accordance with sub-regulation (1)(a), the State-Owned Enterprise shall, within one month, respond in writing, stating with reasons, whether the State-Owned Enterprise-
- (a) agrees to give effect to the proposal; or
 - (b) finds the request to be inconsistent with the primary objective of the State-Owned Enterprise.
- (4) If the Commercial State-Owned Enterprise gives a notice under sub-regulation (3)(b), the Government and the Commercial State-Owned Enterprise shall enter into negotiations with a view to entering agreements under which the Commercial State-Owned Enterprise can give effect to the proposal of the Government without acting inconsistently with its primary objective.
- (5) Where an agreement has been reached under sub-regulation (4), the arrangements for giving effect to the proposal of the Government shall be incorporated in a Public Service Agreement -
- (a) which shall be in writing;
 - (b) which shall be approved by Cabinet and the Board of the Commercial State-Owned Enterprise;

- (c) which may include provision for funding or other resources to the Commercial State-Owned Enterprises;
 - (d) where it provides for Commercial State-Owned Enterprises to provide goods and services, it shall-
 - (i) specify the goods or services, including particular quantities;
 - (ii) specify an estimate of the annual total cost to the Commercial State-Owned Enterprise for providing the goods or service, and an estimate of the annual total revenue to be received by the Commercial State-Owned Enterprise for doing so, and
 - (iii) specify how the performance of the Commercial State-Owned Enterprise in providing the goods or services will be monitored and assessed;
 - (e) may include any other matter which is not specified with these Regulations, that is agreed between the Commission and the Commercial State-Owned enterprise.
- (6) The obligations under a public service obligation agreement are binding.

PART 2 - STATE-OWNED ENTERPRISES

16. Eligibility of Board Members

Subject to section 34, 35 and 40 of the Act, the ex-officio representatives of the Ministry of Finance and Economic Affairs and the line Ministry shall not be below the rank of a deputy director.

17. Delegation of Board powers

Subject to section 54(2) of the Act, the Board shall not delegate-

- (a) the power to approve the strategic plan, oversight of the State-Owned Enterprise operations and review of performance regarding the strategy, objectives, business plans and budgets of the State-Owned Enterprise, ensuring that any necessary corrective or transformative action is taken;
- (b) ultimate oversight of risk, including determining the risk profile and risk appetite of State-Owned Enterprises;
- (c) approval of acquisitions, disposals and other transactions outside delegated limits;
- (d) financial reporting and controls, including approval of the Half-Year Results, Interim Management Statements and Full-Year Results, approval of the Annual Report and Financial Statements, approval of any significant changes in accounting policies or practices and ensuring maintenance of appropriate internal control and risk management systems;
- (e) the power to ensure that Annual Report and Financial Statements present a fair, balanced and understandable assessment of the position and prospects of State-Owned Enterprise, and provides information necessary for shareholders to assess the position, performance, business model and strategy of State-Owned Enterprises;
- (f) the power to assess the viability of a state-owned enterprise and its ability to continue as a going concern;

- (g) the power to approve capital expenditure, including annual approval of capital expenditure budgets and any material changes to them in line with the policy of the State-Owned Enterprise on capital expenditure;
- (h) the power to declare interim dividend and recommendation of the final dividend;
- (i) the power to approve documenting shareholders including approval of resolutions and corresponding documentation to be put to the shareholders and approval of all press releases concerning matters decided by the Board; and
- (j) key business policies.

18. Removal from office

- (1) Subject to section 43 of the Act, a member of the Board shall be removed from office by notice in writing from the President, with reasons for removal from office.
- (2) The reasons for removal from office under sub-regulation (1) include-
 - (a) abuse of office;
 - (b) corruption;
 - (c) incompetence;
 - (d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;
 - (e) failure to attend three consecutive scheduled meetings without reasonable grounds;

- (f) conviction of an offence involving misconduct, or where a member has been convicted for dishonesty, corruption, fraud or violence within or outside The Gambia;
 - (g) being adjudged bankrupt by a court of law; and
 - (h) being convicted of an offence and sentenced to imprisonment for six months or more without the option of paying a fine by a competent court in or outside The Gambia.
- (3) For purposes of sub-regulation (2) (a), abuse of office refers to the misuse of one's position, power, or authority for personal gain, benefit, or to harm others, and it involves:
- (a) illegal activities;
 - (b) misuse of resources or funds;
 - (c) conflict of interest;
 - (d) nepotism or favoritism;
 - (e) harassment or discrimination;
 - (f) violation of rules, policies, or laws;
 - (g) using position for personal benefit or gain;
 - (h) failure to perform duties or responsibilities;
 - (i) using authority to intimidate or coerce others; and
 - (j) breaching public trust or confidentiality.

19. Consequences for removal under section 43 of the Act

- (1) If a person is removed from office in accordance with regulation 18(2)(d), the person is entitled benefits that may be payable to that person under the Act.

- (2) A person removed from office as a result of conviction of a criminal offence under the criminal code shall not occupy any public office until the expiration of three years.
- (3) Where a member has vacated office, the President may, in accordance with section 34(3) of the Act, appoint another person to replace the member and the new member shall be considered as having their first term in office as a new Board member.

20. Meetings of the Board of State-Owned Enterprises

- (1) Subject to section 48 of the Act, the Board shall meet as it resolves or as the chairperson determines, provided that it meets at least once in three calendar months.
- (2) The decisions from the meetings of the Board of State-Owned Enterprises are binding decisions of the Board.
- (3) The Secretary to the Board shall, if requested to do so by at least three Directors, call a meeting of the Board as soon as practicable after receiving the request.
- (4) The Secretary shall give all directors at least seven days' notice of any meeting of the Board convened under sub-regulations (1) or (2).
- (5) The notice under sub-regulation (4) shall be accompanied with board documents sent personally or by any other means including electronic mail to the address of a director, as that director may have been notified and each director shall notify the Secretary of at least one means of giving such notices other than by post for the most convenient and prompt receipt of notices, generally or for any specified period.

- (6) All directors may agree on any occasion that the period of notice under sub-regulation (4) may be reduced or waived
- (7) At a meeting of the Board –
 - (a) a quorum is four directors present and able to vote; and
 - (b) the chairperson, or in his absence, the deputy chairperson shall preside and, in their absence, the directors present shall elect a director, except the managing director to preside; and
 - (c) all matters shall be determined by a majority of the votes of the directors present, and voting.
- (8) In each meeting of the Board-
 - (a) the chairperson shall cause minutes of the meeting to be recorded and kept; and
 - (b) a draft of the minutes shall be circulated to each director by the Secretary within 14 days of the meeting and shall be confirmed, or corrected and subsequently confirmed, at a Board meeting within three months of first circulation of the draft minutes.
- (9) The procedures of the Board in relation to meetings and the conduct of its business at the meeting are as determined by it.
- (10) The Board may determine that meetings may be held, and resolutions passed, by circulation of one or more instruments in writing or by electronic or any other medium in any manner it determines, and, for the purposes of sub-regulation (7), the instrument or other record containing a decision of the Board shall

be taken to be confirmed minutes of the meeting of the Board to which that decision relates.

(11) Where, in accordance with these Regulations, it is not possible to obtain a quorum of the other directors in any matter, it shall be referred by the Minister and the decision of the Minister on the matter—

- (a) shall be taken to be a decision of the Board for all purposes of these Regulations; and
- (b) the notice containing the decision of the Minister issued to the Secretary of the Board of a state-owned enterprise shall be taken to be the minutes of the Board in relation to that matter.

21. Disclosure of conflict of interest

(1) For the purposes of section 53 of the Act, a director is materially interested in a matter where the director –

- (a) is a party to, or may derive a material financial benefit from, a transaction involving the State-Owned Enterprise or a business enterprise in which the State-Owned Enterprise has an interest;
- (b) has a material financial interest in another party to a transaction involving the State-Owned Enterprise or a business enterprise in which the State-Owned Enterprise has an interest; or
- (c) has a close relation with a person who is such a party or who may derive a material financial benefit, or who has such a material financial interest.

- (2) An item relating to disclosure of interest shall be maintained on the agenda for every meeting of the Commission.
- (3) Where a member of the Commission discloses material interest, he or she shall not participate in the deliberations of the meeting relating to the specific agenda item for which the member has an interest.
- (4) The Secretary to the Board shall keep a register of all disclosure made and recorded in the minutes of the Board.

22. Establishment of branch offices

- (1) Subject to section 23 of the Act, a State-Owned Enterprise may establish and maintain branch office in any place in The Gambia as the enterprise decides and may discontinue that office.
- (2) A branch office established under sub-regulation (1) is an extension of the head office pursuant to section 22 of the Act, and shall carry out the business activities of the head office and in a manner as its head office.
- (3) The branch office shall not be a separate legal entity and the liabilities that it may incur shall be considered liabilities of the head office.

23. Business plans for State-Owned Enterprises

- (1) Subject to section 80 of the Act, the management of a state-owned enterprise shall, before the start of the financial year, prepare either a three-year or a five-year Business Plan.

- (2) The business plan in sub-regulation (1) shall be endorsed by the Board and submitted by the Board to the Commission for approval.
- (3) Commencement of preparation of the Business Plan shall come into effect on a date Minister issues these Regulations.
- (4) The Board may review and revise a Business Plan at any time before the end of its period and the Business Plan shall also be reviewed and revised at the written request of the Commission.

24. Matters to be included in the Business Plan

- (1) A Business Plan shall include-
 - (a) the objectives of the plan;
 - (b) the overall strategies and policies that the State-Owned Enterprise will follow to achieve those objectives;
 - (c) the services that the State-Owned Enterprise expects to provide for each area for which the State-Owned Enterprise is appointed and the standards expected to be achieved in providing those services;
 - (d) performance indicators and financial or operational targets as the Board considers appropriate;
 - (e) financial plans that must operate on sound commercial practice and shall ensure that the revenue of the State-Owned Enterprise is sufficient to provide for all depreciation, amortisation, interest costs, operation and maintenance costs as well as a reasonable return on investment for the enterprise;

- (f) other information that the Board may consider appropriate or as may be specified in writing by the Minister or the Commission.

- (2) A Business Plan shall be consistent with every law that the State-Owned Enterprise is required to comply with.

25. Financial matters to be included in plan

- (1) Each Business Plan, for each area for which each State-Owned Enterprise is responsible for shall state in relation to financial matters-
 - (a) the financial target of the State-Owned Enterprise;
 - (b) the overall financial strategies, including the setting tariffs and charges, the making and levying rates, borrowing, investment, and purchasing and disposal strategies;
 - (c) a forecast of the revenue and expenditure of the State-Owned Enterprise, including a forecast of capital expenditure and borrowing;
 - (d) details of the significant tariffs, rates and charges expected to be raised by the State-Owned Enterprise and the basis on which those tariffs, rates and charges are to be raised; and
 - (e) other financial information as the Board may consider appropriate or as is specified in writing by the Minister responsible for each state-owned enterprise.

26. Matters to be considered in financial target

- (1) In preparing a financial target, the Board of a State-Owned Enterprise shall have regard to-
 - (a) maintaining the financial viability of the State-Owned Enterprise;
 - (b) maintaining a reasonable level of reserves, to make provision for-
 - (i) estimated future demand for the services of the State-Owned Enterprise;
 - (ii) improved accessibility of, and performance standards for, the services provided by the State-Owned Enterprise; and
 - (iii) other matters that may be specified by the Commission in writing.

27. Variations to the Business Plans

- (1) The Commission may, within 14 days after receiving a copy of a Business Plan from a State-Owned Enterprise, require more information from the State-Owned enterprise and after consultation with the Board, direct the Board to vary or revise any aspect of the plan, including the period to which it relates.
- (2) In exercise of the power under sub-regulation (1), the Commission shall -
 - (a) have regard to the effect of the variation on the Business Plan;

- (b) have regard to the effect of the variation on the services provided by the state-owned enterprise;
 - (c) ensure consistency with other relevant laws and policies including the dividend policy, and
 - (d) have regard to any other matter that the Commission may consider appropriate.
- (3) A direction under sub-regulation (1) shall be in writing and set out reason for the direction of the Commission.

28. Board to notify the Minister and Commission of significant event

- (1) If the Board of a State-Owned Enterprise is of the opinion that matters have arisen that may prevent or significantly affect the achievement of the-
- (a) objectives of the State-Owned Enterprise under the Business Plan; and
 - (b) financial target under the plan,

the Board shall immediately notify the Minister and the Commission of its opinion and its reasons for the opinion.

29. Business Plan to be followed

- (1) The State-Owned Enterprise shall not make any major deviation from its Business Plan, unless it has first obtained the written

approval of the Commission to do so, and the Commission shall respond within 15 calendar days failing which, the State-Owned Enterprise may go ahead and operate.

- (2) The Commission may issue guidelines regarding what constitutes major deviations for the purposes of sub-regulation (1).
- (3) The State-Owned Enterprise shall not set tariffs, rates and charges except in accordance with its Business Plan.

30. Funds of State-Owned Enterprises

- (1) The funds of the State-Owned Enterprises shall consist of-
 - (a) appropriations by the National Assembly in accordance with section 77 of the Act;
 - (b) all monies received by the State-Owned Enterprises for goods or services provided under the Act;
 - (c) monies borrowed by the State-Owned Enterprise; and
 - (d) other monies received by or made available to the State-Owned Enterprise for purposes of performing its functions under the Act.

31. Budget

- (1) Subject to section 83(1) of the Act, the Board of a State-Owned Enterprise shall, before the end of a financial year, prepare and submit to the Commission for approval, estimates supplementary to the estimates of a current year.

- (2) No expenditure shall be made out of the funds of a State-Owned Enterprise beyond 5% of the approved budget.
- (3) The Commission shall approve any expenditure beyond the prescribed threshold in sub-regulation (2).

32. Accounts and records

- (1) The state-owned enterprise shall keep proper accounts and records of its transactions, affairs, financial operations and financial position in a format consistent with best practice.
- (2) The Board of a State-Owned Enterprise shall -
 - (a) ensure that money payable to the State-Owned Enterprise is collected and paid into an appropriate bank account in accordance with section 28(1)(f) of the Act including timely payments of loans made to Ministry of Finance and Economic Affairs and other ministries;
 - (b) ensure that monies expended by the state-owned enterprise is properly authorised and expended for only purposes authorised under the Act;
 - (c) ensure that adequate control, including accurate valuations of assets, is maintained over assets owned by or in the custody of the State-Owned Enterprise;
 - (d) ensure that liabilities incurred by State-Owned Enterprise are properly authorised;

- (e) ensure that the State-Owned Enterprise is efficient and economic in its operations and avoids waste and extravagance;
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate financial control system.

33. Annual reports

- (1) Subject to section 90 of the Act, a State-Owned Enterprise shall, for each area in which it is empowered to provide a good or service, regarding each financial year, prepare and submit to the Commission an annual report containing-
 - (a) a report of its operations during the financial year consistent with the Business Plan; and
 - (b) financial statements for the financial year.
- (2) The information in sub-regulation (1) shall be submitted not later than three months after closure of the financial year.
- (3) The report of operations under sub-regulation (1)(a) shall-
 - (a) contain separate information about the activities of the State-Owned Enterprise in for each area it is empowered to provide a good or a service;
 - (b) be prepared in a form and contain information determined by the Board to be appropriate;

- (c) contain a copy of any direction given by the Commission under the Act during the financial year; and
 - (d) contain any other information required by the Commission.
- (4) The financial statements referred to under sub-regulation (1)(b) shall-
- (a) contain information determined by the Commission to be appropriate;
 - (b) include an assessment of the cost of-
 - (i) carrying out the community service obligation of the State-Owned Enterprise;
 - (ii) implementing directions given by the Commission under the Act;
 - (iii) carrying out any other obligation that is imposed on the State-Owned Enterprise under the Act or any other Act that requires it to act otherwise than in accordance with normal commercial practice;
 - (c) be prepared in a manner and form approved by the Commission;
 - (d) present the results of the financial transactions of the State-Owned Enterprise during the financial year to which they relate and the financial position of the enterprise as at the end of that year; and

- (e) be signed by the head, chief executive, or managing director the State-Owned Enterprise and by the chairperson of the Board.

34. Investments

- (1) Subject to section 28(1)(g) of the Act, the State-Owned Enterprise may invest money held in any capacity that are not immediately-
 - (a) in securities of, or guaranteed by, the Government of The Gambia;
 - (b) on deposit with an approved bank;
 - (c) in the securities of an authorised short-term market; or
 - (d) in any other manner approved by or prescribed by the Board.

35. Payment of dividends

- (1) Subject to sections 30(2), 79(3)(i), and 93(2)(h) of the Act, a State-Owned Enterprise shall declare profit distribution including dividend to the Government in accordance with the Dividends Policy.

36. Borrowing powers

- (1) A State-Owned Enterprise shall exercise its borrowing powers in accordance with section 56 of the Public Finance Act.

[Act No.5 of 2014]

37. Transfer of liabilities to Government

(1) Subject to section 32 of the Act, the prescribed procedure to transfer liabilities to Government is-

- (a) identification of liabilities- a State-Owned Enterprise shall identify and disclose its liabilities, including debts, guarantees, and other financial obligations;
- (b) assessment and valuation- the Government shall assess and value the liabilities to determine their amount and potential impact on public finances;
- (c) ministerial approval-the transfer of liabilities requires the approval from the Minister responsible for finance and the Minister responsible for State-Owned Enterprises;
- (d) legal agreement- the Minister responsible for finance shall prepare a transfer agreement;
- (e) approval by the National Assembly- the National Assembly shall authorise transfer of liabilities;
- (f) consolidation- the liabilities shall be consolidated into the balance sheet of the Government, making them public liabilities;
- (g) reporting and disclosure- the Government shall disclose the transferred liabilities in its financial statements and reports; and
- (h) ongoing management- the Government shall manage the liabilities, by restructuring, refinancing, or settling the debt.

- (2) Notwithstanding the provisions in sub-regulation (1), liabilities of State-Owned Enterprises shall be transferred to Government in accordance with regulation 12(3)(a)(ii) if the Government has-
- (a) acquired 100% shareholding in the State-Owned Enterprise;
or
 - (b) acquired majority shareholding in the State-Owned Enterprise.

38. Dissolution and liquidation

- (1) Subject to section 104 of the Act-
- (a) State-Owned Enterprises that were incorporated under the Companies Act shall follow the dissolution and liquidation
[Act No.9 of 2013]
process in the Companies Act;
 - (b) where the dissolution and liquidation involve a State-Owned Enterprise that was established by statute, the dissolution and liquidation shall follow the process prescribed in regulation 37(2).
- (2) Subject to regulation 37(1)(b) the prescribed procedure for dissolution and liquidation is-
- (a) the Government shall make a, voluntary or a court-ordered, decision to liquidate the State-Owned Enterprise;
 - (b) the Government shall appoint a liquidator to oversee the liquidation process and the liquidator shall sell the assets, pay off its creditors, and distribute the remaining funds to shareholders;

- (c) the liquidator shall notify the creditors of the liquidation and gather information on the assets and liabilities of the affected State-Owned Enterprise;
 - (d) the liquidator shall sell the assets, either through a private sale or through an auction, in order to raise funds to pay off the debts of the State-Owned Enterprise;
 - (e) the liquidator shall investigate transactions made by the State-Owned Enterprise prior to liquidation to ensure that the company did not engage in fraudulent or improper activities;
 - (f) the liquidator shall compile a final report detailing the financial affairs of the State-Owned Enterprise and distribute the remaining funds to creditors and Government according to the statutory order of priority; and
 - (g) when the liquidator has paid all debts and distributed all assets the liquidation process is considered complete and the State-Owned Enterprise shall be officially dissolved.
- (3) Subsequent to section 104(6) of the Act, the liquidation committee shall-
- (a) oversee the entire liquidation process, ensuring that it is conducted in accordance with the laws and in the best interests of all stakeholders;
 - (b) make important decisions relating to the liquidation including approving sale of assets, distributing proceeds to creditors, and resolving disputes that may arise during the process;

- (c) communicate with Government and other stakeholders, including creditors, shareholders, employees, and other interested parties, to keep them informed about the progress of the liquidation;
 - (d) manage and sell the assets of the State-Owned Enterprise in order to maximise the value of the estate for distribution to stakeholders;
 - (e) resolve disputes that may arise during the liquidation process in a fair and equitable manner;
 - (f) provide regular reports to the court overseeing the liquidation process, detailing the progress of the liquidation and any significant developments; and
 - (g) distribute the proceeds to creditors and other stakeholders in accordance with the priorities set out in the Companies Act immediately the assets have been liquidated.
- (4) While performing the duties prescribed in sub-regulation (3), the liquidation committee has powers to-
- (a) decide on the fee of the liquidator;
 - (b) decide if the liquidator should continue the business of the State-Owned Enterprise;
 - (c) decide if the powers of the directors should continue; and
 - (d) grant permission to the liquidator to-
 - (i) pay any class of creditors in full;

- (ii) make compromise or arrangement with creditors; and
- (iii) compromise debts and liabilities owed to the State-Owned Enterprise.

(5) In performance of the roles prescribed under sub-regulations (3) and (4), the liquidation committee shall observe the prescribed procedure-

- (a) the liquidation committee shall meet as its members consider fit;
- (b) any member of the liquidation committee can convene a meeting;
- (c) the liquidator can also convene a meeting of the liquidation committee;
- (d) a member of the liquidation committee may only resign by writing to the Commission;
- (e) a member of the liquidation committee shall vacate his or her office if the member becomes bankrupt or is absent from five consecutive meetings without permission;
- (f) a member of the liquidation committee shall be removed by the Commission; and
- (g) a valid meeting shall have more than half of the members present.

39. Property of a State-Owned Enterprise

- (1) All property owned by a State-Owned Enterprise immediately before the commencement of these Regulations continues to be owned by the State-Owned Enterprise.
- (2) In accordance with section 75 of the Act, a State-Owned Enterprise shall-
 - (a) create and annually update an asset register with attendant valuations; and
 - (b) develop and implement an assets management plan in the manner prescribed in the guidance in Schedule 2.

40. Corporate governance

Subject to section 13(2)(a) of the Act, every State-Owned Enterprise shall comply with the Code of Corporate Governance as provided in Schedule 3.

41. Procurement rules

The Commission and every state-owned enterprise shall comply with The Gambia Public Procurement Act and its Regulations.

[Act No.5 of 2022]

42. Data protection and privacy

- (1) Subject to sections 97, 98 and 99 of the Act, State-Owned Enterprises shall collect and disclose personal information in accordance with the Data Protection and Privacy laws, regulations,

policies of The Gambia and any other relevant international legislation.

43. Insolvency of a State-Owned Enterprises

For purpose of section 117(1)(i) of the Act, insolvency of a State-Owned Enterprises shall be regulated by the provisions of the Insolvency Act.

[Cap 94: 06]

44. Classes of State-Owned Enterprises

For purposes of section 118 of the Act, the classes of State-Owned Enterprises are set out in Schedule 4.

45. Consequences for non-compliance

- (1) A State-Owned Enterprise which does not comply with these Regulations shall appear, first, before the Commission and then before National Assembly to present a detailed report on their failure to comply with any part of these Regulations.
- (2) The Commission and the National Assembly shall consider the report of the State-Owned Enterprise and determine the next course of action against the State-Owned Enterprise.
- (3) Where Commission or the National Assembly determines that there is need for more information or further investigations arising from the report of the State-Owned Enterprise, the Commission or the National Assembly may set up a select committee to carry out further investigation and report back to enable determination of the next best course of action against the State-Owned Enterprise,

which may include enforcement of sanctions following the extent of non-compliance.

SCHEDULE 1

List of Commercial State-Owned Enterprises in The Gambia and their Subsidiaries

(regulations 3(2) and 13(7))

1. Gambia Civil Aviation Authority (GCAA)
2. National Food Security Processing and Marketing Corporation (NFSPMC)
3. Gambia International Airlines (GIA)
4. Gambia National Petroleum Corporation (GNPC)
5. Gambia Ports Authority (GPA)
 - 5.1 Gambia Ferry Services Company Ltd (GFSC)
 - 5.2 Banjul Shipyard Co. Ltd
 - 5.3 Gambia Fisheries Jetty
6. Gambia Postal Services (GAMPOSTS)
7. Gambia Printing and Publishing Corporation (GPPC)
8. Gambia Radio & Television Services (GRTS)
9. Gambia Telecommunication Company (GAMTEL)
 - 9.1 Gambia Telecommunication Cellular Company (GAMCEL)
10. National Water and Electricity Corporation (NAWEC)
11. Social Security Housing Finance Corporation (SSHFC)

SCHEDULE 2

Asset Management Plan and Register

(regulation 39 (2)(ii))

An Assets and Management Plan and Register shall contain the information set out in this Schedule.

1. Asset Inventory

State-Owned Enterprises shall prepare a list of the inventory of their assets highlighting-

- (a) different itemised assets and their total number;
- (b) the location of each asset;
- (c) the value of each asset which shall be reviewed and updated annually;
- (d) when the asset was acquired;
- (e) the current performance of the asset; and
- (f) the expected life cycle of each asset.

2. The life cycle cost of the assets

The calculations for the life cycle of the asset should include the -

- (a) initial cost of purchase for the asset;
- (b) long-term capital expenses;
- (c) cost for improving the performance of the asset; and
- (d) disposal plan for the asset.

3. The levels of service for the asset

The level of service of the asset will outline the quality, capacity and function of an asset to determine the future operating, maintenance

and renewal activities required to keep the asset up and running for optimum service delivery.

4. The Cost-effective management of the asset
 - (1) The cost-effective asset management ensures that the asset is used optimally to reduce expenses and maximise performance.
 - (2) The plan shall spell out the risks associated with the asset and the risk management plan to address the risks identified.
5. The long-term financial plan

The information collected under this Schedule shall be used to create a long-term financial plan for the assets to ensure there is continuity in providing service and grow the business.
6. There shall be implementation steps for the Asset Management Plan.

SCHEDULE 3

Code of Corporate Governance for Board Directors of State-Owned Enterprises

(regulation 40)

1.The Board

- (1) The Board is accountable for the performance and affairs of the State-Owned Enterprise and shall perform its duties in good faith, with due diligence and care, in the interests of the State-Owned Enterprise.
- (2) The Board may delegate its authority to the management and committees of the Board, except as prescribed in regulation 17.
- (3) The Board is a unitary board with executive and non-executive directors.
- (4) The Board shall-
 - (a) provide strategic direction;
 - (b) retain full and effective control;
 - (c) comply with laws and regulations;
 - (d) define levels of materiality;
 - (e) delegate certain powers to management;
 - (f) if material, reserve powers to itself;
 - (g) have access to information and records of the State-Owned Enterprise;

- (h) agree on a procedure to allow directors to obtain independent professional advice;
- (i) identify and monitor key risk and key performance areas;
- (j) identify and monitor non-financial aspects;
- (k) record facts and assumptions which lead it to conclude that the business will be a going concern in the next financial year and if not state what steps it is taking;
- (l) explain the effect of all proposed resolutions to be passed at the meetings of shareholders;
- (m) encourage shareholders to attend general meetings;
- (n) ensure that the chairperson of the audit committee and as many directors as possible attend meetings of shareholders;
- (o) have a board charter which shall be published in the annual report, setting out its responsibilities and making the Board responsible for-
 - (i) strategic plans;
 - (ii) monitoring operational performance;
 - (iii) monitoring performance of management;
 - (iv) determining policies and procedures;
 - (v) risk management;
 - (vi) internal controls;
 - (vii) communications policy;
 - (viii) director selection;
 - (ix) induction of directors; and
 - (x) evaluation of directors;
- (p) determine a balance between governance constraints and entrepreneurial performance;
- (q) review major plans of action;
- (r) review and guide annual budget and business plans of the company;

- (s) oversee major capital expenditures, acquisitions and divestiture;
- (t) ensure formal and transparent board nominations and elections;
- (u) ensure the integrity of the accounting and financial reporting systems of the State-Owned Enterprise; and
- (v) oversee the process of disclosure and communication.

2. Composition of the Board

- (1) The Board shall be composed of-
 - (a) executive and non-executive directors with non-executive directors constituting the majority; and
 - (b) sufficient non-executive directors who are 'independent' directors.
- (2) A nomination committee, consisting of non-executive directors, with majority independent directors, chaired by the chairperson of the Board, shall select directors in a transparent manner.

3. Chairperson and chief executive officer (CEO)

- (1) There shall be a division of responsibilities between the chief executive officer and the chairperson of the Board to ensure no one has unfettered power or authority.
- (2) When the roles of the chief executive officer and chairperson are combined-
 - (a) a deputy chairperson who is an independent director shall be appointed; or

- (b) there shall be a strong independent director component of the Board and the combined roles shall be justified in the annual report of each year.
- (3) The Board shall annually or on any other basis, evaluate the performance of the chairperson.
- (4) If the role of chairperson and chief executive officer are combined, an independent deputy chairperson shall lead the evaluation.
- (5) The performance of the chief executive officer shall be evaluated by the chairperson or a sub-committee appointed by the Board at least once a year.
- (6) The remuneration committee shall take the performance appraisal into account when setting the remuneration of the chief executive officer.

4. Directors

- (1) The Board shall be controlled by a division of powers and one block of directors shall not dominate the Board.
- (2) Non-executive directors shall have the skill and experience to bring to bear on-
 - (a) strategy;
 - (b) performance;
 - (c) standards of conduct; and
 - (d) resources.
- (3) The annual report shall categorise directors as-

- (a) executive director who is involved in the management or employed by the State-Owned Enterprise or its subsidiaries;
 - (b) non-executive director; and
 - (c) independent director being a non-executive director who
 - (i) does not represent or is not nominated by a major shareholder;
 - (ii) is not employed by the State-Owned Enterprise in the past three financial years;
 - (iii) is not an immediate family member of a person who is, or was employed in an executive capacity in the past three financial years;
 - (iv) is not a professional advisor;
 - (v) is not a significant supplier to, or customer of the State-Owned Enterprises;
 - (vi) has no significant contractual relationship with the State-Owned Enterprises; and
 - (vii) is free from any business or other relationship, which could materially interfere with his or her ability to act independently.
- (4) State-Owned Enterprises shall not engage in the practice of using 'shadow directors'.
- (5) Executive directors are encouraged to hold non-executive directorships in other companies.

- (6) Non-executive directors shall not hold a number of directorships that interfere with their ability to perform effectively.
- (7) A State-Owned Enterprise shall organise an orientation programme to

- (a) introduce new directors to the State-Owned Enterprise;
and
 - (b) brief the directors on their fiduciary duties.
- (8) The secretary of the State-Owned enterprise shall regularly brief directors on new laws and regulations.

5. Remuneration.

- (1) Subject to section 44 of the Act, directors shall be paid sufficient remuneration to retain quality directors.
- (2) A remuneration committee shall be appointed by the Board to consider executive remuneration.
- (3) The remuneration committee shall-
 - (a) consist mainly of independent directors; and
 - (b) make recommendations to the Board.
- (4) The chief executive officer may attend meetings of the committees, by invitation, for most business, but shall excuse himself or herself while his or her remuneration is being considered.
- (5) An independent non-executive director shall be the chairperson of the remuneration committee.
- (6) The annual report shall disclose membership of the remuneration committee.

- (7) The chairperson of the remuneration committee shall attend annual general meetings, to answer questions from shareholders.
- (8) The annual report shall contain a declaration of remuneration, share options and other benefits of individual director.
- (9) Performance-related elements shall constitute a large portion of the package of each executive.
- (10) Full disclosure is required, for each director in respect of options and other share issues.
- (11) The contract of an executive director shall not exceed three years and a shareholder approval is required for the contract that exceeds three years.
- (12) The annual report shall contain a 'Statement of Remuneration Philosophy'.
- (13) Succession planning is necessary for the chief executive officer and executive management.
- (14) The remuneration committee shall recommend pay for non- executive directors on a merit basis and accordingly, each non-executive director shall be paid an appropriate rate,

which may be different from that of other non-executive directors.

(15) The Board shall present the recommendations of the remuneration committee for the purposes of determining the remuneration of directors.

6. Board Meetings

- (1) The Board shall meet at least once every three months.
- (2) The annual report shall record-
 - (a) the number of meetings; and
 - (b) attendance of each director at meetings.
- (3) The members of the Board shall be briefed prior to each meeting of the Board.
- (4) Non-executive directors shall have access to management without executive directors being present.
- (5) The whole Board shall set the policy and procedure for the access.
- (6) The Board shall regularly-
 - (a) review processes and procedures; and
 - (b) ensure the effectiveness of internal controls.

- (7) The Board shall ensure that it receives non-financial information to address broader stakeholder issues and measures.

7. Board Committees

- (1) The committees of the Board shall assist the Board in the performance of its duties but the directors remain responsible notwithstanding delegation to a committee.
- (2) A formal procedure for delegation shall exist to discharge the duties of the Board and facilitate decision making.
- (3) The terms of reference or mandates of the committees of the Board, shall state their lifespan.
- (4) There shall be transparency and full disclosure of committee matters.
- (5) Non-executive directors shall play an important role in committees.
- (6) An audit committee shall be composed of the chairperson and at least three other persons of reputable integrity who are not members of the Board.
- (7) The committees of the Board, except operational committees, shall be chaired by an independent non-executive director.
- (8) The committees of the Board may seek independent professional advice.

- (9) The annual report shall state-
 - (a) the members of the committees of the Board; and
 - (b) the number of meetings held.
- (10) Chairpersons of committees of the Board shall attend the annual general meetings.
- (11) The performance of the committees of the Board shall be regularly evaluated.

8. Board and director evaluation

- (1) The Board shall, through self-evaluation by all directors using the nominations committee or other committee, regularly review its effectiveness and its composition, by-
 - (a) a mix of skills;
 - (b) experience;
 - (c) demographics; and
 - (d) diversity.
- (2) The evaluation shall be done at least once a year.

9. Board Secretary

- (1) The secretary of a State-Owned Enterprise has a pivotal role in the corporate governance.

- (2) Subject to section 47 of the Act, the secretary of a State-Owned Enterprise shall-
 - (a) provide directors with detailed guidance on discharging their responsibilities;
 - (b) induct or participate in the induction of directors;
 - (c) assist the chairperson and the chief executive officer in setting the annual board plan;
 - (d) administer other strategic board level matters;
 - (e) provide a central source of guidance on ethics and good governance; and
 - (f) be subject to a fit and proper test, as directors.

Risk Management

10. Responsibility

- (1) The Board is responsible for the total process of risk.
- (2) Management is responsible to the Board in respect of the risk management processes for designing, implementing and monitoring.
- (3) The Board in liaison with management shall-
 - (a) set risk management policies; and
 - (b) ensure those policies are communicated to and implemented by all employees.

- (4) The Board shall-
 - (a) decide on the risk tolerance or appetite levels; and
 - (b) implement an ongoing process to-
 - (i) identify risks;
 - (ii) measure risks; and
 - (iii) proactively manage risks.
- (5) The Board shall use recognised models to provide reasonable assurance that risk management and internal controls are serving objectives to-
 - (a) provide effective and efficient operations;
 - (b) safeguard assets;
 - (c) comply with laws and regulations;
 - (d) ensure business is sustainable;
 - (e) reliable reporting; and
 - (f) a responsible attitude to stakeholders.
- (6) State-Owned Enterprises shall undertake a systematic, documented assessment of key risks in order to make an annual statement on risk management.
- (7) The Board shall regularly receive reports on risk management and address the various risks including-
 - (a) physical and operational;
 - (b) human resources;
 - (c) technology;

- (d) business continuity;
 - (e) credit;
 - (f) market;
 - (g) compliance; and
 - (h) disaster recovery plans, which often involve insurance and risk funding planning.
- (8) The risk management process and evaluation of risks shall be addressed by a special committee, or a committee of the Board, which shall report to the Board.
- (9) Risk management and internal controls shall be embedded in the day- to-day activities of State-Owned Enterprises.
- (10) A ‘whistle blowing’ process, which allows protected reporting, shall be established, to enable employees and others to report misdemeanors.

11.Application and Reporting

- (1) Controls, including ethical value, shall be in place to reduce risks and attain objectives.
- (2) Risks shall be assessed in a continuous manner and controls instituted to respond to risks.
- (3) Risk management systems shall manage risks, protect and enhance the interests of shareholders and stakeholders.
- (4) The systems shall deliver-
 - (a) risk identification;
 - (b) a management commitment to the process;

- (c) risk mitigation activities;
 - (d) documented risk communications;
 - (e) documentation of the costs of non-compliance and losses;
 - (f) documented internal control and risk management;
 - (g) assurance of efforts to risk profile; and
 - (h) a register of key risks.
- (5) The Board shall identify key risk areas and key performance indicators.
- (6) Management shall report to the Board on-
- (a) effectiveness of internal controls;
 - (b) significant control weaknesses identified; and
 - (c) action taken to reduce or control weaknesses and to reduce risks.
- (7) The Board shall disclose that-
- (a) it is responsible for internal control systems and risk management, which are regularly reviewed;
 - (b) an on-going process for identifying, evaluating and managing significant risks is and has been in place;
 - (c) an adequate system of internal control to provide reasonable, but not absolute assurance exists to manage risk and to achieve business objectives;
 - (d) a documented and tested disaster recovery plan exists;
 - (e) material joint ventures have been dealt with-
 - (i) as part of the risk management process; or

- (ii) by other means, details of which shall be provided;
and
 - (f) any additional appropriate information on the risk management process shall be provided.
- (8) If the Board is not able to make any of the disclosures described in this paragraph, this should be explained.
- (9) The review of processes may identify areas in which risk management can be turned to competitive advantage.

Internal Audit

12. Status and Role

- (1) When the Board decides not to implement internal audit, the annual report shall explain why and how effectiveness of processes and systems will be tested.
- (2) The internal auditors shall comply with the code of ethics issued by the Institute of Internal Auditors.
- (3) The internal auditor shall-
 - (a) report to all audit committee meetings;
 - (b) have access to the chairperson of the audit committee;
 - (c) have access to the chairperson of the Board; and
 - (d) report to the chief executive officer.
- (4) The audit committee shall concur with any decision to appoint or dismiss the head of internal audit.

- (5) When internal and external audit are provided by the same auditing firm, segregation between the functions to ensure independence, shall be agreed by the Board and audit committee.

13. Scope of Internal Audit

- (1) Internal audit is an independent objective assurance activity which brings a disciplined approach to evaluate risk management, control and governance.
- (2) Effective internal audit shall provide assurance that-
 - (a) risks are adequately identified and monitored;
 - (b) internal control systems are effective;
 - (c) feedback on risk matters is effective; and
 - (d) management generated information is reliable.
- (3) The internal audit plan is based on a risk assessment and shall include emerging and existing risks.
- (4) The risk assessment shall be formally reviewed at least once a year.
- (5) Internal audit work plan shall be approved by the audit committee.
- (6) Internal audit shall ensure that comprehensive assurance reviews are conducted by experts, without duplication.

Integrated Sustainability Reporting

14. Sustainability Reporting

- (1) A State-Owned Enterprise shall report on its policies, procedures, systems and commitments to-
 - (a) social;
 - (b) ethical;
 - (c) safety;
 - (d) health; and
 - (e) environment.
- (2) Stakeholder reporting requires an integrated approach and issues shall be categorised into the following reporting levels-
 - (a) first level- matters arising from documents;
 - (b) second level- implementation of practices and the steps taken to implement; and
 - (c) third level-demonstrate the benefit of changes.
- (3) The Board shall consider-
 - (a) the nature of the State-Owned Enterprise;
 - (b) performance expectations consequent upon the concept of a going concern;
 - (c) extent to which the action or inaction of the State-Owned Enterprise, led to the reported matter;

- (d) whether non-financial information is reliable, relevant, clear and unambiguous, verifiable and timeless; and
 - (e) and ensure that guidelines for materiality are developed, to ensure consistent reporting.
- (4) The following matters shall require specific consideration-
- (a) safety and occupational health objectives issues;
 - (b) environmental reporting and following the option with the least impact on the environment; and
 - (c) human capital development, including-
 - (i) number of staff; and
 - (ii) training.

Ethical Conduct

15. Organisational integrity and code of ethics

- (1) A code of ethics shall be set for all stakeholders.
- (2) The Board shall establish a system of code of ethics at a high level including-
 - (a) procedures to implement, monitor and enforce the code of ethics at a high level;
 - (b) assessing integrity when promoting; and
 - (c) training on company values.

- (3) The regulatory requirement for disclosure shall include the opinion of directors as to the extent to which ethical standards are met.
- (4) Continuing relationships with those with lower ethical standards shall be re-evaluated.

Accounting and Auditing

16. Auditing and non-audit services

- (1) Financial statements shall be presented in line with applicable national laws and in accordance with international financial reporting standards.
- (2) The independence of auditors shall not be impaired.
- (3) Internal and external audit services shall supplement one another through good audit processes.
- (4) Internal and external auditors shall consult and co-ordinate their effort.
- (5) The audit committee shall set the principles that will guide external auditors for non-audit services.
- (6) Separate disclosure shall be made to members of the non-audit services provided by the external auditor.

Financial and Non-Financial Reporting

17. Reporting of Financial and Non-Financial Information

- (1) The Audit committee shall determine whether or not interim reports should be audited.
- (2) If interims are not audited, the audit committee shall report to the Board on the reasons for the non-audit after which the Board shall adopt the interim reports.
- (3) The Board shall establish a system for internal or external audit consultation.
- (4) Non-financial reports-external validation shall be reported in the annual report.

18. Audit Committee

- (1) The audit committee shall consist of a chairperson and at least three other persons of reputable integrity coming from outside the Board.
- (2) Written terms of reference shall be given to the audit committee to deal with membership, authority and duties.
- (3) The annual report shall indicate if the-
 - (a) written terms of reference are given; and
 - (b) audit committee has complied with its terms of reference.
- (4) The annual report shall disclose membership.

- (5) The chairperson of the audit committee shall attend the annual general meeting to answer relevant questions.

19. Relations with shareholders

- (1) Dialogue with institutional investors by constructive engagement will assist in understanding objectives.
- (2) Institutional investors shall take all relevant factors into account.
- (3) Notices of general meetings shall explain the effect of all items of special business and reasonable time shall be allowed for discussion at general meetings.
- (4) A poll system shall be used at general meetings for contentious issues, and the results of decisions shall be published.

20. Communication

- (1) The Board shall report in a balanced sheet, on significant and relevant matters.
- (2) Reports shall-
 - (a) be transparent;
 - (b) reflect accountability;
 - (c) be objective; and
 - (d) be comprehensive.
- (3) A balance between positive and negative is required to ensure a full, fair and honest account of performance.

- (4) The report of the directors shall contain-
- (a) the responsibility of the directors to report fairly;
 - (b) adequate-
 - (i) accounting records kept;
 - (ii) internal control; and
 - (iii) risk management;
 - (d) consistent and appropriate accounting policies and prudent judgments that have been applied;
 - (e) accounting standards which were followed with departures quantified and explained;
 - (f) a statement that there is no reason to believe that the State-Owned Enterprise will not be a going concern in the year ahead; and
 - (g) the provisions of the Code of Corporate Practice and Conduct followed.

21. Implementation of the Code.

All Boards and directors shall ensure that the principles contained in the Code of Corporate Practice and Conduct are observed.

SCHEDULE 4
Classes of State-Owned Enterprises
(regulation 44)

State-Owned Enterprises are classified as set out in this Schedule.

1. Commercial State-owned enterprises- are established to earn profits for the Government and operate in a competitive market and they include oil companies, telecommunication providers, among others.
2. Public Utility State-owned enterprises- have a primary mandate to serve the broader public interest and provide essential services such as electricity, water, and transportation.
3. Strategic State-owned enterprises- shall be involved in areas of strategic national interest, such as defense, energy security, and critical infrastructure.
4. Developmental State-owned enterprises- shall promote economic development in specific regions or industries.
5. Public Service State-owned enterprises- shall provide non-commercial public services such as healthcare, education, social welfare programs among others.
6. Regulatory State-owned enterprises- shall oversee specific industries or sectors, set rules and enforce standards.

7. Government Agencies- some State-Owned Enterprises shall serve as government agencies, responsible for implementing policies and programs on behalf of the State.

Made day of 2024

HON. SEEDY KEITA

MINISTER OF FINANCE AND ECONOMIC AFFAIRS

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