Code of Corporate Governance

for Public Enterprises

PEMC

PUBLIC ENTERPRISE MONITORING COMMISSION

Code structure

A. Foreword

Corporate governance encompasses systems and procedures by which organisations are directed, controlled and managed. Public Enterprises should act in the best interests of the Government of Seychelles (GOS) being the main shareholder on behalf of the people of Seychelles, and all other stakeholders.

Public Enterprises' role is to create value for their stakeholders. This requires that Public Enterprises pursue value for money in their activities, including managing risks appropriately. Public Enterprises should at all times, be guided by the pillars of good corporate governance and act prudently, ethically and transparently. Public Enterprises that embrace these cardinal principles are prone to produce long-term values for stakeholders than those that are facing difficulties in applying the principles of corporate governance.

The Code of Corporate governance for Public Enterprises (Code) sets high standards of corporate governance in Public Enterprises, whether created to perform commercial activities or to deliver public service obligations. This is vital in ensuring a positive contribution to GOS' overall economic efficiency, competitiveness and social cohesion.

The mandate of Public Enterprises is entrusted to Board of directors (the board) and the latter delegates the day-to-day management of the company to the Management. Nevertheless, both the former and the latter, are accountable for the proper management of the organisation. They should be strongly guided by the principles laid out in this Code in the performance of their activities.

The benefits of good governance are better informed and longer-term decision-making and efficient use of resources. Good governance strengthens accountability for the stewardship of resources and strives to improve performance.

Maurice Loustau-Lalanne

AMBASSADOR MAURICE LOUSTAU-LALANNE
MINISTER FOR FINANCE, TRADE, INVESTMENT & ECONOMIC PLANNING

B Implementation of this Code

Following good international best practices, the primary purpose of this Code is to provide a framework for Public Enterprises to apply the principles of corporate governance.

Nevertheless, the Code should be read in conjunction with the legislative provisions which govern the Public Enterprises. Existing legislative provisions applying to Public Enterprises on matters that are also the subject of this Code, continue to apply and for the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions prevail.

Contrary to the 'comply and explain approach' being implemented by international codes, this code is proposing an 'apply or explain approach'. This Code recognises that some smaller Public Enterprises would not be able to apply all the principles of this Code. Hence, Public Enterprises will be expected to adhere to the Code based on 'apply or explain an alternative approach' and provide a meaningful explanation of:

i. how it has applied each section of the Code

ii. the reason for a departure from any section

iii. what alternative approach it has adopted in the case of a departure

The Code was approved by the Cabinet of Ministers on Wednesday 6th March 2019 and shall come into operation 1st April 2019. The Code shall apply to all Public Enterprises as per the definition of section 2 of the Public Enterprise Monitoring Commission Act, 2013.

C Board Leadership and Effectiveness

Each Public Enterprise should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.

PRINCIPLE 1

The board is collectively responsible for leading and directing the Public Enterprise's activities and to works closely with management to deliver the long-term success of the company.

PROVISIONS

1. Board directors carry the legal duties, responsibilities and liabilities for leading the organisation successfully. Board directors operate on a collegial basis and are jointly and severally liable for their decisions and their actions.

2. The board should meet regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision.

3. The board should establish the organisation's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, avoid conflicts of interest, lead by example and promote the desired culture.

4. The board should ensure that the Public Enterprise is compliant with relevant laws and regulations, including statutes pertaining to public procurement and public financial management.

5. The board should work closely with the CEO and the management team, which is responsible for the running of the organisation, to ensure the organisation achieves its objectives. A healthy relationship between the board and management is an essential feature of a well-governed organisation.

6. One of the board's principal roles is to exercise effective oversight over the management team and its activities. This requires the board to maintain a reasonable arms-length distance from management, and to ensure that – supported by the management team – it satisfies its fiduciary duty to place the interests of the entity, or organisation, first.

7. There should be a clear division of responsibilities at the head of the organisation between the running of the board and the executive responsibility for the running of the organisation's business. No one individual should have unfettered powers of decision.

8. The division of responsibilities between the Chair and the CEO should be clearly established, set out in writing and agreed by the board.

9. The management of a Public Enterprise has a duty to provide its board with all necessary information to enable the board to perform their duties to a high standard. The board should take all necessary steps to make themselves aware of any relevant information and access all information as necessary.

10. There should be clear escalation procedures so that contentious issues are brought to the board for its consideration.

11. Board discussions should be properly recorded in minutes to provide a thorough record of board discussion and the rationale behind decisions taken.

12. Board meetings should be conducted in private, and all board business should be considered confidential, and not for discussion outside the boardroom.

13. The organisation should, if appropriate, arrange appropriate insurance cover in respect of legal action against its directors.

PRINCIPLE 2

In conducting its business, the board should reassure itself that it has sought assurance of the operations of the organisation, focusing particularly on those activities which create, sustain and protect value.

PROVISIONS

The board should be confident that it can provide evidence – through board papers, minutes and the review of policies – of the quality of the discussion in the areas outlined below. The board should:

1. The board's relationship with the CEO and management team

1. Prioritise strategy formulation to maximise value creation; agreeing with management the board's role in terms of involvement with, and oversight of:

   i. the strategic vision;

   ii. development of the strategy; and

   iii. crafting of the business model.

2. Understand where value lies in the business model, and the Public Enterprise's strengths and points of differentiation; provide direction, and monitoring, and hold management to account, for execution of the business plan, using appropriate non-financial and financial KPIs; and compensate management through a system which clearly links rewards to outcomes.

3. Have a clear view of the opportunities and risks associated with the Public Enterprise's activities, and how much risk it is prepared to take (its risk appetite) for the Public Enterprise to achieve its objectives; and achieve effective oversight of the system for managing risks to the delivery of the strategy.

4. Ensure, through oversight of the budget, that management has sufficient resources in place to 'do the job'; champion the fact that the Public Enterprise's people, its human

capital, is a differentiator; and ensure that there is a solid succession plan for developing the executive pipeline, and for managing talent.

2. The board’s relationship with the wider environment

1. Understand the legal and regulatory context within which the board operates, and the compliance obligations which need to be met; create a culture which supports management in meeting the Public Enterprise’s obligations; and view a positive attitude to compliance as a means of offering reassurance to the Public Enterprise’s key stakeholders, therefore constituting a source of strength and, where appropriate, competitive advantage.

2. Ensure the controls framework is healthy and fit for purpose; acknowledge that weak controls pose a major risk for fraud to occur within the Public Enterprise; seek reassurance from management that the controls framework is being implemented in a way that achieves its purpose without restricting the Public Enterprise’s ability to create value.

3. Be accountable to its business partners, particularly those that provide the organisation’s funding; accept that accountability generates positive sentiment among stakeholders; promote strong communications with, and disclosure, to those stakeholders; ensure the integrity of the Public Enterprise’s non-financial and financial reporting to those stakeholders.

4. Accept that the board has a leadership role; that management looks to the board for signals of intention, and therefore consciously and explicitly seeks to encourage a strong performance culture, which will drive a process of value creation without exposing the Public Enterprise to unacceptable levels of risk of value destruction.

3. The board’s relationship with itself

1. Ensure that it possesses the right mix of skills, experience, knowledge, ‘independence’, diversity and displays the appropriate behaviours to address the challenges facing the organisation; has a solid succession plan in place.

2. Demonstrates ethical leadership, displaying and promoting behaviours consistent with the organisation’s purpose, direction, culture, vision and values.

3. Create a decision-making process which generates well-informed, high-quality, strategic decisions, based on a clear line of sight into the business, and achieve clarity in decision processes and authorities.

4. Think carefully about its governance arrangements, and embrace evaluation of their effectiveness periodically, while reviewing its own performance regularly; conduct an annual board evaluation of its own effectiveness.

PRINCIPLE 3

The Chairperson is responsible for the board's overall effectiveness in directing, and controlling, the activities of the organisation.

PROVISIONS

1. The Chairperson should display high standards of integrity and probity and set expectations regarding culture, values, and behaviours for the Public Enterprise and for the tone of discussions at Board level.

2. A competent and performing board Chair is the single most significant driver of an effective board.

3. The Chair leads the board, while the CEO leads the organisation. The most important relationship in the boardroom is that between the Chair and the CEO, with efforts made to ensure a constructive relationship.

4. The Chairperson should demonstrate objective judgement throughout their tenure, and promote a culture of openness and debate.

5. The Chair facilitates constructive board relations and the effective contribution of all directors.

6. The Chairperson sets the board agenda, ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues, and ensures that directors receive accurate, timely and clear information.

7. Internally, the Chair manages the interface between board and management and, externally, ensures appropriate steps are taken to provide effective communication with stakeholders, and that their views are communicated to the board as a whole.

8. The positions of Chair and CEO should be held by different individuals.

9. A CEO should not go on to be Chair of the same organisation.

PRINCIPLE 4

The board should include an appropriate combination of executive and non-executive directors, such that no one individual or small group of individuals dominates the board's decision-making.

PROVISIONS

1. A majority of the board should comprise non-executive directors.

2. At least three of the non-executive directors should be independent in nature.[1] [2]

3. Non-executive directors should have sufficient time to meet their board responsibilities and should, to achieve this, be prepared to limit the number of boards on which they sit

4. They should provide constructive challenge, strategic guidance, offer specialist advice and, collectively, hold management to account.

5. All directors should always objectively discharge their duties and responsibilities as fiduciaries in the interests of the organisation and keep abreast of their responsibilities as a director and of the conduct and development of the organisation.

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1 All directors, including executive directors sitting on a board, are expected to display an independent mindset, acting in the interests of the entity (their fiduciary duty)

2 Independence in this context can be defined as the director having no material connection with the board. A material connection would include considerations such as whether the proposed director: has been an employee of the organisation or group within the last five years; has, or has had within the last three years, a material business relationship with the organisation either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the organisation; has received or receives additional remuneration from the organisation apart from a director's fee, participates in the organisation's share option or a performance-related pay scheme, or is a member of the organisation's pension scheme; has close family ties with any of the organisation's advisers, directors or senior employees; holds cross-directorships or has significant links with other directors through involvement in other companies or bodies; represents a significant stakeholder or shareholder; or has served on the board for more than nine years from the date of their first election.

6. Directors are expected to attend each board meeting and each meeting of any committee on which they sit. They should notify the Chair and the board secretary of any absence, and the board should consider whether any such absence is acceptable.

7. A record should be kept of individual director's attendance and (where relevant) voting record.

8. It is established good practice for the Chair to hold meetings with the non-executive directors without the executives present.

9. Where directors have concerns which cannot be resolved about the running of the organisation, or a proposed action, they should ensure that their concerns are recorded in the board minutes.

10. On resignation, a non-executive director should provide a written statement to the Chair, for circulation to the board, if they have any such concerns.

11. Existing directors will be expected to enhance their continuous professional development by attending training in the field of Corporate Governance and finance, with the objective of developing their board-craft skills – unless they can provide evidence of previous knowledge of, or experience gained in, this discipline.

12. New directors will be expected to take the training in Corporate Governance, to develop their board-craft skills, either in advance, or within the first year, of serving on a board – unless they can provide evidence of previous knowledge of, or experience gained in, this discipline.

13. All directors will be expected to devote some time to their continuing professional development, and to gaining a greater understanding of the organisation's business.

14. Each director should receive a letter of appointment which clearly sets out the expectations of the role including time commitment and, if appropriate, level of remuneration. Attached to the letter will be key documents, including the Code, the Board Charter and the Code of Conduct and Ethics.

PRINCIPLE 5

The board should be supported by a suitably qualified and competent board secretary who will, through the chair, promote good governance.

PROVISIONS

1. The board secretary should be recognised as an important member of the board community and the organisation’s head of governance.

2. The board secretary will ensure that the board has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.

3. The board secretary will help the board and its committees function effectively, manage all board and committee meeting logistics, attend and record minutes of all board and committee meetings, and facilitate board communications.

4. He or she will ensure the timely distribution of meeting papers; advise the board on its roles and responsibilities; facilitate the orientation of new directors and assist in director training and development; monitor governance developments; and assist the board in applying governance practices to meet the board’s needs and stakeholders’ expectations.

5. The board secretary will not simply carry out his or her technical duties but will also act as governance adviser to the board, helping the directors individually, and the board collectively, achieve high levels of governance performance.

6. All members of the board should have access to the services and advice of the board secretary, particularly on matters relating to governance.

7. The board secretary will be expected to take the Advanced training in Corporate Governance either in advance, or within the first year, of taking up the role.

8. He or she will also be expected to consider studying for the internationally-recognised qualification provided by the Institute of Chartered Secretaries and Administrators: The Governance Institute.

PRINCIPLE 6

An effective board possesses the right mix of skills, experience, knowledge, 'independence' and diversity, and displays the appropriate behaviours, to address the challenges facing the organisation.

PROVISIONS

1. Appointments to the board should be subject to a formal, rigorous and transparent procedure.

2. An effective succession plan should be maintained for board (as well as senior management).

3. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social background, and cognitive and personal strengths.

4. The board should have independent directors. Such directors will no longer be considered independent after a cumulative term limit of nine years.

5. A Nomination Committee should be established to help with the task of succession planning and the appointment of board members, including the future Chair (and CEO).

6. A board skills matrix should be used to identify gaps on the board as the basis for appointing appropriate board members, based on their fit.

7. In identifying candidates for appointment as directors, the board should not rely solely on recommendations from existing board members, or management, but should use an independent mechanism – such as a directors' register, or open advertisements – to identify suitably-qualified candidates.

8. The organisation should disclose how candidates for (independent) non-executive director positions were sourced.

9. A director should, when joining a board for the first time, receive a comprehensive induction about the organisation.

10. All directors should have access to a programme of ongoing professional development to help them strengthen their skill and knowledge base.

PRINCIPLE 7

The board should undertake a formal and objective annual evaluation to determine the effectiveness of the board, its committees and each individual director.

PROVISIONS

1. The evaluation should consider the board's composition, diversity achieved and how effectively members work together to achieve objectives.

2. Individual evaluation should demonstrate whether each director continues to contribute effectively.

3. The results should feed through to work of the board (or Nomination Committee) in terms of board composition and succession planning.

4. The board should disclose how the assessment was carried out and, in general terms, its outcome.

5. Every third year, the evaluation should be conducted by an independent, external professional evaluator.

PRINCIPLE 8

The board should have a charter which is periodically reviewed and published on the organisation's website.

PROVISIONS

1. The board charter should clearly identify the governance structure, authority and terms of reference of the board, its committees and management.

2. The board charter should include respective roles and responsibilities, and issues and decisions reserved for the board.

3. The board charter should identify, for directors, what is expected from them in terms of their commitment as board members.

4. The board charter should also outline the vision, mission, values, expected behaviours and desired culture of the organisation.

PRINCIPLE 9

The board will establish a Code of Conduct and Ethics for the organisation and monitor its implementation by management.

PROVISIONS

1. The organisation has an obligation to behave ethically, that is to treat its stakeholders (strategic business partners) fairly, and to meet the legitimate expectations of those stakeholders in terms of the organisation's behaviours and the resulting outcomes.

2. The responsibility for setting the tone and culture of the organisation, and for driving ethical behaviour, lies with the board working closely with the CEO.

3. In articulating acceptable practices, the Code of Conduct and Ethics should guide the behaviour of directors, management and employees.

4. The policies of the Code of Conduct and Ethics should be integrated into organisation-wide management practices and be periodically reviewed.

5. The document should be published on the organisation's website.

6. Specifically, the Code of Conduct and Ethics should describe measures put in place to handle actual or potential conflicts of interest, prevent corrupt practices which include the offering and acceptance of gifts and other form of benefits, prevent the abuse of power, protect and ensure the proper use of the organisation's assets, and ensure compliance with laws, rules and regulations.

7. In encouraging the reporting of unlawful or unethical behaviour, the document should ensure that whistleblowing policies provide for legitimate concerns to be objectively investigated and addressed, and for individuals to be able to raise concerns in confidence, and without the risk of reprisal.

8. The existence of a Code of Conduct and Ethics does not, in itself, deliver an organisation which is ethical in its behaviour. As important is the commitment of the board and CEO (and wider management team) to 'walk the talk'.

D Business and Financial Reporting

PRINCIPLE 10

The board should ensure that a balanced, true and fair view of the State body's financial performance and financial position is made when preparing the annual report and financial statements of the Public Enterprise.

PROVISIONS

1. The Board is required to arrange for the preparation of the financial statements in respect of each financial year. The annual financial statements are prepared from the information contained in the Public Enterprise accounting records and other relevant information and in accordance with the accounting standards.

2. The Board must present financial statements of a State body that give a true and fair view of the income, expenditure (financial performance), assets, liabilities and capital (financial position) of the State body as at the financial year end.

3. The Board is required to arrange for the financial statements to be audited by an independent auditor.

4. The annual report, comprising the financial statements and commentary thereon, is a comprehensive report of the Public Enterprise's activities throughout the preceding year. Annual reports are intended to give stakeholders information regarding the State body's activities and financial performance.

E Audit, Risk and Internal Control

PRINCIPLE 11

The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.

PROVISIONS

1. The board should ensure that it has members who are financially literate.

2. Directors should be willing to undertake continuous professional development to develop their knowledge of financial matters.

3. They should have sufficient understanding of the organisation’s business to be able to offer constructive challenge to management on issues relating to financial matters.

4. The board should demonstrate an appropriate level of vigilance concerning the detection of any financial anomalies or irregularities in the organisation’s finances and ask probing questions to ascertain whether the financial statements are consistent with operational and other information known. Such irregularities may occur when operating and financial performance deteriorates but can also occur when performance is unexpectedly strong.

5. The board should consider whether the financial statements, taken as a whole, provide a true and fair view of the organisation’s financial position and performance, on the basis of which it should be able to present a fair, balanced and understandable assessment of the organisation’s position and prospects.

6. The board should have policies and procedures to assess the suitability, objectivity and independence of any external audit advice received.

7. The board should set up an Audit Committee to assist it in its work.

PRINCIPLE 12

The board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the opportunities it wishes the organisation to explore, and the principal risks the organisation is willing to take, in order to achieve its long-term strategic objectives.

PROVISIONS

1. Well-governed organisations integrate performance-focused risk management and internal control at every level of the organisation and across all operations.

2. The board should, with the assistance of management, carry out a robust assessment of the company’s emerging and principal risks.

3. The board should confirm that it has completed this assessment, and include a description of its principal risks, an explanation of how these are being managed or mitigated, and what procedures are in place to identify emerging risks.

4. In addition, it should state if the risk management framework adopted by the organisation is based on an internationally-recognised risk management framework.

5. The board should set appropriate policies on internal control and seek assurance from management that the systems are functioning effectively.

6. The board should ensure that any internal audit function is effective and able to function independently.

7. The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review.

8. The monitoring and review should cover all material controls, including financial, operational and compliance controls.

9. The board should set up a Risk Committee (if deemed necessary) to assist it in its work.

F Remuneration

PRINCIPLE 13

Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success.

PROVISIONS

1. It is important for the organisation's stakeholders that the remuneration of executive directors, and senior management team, is perceived to be subject to the same approach as the other issues set out in this Code, namely transparent, accountable, responsible and fair.

2. CEO and senior management remuneration should be aligned to organisational purpose and values and be clearly linked to the successful delivery of the organisation's long-term strategy.

3. A formal and transparent procedure for developing policy on management remuneration and determining director and senior management remuneration should be established. No executive director should be involved in deciding their own remuneration outcome.

4. Non-Executive directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of organisational and individual performance, and wider circumstances, including whether proposed remuneration levels are considered acceptable to wider Seychellois society.

5. The board will set up a Remuneration Committee to assist it in its work.

G Monitoring Code Performance

PRINCIPLE 14

Boards will be expected to report on the progress they are making with implementation of the Code's provisions.

PROVISIONS

1. It is important for an organisation's people, starting with the board, spreading through management, and reaching all staff, to understand, and work to deliver, the benefits of strong governance.

2. It is the organisation's responsibility to disclose – to its stakeholders, as well as the wider governance community – how it has exhibited governance leadership.

3. The board's report on its implementation of the Code will be contained within the Annual Report.

4. The report will also be submitted to the Public Enterprise Monitoring Commission, whose responsibility will be to engage with individual companies where progress is slow.

5. The monitoring body will consider, and recommend to the President of the Seychelles, what further action should be taken with respect to poorly-performing organisations.

6. The monitoring body will present a report to the President of the Seychelles each year, summarising overall progress with the Code, identifying organisations whose poor progress is a matter of concern, and identifying those organisations whose progress merits acknowledgement.