

Final Draft of the Public Enterprises Ownership Policy of the Namibian State

(Draft of October 2023)

PUBLIC ENTERPRISES OWNERSHIP POLICY (PEOP) OF THE NAMIBIAN STATE

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1. DEFINITIONS

"Anti-Corruption Act" means the Anti-Corruption Act, 2003 (Act No. 8 of 2003).

"Board", in relation to a public enterprise, means the Board of Directors or other governing body of the public enterprise, by whatever name it is called, holding positions comparable to those of the Board of Directors of a company.

"Commercial Public Enterprise" means a public enterprise specified as a commercial public enterprise under section 2(2)(a) of the Public Enterprise Governance Act, 2019 (Act 1 of 2019).

"Companies Act" means the *Companies Act, 2004 (Act No. 28 of 2004)*.

"Extra-Budgetary Fund" means a public enterprise specified as an extra-budgetary fund under section 2(2)(b) of the *Public Enterprise Governance Act, 2019 (Act 1 of 2019)*.

"Investment Policy" means an investment policy referred to in Section 23 of PEGA.

"Government" means the Government of the Republic of Namibia.

"Minister" means the Minister responsible for public enterprises.

"Ministry" means the Ministry responsible for public enterprises.

"Non-Commercial Public Enterprise" means a public enterprise specified to be a non-commercial public enterprise under section 2(2)(c) of the *Public Enterprise Governance Act, 2019 (Act 1 of 2019)*.

"Ownership Policy" means this document - the Public Enterprises Ownership Policy of the Namibian State.

"Senior Management Staff" means the employees of a public enterprise who report within the hierarchy of the public enterprise's employment structure directly to its chief executive officer.

"Public Enterprise" means a body declared to be a public enterprise under section 2(1) of the Public Enterprise Governance Act, 2019 (Act 1 of 2019).

"Relevant Minister" means –

(a) In respect of a non-commercial public enterprise –

(i) That is created by a law, the Minister responsible for the administration of the law governing the establishment and functions of the public enterprise; and

(ii) That is not created by a law, the Minister responsible for the matters for which the public enterprise was established;

(b) In respect of a commercial public enterprise, the Minister; and

(c) In respect of an extra-budgetary fund, the Minister responsible for Finance.

2. ACRONYMS AND ABBREVIATIONS

Board	-	Board of Directors
CEO	-	Chief Executive Officer
CSR	-	Corporate Social Responsibility
IFRS	-	International Financial Reporting Standards
KING IV	-	King IV Report on Corporate Governance
NamCode	-	The Corporate Governance Code for Namibia
OECD	-	Organisation for Economic Co-ordination and Development
PEGA	-	Public Enterprises Governance Act, 2019 (Act 1 of 2019)
SOEGC	-	State-Owned Enterprises Governance Council

3. EXECUTIVE SUMMARY

1. Public Enterprises (PEs) play a significant role in developing economies as they are the sole providers of key public services, such as water, electricity, transportation, telecommunications and postal services. It is essential to ensure that public enterprises are competitive and efficient for the purposes of economic development and public service delivery, as well as overall business competitiveness downstream. When managed transparently and efficiently, PEs can help to rectify market failures, improve public service delivery, and generally contribute to fairer, more competitive markets. Historically, many developing countries have established PEs as part of a broader strategy to develop emerging industries, or to establish new sectors with no pre-existing private sector economic activity.

2. Public Enterprises, are ultimately owned by the Namibian people and form a significant part of the business sector in Namibia. As per Article 41 of the Namibian Constitution, the government is mandated to actively oversee State-owned enterprises to maximise long-term value and performance, as well as to ensure the effecticve execution of public policy assignments wherever applicable. For Government, it is of utmost importance that State-owned enterprises are professionally managed, with long-term value creation being a major all-inclusive objective.

3. The all-encompassing intention of the State is to establish public enterprises that serve the interests of the public by driving economic growth, as well as contributing significantly to the achievement of Namibia's national development objectives. To achieve this, the State must implement sound policies, and in doing so, introduce comprehensive corporate governance principles to ensure that public enterprises deliver on their mandates and associated objectives.

4. The Namibian government has thus prioritised developing and adopting this Public Enterprises Ownership Policy (PEOP) to guide the exercise of ownership of public enterprises owned by the State.

5. The Namibian State's Ownership Policy is in line with Namibia's principal national objective of creating an industrialised and prosperous Namibian nation, developed by her own human resources, enjoying peace, harmony and political stability - as articulated in Vision 2030, the SWAPO Manifesto as well as the various National Development Plans (NDPs 1-5). As such, the Namibian State will continue to own and control public enterprises to achieve its key national objectives.

6. The Namibian State also considers public enterprises as key to the achievement of its regional objectives, as reflected in Vision 2030, the SWAPO Manifesto, Agenda 2063 of the African Union, and also Namibia's international objectives as per the United Nations Sustainable Development Goals.

7. This Ownership Policy thus serves to elucidate why, when and how the Namibian State owns public enterprises and outlines the key principles guiding the State's ownership of such enterprises. It furthermore outlines the roles and responsibilities of the Board of Directors (Board) and management, as well as measures to ensure sound financial management. Additionally, the Ownership Policy also includes social and environmental considerations, as well as measures to curtail any forms of corruption and/or other irregularities.

8. The application of this Ownership Policy is therefore mandatory for public enterprises that are wholly owned by the State, or in instances where the State is the majority shareholder. Where the State is a minority shareholder, the Ownership Policy's application is only recommended, given the inalienable rights of other shareholders.

4. PART I: INTRODUCTION, APPLICATION AND RATIONALE

4.1. INTRODUCTION AND BACKGROUND

9. The Namibian State is the owner of 81 public enterprises operating within the Namibian economy. These public enterprises are ultimately owned by the Namibian people. The State's ownership of public enterprises is crucial for supplying products and services to the market, as well as safeguarding and maintaining control of Namibia's strategic resources and assets. State ownership also ensures that the revenue derived from State participation in profitable enterprises can be used for the greater good of all Namibian citizens. The historic reality of Namibian colonialism and apartheid had a significant impact regarding the economic exclusion of the majority black population, to the advantage of the minority white population.

10. The adoption of the Namibian Constitution in 1990 thus entrenched economic participation as a human right for all Namibians and subsequently recognised various forms of ownership in Namibia legally, including public-, private and joint public-private ownership. The Namibian Constitution, in Article 98, also defines the Namibian economic order, based on the principles of a mixed economy with the main objectives of fostering economic growth, prosperity and a life of human dignity for all Namibians.

11. While public enterprises undoubtedly play a central role in the Namibian economy, they have a well-documented history of poor performance, mismanagement, and maladministration. In order to transform public enterprises, particularly those of a commercial nature, Namibia has taken steps to institute various legal and policy reforms in the public enterprises sector.

12. In March of 2015, a Report on the Proposal to Transform the State-Owned Enterprises Governance Council into the Ministry of Public Enterprises was submitted by a consultancy to the then SOEGC Secretariat. The SOEGC Report would serve as the bedrock for the establishment of the Ministry of Public Enterprises and the beginning of a long-awaited reform process for public enterprises in Namibia.

13. The SOEGC Report included robust and practical recommendations, many of which serve as the foundation upon which the MPE was developed. The essence of the SOEGC Transformation Report was premised on the OECD Report of 2005. As a starting point to PE sector reform, the SOEGC Transformation Report recommended the categorisation and classification of all public enterprises as reflected in the substitution of Schedule 1 to the State-Owned Enterprises Governance Act, 2006 (Act No. 2 of 2006).

14. Namibia has since adopted the Hybrid Governance Model, which categorises public enterprises into commercial, non-commercial and extra-budgetary funds. The Hybrid Governance Model today finds expression in the form of pertinent legal reforms that include the creation of the Ministry of Public Enterprises in 2015, and the subsequent promulgation of the Public Enterprises Governance Act (PEGA), 2019 (Act No. 1 of 2019), thus legislating the hybrid governance model for public enterprises in Namibia that specifies the authority and accountability for key roles in the exercise of the State Ownership function. Further, the High-Level Panel on the Namibian Economy Recommendation Report of 2020, made key recommendations on the transformation plan, specifically aimed at commercial public enterprise mandates and re-purposing.

15. The overarching aim of the State is to have public enterprises that serve the interests of the public by driving economic growth and contributing to the achievement of Namibia's national development objectives. To achieve these objectives, public enterprises must be professionally, and efficiently managed through sound, established corporate governance principles, that will ensure public enterprises deliver upon their mandates and associated objectives.

16. Since independence, public enterprises have been a significant vehicle for achieving fiscal revenue, economic growth, poverty reduction and employment creation for Namibia's working population. Thus, Public Enterprises are instruments of the State that, in addition to commercial objectives, assist with achieving public policy objectives. Given a serious skills shortage, high Gini-coefficient and unacceptably high unemployment rate, the implementation of reform initiatives in the context of the State's exercise of the ownership function must be considered and implemented within the context of the socio-economic realities of Namibia.

17. The Namibian State's Ownership Policy is in line with Namibia's overarching national objective of an industrialised and prosperous Namibia, developed by her human resources, and enjoying peace, harmony and political stability, as articulated in Vision 2030, the SWAPO Manifesto and Namibia's National Development Plans. The Namibian State will continue to own and control public enterprises to achieve her key national objectives. The State also considers public enterprises key to the achievement of her regional objectives as reflected in Agenda 2063 of the African Union, as well as her international objectives ratified in the United Nations Sustainable Development Goals.

18. Accordingly, public enterprises that have been mandated with maximising direct and indirect employment creation, as a public policy objective should have this intent included as part of their strategic targets, such as in the governance agreements concluded with Boards, and should furthermore be subject to express reporting to the State as shareholder and the public in general.

19. On the other hand, commercial public enterprises should not be seen as the panacea for employment. Employment creation should be a public policy objective for identified public enterprises that are labour intensive. Most importantly, investment in job creation needs to be accompanied by improved total factor productivity to ensure sustainability. All public enterprises must, however, be mandated to contribute to supporting and encouraging the development of critical skills required for the economy, and prioritising the development of scarce intermediate and high-level knowledge-based skills.

4.2. OBJECTIVES OF THE STATE OWNERSHIP POLICY

20. The objectives of this policy is as follows:

a) To clarify the role of the State and professionalise its role as shareholder
b) To provide a concise, high-level document that outlines and prioritises the reasons why the State should own any given enterprise
c) To define the State's market role, the private sector's role, and the conditions under which the State will engage in the market, specifying the reasons and methods for participation
d) To outline the roles and responsibilities of the Board and management
e) To outline measures to ensure sound financial management, including social and environmental considerations, and measures to prevent any forms of corruption and other irregularities

4.3. SCOPE OF APPLICATION OF THE OWNERSHIP POLICY

21. The Ownership Policy will primarily apply to all commercial public enterprises, including any subsidiaries that fall within the portfolio of the Minister as the shareholder representative of the State. This Ownership Policy, which is developed as a principles-based document, will also apply to non-commercial public enterprises and extra-budgetary public enterprises where relevant. The application of this Ownership Policy is therefore mandatory for public enterprises that are entirely State-owned or where the State is the majority shareholder. Where the State is a minority owner, or co-owner, the Ownership Policy's application is recommended, where applicable, with due regard to the rights of other shareholders.

22. When applying this Ownership Policy, an 'apply and explain' approach must be followed. As such, the application of the Ownership Policy should not be deviated from without due consideration. Notably, the 'apply or explain' approach is adopted by NamCode, as developed by the Namibian Stock Exchange. The Namibian Stock Exchange recommends the NamCode application to all Namibian entities, regardless of the manner and form of incorporation or establishment, including public and private sector enterprises, as well as non-profit organisations. However, in line with latest best practices reflected in the King IV report, the Ownership Policy adopts an 'apply and explain' approach.

4.4. REVIEW OF THE POLICY

23. The Government commits to continuously review this Ownership Policy after every five years by commissioning a white paper with the purposes of ensuring relevance and sound management of the State's ownership interests. Importantly, the review process should include the rationale for the State's ownership of individual, as well as different categories of public enterprises.

4.5. JUSTIFYING STATE OWNERSHIP OF ENTERPRISES

24. In the Namibian Constitution, Article 98(2), establishes the legal basis for public ownership of enterprises within the Namibian economy. Recognised forms of ownership in the Namibian economy include public, private, and joint public-private ownership.

25. Given that the Namibian economic order is constitutionally prescribed in Article 98(1) as a mixed economy, the State will seek to achieve the right balance between a developmental State model where economic growth and national development is primarily driven by the State, and a private sector model that prioritises private participation in the economy.

26. The State recognises the indispensable role of the private sector regarding the provision of services or products in the market. Nevertheless, State ownership of enterprises in product or service markets within the Namibian economy will continue to remain vital and indispensable.

4.6. OVERARCHING PURPOSES FOR STATE OWNERSHIP

27. The State aims to establish a clear and consistent ownership policy in the form of a concise, high-level policy document, that describes the general justification and rationale for its ownership of public enterprises.

28. The State is of the view that its ownership of public enterprises in the Namibian economy is justified to achieve two predominant purposes:

a) To facilitate economic growth that will provide meaningful benefits to all members of Namibian society
b) To facilitate national development, both economically and socially, for all Namibian citizens

29. The aim is to ensure sustainable long-term value creation by public enterprises. In this light and at this stage of Namibia's economic development, the following key strategic reasons have been identified as to why the State should own commercial public enterprises within the Namibian economy:

a) To correct market failures or gaps in the market that leave out key sectors of social and economic significance in Namibia - this may be in particular where it is not as attractive, from a commercial or profit perspective for private enterprises to enter a market
b) To ensure that the ownership, exploitation, and management of key natural resources (mineral, marine and petroleum resources) as well as strategic infrastructure (water, electricity, and transportation) is for the benefit of the public; and
c) To ensure that the State can generate adequate revenue directly and create value that will stimulate economic growth to achieve its national development goals
d) To safeguard Namibia's economic interests

30. The State shall endeavour to articulate its rationale and objectives for owning public enterprises in key documents such as in enabling legislation and articles of incorporation. Although once articulated, the rationale for the State's continued ownership of public enterprises should be periodically re-evaluated.

4.7. PROFESSIONAL, ACTIVE, EFFECTIVE, AND TRANSPARENT STATE OWNERSHIP

31. The State can only achieve its economic growth and national development objectives where public enterprises are professionally, actively, effectively and transparently owned by the State in order to deliver upon their commercial and public policy objectives. It is the expectation of the State that each public enterprise must annually account, and report, on how it contributes to the State's strategic objectives for enterprise ownership.

32. It is to this end that all public enterprises must be owned and function exclusively in the best interests of the State and in the relevant public interest, with due regard for the purpose the public enterprise was established for. As such, personal or political conflict of interest that is detrimental to public, societal or national interests within a public enterprise is strictly prohibited and should be avoided. As the owner, the State must comply with the law, as well as recognised best practices of good corporate governance.

4.8. THE STATE AS A MARKET PARTICIPANT, AND ENSURING FAIR PLAY BETWEEN PUBLIC AND PRIVATE ENTITIES

33. There is an economic role for the State to assume in a market economy, whenever the benefits of a government policy outweigh its costs. Notwithstanding the latter, the Namibian State will promote a level playing field and fair competition in the marketplace when public enterprises undertake economic activities, and will ensure that laws and regulations will apply equally to both public and private entities. Ideally, no State-owned entity should have a competitive advantage, or disadvantage, purely as a consequence of its (State) ownership. This principle ensures that activities by State-owned enterprise business is conducted without any undue advantage or disadvantage relative to similar privately owned enterprises.

34. The main approach to market participation is that the State aims to create an enabling environment for the private sector to participate in and drive economic growth and national development in Namibia. The State has and will continue to adopt and implement measures that aim to strengthen private ownership in Namibia. The main objective of this, is to make Namibia a more attractive and profitable destination for establishing business, creating employment, investment, to attract foreign direct investment, and also to maintain capital within the country.

35. In any product or services market, the State will endeavour to ensure that it creates an enabling environment for such activities. Creating an enabling environment includes establishing laws, regulations and policies that create and maintain a level playing field and fair competition within the marketplace. To this end, the State must separate its ownership role from its other responsibilities, including supervisory and regulatory tasks. Public enterprises must therefore be subject to the same laws, and receive the same treatment as private enterprises.

36. The State must thus endeavour to prioritise the economic participation of private sector enterprises and encourage meaningful ownership and empowerment by Namibian nationals. However, there remain significant challenges to creating a Namibian economy with a thriving private sector. This is in light of Namibia's categorisation as an emerging economy, its history of economic exclusion and the marginalisation of the majority of the population, as well as the under-development of capital markets in Namibia. It will take more time and greater effort for the private sector to enter and develop new markets within the Namibian economy.

37. Therefore, the State's direct market participation through its ownership of public enterprises remains indispensable in certain markets of strategic importance, especially in the realm of its abundant mineral, marine and petroleum resources. This furthermore includes Namibia's strategic infrastructure such as water, electricity, and transportation, which is to the benefit of the Namibian public and business.

38. Namibia is classed as an emerging economy, however, has relatively low levels of economic development and high income inequalities. As such, the State will promote inclusivity and may thus be required, where necessary, to promote an uneven playing field, as a necessary cost of the pursuit of promoting an equitable allocation of resources. This is provided that during the process of economic development, the State gives adequate consideration to the need for balancing public and private activities. Crucially, the State must also reconcile public policy objectives with its other objectives, such as encouraging the private participation of previously disadvantaged people in the economy.

39. The achievement of a level playing field is complex in practice, particularly when public enterprises are expected to combine commercial objectives with important public policy objectives, and where the State is required to correct the economic imbalances of the past. For instance, State-sponsored rescue packages in response to socio-economic challenges may involve significant State investment, whether through financial allocations or State guarantees. This could give rise to competitive neutrality concerns.

40. To enhance fair market competition whilst ensuring socio-economic growth and empowerment, the State shall therefore commit to adhering to the principles of transparency and public disclosure related to the support that public enterprises receive from the State.

41. The State shall request public enterprises to identify the costs of any given function of commercial State activity, and to separate such costs from non-commercial activity, to ensure that commercial viability is credibly enforced. Where State monetary support is provided, or where costs are shared with the non-commercial activities of the State, disclosure is essential, to ensure that public enterprises are accountable to shareholders, oversight bodies and the general public. The effectiveness of this practice will depend on the consistency with which it is applied, especially where small or unincorporated public enterprises are concerned.

4.9. PUBLIC ENTERPRISE REFORMS AND RESTRUCTURING

42. Where there are no compelling strategic reasons or public policy objectives as to why the State should own a particular commercial public enterprise operating in a given market, the State will endeavour to withdraw from the market through voluntary dissolution or liquidation, or reduce the State's ownership through PE Restructuring, provided that the market is sufficiently competitive, where it is commercially appropriate for the State to withdraw from such a market.

43. Voluntary dissolution, liquidation or the reduction of the State's ownership through PE Restructuring should only be conducted when the shareholder is properly and transparently apprised of all the facts, as well as the financial and social consequences that are relevant to such proposed action. There must be mandatory consultation with all stakeholders, including trade unions and affected employees. Furthermore, the State must be presented with evidence of measures taken to safeguard employment as well as employee wages and benefits.

44. The State also takes the view that the strategic reasons are identified for the State's ownership of public enterprises can, in some circumstances, be achieved without the State necessarily retaining full ownership. For example, the State may retain a majority or minority shareholding that would allow it to maintain control through voting rights in enterprises that operate in strategic markets. Through this form of control, the State can notwithstanding achieve its strategic reasons for State ownership that have been identified.

45. The State has a favourable opinion of listing public enterprises on a stock exchange where the relevant listing requirements are met. At an appropriate time, the State will prioritise the listing of public enterprises on the Namibian Stock Exchange with the aim of ensuring broad-based Namibian ownership within the economy to develop domestic equity and capital markets. The decision to list a public enterprise must however be based on commercial considerations that are in the interests of the public as the ultimate owners of public enterprises.

46. In deciding whether to partially or fully withdraw its participation from a given market, the State will also consider whether the relevant private enterprises are owned by Namibian nationals as significant shareholders, or whether they are dominated by foreign shareholders. The following considerations may trigger or motivate the restructuring of public enterprises:

a) Changing market conditions in the sectors where public enterprises operate, including the entry of private sector competitors
b) The desire to reduce the State's share of the market, strengthen national entrepreneurship, and enhance corporate efficiency
c) The desire to minimise the role of the State in a competitive economy - in some instances, the State may develop an all-encompassing plan to transfer State assets, along with its associated public policy objectives to local governments
d) The need to boost fiscal revenue, or simply to reduce fiscal deficits and public debt
e) The desire to promote market diversification and competition
f) The State may identify the need to set up more efficient and cost-effective ways of managing and utilising State property and national assets
g) A public enterprise may have been created to correct market imperfections or to serve strategic and national security objectives - subsequently, it may have failed to address such objectives or they may no longer be needed - in such cases it can therefore be divested
h) Case-by case issues regarding a diversity of objectives may occur from time to time that require restructuring

47. The State, in withdrawing from a market or changing the extent of its participation therein, must restructure certain public enterprises in line with Chapter 5 of the PEGA.

48. The State may put in place a framework on how to withdraw public enterprises and integrate them in line ministries if the mandate is fulfilled, or if the entity fails to sustain itself.

49. The State takes the view that the objectives of restructuring should strive to:

a) Re-align the public enterprises towards the purpose for which they were initially created

b) Facilitate economic growth

c) Facilitate the efficient use and allocation of State resources

d) Create wider ownership and inclusivity in the Namibian economy

e) Mobilise private sector capital

f) Reduce State debt

g) Enhance the competitiveness of public enterprises

h) Access globally competitive technologies

50. The State must develop a comprehensive policy framework and reform plan, for the reform and restructuring of public enterprises. The policy framework should provide the various reform and restructuring scenario options and associated techniques to bring about the desired outcomes. The policy framework will provide clarity of responsibilities within the reform and restructuring process. The reform and restructuring of a public enterprise must be accompanied by a restructuring plan and a timetable.

51. Although PE Restructuring may be justified in certain instances, it must be carefully considered such that it does not further exacerbate inequality, unemployment, and market imbalances. Suffice to say, PE Restructuring may be used as a policy instrument to broaden domestic economic empowerment by prioritising offering shares to previously disadvantaged groups, thereby reducing structural economic inequalities.

52. Ultimately, the State shall ensure that any form of reform or restructuring does not serve to negate its efforts towards addressing market imbalances, unemployment, structural inequality and breaking the cycle of poverty.

53. In the event that the State decides on PE Restructuring, the Auditor General or an auditing company should be empowered to audit any PE Restructuring transaction, or parts thereof.

4.10. CATEGORIES OF COMMERCIAL PUBLIC ENTERPRISES

54. With the enactment of the PEGA in 2019, the legislature has resolved to divide Namibian public enterprises into three categories: commercial, non-commercial and extra-budgetary funds.

55. Commercial public enterprises must fulfil the cumulative legislative requirements of: (i) providing a product or rendering a service; (ii) being capable of making a sustained profit; and (iii) not performing a regulatory function or administering a fund in the public interest. Within this category of commercial public enterprises that the Ownership Policy is primarily directed towards, the State deems it appropriate to distinguish commercial public enterprises into two further categories: commercial public enterprises with purely profit objectives and commercial public enterprises with public policy objectives.

56. Commercial public enterprises with purely profit objectives are owned to solely maximise the value of the State's investment with regard to only commercial considerations, including profit maximisation. Commercial public enterprises with purely profit objectives will not be required to deliver on specific public policy objectives.

57. Commercial public enterprises with public policy objectives are owned to achieve both the specific commercial objective of maximising the value of the State's investment, and are also tasked with achieving set public policy objectives.

58. These two categories of commercial public enterprises will ensure that there is clarity in the State's objectives as owner, and will facilitate more professional, active, effective, and transparent ownership by the State. This will also allow the State to issue clear owner's instructions and expectations and to assess the performance of the public enterprise.

59. From a financial perspective, where the State is clear on the objectives for its ownership, it will be easier to evaluate whether the capital invested has been utilised efficiently and the reasons why the capital has been allocated, that is, that the rate of return must be greater than, or equal to the cost of capital. Further, vague, ambiguous, or unstated objectives can be counterproductive to investor confidence and drive the capital markets in believing that the State has other objectives. This may undermine market competitiveness and negatively affect the value of a public enterprise, particularly where it is listed on a stock exchange.

60. This distinction between commercial public enterprises with purely profit objectives and commercial public enterprises with public policy objectives is made with the aim to ensure that commercial public enterprises that are operating in a product or service market can focus on delivering the highest possible return over time to the State, as well as to deliver on its profit maximisation objectives and other commercial considerations efficiently. Imposing public policy objectives upon a commercial public enterprise with purely profit objectives is also likely to undermine the ability of the relevant market to operate effectively and competitively.

4.11. CLARIFYING PUBLIC POLICY OBJECTIVES FOR COMMERCIAL PUBLIC ENTERPRISES

61. The State takes the approach that public policy objectives are to be principally assigned to non-commercial public enterprises. Commercial public enterprises should only be assigned public policy objectives by the State as owner, where there are no non-commercial public enterprises that can be tasked with pursuing such public policy objectives or where there are no other State mechanisms and regulatory measures such as incentivising the private sector to achieve these public policy objectives.

62. In the event where the State expects a commercial public enterprise to deliver public policy objectives, these expectations will be wholly subsidised and disclosed, to ensure that they do not encroach on their ability to deliver on the commercial targets. Public enterprises with public policy objectives should be adequately compensated for the cost of these obligations, in the absence of which they are placed at a competitive disadvantage through subsidies.

63. Compensation methods may range from direct transfers, capital grants, reimbursements, and budget appropriations, to State aid, or subsidies. In some cases, subsidies and or compensation for public policy objectives are not feasible, especially in a developing jurisdiction such as Namibia.

64. As an alternative, public enterprises may be expected to price efficiently and to fully recover costs in other ways, such as through exemptions from other obligations; contracting out service delivery through public-private participation or other competitive tendering processes; direct capital transfers; or through a negotiation of their tariff structures and user fees. However, there is a clear need for a legal provision that sets out rules for mechanisms that are allowable to compensate public enterprises – such as whether or not cross-subsidisation is allowable – and the criteria that need to be fulfilled in order for an enterprise to receive a subsidy or compensation.

65. For commercial public enterprises with public policy objectives, the State as owner, may also set public policy objectives, in addition to commercial and return on investment objectives. These public policy objectives must be explicit and set out in such a manner that they can be meaningfully assessed, and their performance tracked effectively.

66. The purpose of explicitly setting public policy objectives for public enterprises is to both ensure that the specifically adopted public policy assignments are duly performed and to clarify the financial implications of performing them. The State as owner, must provide specific funding for the attainment of public policy objectives, which objectives must be evaluated against the key performance indicators for the public enterprise Board and management. This will enable monitoring and reporting on public policy objectives to the Ministry, which exercises the public enterprise ownership function on behalf of the State, and to other stakeholders, including Parliament.

67. Further, the State must constantly maintain transparency for all of its public policy objectives, particularly in ensuring that they are clearly mandated and that they are disclosed to the public. Their associated financial implications must also be clearly covered in a transparent manner.

68. A public enterprise's prerequisites to perform a specifically adopted public policy assignment and to achieve commercial objectives may be mutually dependent. Therefore, commercial objectives and public policy objectives are normally prepared as an integrated project. In an integrated project, the level of ambition regarding public policy objectives can be weighed against the cost in terms of the effects on risk and financial return implied.

69. Any public policy objectives not contained in the establishing law or document of a public enterprises may also be formally resolved by way of a special resolution that issues owner's instructions of the State to the Board of a public enterprise, provided that the establishing law or document makes provision therefore.

5. PART II: PRINCIPLES GUIDING THE OWNERSHIP OF PUBLIC ENTERPRISES BY THE NAMIBIAN STATE

70. The Namibian State is a large owner of public enterprises in Namibia. How the State exercises its ownership function is therefore integral to the positive performance of markets in Namibia. Further, the State's conduct as an owner will inevitably greatly influence the confidence of the public and investors in public enterprises and in the Namibian market.

71. As such, the State must ensure that its ownership of public enterprises is exercised professionally, effectively, efficiently and transparently, and in accordance with Namibian law, and in line with established principles and standards of corporate governance. Crucially, this facilitates predictability in the State's exercise of ownership, which is integral to the competitiveness of the Namibian market.

72. Key to this is to ensure that public enterprises, with commercial objectives particularly, function in the same manner, and subject to the same constraints, as well-governed and managed private sector enterprises. In the short term, the State aims for its ownership of public enterprises to be exemplary and serve as the best practice amongst developing economies around the world.

5.1. THE FOLLOWING PRINCIPLES WILL THEREFORE GUIDE THE STATE'S EXERCISE OF OWNERSHIP:

a) The State must be a professional and responsible owner that will at all times act within the confines of the law.

73. For a public enterprise to thrive in delivering upon its commercial and public policy objectives, professional and responsible ownership by the State is indispensable. This requires the State to exercise discretion and confidentiality as to its ownership of enterprises, while respecting the expectation of transparency and openness expected of a publicly-owned enterprise. Professional and responsible ownership of public enterprises must be akin to a private enterprise, whether listed or unlisted, and which complies with the highest standards of corporate governance.

b) The State must exercise its ownership function in the exclusive interest of the general public.

74. The public are the ultimate owners and beneficiaries of public enterprises. Therefore, the State must ensure that the exercise of ownership is exclusively in the public interest. This is pursuant to the strategic reasons why the State owns the public enterprise, the commercial objectives of the public enterprises, and their public policy objectives where these have been assigned.

c) Where the State is a co-shareholder, the State must exercise its ownership in accordance with the principle of equal treatment of shareholders.

75. Not all public enterprises are wholly owned by the State since private shareholders may have an ownership stake. The equal treatment of shareholders is thus crucial. The principle of equal treatment of shareholders is one that is reflected in company law. It also ensures investor confidence, and that the State does not abuse its position of power and authority, particularly considering its other roles such as regulator and administrator, to the detriment of private shareholders.

d) The State must be transparent about its ownership and the exercise of the ownership function.

76. The State primarily owns public enterprises for the benefit of the public. Transparency is a key democratic pillar of the rule of law and good governance in Namibia. Transparency is crucial in ensuring that the general public can have access to information that allows them to ascertain that the State exercises ownership that will benefit society in general. Maximum transparency also avoids misunderstanding and suspicion, while enhancing predictability in the conduct of the State's ownership.

77. Transparency is integral to ensuring that the market within which a commercial enterprise is operating is strengthened and investors and the capital markets maintain confidence in the Namibian economy. Given the State's other roles in the market that are in addition to being an owner of public enterprises, ownership transparency reassures competitors to public enterprises that such enterprises are competing equally and fairly.

e) The State must ensure that commercial public enterprises are profitable and sustainable financially, socially and environmentally. For this purpose, public enterprises must maintain transparency and openness.

78. Certain public enterprises are created for the financial benefit of the State. While profit maximisation is important, public enterprises should also take into account social and environmental considerations in their market-related activities. The financial matters of public enterprises are elaborated in Part IV of the Ownership Policy.

f) The State must ensure that public enterprises are held accountable by the Relevant Ministry, the National Assembly, and the general public.

79. The ultimate owners of public enterprises are the Namibian people. This requires heightened transparency, accountability and consequence management. PEGA vests the responsibility of commercial public enterprises with the Minister responsible for public enterprises, and for non-commercial, in the Relevant Minister, who exercises the State's ownership function on behalf of Cabinet and the wider public.

80. In addition, the National Assembly has the indispensable oversight and accountability role, which is rooted in Article 63(2)(f) of the Constitution, to receive reports on the activities of the Boards and Executive on public enterprises and to have Boards and senior officials from public enterprises account for such activities. Therefore where public enterprises are not performing in line with agreed targets, Cabinet and Relevant Ministers, must hold Boards and Executives accountable and ensure consequence management is visibly enforced.

81. The State's role as owner must be kept separate from its other roles, including the State as law and policy maker, as regulator and as administrator. In so doing, the State must ensure that it maintains competitive neutrality in relation to public enterprises that operate in the market.

82. The State has numerous other responsibilities in addition to its exercise of ownership. These include law-making and policy determination functions, supervisory functions, regulatory functions and administrative functions. A strict distinction must be maintained. This is indispensable for maintaining the legitimacy and trust of the State. PEGA therefore creates a system where the Minister exercises the ownership function of the State in a manner that is separate from the State's other roles.

83. The State must also establish and maintain an exercise governance threshold between the State's role as owner and the roles of the different authorities. By concentrating the State's commercial ownership interests in one place in the central State administration, it increases trust in the State's administration of its ownership and reduces role conflicts.

84. A clearly distinct ownership arrangement will ensure that market competition is not distorted by the State's ownership of an enterprise that is operating within the market. Further, in pursuance of the principle of competitive neutrality, the public enterprises' operating principles, financial structures, and return on investment targets must be comparable to those of other private enterprises that are engaged in the same or similar market.

g) The State must align its objectives for ownership to realise its commercial objectives and public policy objectives where they have been set.

85. The State will not merely own public enterprises for ownership sake, but must make certain that its ownership is constantly directed towards the State's overarching strategic reasons for ownership. As such, the State's ownership must be exercised to achieve commercial objectives that are directed at ensuring maximum return on the State's investment, and any public policy objectives. Clarity and transparency on the objectives set for the public enterprise must be constantly maintained.

h) The State's exercise of ownership must be based on the division of roles and responsibilities between owners, the Board and the management.

86. It is the responsibility of the Board to provide the strategic direction and the role of management to run the day-to-day operations of public enterprises. As owner, the State's management of public enterprises will be limited to an overarching corporate governance oversight. It is not the responsibility of the Minister, as the representative shareholder of the State's ownership interest, to make decisions that concern the running of the public enterprise, or that concern the detailed organisation of the public enterprise.

87. This also applies to matters of an unusual or controversial nature. The division of roles and responsibilities will follow the prescriptions of enabling legislation such as company law, and the constitutive instruments, and on generally accepted principles and standards for corporate governance. The Board and management are given business freedom withintheir fudiciary duties, with due regard to shareholder's mandate in relation to commercial and public policy objectives.

i) The State's ownership must be formally exercised using the owner's instructions issued through Shareholders agreement/Governance Agreements/resolutions at the general meeting or special meeting of the public enterprise.

88. In order to ensure that the State's ownership objectives are clearly defined, are in the public interest and are set out in a transparent manner, the State clearly stipulates its expectations and performance indicators in the Governance Agreements as stipulated in section 11 of PEGA, or use special meetings to issue owner's instructions, provided such instructions do not contravene the establishing Act of a public enterprise, where applicable. The use of general or special meetings as the decision-making forum will ensure the documentation of decisions. The State may also elect to amend an establishing Act to convey statutory ownership instructions to a public enterprise, where necessary, in the public interest.

j) The State must appoint professional Boards of Directors. The competence and diversity of the director's skills in the relevant field must be the State's main consideration in its composition of Boards.

89. To ensure that public enterprises can deliver on their mandates, the State must ensure that professional Boards oversee the management. The key consideration in the composition of Boards should be the technical competence and diversity of the directors. To ensure gender equality, the State must ensure equal representation of gender in the Board at all times, based on competence. The State should also consider representation of the minority, geographical diversity, youth and vulnerable groups across Boards of Directors. The further aspects of Board nomination and composition will be addressed in Part III of the Ownership Policy.

k) State ownership must not give public enterprises unfair competitive advantages or disadvantages compared to entities in which the State does not have an ownership interest.

90. Maintaining competitive markets is integral to economic growth in Namibia. Therefore, the State's ownership of a public enterprises operating in a given market should not advantage it relative to other entities that do not have State ownership. The same would apply to competitive disadvantages.

l) All persons, whether in the public or private sector, exercising ownership on behalf of the State must take the necessary measures to avoid conflict between their personal interest and the public interest.

91. As public enterprises are ultimately owned by the Namibian people, care must be taken to ensure that they are not abused to serve the personal or private interests of those tasked with their management. The State expects that measures are taken to ensure that associated risks are managed at an acceptable level within public enterprises.

92. Thus, all public enterprise Boards of Directors and executives should declare their interests annually and at Board meetings. Public enterprises must be required to ensure that a conflict of interest policy is in place and regularly updated. Therefore public enterprises must avoid at all times commercial damage that any conflict of interest may cause, public enterprises must thus protect the entity against conflicts that erode their public standing and reputation.

m) The State expects the Board and management of public enterprises to lead ethically, effectively and responsibly.

93. Good governance is essentially about ethical, effective leadership. Such leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency. Leaders are the primary influence on ethical conduct in an organisation and are responsible for the norms and codes of conduct that guide employees' behaviour.

94. The State expects that all Public Enterprises will be expected to formulate their core values and ethical guidelines so that ethical behaviour becomes an institutional norm. In addition, other measures to must be put in place to ensure that the public enterprises are ethical and they comply with ethical standards and codes of conducts. These should be implemented actively within the public enterprise.

95. All leaders are required to be results-driven, achieving strategic objectives and positive outcomes. Effective leadership includes, but goes beyond an internal focus on effective and efficient execution. The State expects its leaders to be responsible stewards of society and the environment, by considering both the short- and long-term impact of their personal and institutional decisions on the economy, society and the environment.

n) All persons responsible for public enterprises must ensure the highest standards of ethical and legal conduct, particularly in preventing and combating corrupt practices.

96. The State maintains a zero-tolerance for corrupt practices policy. All persons responsible for public enterprises must thus put in place and implement measures to effectively prevent and respond to corrupt practices.

6. PART III: GOVERNING PUBLIC ENTERPRISES: CORPORATE GOVERNANCE, ROLES, AND RESPONSIBILITIES, AND PERFORMANCE MANAGEMENT

6.1. GOVERNANCE

97. As owner, the State is committed to professionalise the management of public enterprises through Boards of Directors. The composition of Boards must be based on transparent processes, which emphasise the competence of the Board members. It is important for the State to clarify the roles and responsibilities in managing public enterprises. This Part guides the public enterprise sector in discharging its governance functions and responsibilities such that good governance outcomes of an ethical nature, outstanding performance, effective control and legitimacy with the State as owner are realised.

98. The principles that determine good corporate governance for public enterprises are primarily underpinned by the PEGA and the Companies Act as well as the NamCode and King IV. The State must ensure the professionalisation of the Boards of public enterprises and coherence in the manner in which the State, as owner, exercises its shareholder functions while maintaining Board autonomy and independence. Ensuring sound composition and competence of Boards of public enterprises is of crucial importance and is one of the State's prime responsibilities.

6.2. GOVERNANCE ROLES AND RESPONSIBILITIES

99. The relationship between the State as owner and a public enterprise usually follows from the enabling legislation governing the form of organisation of the public enterprise. To observe the interest of the State as represented by the Minister, a two-tier corporate hierarchy has been adopted – the first tier being the Board and the second tier being the Chief Executive Officer (CEO) of the public enterprise.

100. The Board is the ultimate governing authority of the public enterprise, whose members are appointed by the State as shareholder, through the Minister. The Board appoints the CEO. In turn, the CEO appoints executive management of the public enterprise. The CEO is expected to timeously inform the Board of any executive management appointments.

101. A productive and professional relationship between the State, the Board, and CEO is critical for good governance, and it is therefore important that there exists clarity of roles. The State aspires to ensure that there is a clear division of roles between the State as owner and the structures that govern the public enterprise, consisting of the Board, the CEO, and the management of the public enterprise.

6.3. THE MINISTER

102. The Minister, in consultation with Cabinet, administers the State's ownership function under its constitutional and legislative responsibility and in accordance with Cabinet resolutions concerning the individual public enterprise, general statutory provisions and other parliamentary resolutions. Under PEGA, the Minister is responsible for the development of common policy frameworks for the operations of public enterprises, including policy on issues relating to human resources, assets and finance.

6.4. THE BOARD OF DIRECTORS

103. The Board must set the strategic direction for the public enterprise and review the public enterprise's progress in line with the agreed strategy and the purpose for which the public enterprise is created. To this end, the management of the public enterprise must accept that the Board's role is to monitor and question, probe issues, seek clarification, offer insight and share its knowledge and experience.

6.5. THE CHIEF EXECUTIVE OFFICER

104. The CEO is responsible for managing the effective and efficient day-to-day operations of the public entity in accordance with the strategy, business plans and policies of the Board. With the CEO much more deeply involved in the detail and operations of the public enterprise, the Board will rely on the CEO to share in a timely manner, all material information needed for decision-making to allow them to effectively fulfil their obligations as directors. The Board also expects the CEO and management to solicit advice and make use of the Board's expertise as and when appropriate.

105. The primary role of the CEO and management is to implement strategy and deliver outcomes without undue interference by the Board. The CEO will specifically expect clearly stated performance objectives and defined boundaries of authority by the Board. The CEO will expect regular and honest performance feedback from the Board and enter into recognition agreements for performance.

6.6. NOMINATION AND APPOINTMENT OF THE BOARD OF DIRECTORS

106. The State must ensure that the process for nomination, recruitment and appointment of the Board of public enterprises is formalised and done in a transparent manner as per PEGA. All qualified Namibians should be given an opportunity to apply for vacancies within public enterprises through open advertisement.

107. Relevant Ministers should when possible respect and apply due regard for the results of the recruitment process and only in cases, where discrepancies are found, should the Minister be required to advise the Nomination committee to review its recommendations. The State recognises the importance of having systematic and sound procedures in support of Board appointment and evaluation for transparency, professionalism and competence. The State must therefore adopt guidelines for the recruitment, appointment and evaluation of the Board.

108. Through its representatives on nomination committees, the State will ensure that the Board represents a diversity of competence and that Board members have sufficient capacity to perform their duties as required.

109. On first constitution of a new term of office of members of the Board, or for filling a vacancy on an existing Board, the Minister, in consultation with Cabinet, is responsible for the appointment (after recruitment process is finalised) of Board members for commercial public enterprises, including its chairperson and vice-chairperson.

110. For non-commercial and extra-budgetary funds public enterprises, the Minister must facilitate the recruitment through the nomination committee and provide recommendations to the relevant Minister on potential candidates who are most suited for appointment as members of the Board. For the appointment of CEOs, Cabinet shall only be informed in an "Information Memorandum" and be requested to take note thereof, but not to endorse or approve such an appointment.

111. If at any time during the term of office of the Board of a public enterprise, the offices of all the members of the Board become vacant; or the number of members of the Board are reduced to less than the number of members required for a quorum of the Board, and if circumstances of a pressing or urgent nature so require, the relevant Minister may appoint suitably qualified persons on a temporary basis to serve on the Board until new members are appointed. The Minister is required to fill the Board vacancy within than six months after the vacancy occurs.

112. The appointment of a person as temporary member of a Board ceases to be of effect upon expiry of a period of six months from the date of their temporary appointment, but the Minister responsible for public enterprises may extend the period by an additional period of not more than two months. This should not however be more than 12 months.

6.7. BOARD COMPOSITION AND ELIGIBILITY

113. The composition of the Board must be characterised by competence, independence, capacity and diversity and must reflect the distinctive characteristics and competency requirements of each public enterprise, including essential competencies such as strategic leadership.

114. The State must place emphasis on competence, capacity, independence and diversity based on each public enterprise's special characteristics when nominating and appointing individuals to serve on the Board of public enterprises. The aim is for the Board of each public enterprise to represent, in its totality, the requisite competence, given the public enterprise's commercial and public policy objectives, area of business and challenges.

115. For public enterprises with commercial objectives, the emphasis must be on appointing Board members with wide-ranging business and industry experience. In public enterprises with public policy objectives, the number of Board members competent in the relevant public policy remits should be balanced by the members competent in business management and commercial undertakings.

116. The State will consider the past performance of prospective Board members prior to nomination for re-appointment. The State must request information of other commitments from potential non-executive directors and assess whether or not such persons have sufficient time to satisfy the criteria of the capacity. A Board member may thus have the requisite competence to carry out their Board obligations, however, their competence may be limited by their capacity. No person may simultaneously serve as a Board member on more than two Boards of public enterprises, and no person should serve on one Board for more than two terms.

117. In the event that members of the Board fail to deliver on performance expectations as outlined in the governance and performance agreement, the relevant Minister should remove the Board in line with the Regulations made under PEGA.

118. Political affiliations or political activities must not be a relevant consideration for eligibility to the appointment of a Board. Based on the basic competence requirements, the State will endeavour to ensure that each Board represents appropriate diversity in respect of geographical affinity, age, and cultural and experiential background. The State will strive for equal representation and balance of gender in nominating Board members and will endeavour to increase the proportion of female chairpersons of Boards.

119. The Board must comprise a majority of non-executive directors, most of whom must be independent. This must also be sufficiently reflected in numbers for its committees and quorum requirements. Where a Board lacks expertise, these may be readily acquired through practical services. There is consequently a need to maintain continuity on Boards to ensure the retention of acquired expertise. To this end, the State will endeavour to arrange for the periodic and staggered rotation of Board members.

120. The State will strive to ensure that commitments through paid employment, entrepreneurial commitments or positions of trust held by prospective Board members must be compatible with the time commitment that may be reasonably expected for Board duties. Persons elected to a public office or who are appointed to a political office will not be eligible to serve on the Boards of public enterprises, except on the understanding that such representatives do not run for re-election.

121. Any director on a Board of a public enterprise who is formally selected to stand as a candidate for an elected public office or appointed to a political office, or placed on any political party's list, must resign from their Board position within a reasonable time.

122. Newly appointed Cabinet Ministers or Deputy Ministers, upon taking up office in Government, are to resign from service on any Board and are not eligible for Board appointments. The same applies to executive directors.

123. Any individual who regularly attends to matters concerning a particular public enterprise as part of their professional responsibilities or who are employed by a ministry or other central Government entity, or who regularly attend to matters relevant to the public enterprise or its regulatory sector, are not eligible to serve on the Board of a public enterprise. Appointments to a Board is ordinarily for a term of three years.

6.8. THE ROLE OF THE BOARD OF DIRECTORS

124. The responsibilities of the Board of a public enterprise, taking into account all applicable laws, include to:

a) Ensure compliance with the directors' duties as set out in statutory law and common law, including fiduciary duties and the duty to act in the best interests of the public enterprise
b) Appoint and, if necessary, dismiss the CEO
c) Determine the public enterprise's risk profile and ensure that it has put in place effective internal controls, adequate systems and resources for ensuring compliance with statutory provisions and effective systems for risk management
d) Elaborate explicit objectives and strategies for the public enterprise within the confines of its constitutive instruments, whether the Companies Act or enabling legislation and oversee the development of a five (5) year integrated strategic business plan, its annual business and financial plan and budget
e) Provide an annual report and annual financial statements to the shareholder
f) Comply with the solvency requirements set out in the Companies Act or in any other law setting more onerous solvency requirements
g) Immediately notify the Minister or relevant Minister if any event occurs that may prevent, or significantly affect the achievement of the commercial or public policy objectives of a public enterprise or any of its subsidiaries, especially those resorting under its integrated strategic business plan, annual financial plan, or achievement of the targets under those plans
h) Present special resolutions to the shareholder for adoption when necessary (for example, resolutions for the approval of major transactions); and
i) Hold Annual General Meetings

6.9. BOARD COMMITTEES

125. A committee may be established by the Board. The Board committee's terms of reference and powers, duties, reporting procedures, membership and duration of office must be clearly recorded by the Board. Board committees exist to increase the overall effectiveness and efficiency of the Board. These committees have no legal standing or distinction from the Board itself, and all Board members remain accountable for committee activities. Board committees must therefore make recommendations for the approval of the full Board, rather than have complete decision-making powers delegated to them.

126. Board committees can be standing or ad hoc in nature and may typically encompass areas including audit (finance and risk) and remuneration. The Board of each public enterprise must establish an audit committee. It is expected that such a committee will give the Board assurance in terms of risk management and compliance, as well scrutinising the public enterprise's financial management, reporting and internal controls. In public enterprises of a specialist or technical nature, it may be appropriate for risk management issues to be dealt with by a separate risk committee.

127. Apart from the audit committee, there is no prescribed or optimum number, or type of committee, and Boards must set up new committees only after consideration of their potential benefits to the governance of the particular public enterprise. Membership of an audit committee must include directors with financial and commercial competencies. The chairperson of the audit committee must not be the chairperson of the Board.

6.10. REMUNERATION OF BOARD MEMBERS AND SENIOR MANAGEMENT STAFF OF PUBLIC ENTERPRISES

128. The State aims to maintain Board remuneration at a moderate level. However, the State also recognises the importance of Board remuneration to be at a level conducive to appropriate and reliable Board competence, and remuneration that is commensurate with the Board's responsibility and complexity.

129. The Board must, in line with appropriate provisions, set the direction and approach for remuneration of the public enterprise and approve a remuneration policy that aspires to fairness, financial responsibility and transparency. The oversight of remuneration governance must be delegated to a remuneration committee, or another appropriate committee. Through the Board, the State must apply guidelines for the remuneration of directors of Boards and senior management staff, in wholly owned public enterprises.

130. The guidelines have comprehensive information on the State's expectations with regard to the payment of directors' fees and remuneration of senior management staff of public enterprises. Boards must ensure that Board guidelines are implemented and that any deviation from the guidelines must be accounted for in accordance with the 'apply and explain' principle.

131. The Boards must present a statement in respect of the remuneration of their management staff, along with their annual reports. The underlying aim is transparency around remuneration. Given the varying nature of complexity of public enterprises, to ensure fairness, the State must have in place a clearly defined public enterprise remuneration framework, based on the categorisation of public enterprises, and must consider factors such as their size, nature or the complexity of the public enterprise, its strategic importance, and level of autonomy.

132. The Board must present a report on the remuneration of the directors of the Board and senior management staff for each public enterprise at the Annual General Meeting. The responsibility for drawing up and concluding employment contracts for senior management staff must rest with the Chief Executive Officer.

6.11. PERFORMANCE INCENTIVES AND SANCTIONS

133. The State must put in place a robust integrated performance management framework that will include a performance and recognition incentive system that must cater for the unique nature of business conducted by each public enterprise. The performance incentive system must gear remuneration towards short-, medium- and long-term incentives. The State takes a positive view of Board members holding shares in listed public enterprises, on which they are appointed, as an incentive for performance.

134. The performance evaluation of the senior management staff of the public enterprise is carried out by the Board. The performance evaluation indicators must be specific to each public enterprise. In the event that members of the Board or senior management staff fail to deliver on performance expectations on commercial and public policy objectives as outlined in the performance agreement, they may be removed in line with the Regulations made under PEGA, or in the case of senior management staff, in accordance with the disciplinary policy and procedures of the public enterprise concerned.

6.12. MEASURING THE IMPACT AND EVALUATION OF PUBLIC ENTERPRISES AND BOARDS

135. The State must set explicit performance targets for majority-owned public enterprises. For commercial public enterprises, the State in its capacity as owner, must impose targets regarding returns and dividends. To that end, the State must adopt principles of assessment on returns, in line with standard market practices. For public enterprises with public policy objectives, the State in its capacity as owner must impose targets regarding societal and social impact. To this end, the State should adopt principles for the assessment of societal impact in line with standard market practices.

136. Expectations for returns and dividends must be communicated and discussed with the Board. The State recognises the importance of having systematic and sound procedures in in place for the evaluation of Board performance and competence. The State must therefore adopt guidelines for the evaluation of the Board.

137. The State must assess the extent to which any failure in goal attainment is attributable to the Board, or to factors beyond the Board's control according to agreed key performance indicator metrics.The State will, within ninety days from the date on which a Board has been constituted, enter into a written governance agreement with the Board of a public enterprise in relation to:

a) The State's expectations in respect of the public enterprise's scope of business, efficiency and financial performance, and the achievement of set objectives
b) The relevant Minister's obligations in relation to any function conferred or imposed by the establishing law or document of the public enterprise
c) The principles to be followed by the public enterprise for business planning
d) The measures which are necessary to protect the financial soundness of the public enterprise:
    i. Key performance indicators in terms of which the public enterprise's performance will be evaluated
    ii. The structure of the integrated strategic business plan and the annual financial plan
    iii. The principles to be followed at the end of each financial year in respect of any surplus in the accounts of the public enterprise; and
    iv. Any other matter related to the performance of the public enterprise's functions under any law

138. The State should endeavour, within ninety days of appointing a person as a member of a Board, enter into a performance agreement with that person.

139. The Board must in turn, enter into a performance agreement with the CEO. The CEO will in turn, enter into performance agreements with management. Performance agreements must reflect quantitative indicators measuring both financial and non-financial performance.

6.13. COMPETENCE DEVELOPMENT FOR BOARD MEMBERS

140. The State makes provision for Board induction guidelines. To this end, all Board members must undergo the induction before their first Board meeting in order to comprehensively familiarise incoming directors with the public enterprise's operations, its business environment, and sustainability issues relevant to its business.

141. It is incumbent upon the Board to make arrangements for the Board members to gain the requisite competence for discharging their Board duties and put measures in place to raise their level of competence, as and when required. The Board must arrange for competence development for the Board members to reinforce the Board's identified competence requirements going forward.

6.14. RISK MANAGEMENT

142. The Board must, in accordance with international standards such as ISO 31000 as may be periodically adopted by the Namibia Standards Institute, define the public enterprise's risk profile and ensure that the public enterprise has put in place effective internal control procedures, adequate control systems and resources for ensuring legal compliance. This includes effective systems for risk management reflecting the scope and nature of business conducted by the public enterprise.

143. Risk management must serve as an integral component of the integrated strategic business plan to ensure that the Board and the management are fully apprised of the types of risk posed by the various strategies. The Board must ensure that the public enterprise has established governance systems and a risk-management culture aligned with the public enterprise's established risk mitigation strategy.

6.15. THE BOARD'S ROLE IN SUCCESSION PLANNING

144. The State aims to ensure that public enterprises reflect a steady and continued supply of suitably qualified and competent employees to meet the current and future human resources needs of each public enterprise, by cultivating internal talent to ensure leadership, continuity and uninterrupted skills availability, in the public enterprise sector.

145. The Board must adopt a pro-active approach to ensure that succession planning is aligned to the vision and strategic objectives of the public enterprise, by identifying critical, scarce and leadership roles within the public enterprise and prepare a continuous supply of qualified and motivated individuals who are equipped to assume these roles when required, with the purpose of facilitating continuity and sustainability.

6.16. CONFLICT OF INTEREST

146. All directors must act in the best interests of the public enterprise and must be free from conflicts of interest in order to do so. The identification of conflicts requires each individual director to engage, with good conscience, in identifying relationships that do or may give rise to a conflict – either their own or those of other directors. A conflict of interest can, therefore, be regarded as an ethical matter with a legal dimension.

147. A conflict of interest arises when a director or employee's duties or responsibilities to the public enterprise could be affected by some other interest or duty. The other interest or duty may create an incentive for the director to act in a way that may not be in the best interests of the public enterprise. Directors must disclose any relationships and/or matters that give rise to an actual or potential conflict of interest. The Board must obtain annually (or whenever there is a significant change) from each member, a declaration of all interests.

148. Equally, declarations of conflict of interest must be made by each member prior to any Board or committee meeting, which conflicts must appropriately and proactively be managed by the Board or the committee, as the case may be. Exemption from the rule prohibiting directors from voting on a matter in which they have an interest can only be granted by the State as owner.

6.17. DIRECTORS' AND OFFICERS' LIABILITY

149. Various establishing statutes of a public enterprise generally contain a limitation of liability clause which indemnifies Board members as well as employees, including the CEO in respect of anything done or omitted in good faith and not attributable to intent or negligence in the exercise of a power or performance of a duty or function, under or by virtue of a given law, or in respect of anything that may result therefrom.

150. The State does not provide directors and officers with any indemnity against personal liabilities incurred while performing, or failing to perform, their duties. Directors and officers are personally responsible for many duties and obligations imposed by legislation, and their personal assets and professional standing are at risk. Individual liability may arise from the actions of fellow directors on the Board. The cost of legal representation, both for themselves and where a claimant's costs are awarded against them, can be substantial. The greater part of this liability is imposed by the Companies Act and under common law.

6.18. 'NO SURPRISES' PRINCIPLE

151. The State expects Boards to be sensitive to the interests of the State. Boards must be mindful that Ministers are accountable to Parliament, Cabinet and the wider public, and that the affairs of public enterprises, both positive and negative, can impact the responsible Minister. Boards must therefore keep the State as owner, through the Minister, informed of both potentially contentious issues and issues that may have a significant impact on the current and ongoing operations of public enterprises. The Board's obligation to inform the Minister will only arise where the information can be lawfully disclosed and where the independence of the Board is not compromised.

7. PART IV: FINANCIAL, SOCIAL AND ENVIRONMENTAL PERFORMANCE AND SUSTAINABILITY

152. As a professional and active owner, the State must ensure that public enterprises are profitable and that they maintain financial, social and environmental sustainability. For this purpose, public enterprises must be transparent and open regarding its affairs insofar as genuinely commercially sensitive information is not jeopardised.

7.1. FINANCING DECISIONS

153. Public enterprises may seek to raise financing to ensure maximum return on the investment of the State as shareholder. Public enterprises may achieve this through options that include debt, retained earnings, asset-based financing, shareholder backed guarantees, preference shares and common equity. To minimise risk exposure, the borrowing plans and strategies of public enterprises must be those that are reflected in their integrated strategic business plan, and their annual business and financial plans and budget.

154. The levels of financing (gearing) associated with a business are often an important factor in assessing the risk and return to the shareholder. Thus, public enterprises must exercise responsible sourcing of capital. Gearing ratios vary significantly depending on the industry, and even between enterprises within an industry, owing to varying capital intensity levels. Thus, a uniform approach is not suitable. The capital structure of a public enterprise must therefore be appropriate, given the objective/s and the situation of the particular enterprise.

155. Return targets are a necessary means of monitoring and evaluating actual value growth in relation to shareholder expectations. If the State is required to finance a commercial public enterprise, a target rate of return (ideally greater than or equal to the cost of capital) should be calculated based on the External Rate of Return for non-listed entities and the Capital Asset Pricing Model (CAPM) for listed entities. Although the CAPM has weaknesses, it is widely used in practice, in the absence of a better alternative. Because of the CAPM's shortcomings, however, sound judgement must be exercised when calculating the target rate of return.

156. The State must develop financial management regulations which set target rates of return for commercial public enterprises. Return targets are not set for public enterprises that are not based on commercial operations, or which are dependent on State assistance for the continuation of their operations. For these companies, return requirements will be replaced by other targets, such as efficiency targets, or targets related to public policy objectives.

7.2. INVESTMENT DECISIONS

157. Investment involves making an outlay of something of economic value, usually cash, at a certain point in time, which is expected to yield economic benefits to the investor at some time in the future. Where appropriate, the Board of each public enterprise with excess funds must establish an investment committee that is the primary authority for approving the Investment Policy of the public enterprise. The investment committee is responsible for establishing and articulating the public enterprise's direction with regard to responsible investment. The Investment Policy should thus provide for the adoption of recognised, responsible investment principles, practices and codes.

158. The Investment Policy must be approved by the shareholder ministry in consultation with the Ministry of Finance. All investment decisions must be consistent with the objectives of the particular public enterprise in question, as laid out in its approved Investment Policy. For commercial public enterprises, ensuring the maximum return on the State's investment must be the paramount investment objective.

159. The investment committee must delegate to management, if in place, or to an outsourced service provider if investment decisions and activities are outsourced, the responsibility to implement and execute its policy on responsible investments. The responsible persons or service provider must provide the investment committee with detailed information about asset allocation, investment performance, future investment strategies, associated risks and other matters of interest.

160. Given the importance of investment decisions, it is essential that proper screening of investments takes place. Funds must, therefore, be invested with due care, skill, prudence and diligence. Investment funds must be diversified to minimise the risk of loss and to maximise shareholder returns.

7.3. FINANCIAL RATIOS

161. Financial ratios provide a quick, relatively simple means of assessing the financial health of the business. Each public enterprise should measure the various profitability, liquidity and solvency ratios, based on industry thresholds. A uniform approach is not suitable, because the types of business conducted by the various public enterprises vary. As a result, a direct comparison of financial ratios between different types of business may be misleading.

162. Therefore, each public enterprise should establish its own ratios target, informed by the ratio targets of industry norms and similar enterprises. Where financial analysis indicates financial distress within a public enterprise, the Board and management must put in place appropriate measures to ensure that the public enterprise remains a going concern.

7.4. RETURNS AND DIVIDEND DECISIONS

163. The State shall seek to promote a dividend policy that is designed to foster a balance between long-term value creation by public enterprises and the State's objectives. Each public enterprise must adopt a dividend policy that is approved by the Board and the Minister. The dividend policy must indicate the type of dividend policy pursued by the public enterprise, whether a regular dividend policy, stable dividend policy, irregular dividend policy, or no dividend policy.

164. The State may request a special dividend from its public enterprises, beyond the established dividend policy. However, the dividend policy or special dividend should always maintain a balance between shareholder returns, retained earnings, liquidity and cash flow. Public enterprises shall endeavour to honour their obligation to pay their annual dividends to the State, after due consideration of earning expectations, current and future market prospects, and current and future investment opportunities. In the event of the failure of a public enterprise to honour its obligation to pay the agreed dividends, a fully supported written explanation must be submitted to the shareholder.

7.5. REPORTING

165. The State expects public enterprises to adopt integrated reporting as a means of holistic and integrated representation of the public enterprise's performance in terms of finances, sustainability and social and environmental impacts.

166. All public enterprises are required to prepare an integrated report that conveys adequate information about their social, economic and environmental impact on the communities in which they operate. By issuing integrated reports, a public enterprise will increase the trust and confidence of its stakeholders and the legitimacy of its operations.

167. In contrast to compliance-based reporting, there can be no prescribed template for integrated reporting - each public enterprise should produce an Integrated Report based on their unique model. The only exception is audited financial statements that must be prepared according to the stipulations of recognised accounting standards appropriate for the public enterprise. Annual financial statements must be audited by an independent and accredited body and uploaded onto the financial monitoring system, within the stipulated timeframe, as per the public enterprises enabling legislation or other governance frameworks, in the case of listed entities.

168. In addition to external audits, each public enterprise should provide independent assurance to monitor and improve the effectiveness of the public enterprise's risk management and governance protocols by ensuring that internal controls are identified for operational risks, and that they are adequate and are complied with.

169. Each public enterprise is required to hold an annual general meeting as per the stipulations of its enabling legislation or governance framework, in the case of listed entities. It is here where annual reports are presented and adopted. It is also where shareholder decisions and owner's instructions are issued. The Board must, as soon as possible, but in any case not later than six months after the end of each financial year of the public enterprise, submit an annual report on the operations of the public enterprise in that year to the relevant Minister, and simultaneously to the Minister in the case of a non-commercial public enterprise or an extra-budgetary fund.

170. For the State to make informed decisions on key matters, it should ensure that it receives all necessary and relevant information in a timely manner. The State may from time to time issue reporting requirements that each public enterprise should adhere to. This will be communicated in writing and timeous adherence is mandatory. The reporting systems should give the State a true picture of the public enterprise's performance or financial situation, enabling it to react on time and to be selective in its intervention.

7.6. CORPORATE SOCIAL RESPONSIBILITY

171. Corporate Social Responsibility (CSR) is a concept whereby companies incorporate social and environmental concerns in their business operations and their interactions with their stakeholders voluntarily, thus making a positive contribution to wider society. This is done over and above complying with existing laws and regulations. Such attitude requires that companies assume broad responsibilities, which notably include environmental impacts, as well as socially cohesive and ethical conduct.

172. Each public enterprise, in consultation with the shareholder ministry, must develop a CSR policy aimed at defining the limits of their activities, and also clearly defining their ethical boundaries. A public enterprise's reputation is increasingly affected by its ability to maintain high ethical and environmental standards, and to demonstrate social responsibility. The State has both general and more specific expectations concerning public enterprises with regard to CSR. Public enterprises are also encouraged to look beyond charitable donations in realising their CSR objectives.

173. Public enterprises should embrace a shared future with their identified stakeholders, and be sensitive to the impact of their corporate activities on all of their internal and external stakeholders. Public enterprises should endeavour to directly respond to, rather than give peripheral consideration to, the legitimate interests and expectations of their stakeholders.

8. PART V: CORRUPT PRACTICES WITHIN PUBLIC ENTERPRISES

8.1. ZERO-TOLERANCE FOR CORRUPT PRACTICES

174. As owner, the State maintains a policy of zero-tolerance for corrupt practices. The State must ensure that public enterprises pursue the realisation of their commercial and public policy objectives to benefit the public exclusively. Corruption and other irregular practices cause public enterprises to suffer financial loss, or brand and reputational damage, as well as distorting markets, eroding public trust, and causing the degradation of domestic and foreign investor confidence. All persons responsible for public enterprises, including officials from the Ministry, the Boards of Directors, management and employees of a public enterprise, must at all times act honestly, responsibly, with care and with integrity.

175. The State will particularly aim to ensure that public enterprises are owned, managed and governed in a manner that prevents incidences of corruption and other irregular practices including fraud, bribery and unethical conduct within public enterprises. Where they arise, these must be addressed urgently and effectively.

8.2. RESPONSIBILITY FOR ADDRESSING CORRUPT PRACTICES

176. The Board, management and staff of public enterprises must ensure that there is strict compliance with Namibian laws aimed at curbing corrupt practices, including the Anti-Corruption Act, as well as any relevant laws of any other jurisdiction where the public enterprise is engaging in business.

177. As the case may be, the shareholder ministry, and the Board or management of a public enterprise must ensure that any financial loss a public enterprise suffers, as a result of corrupt or other irregular practices are recovered, using the available legal mechanisms.

178. For this purpose, transparency and public disclosure are key to ensure effectiveness. Such measures include internal controls and audits, as well as external audits. The State as owner must also ensure that public enterprise Boards, management and staff are held accountable for corrupt and other irregular practices through criminal or civil liability, or other appropriate sanctions.

179. The Minister may where appropriate conduct a special investigation under Chapter 4 of PEGA for the purpose of addressing corruption and other irregular practices. Public enterprises must not be used as instruments for financing or otherwise benefiting politically partisan activities. Financial and other contributions to political organisations are therefore strictly prohibited.

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