



# REPUBLIC OF THE GAMBIA

National Assembly, New Assembly Building, Reverend Pye Lane  
Banjul, The Gambia



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MC 14/120/02/ (124)

28<sup>th</sup> April, 2023

The Solicitor General & Legal Secretary  
Ministry of Justice  
Marina Parade  
Banjul

Permanent Secretary ✓  
Ministry of Finance and Economic Affairs  
The Quadrangles  
Banjul

The Director General  
Gambia National Library Services  
Banjul

The Managing Director  
GPPC  
Mamadi Manjang Highway  
Kanifing

The Judiciary Secretary  
Judiciary Service Commission  
High Court Building  
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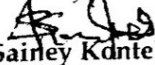
**COPY OF ACT ASSENTED TO BY HIS EXCELLENCY**  
**THE PRESIDENT OF THE REPUBLIC**

I forward herewith to your good Offices, a copy of the under-mentioned Act passed by the National Assembly during the First Ordinary Session in the 2023 Legislative Year, and assented to by His Excellency, the President of the Republic.

**State-Owned Enterprises Act, 2023**  
**Act No. 05 of 2023; passed on the 30<sup>th</sup> March, 2023**

It is for your information and necessary action.

Thank you.

  
Sainey Konteh  
Principal Table Clerk  
For: Clerk of the National Assembly

MF/c

Cc: Chief of Staff - Office of The President  
Parliamentary Counsel - MoJ  
Files

E-mail: [table@leg.gam.gov.gm](mailto:table@leg.gam.gov.gm); [nationalassembly32@gmail.com](mailto:nationalassembly32@gmail.com); [clerk@assembly.gov.gm](mailto:clerk@assembly.gov.gm); [www.assembly.gov.gm](http://www.assembly.gov.gm)

MINISTRY OF FINANCE  
AND ECONOMIC AFFAIRS  
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State-owned Enterprises Act, 2023



THE GAMBIA

NO. 05 OF 2023

Assented to by The President,

this 25<sup>th</sup> ay of April, 2023.



President

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REPUBLIC OF THE GAMBIA

**STATE-OWNED ENTERPRISES  
ACT, 2023**

## **STATE-OWNED ENTERPRISES ACT, 2023**

### **ARRANGEMENT OF SECTIONS**

#### **Section**

#### **PART I – PRELIMINARY**

1. Short title
2. Interpretation
3. Application

#### **PART II – ESTABLISHMENT AND COMPOSITION OF THE STATE-OWNED ENTERPRISES COMMISSION**

4. Establishment of the State-owned enterprises Commission
5. Composition of the Commission
6. Appointment of members of the Commission
7. Tenure of office of members
8. Disqualifications for holding office
9. Removal of members
10. Meetings of the Commission
11. Salaries and benefits
12. Conflict of interest

#### **PART III – FUNCTIONS AND POWERS OF THE STATE-OWNED ENTERPRISES COMMISSION**

13. Functions of the Commission
14. Powers of the Commission
15. Units of the Commission
16. Secretary and staff of the Commission
17. Staff Regulations
18. Consultants
19. Preservation of secrecy

#### **PART IV – ESTABLISHMENT, COMPOSITION AND FUNCTIONS STATE-OWNED ENTERPRISES**

20. Establishment of a State-owned enterprises
21. Composition
22. Head office
23. Branch office
24. Seal
25. Primary objectives of State-owned enterprises
26. Functions
27. Public service obligations

28. Powers of State-owned enterprises
29. Transfer of Government property and certain contracts and liabilities to a State-owned enterprises
30. Disposal of profits of the State-owned enterprises
31. Acquisition of any land or interest in land for State-owned enterprises
32. Liability transferred to Government
33. Memorandum of understanding

## **PART V – BOARD OF DIRECTORS OF THE STATE-OWNED ENTERPRISES**

34. Board of Directors
35. Composition
36. Candidates qualifications
37. Qualifications of a Director
38. Disqualifications for appointment to a Board
39. Term of office
40. Board rotation
41. Resignation
42. Duties of a Director
43. Removal from office
44. Remuneration and benefits
45. Vacancy
46. Chairperson and Vice-Chairperson
47. Secretary
48. Meetings of Board
49. Casting vote
50. Quorum
51. Meetings not open to the public
52. Improper conduct
53. Conflict of interest
54. Delegation of Board powers
55. By-laws and resolutions
56. Formal requirements
57. Saving
58. Committees
59. Vacancies in committees
60. Composition
61. Functions, etc.
62. Chief Executive Officer
63. Duties
64. Advisor to Board
65. Absence of chief executive officer from meetings
66. Employees
67. Officers
68. Other persons

## **PART VI - FINANCIAL MATTERS**

69. Funds of the Commission
70. Annual estimates, account and audit
71. Quarterly report
72. Annual report
73. Financial year
74. Report to National Assembly
75. Asset management plan
76. Disposal, lease or pledge of major assets
77. Request for state support
78. Recapitalisation
79. Statement of corporate intent
80. Business plan
81. Performance Contract
82. Audit of state-owned enterprise
83. Estimates, accounts and audit
84. Approval of external borrowing
85. Accounting records
86. Place and duration of records
87. Directors' duty to cause financial statement to be prepared
88. Form and content of financial statement
89. Restriction on the granting of loans, etc., to directors
90. Directors' report
91. Signing of financial statements and documents to be annexed thereto
92. Publication by a State-owned enterprise of full individual financial statements
93. Reporting of financial plan
94. Legal proceedings against the Government
95. Protection from personal liability
96. State-owned enterprise not relieved of liability
97. Collection of personal information
98. Disclosure of personal information
99. Permission before disclosure
100. Copyright
101. Liability of the State-owned enterprise limited to its capital
102. Pension scheme and other benefits for staff
103. Reorganisation of state-owned enterprises
104. Dissolution and liquidation of state-owned enterprises

## **PART VII – PROHIBITED ACTIVITIES**

105. Multiple directorships
106. Director prohibited from receiving bribes, gifts, etc.
107. Destruction, etc.
108. Contributing to economic adversity of state-owned enterprise
109. Failure to execute contract, etc.
110. Failure to supervise performance of contract
111. Prohibited activities by chief executive officer, director, etc.

**PART VIII - MISCELLANEOUS**

- 112. General Penalty
- 113. Penalty for corporation
- 114. Penalty for Directors, officers, employees and agents
- 115. Determination of appropriate punishment, etc.
- 116. Sanctions
- 117. Regulations
- 118. Classes
- 119. Transition
- 120. Savings

## STATE-OWNED ENTERPRISES ACT, 2023

### A BILL ENTITLED

An Act to establish the State Owned Enterprise Regulatory Commission, to enable the establishment of state owned enterprises, to make provision for the efficient governance of state owned enterprises and the monitoring of their performances; to make provision for the restructuring of state owned enterprises; to provide for the appointment of boards of state owned enterprises and to define their powers, duties and functions; and to make provision for connected matters

[            ]

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

### PART I – PRELIMINARY

#### 1. Short title and commencement

(1) This Act may be cited as the State-Owned Enterprises Act, 2023 and shall come into operation on such date as the Minister responsible for Finance, by Order published in the Gazette, shall determine.

#### 2. Interpretation

In this Act unless the context otherwise requires –

“**Board**” means the Board of Directors of a state-owned enterprise;

“**Commission**” means the state-owned enterprises Commission established under Part II, pursuant to section 175 (4) of the Constitution;

“**by-laws**” means by-laws of a state-owned enterprise;

“**Constitution**” means the Constitution of the Republic of the Gambia;



“**Government**” means the Government of the Republic of The Gambia;

“**Minister**” in relation to a state-owned enterprise, means the line Minister for the time being responsible for that state-owned enterprise; and “**Ministry**” shall be construed accordingly;

“**memorandum of understanding**” means a memorandum of understanding entered into by the Ministry, the Ministry responsible for finance and a state-owned enterprise under Part IV;

“**officer**” means a senior employee of a state-owned enterprise, and includes such other person as may be defined as an officer in the articles of association of a state-owned enterprise formed and registered under the Companies Act;

“**prescribed**” means prescribed by Regulations made by the Minister responsible for finance under this Act;

“**President**” means the President of the Republic of The Gambia;

“**State-owned enterprise**” or “**public enterprise**” means a body corporate or other body or institution, wholly owned or controlled by the Government, as defined in section 175 (1) of the Constitution.

### **3. Application**

(1) This Act applies to a commercial state-owned enterprise established –

- (a) prior to the coming into force of this Act; and
- (b) after the coming into force of this Act.

(2) In this section, “**commercial state-owned enterprise**” means a body corporate or other body or institution, wholly owned or controlled by the Government, established to carry out commercial activities.

## **PART II – ESTABLISHMENT AND COMPOSITION OF THE STATE-OWNED ENTERPRISES COMMISSION**

### **4. Establishment of the state-owned enterprises Commission**

(1) There is established by this Act, the state-owned enterprises Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may –

- (a) sue or be sued in its corporate name;
- (b) enter into contracts and acquire, hold and dispose of property; and
- (c) do such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

(3) The common seal of the Commission shall be authenticated by the signature of the Chairperson, or such other member of the Commission as may be authorised by the Chairperson in writing to sign on behalf of the Commission.

(4) A document bearing the imprint of the common seal of the Commission is deemed to be properly sealed, unless the contrary is proved.

## **5. Composition of the Commission**

Subject to section 8, the membership of the Commission shall consist of –

- (a) a Chairperson;
- (b) a Vice Chairperson, who shall be chosen by the members from amongst their number; and
- (c) four other eminent Gambians, including at least two women.

## **6. Appointment of members of the Commission**

(1) The President shall appoint the members of the Commission after consultation with the Public Service Commission.

(2) The President shall appoint a person with integrity, competence and maturity of judgment and has at least at least fifteen years' experience with knowledge in industry, commerce, law, finance or economics as member of the Commission.

(3) The Commission may co-opt any person to assist in carrying out its functions, if the Commission is satisfied that the person possesses expertise in relation to State-owned enterprises.

## **7. Tenure of office of members**

A member of the Commission shall hold office for three years and is eligible for re-appointment for one further term.

## **8. Disqualifications for holding office**

(1) A person shall not hold office as a member of the Commission or shall cease to be a member of the Commission if he or she –

- (a) is adjudged to be a person of unsound mind;
- (b) has been convicted of an offence involving dishonesty, fraud or violence;
- (c) has been dismissed from the public service or private sector for misconduct;
- (d) has had his or her appointment terminated in circumstances amounting to dishonesty;
- (e) in the case of a person who has professional qualification, he or she is disqualified or suspended from practicing his or her profession by the order of a competent authority made in respect of him or her personally;
- (f) is a member of the Cabinet, the National Assembly, a disciplined force, a local government authority or occupies any public office; or
- (g) is the holder of a political office or an officer of a political party.

## **9. Vacation of office**

(1) The President shall only remove a member of the Commission from office –

- (a) for inability to perform the functions of his or her office whether arising from infirmity of mind or body or from any other cause;
- (b) if any circumstance arises which would have disqualified him or her from appointment to the commission; or
- (c) for misconduct.

- (2) A member of the Commission may resign his or her appointment by notice in writing, addressed to the President and that member shall, on the date of the receipt of the notice by the President, cease to be a member of the Commission.

#### **10. Meetings of the Commission**

- (1) The Chairperson of the Commission shall decide when and where to hold meetings.

- (2) The Commission shall hold meetings at least quarterly.

- (3) Any Commissioner may call up an extraordinary meeting provided three (3) days written notice is given to each member of the Commission.

- (4) At a meeting of the Commission-

- (a) the Chairperson or, in the absence of the Chairperson, the Vice Chairperson may preside;
- (b) the quorum for meetings shall be four members including the Chairperson or the Vice-Chairperson;
- (c) the Commission shall make decisions by simple majority and the Chairperson or Vice chairperson presiding shall have a casting vote.

- (5) A resolution of the Commission contained in writing and signed by all members of the Commission constitutes a valid decision of the Commission as if it had been passed at a meeting of the Commission.

- (6) Whenever a matter is to be discussed or considered at a meeting of the Commission in relation to a State-owned enterprise or the board of a state-owned enterprise, the Commission shall invite the Minister to attend the meeting.

- (7) The Minister shall provide information relevant to the subject matter and may present a paper dealing with policy issues at the meeting.

- (8) The Commission -

- (a) may regulate its own proceedings; and
- (b) shall cause minutes to be kept of proceedings of meetings of the Commission.

## **11. Salaries and benefits**

There shall be paid to every member of the Commission such salary, allowances and benefits as may be recommended by the Minister responsible for finance and approved by the National Assembly.

## **12. Conflict of interest**

(1) A member of the Commission who directly or indirectly has an interest in any state-owned enterprise, the affairs of which are being deliberated upon by the Commission, or is interested in any contract made or proposed to be made by the Commission shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A disclosure under this section shall be recorded in the minutes of meetings of the Commission and the member shall-

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

(3) Notwithstanding the generality of sub-section (1), a conflict of interest includes such activity as may be prescribed.

## **PART III- FUNCTIONS AND POWERS OF THE STATE OWNED ENTERPRISE COMMISSION**

### **13. Functions of the Commission**

(1) The Commission shall-

- (a) monitor and provide oversight of the primary objectives, statements of corporate intent, business plans, memorandums of understanding, performance contracts including those provisions relating to public service obligations and asset management plans of state-owned enterprises;
- (b) where applicable, oversee the reorganization, dissolution and liquidation of State-owned enterprises in accordance with section 104;

(c) coordinate and monitor the operations of state-owned enterprises, ensuring alignment and consistency with the national development policies and programs and-

(i) review the strategy and produce and publish annual performance report of all state-owned enterprises, and

(ii) evaluate and provide recommendations to Cabinet regarding the performance and determine the rationale and relevance of state-owned enterprises, to ascertain whether such entities should be reorganized, merged, streamlined, abolished or privatized, in consultation with the Ministry, department or agency to which a state-owned enterprise relates; and

(d) support the President and the Public Service Commission in appointing qualified members of Board of Directors of state-owned enterprises by vetting applications of candidates for appointment as members of those Boards in accordance with the procedure prescribed in the Act.

(2) The Commission shall in carrying out its functions under subsection (1) -

(a) establish generally accepted common principles of corporate governance and good practice governing state-owned enterprises;

(b) determine the criteria for the performance measurement and evaluation of state-owned enterprises, and develop appropriate means for monitoring their performance;

(c) lay down directives in relation to any performance agreements to be entered into between Ministers and the individual members of a Board and between the Board and its chief executive officer and other senior management staff;

(d) analyse the approved annual budget of a State-owned enterprise and advise any relevant authority as to its adequacy or suitability in light of the objects and functions of the State-owned enterprise;

- (e) monitor the implementation of all the measures enumerated in approved annual budgets of state-owned enterprise;
- (f) monitor and identify factors inhibiting the realization of set revenue targets of any state-owned enterprise;
- (g) promote efficiency, monetary stability and a sound financial system in the management of state-owned enterprises;
- (h) come up with common policy frameworks for the operations of state-owned enterprises, including policy on issues relating to human resources, remuneration, assets and finance so as to ensure sound and efficient management of state-owned enterprises;
- (i) arrange and conduct investigation or inspection into the affairs of a State-owned enterprise where the interest of the public so demand;
- (j) assess the report on any project being carried out by a State-owned enterprise and confirm that funds released for such projects are judiciously utilized;
- (k) give a situation report of all its activities annually to the National Assembly and bi-annually to the Cabinet;
- (l) ensure that a person who defaults in any matter referred to in this section or any other matter related to it is brought before the appropriate authority;
- (m) receive the annual reports and accounts of all state-owned enterprises and make recommendations on them to Cabinet; and
- (n) carry out such other activities connected with its other functions as may be directed, from time to time, by Cabinet.

(3) Without limiting the generality of sub-section (1), the Commission shall ensure that each State-owned enterprise operates in a manner that-

- (a) is efficient and profitable;
- (b) is in harmony with the overall economic development in The Gambia;

- (c) promotes and protects the public interest;
- (d) provides quality service and goods to the public; and
- (e) is independent but maintains functional linkages with government and other businesses in The Gambia and abroad.

#### **14. Powers of the Commission**

(1) The Commission may-

- (a) invite any Director or officer of a State-owned enterprise to appear before it;
- (b) call for memoranda from any State-owned enterprise or any Director or officer of the state-owned enterprise;
- (c) ask for and receive from a state-owned enterprise, reports, audited accounts or such other information relating to the State-owned enterprise as may be required for the purposes of the Commission and in whatever manner it deems fit;
- (d) monitor any matter to the extent that it affects the functions of the Commission;
- (e) enter and inspect premises, projects and such other places as may be necessary for the purposes of carrying out its functions under this Act;
- (f) designate any public entity as a commercial State-owned enterprise; and
- (g) do such other things as are necessary and expedient for the full discharge of any of its functions under this Act.

(2) Nothing in this section shall affect the powers, duties or jurisdiction conferred on anybody established under any other Act or law for the time being in force for the smooth and effective performance of that body.



### **15. Units of the Commission**

- (1) The Commission may create units to carry out on behalf of the Commission any of its functions under this Act.
- (2) A unit created by the Commission under this section shall consist of such number of persons as may be determined by the Commission.

### **16. Executive Secretary and Staff of the Commission**

- (1) There shall be an Executive Secretary who shall be the administrative head of the commission.
- (2) The Executive Secretary shall be appointed by the President after consultation with the Public Service Commission and the Commission.
- (3) The Executive Secretary shall be responsible for-
  - (a) keeping proper records of the proceedings of the Commission;
  - (b) the day-to-day administration of the Commission; and
  - (c) the direction and control of all other employees of the Commission.
- (4) The Commission may appoint such other employees as it considers necessary for the efficient performance of its functions under this Act and shall have power to pay persons so employed such remuneration, including allowances, as the Commission, with the approval of Cabinet, may determine.

### **17. Staff Regulations**

- (1) The Commission shall make staff regulations generally for the conditions of service of the employees of the Commission.
- (2) The regulations made may provide for-
  - (a) the appointment, promotion, entitlements and discipline of employees of the Commission;
  - (b) appeals by employees against disciplinary measures; and

- (c) such other matters as may lawfully be provided for under this Act.

### **18. Consultants**

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

(2) The Commission shall engage a consultant only after selection of a suitable person through a process of competitive tender conducted in a manner determined by the Commission or in such manner as may be prescribed by a Regulations.

### **19. Preservation of secrecy**

(1) A person shall not publish, communicate or disclose any information relating to –

- (a) the affairs of any state-owned enterprise or its Board, or the Commission; or
- (b) a person being considered or recommended as a candidate for appointment to a state-owned enterprise or its Board.

(2) Sub-section (1) applies to information which has come to a person's knowledge –

- (a) in the performance of any function in connection with the functions of the Commission; or
- (b) as a result of such person's attendance at a meeting of the Commission or a committee of the Commission.

(3) Subsection (1) shall not apply to information disclosed –

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

## **PART IV – ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF STATE-OWNED ENTERPRISES**

### **20. Establishment of a state-owned enterprises**

A State Owned Enterprise may be established in accordance with this Act.

### **21. Composition**

A state-owned enterprise shall be comprised of the members of its Board of Directors.

### **22. Head office**

The head office or principal place of business of a state-owned enterprise shall be in The Gambia.

### **23. Branch offices**

A state-owned enterprise may establish branch offices in such manner as may be prescribed.

### **24. Common seal**

(1) The state-owned enterprise shall have a common seal which shall be in the custody of its Chief Executive Officer.

(2) The common seal of the state-owned enterprise may be altered in such manner as may be determined by the board.

### **25. Primary objectives of state-owned enterprise**

- (1) The primary objectives of a state-owned enterprise shall be to –
- (a) provide quality public service delivery that is accessible to all citizens in an effective and efficient manner;
  - (b) protect and promote the public interest;
  - (c) be a successful business and, to this end, to be at least as profitable and efficient as comparable businesses not owned by Government; and
  - (d) maximize the net worth of the public investment in the state-owned enterprise.

## **26. Functions**

(1) The functions of a state-owned enterprise are, where it is established –

- (a) by statute, those objects and functions set out in its statute;
- (b) as a public enterprise by Incorporation Order under section 14 of the Public Enterprises Act, those objects and functions set out in its Incorporation Order; and

[Cap.87:01]

- (c) as a corporate body registered under the Companies Act, those objects and functions set out in its Memorandum of Association.

(2) A state-owned enterprise shall conduct its business and operations with a view to achieving its primary objectives.

## **27. Public service obligations**

(1) The Commission may, with the approval of Cabinet, require a state-owned enterprise to provide a public service that may not be in line with its financial objectives provided that such public service falls within the mandate of that state-owned enterprise.

(2) Where the Commission requires a state-owned enterprise to provide a public service as provided for in subsection (1), the Commission, and the State-owned enterprise shall have a written memorandum of understanding that shall-

- (a) comply with any law that applies to Government contracts, the Government's budgetary and procurement process;
- (b) set out the nature and quantity of the goods or services or both;
- (c) set out the total cost to the State-owned enterprise for the goods or services and a margin to permit the State-owned enterprise to meet its targeted return on equity as set by the board; and
- (d) contain such other matters as may be prescribed.

(3) Where the user fees charged by the State-owned enterprise are insufficient to cover the full cost of the goods or services, the Government shall pay the balance of the total price to the State-owned enterprise.

## **28. Powers of State-owned enterprise**

(1) A state-owned enterprise may -

- (a) acquire, hold, hire, lease, improve, manage, develop, alter, extend, equip, furnish, repair, maintain or dispose of real or personal property;
- (b) enter into any covenants or agreements in respect of its objectives or functions;
- (c) employ any person with the required experience or expertise to assist it in the performance of its objectives, functions and powers;
- (d) exercise any functions or rights and undertake to perform any act in respect of or in connection with any asset as if it were a natural person;
- (e) subject to the approval of the Commission and in consultation with the Minister responsible for Finance, borrow money or secure the payment of any sum of money, including money for a mortgage of any of its properties, for its purposes;
- (f) establish and operate bank accounts consistent with the performance of its functions and powers;
- (g) subject to the approval of the Commission and in consultation with the Minister responsible for finance, where the amount is greater than a prescribed amount, lend money or enter into any form of investment for its purposes; and
- (h) do all such other things as are incidental or conducive to the exercise of its powers.

**29. Transfer of Government property and certain contracts and liabilities to a state-owned enterprise**

(1) The Minister responsible for finance may in consultation with the Commission and subject to the provisions of subsection (3), by Order published in the Gazette, transfer to a state-owned enterprise-

- (a) any movable or immovable property of the Government required for the purposes of the state-owned enterprise; and
- (b) any contracts and liabilities of the Government connected with such purposed issue.

(2) Immovable property of the Government shall not be transferred to a state-owned enterprise under this section without the consent of the Minister responsible for lands is for the time being assigned.

(3) On publication of an Order under this section in the Gazette –

- (a) the properties specified in that Order shall vest in and be the properties of the State-owned enterprise;
- (b) the contracts specified in that Order shall be deemed to be the contracts of the State-owned enterprise and all subsisting rights and obligations of the Government under such contracts shall be deemed to be rights and obligations of the State-owned enterprise; and
- (c) the liabilities specified in that Order shall be deemed to be the liabilities of the State-owned enterprise.

**30. Disposal of profits of a State-owned enterprise**

(1) Out of the profits of a state-owned enterprise in each year, the Board shall, pay to general or specific reserves of the State-owned enterprise such sums of money as may be determined by the Board and the balance, if any, of its profits shall, with the approval of the Commission and the Minister responsible for finance, be paid into the Consolidated Revenue Fund of The Gambia.

(2) The Government through the Ministry responsible for finance shall formulate a dividend policy in consultation with the Commission.

### **31. Acquisition of any land or interest in land for state-owned enterprise**

A State-owned enterprise may through the Minister responsible for lands –

- (a) acquire any land, or any interest in any land, for any legitimate purpose of the State-owned enterprise; and
- (b) **acquire** a land or the interest in any land **which is** deemed to be required for a public purpose and acquired under the law for the time being making provision for the compulsory acquisition of such land.

### **32. Liability transferred to Government**

Where it is proposed that the liability of a state-owned enterprise be transferred to Government, the transfer shall take place in such manner and in accordance to such process as may be prescribed.

### **33. Memorandum of understanding**

(1) A state-owned enterprise shall enter into a memorandum of understanding with the Ministry concerned and the Ministry responsible for finance that shall set out-

- (a) the rights and obligations of the State-owned enterprise and the Government, and shall include those matters as are prescribed, performance standards for the State-owned enterprise; and
- (b) any agreement with respect to any public service obligations and may include penalties or sanctions for the State-owned enterprise if it fails to meet obligations set out in the memorandum.

(2) A memorandum of understanding under this section shall be for a maximum period of three years and shall be reviewed by the State-owned enterprise and Commission annually.

(3) The memorandum of understanding shall be signed by the Board on behalf of the State-owned enterprise and the Minister responsible for finance on behalf of the Government and the Minister.

## **PART V- BOARD OF DIRECTORS OF THE STATE-OWNED ENTERPRISE**

### **34. Board of Directors**

(1) The business and affairs of the state-owned enterprise shall be managed by its Board of Directors.

(2) The Commission, in consultation with the Public Service Commission, shall establish a database of competent and qualified persons to sit on the Board of Directors of state-owned enterprises.

(3) The President, in consultation with the Public Service Commission, shall appoint members of the Board of Directors of a state-owned enterprise from the database or otherwise.

### **35. Composition**

The Board of Directors shall be comprised of the following persons, at least three of whom shall be women-

- (a) the chief executive officer;
- (b) the Permanent Secretary of the Ministry;
- (c) the Permanent Secretary of the Ministry responsible for finance;
- (d) four persons appointed by the President in consultation with the Public Service Commission upon the recommendation of the Commission in accordance with section 36.

### **36. Vetting process for appointment of Boards of Directors**

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

- (a) the Board of the State-owned enterprise identifies the skill gap on its board and advises the Commission of the skills, knowledge and experience that should be possessed by a successful candidate to address that skill gap,
- (b) the Commission commences a selection process to identify persons with the appropriate set of skills, knowledge and experience to meet the skills gap identified,



- (c) the Commission causes advertisements to be run in local media and the Commission searches its own database,
- (d) the Commission undertakes a selection process to identify the candidate with the closest fit to the skill set identified by the Board,
- (e) the President on the recommendation of the Commission and Public Service Commission makes an appointment of a candidate with the skills closest to the skills, knowledge and experience identified by the Board, and
- (f) the Commission publishes a notice of the appointment in a local newspaper together with the skill set identified by the Board.

### **37. Qualifications of a Director**

A person shall qualify to serve as a Director of a Board of a State-owned enterprise if he or she has -

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

### **38. Disqualifications for appointment to a Board**

(1) A person is not eligible to be appointed to a Board if he or she-

- (a) is a member of the National Assembly;
- (b) is the holder of a political office or an officer of a political party;
- (c) is an employee of the Commission;
- (d) except for the chief executive officer, is an employee of the State-owned enterprise to which the person is being appointed
- (e) has been convicted of an offence involving fraud, dishonesty or violence;

- (f) is of unsound mind;
- (g) is an undischarged bankrupt; or
- (h) is disqualified or suspended, otherwise than at his or her request, from practising his or her profession by the order of a competent authority made in respect of him or her personally.

### **39. Term of office**

Subject to section 35, a Director shall hold office for a term not exceeding three years and may be reappointed for a further term.

### **40. Board rotation**

Except for the Chief Executive Officer, the representative of the Ministry responsible for finance and the representative of the Ministry, other Board Members shall be eligible for renewal in order to provide continuity within the Board.

### **41. Resignation**

(1) A member of a Board may resign from his or her appointment by notice in writing under his or her hand, addressed to the President.

(2) If a Director resigns from office before the expiration of his or her term, he or she shall continue as a Director until the earlier of -

- (a) the appointment of another Director in his or her place for the remainder of the term; and
- (b) the expiration of forty-five days after the Director submitted his or her resignation to the President,

provided that such resignation shall take effect from the date it is received by the President, if the grounds for resignation fall within the restrictions provided for under section 38.

## 42. Duties of a Director

(1) In addition to any other duties that a Director may have in law, a Director shall –

- (a) act at all times and at the best interest of the State-owned enterprise as a whole so as to preserve its assets, further its activities, and promote the purposes for which it is established and in such manner as a faithful, diligent, careful and ordinarily skilful Director would act in the circumstances;
- (b) observe the utmost good faith towards the State-owned enterprise in any transaction with it or on its behalf;
- (c) in the performance of his or her duties, consider the interest of the employees of the State-owned enterprise;
- (d) shall exercise his or her powers for the purpose for which it is specified and shall not do so for a collateral purpose, and the power, if exercised for that purpose shall not constitute a breach of duty, if it incidentally affects the State-owned enterprise adversely;
- (e) shall not fetter his or her discretion to act in a particular way;
- (f) ensure that all business decisions of the Board support the primary objective of the State-owned enterprise to the degree that is possible in the circumstances;
- (g) ensure that all decisions of the board are within the law;
- (h) ensure that all contracts entered into by the State-owned enterprise are done through a process that is transparent and fair, and that where possible proper requests for proposals are issued before contracts are let;
- (i) ensure that the decisions of the Board do not create any undue financial risk or loss to any creditors of the State-owned enterprise;
- (j) ensure that the State-owned enterprise can, with reasonable certainty, perform any obligation that is placed on it by the board; and

- (k) ensure that all decisions of the Board are consistent with the statement of corporate intent of the State-owned enterprise; and
- (l) ensure that financial plans and reports are submitted on time as required under this Act.

(2) A Director shall ensure that the State-owned enterprise complies with the provisions of this Act and, notwithstanding the generality of the foregoing shall ensure that the State-owned enterprise -

- (a) clearly defines its statement of corporate intent, business plan and asset management plan;
- (b) provides annual reports and financial plans as required under this Act in the manner required and on time;
- (c) uses any income generated from the State-owned enterprise's operation to cover its losses;
- (d) adopts an investment policy;
- (e) clearly defines the prices of its products and services; or
- (f) sets out clear policies regarding its internal organization.

(3) A provision, whether contained in any contract or otherwise, shall not relieve any Director from the duty to act in accordance with this Act or relieve that Director from any liability incurred as a result of any breach of the duties conferred on the Director under the Act.

(4) A Director being the trustee of the moneys and properties of the State-owned enterprise and who stands in a fiduciary relationship to it shall –

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

(5) A Director shall exercise his or her powers honestly in the interest of the State-owned enterprise and all the shareholders, and not in his or her own interest or a sectional interest.

#### **43. Removal from office**

Notwithstanding sections 38 and 39, the President, in consultation with Public Service Commission, may remove a Director at any time from office for inability to discharge the functions of his or her office, whether arising from infirmity of mind or body or for misconduct.

#### **44. Remuneration and benefits**

The State-owned enterprise shall pay remuneration and provide benefits to its Directors as determined by the Commission.

#### **45. Vacancy**

(1) Where there is a vacancy in the Board of Directors of a state-owned enterprise, the Chairperson of the Board shall notify the Commission of such vacancy and the skills, knowledge and experience required, in accordance with section 36 and 37.

(2) If a Director ceases to be a Director for any reason, a decision, act or proceeding of the Board occurring within ninety days after the day on which the Director ceased to be a Director is not invalid merely because of there being in office less than the number of Directors required by this section.

#### **46. Chairperson and Vice-Chairperson**

The members of a Board shall choose a Chairperson and Vice-Chairperson from amongst themselves.

#### **47. Secretary**

(1) The Board shall appoint a secretary to the Board from within the State-owned enterprise.

(2) The secretary shall be responsible for -

- (a) convening on the authority of the Chairperson or meetings of the Board;
- (b) recording the minutes of all meetings of the Board and such other meetings as the Board may direct;
- (c) acting as secretary to any committee of the Board;
- (d) maintaining and keeping minute books;

- (e) keeping in safe custody the common seal of the State-owned enterprise;
- (f) keeping in safe custody all title documents relating to the State-owned enterprise's properties;
- (g) keeping in safe custody all agreements entered into by the State-owned enterprise; and
- (h) carrying out such other duties and responsibilities as may be assigned to him or her, from time to time, by the Board.

#### **48. Meetings of Board**

The Board of Directors shall meet at the call of the Chairperson or a majority of the Directors and, in any event, at least quarterly.

#### **49. Casting vote**

The Board shall make decisions by simple majority and the Chairperson or Vice Chairperson presiding shall have a casting vote.

#### **50. Quorum**

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

#### **51. Meetings not open to the public**

Meetings of the Board shall not be open to the public unless the Board so determines that a particular meeting shall be open to the public.

#### **52. Improper conduct**

The Chairperson may expel or exclude from any meeting any person, including a Director, for improper conduct at the meeting as defined in the by-laws.

### **53. Conflict of interest**

(1) A Director who has a direct or indirect interest in any arrangement or agreement entered into or proposed to be entered into by the State-owned enterprise or has such conflict of interest as may be prescribed shall, as soon as possible after the relevant facts have come to his or her notice, disclose the nature of the interest at a meeting of the Board.

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

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

(3) A Director who contravenes subsection (1) may be removed from the Board by the Commission on the recommendation of the other Board members.

### **54. Delegation of Board powers**

(1) The Board may delegate any of its functions or powers or the State-owned enterprise, either generally or specifically, to any of the following persons by resolution and written notice to the person -

- (a) a Director;
- (b) the chief executive officer, or any other officer or employee of the State-owned enterprise;
- (c) a committee of the State-owned enterprise; or
- (d) any class of persons comprised of any of the persons listed in paragraphs (a) to (c).

(2) The Board shall not delegate the general power of delegation.

(3) A delegate to whom any functions or powers of the State-owned enterprise or Board are delegated may-

- (a) unless the delegation provides otherwise, perform the function or exercise the power in the same manner,

subject to the same restrictions, and with the same effect as if the delegate were the State-owned enterprise or the board; and

- (b) sub -delegate the function or power only with the prior written consent of the Board, and subject to the same restrictions, and with the same effect, as if the sub delegate were the delegate.

(4) A delegate who purports to perform a function or exercise a power under a delegation is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation but shall produce evidence of his or her authority to do so, if reasonably requested to do so.

(5) A delegation under this section is revocable and does not prevent the exercise of a power or the performance of a function by the Board.

#### **55. By-laws and resolutions**

The Board may make by-laws and resolutions governing its proceedings and generally for the conduct and management of the business and affairs of the State-owned enterprise, including by-laws governing the holding of electronic meetings such that all persons participating in the electronic meeting may communicate with each other simultaneously.

#### **56. Formal requirements**

Any by-laws made by the Board -

- (a) shall have the State-owned enterprise's seal affixed to it; and
- (b) shall be signed by the Chairperson and secretary who were present at the meeting at which the by-law was passed.

#### **57. Saving**

A by-law is not valid until the State-owned enterprise's common seal is affixed to it, but the seal may be affixed to a by-law at any time after it was made.



## **58. Committees**

(1) The Board shall establish the following committees -

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

(2) A committee may be divided into sub-committees.

(3) The Board may establish such other committees in addition to those established under subsection (1) as the Board may from time to time considers necessary.

## **59. Vacancies in committees**

If one or more vacancies occur in the membership of a committee, the members remaining constitute the committee so long as their number is not less than a quorum of the committee.

## **60. Composition**

A by-law establishing a committee shall provide for the committee's composition which may include persons who are not Directors of the State-owned enterprise.

## **61. Functions, etc.**

A by-law establishing an advisory committee shall provide for the committee's functions and for the committee members' terms of appointment, remuneration and payment of expenses.

## **62. Chief Executive Officer**

(1) The President, after consultation with the Board of Directors or other governing body of a State-owned enterprise, the Public Service Commission and the Commission, and in accordance with sections 36 and 37, shall appoint a person as Chief Executive Officer of the State-owned enterprise for a period of five years and he or she may be reappointed for a further term.

(2) The Chief Executive Officer shall be an employee of the State-owned enterprise and shall be a member of the Board.

### **63. Duties**

The Chief Executive Officer of a State-owned enterprise is responsible for its operation, subject to the supervision and direction of the Board.

### **64. Advisor to Board**

The Chief Executive Officer shall act as an advisor to the board during its meetings and may assist the chairperson or vice-chairperson with the agenda for meetings of the board and with matters of policy to be brought before the Board.

### **65. Absence of chief executive officer from meetings**

If the office of the chief executive officer is vacant or he or she is unable to attend a meeting of the board, the person for the time being carrying his or her their duties shall attend the meeting and participate in its deliberations, but shall not vote.

### **66. Employees**

The Board may hire such other employees as are considered necessary for the proper conduct of its business and affairs upon such terms as to remuneration or otherwise as it may determine.

### **67. Officers**

The Board may appoint such officers as are considered necessary for the proper conduct of its business, subject to a successful annual performance evaluation, upon such terms as to remuneration or otherwise as it may determine.

### **68. Other persons**

The Board may engage persons other than those hired under section 66 to provide professional, technical or other assistance to or on behalf of the state-owned enterprise.

## **PART VI - FINANCIAL MATTERS**

### **69. Funds of the Commission**

(1) There shall be established and maintained by the Commission a fund into which shall be paid and credited -

- (a) Moneys appropriated to it by the National Assembly;
- (b) such contributions from each State-owned enterprise as may be prescribed;
- (c) such money as may, from time to time, be lent, deposited with or granted to the Commission by the Ministry responsible for finance;
- (d) Publicly declared grants or donations from any lawful source, if the conditions attached by the individual or organisation donating or making the grant are not inconsistent with the functions of the commission under this Act or any other enactment of the National Assembly;
- (e) such fees and charges for services rendered by the Commission as may be prescribed; and
- (f) all other sums which may, from time to time, accrue to the Commission.

(2) The Commission may, from time to time, as the board may direct, apply the funds at its disposal.

### **70. Annual estimates, account and audit**

(1) The Commission shall cause to be prepared within three months before the end its financial year, an estimate of the expenditure and income of the Commission during the next succeeding year and when prepared, they shall be submitted to Cabinet and Ministry responsible for finance.

(2) The Commission shall cause to be kept proper accounts of the Commission and proper records in relation thereto and when certified by the Commission, the accounts shall be audited by the Auditor General.

### **71. Quarterly report**

In addition to the estimates required under section 70, the Commission shall submit a report on the activities and administration of the Commission at the end of every three months to the Cabinet through the Ministry responsible for finance.

### **72. Annual report**

The Commission shall, not later than three months after the end of each year, submit to the National Assembly and the Cabinet through the Ministry responsible for finance, a report on the activities and the administration of the Commission during the immediately preceding year and shall include in the report audited accounts of the Commission and the Auditor General's report thereon.

### **73. Financial year**

The financial year of a State-owned enterprise is January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

### **74. Report to National Assembly**

A State-owned enterprise, not later than three months after the end of the financial year, shall submit to the National Assembly through the Commission an annual report on its business and operations during the preceding year, including a copy of its audited financial statements and the procurement compliance report.

### **75. Asset management plan**

Within three months of the coming into force of this Act and annually thereafter, a State-owned enterprise shall deliver an asset management plan in the prescribed form to the Commission.

### **76. Disposal, lease or pledge of major assets**

(1) A state-owned enterprise shall not dispose of, lease or pledge its assets, the value of which exceed such amount as may be prescribed in consultation with the Commission.

(2) The Commission may recommend a disposal, lease or pledge of assets only if –

- (a) the price of the disposal or lease is at the market price; and
- (b) the borrowing secured by the pledge of the assets has been approved as prescribed.

### **77. Request for state support**

(1) A State-owned enterprise which intends to request for state support shall apply to the Ministry responsible for finance through the Commission and the application shall be accompanied by documents including -

- (a) a copy of its financial plan, approved by the Board;
- (b) a statement showing the amount of state support provided for the last three financial years, if any;
- (c) a statement showing the amount of state support to be provided during the current financial year; and
- (d) a statement showing the amount of state support requested from the Government for the next financial year, together with the cost of activities and programmes for which state support is requested.

(2) The Ministry responsible for finance shall consult with the Commission in regards to any request for state support by a State-owned enterprise that relates to –

- (a) subsidies and capital transfers from the Government budget;
- (b) lending from the Government budget;
- (c) Government guarantees on borrowing; and
- (d) recapitalisation by the Government.

### **78. Recapitalisation**

(1) A state-owned enterprise may only be recapitalised by the Government with the prior approval of the National Assembly.

(2) In this section, “**recapitalisation**” means the process of restructuring the debt and equity structure of a state-owned enterprise to stabilise its capital structure.

### **79. Statement of corporate intent**

(1) A state-owned enterprise shall develop and adopt a statement of corporate intent by the start of each financial year that covers the financial year and provides indicative financial and operational information in respect of the next two financial years.

(2) The state-owned enterprise shall not adopt a statement of corporate intent unless -

- (a) it has given the Commission a draft of the statement, no later than two months before the start of the financial year to which the statement relates; and
- (b) it has taken into account any comments made by the Commission in relation to the draft statement.

(3) The statement of corporate intent must include the following information -

- (a) a description of the principal business of the state-owned enterprise;
- (b) a statement of the commercial objectives of the state-owned enterprise, demonstrating how those objectives are consistent with its primary objective;
- (c) a description of the nature and scope of the activities that the state-owned enterprise intends to undertake;
- (d) a summary of the strategies that the state-owned enterprise will adopt to achieve its commercial objectives and the primary objective; and
- (e) a statement or summary of the targets or benchmarks to be used to measure the state-owned enterprise’s performance against its commercial objectives and the primary objective, including in respect of revenue, net profit after tax and return on equity;
- (f) a statement of any current and anticipated borrowing by the state-owned enterprise;

- (g) the intention of the state-owned enterprise regarding the sale and purchase of its assets;
- (h) a statement of the accounting policies to be applied by the state-owned enterprise in its financial records and reports;
- (i) a statement of the proposed dividend and distribution policy of the state-owned enterprise;
- (j) a description of any applicable public service obligation memorandum of understanding and the impact of that memorandum on the financial returns expected to be achieved by the state-owned enterprise during the period to which the statement relates; and
- (k) any other matter that the Commission directs be included in the statement or that is prescribed.

(4) A state-owned enterprise may amend its statement of corporate intent for a financial year at any time during the year, but shall give the Commission a draft of the amendment at least two months before it is adopted, and take into account any comments made by the Commission in relation to the proposed amendment.

(5) A state-owned enterprise shall give the Commission a copy of its statement of corporate intent, and of any amendment to its statement of corporate intent, within fourteen days after the board adopts or makes it.

(6) The Commission shall provide the Minister responsible for finance a copy of each statement of corporate intent, and each amendment to a statement of corporate intent, within fourteen days after it is given to the Commission.

(7) The Minister responsible for finance shall submit a copy of the state-owned enterprise's statement of corporate intent with the National Assembly within fifteen sitting days after the Minister receives it and provide a copy to the state-owned enterprises committee.

(8) A state-owned enterprise shall strive to give effect to, and act consistently with, its current statement of corporate intent.

(9) The statement of corporate intent shall be made publicly available after it has been submitted by the Minister of finance.

## **80. Business plan**

(1) The Board of a state-owned enterprise, by the start of each financial year, shall develop a draft business plan that covers the financial year, at least the next three financial years and at most the next five financial years.

(2) A draft business plan shall contain information on the operations, future strategic direction and financial projections of a state-owned enterprise sufficient to enable the Commission to form a view that the business plan demonstrates that the state-owned enterprise will achieve its primary objective.

(3) The Board shall give the Commission a draft of the plan, no later than two months before the start of the financial year to which the plan relates.

(4) The Commission, within fourteen days of receiving the draft business plan, shall review and give feedback on it.

(5) The Board shall not adopt the business plan unless it has taken into account any comments made by the Commission in relation to the draft plan.

(6) A state-owned enterprise shall give to the Commission a copy of its business plan within fourteen days after the Board adopts it.

## **81. Performance Contract**

(1) The Commission, Minister and the Minister of finance shall enter into contracts with state-owned enterprises for the purpose of providing a formal statement of the intentions of and obligations of the state-owned enterprise in order to encourage maximum performance of the enterprise consistent with its role and objective as a publicly owned company.

(2) These performance contracts shall be for a period of three years and shall be reviewed annually by the Commission and the state-owned enterprise.

(3) All such performance contracts shall be executed by the Chairperson on behalf of the Commission and by the Chairperson of the Board of Directors of the state-owned enterprise.



(4) A performance contract shall contain such terms and conditions as may be agreed by the parties and shall determine the scope of activities for the state-owned enterprise to which it applies, which shall include the following -

- (a) the scope of commercial and public services;
- (b) an outline of the objectives of the enterprise and the strategies which it is expected to adopt in the furtherance of its objectives;
- (c) the performance targets of the state-owned enterprise;
- (d) an incentive scheme for management performance, including penalties for lack of performance; and
- (e) such other matters as are deemed necessary having regard to the objectives of such public enterprise.

## **82. Audit of state-owned enterprise**

(1) The Auditor General shall audit the annual financial statements of a state-owned enterprise in accordance with the National Audit Act and internationally acceptable auditing and accounting standards.

(2) The Auditor General's report on state-owned enterprises shall form part of the Auditor General's annual report to the National Assembly.

## **83. Estimates, accounts and audit**

(1) A state-owned enterprise, not later than two months before the beginning of each financial year, shall submit its budget for the next financial year to its Board for initial approval and the Commission for final approval.

(2) A state-owned enterprise shall keep proper records and accounts of its income and expenditure.

(3) A state-owned enterprise shall prepare financial statements in respect of each financial year.

(4) A state-owned enterprise, within three months after the end of each financial year, shall submit to the Auditor General for auditing, its financial statements for the preceding year.

(5) The financial statements of the state-owned enterprise and the Auditor General's report on those financial statements shall form part of the Auditor General's overall annual report to the National Assembly.

(6) The Auditor-General shall examine the financial statements of the state-owned enterprise and furnish a report stating –

- (a) whether he or she has or has not obtained all the information and explanations required by him or her; and
- (b) whether the financial statements referred to in the report are properly drawn up so as to exhibit a true and fair view of the financial position and performance of the state-owned enterprise.

(7) The Auditor-General shall transmit the report together with his or her comments, or his or her supplement to, such report, to the state-owned enterprise, the Commission and the National Assembly.

#### **84. Approval of external borrowing**

(1) A state-owned enterprise which intends to borrow funds outside The Gambia shall submit to the Commission -

- (a) its approved budget for the next financial year;
- (b) its proposed external borrowing and its borrowing limit for the next financial year; and
- (c) details of any guarantees to be issued by the state-owned enterprise for the next financial year.

(2) After receiving the information under sub-section (1) in respect of the borrowing limit, any external borrowing, or any guarantees of the state-owned enterprise, the Commission shall consult with the Ministry responsible for finance.

(3) The Minister responsible for finance shall approve external borrowing for a state-owned enterprise subject to ratification by the National Assembly of such borrowing.

(4) The Commission shall convey to the state-owned enterprise -

- (a) the approval of the Minister responsible for finance for any external borrowing by the state-owned enterprise; and

- (b) the ratification by the National Assembly of such borrowing.

### **85. Accounting records**

(1) A state-owned enterprise shall keep accounting records in accordance with this Part and, in accordance with the International Financial Reporting Standards (IFRS).

(2) The accounting records shall be sufficient to show and explain the transactions of the state-owned enterprise and shall be such as to -

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

(3) The accounting records shall be in accordance with standards required by the Accountant General and shall contain -

- (a) entries from day to day of all sums of money received and expended by the State-owned enterprise and the matters in respect of which the money was received and expended; and
- (b) a record of the assets and liabilities of the state-owned enterprise.

(4) Where the activities of the state-owned enterprise involve dealing in goods, the accounting records shall contain -

- (a) statements of inventories held by the state-owned enterprise at the end of each year;
- (b) all statements of stocktaking from which any statement of inventories as is mentioned in subsection (4) (a) has been or is to be prepared; and
- (c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods, the buyers and sellers in sufficient detail to provide easy identification.

## **86. Place and duration of records**

(1) The accounting records of a State-owned enterprise shall be kept at its head office or such other place in The Gambia as the Commission may direct and shall at all times be open to inspection by such officers of the Commission as may be authorized by the Commission from time to time.

(2) In addition to the requirements of subsection (1), the accounting records of a state-owned enterprise shall be available for viewing on a website operated and maintained by the state-owned enterprise.

(2) Subject to any direction relating to the disposal of records that may be given by the Commission, accounting records that a state-owned enterprise is required to keep under this Act shall be preserved by it for a period of not less than thirty years from the date on which they were made.

## **87. Directors' duty to cause financial statement to be prepared**

(1) The directors of a state-owned enterprise shall cause to be prepared every year, in respect of the state-owned enterprise, financial statements in accordance with this Part.

(2) The financial statements shall include -

- (a) a statement of the accounting policies of the state-owned enterprise;
- (b) the balance sheet as at the last day of the year;
- (c) an income statement;
- (d) a statement of changes in equity;
- (e) notes to the financial statements;
- (f) a cash flow statement;
- (g) a value-added statement for the year;
- (h) a five-year financial summary;
- (i) the auditor's report; and
- (j) the directors' report.

## **88. Form and content of financial statement**

- (1) The balance sheet shall give a true and fair view of the state of affairs of the State-owned enterprise as at the end of the year and the income statement shall give a true and fair view of the profit or loss of the State-owned enterprise for the year.
- (2) The statement of cash flow shall provide information on the generation and utilization of funds by the State-owned enterprise during the year.
- (3) The value-added statement shall report the wealth created by the State-owned enterprise during the year and any distribution by the state-owned enterprise.
- (4) The five-year financial summary shall provide a report of material financial information for a comparison over a period of five years.

## **89. Restriction on the granting of loans, etc., to directors**

- (1) A State-owned enterprise shall not by itself or through its officers grant a loan, an advance or any other credit facility to any of its directors.
- (2) A Director of a State-owned enterprise shall not receive a loan, an advance or any other credit facility from the state-owned enterprise.

## **90. Directors' report**

- (1) The directors shall cause to be prepared, in each year, a report containing a fair view of the development of the activities of the State-owned enterprise during the year, and of its position at the end of that year.
- (2) The directors' report shall state the names of the persons who, at any time during the year, were directors of the State-owned enterprise and the principal activities of the State-owned enterprise in the course of the year and any significant changes in those activities in the year.
- (3) The directors' report shall include information with respect to the employment, training and advancement of disabled persons, the health, safety of work and welfare of the employees of the State-owned enterprise and the involvement of employees in the affairs, policy and performance of the state-owned enterprise.

**91. Signing of financial statements and documents to be annexed thereto**

(1) The financial statements of a State-owned enterprise and every copy thereof shall be delivered to the Commission within three months after the year end and shall be approved by the board of directors and signed on behalf of the State-owned enterprise by the chairperson and the chief executive officer of the state-owned enterprise.

(2) The financial statements shall be accompanied by-

- (a) the auditor's report; and
- (b) the directors' report.

**92. Publication by a State-owned enterprise of full individual financial statements**

(1) The provisions of this Part apply to the publication by a State-owned enterprise of the financial statements required by section 87 to be delivered to the Commission, including the directors' report.

(2) A State-owned enterprise shall not publish an individual financial statement for a year unless it is accompanied with an auditor's report.

**93. Reporting of financial plan**

(1) A state-owned enterprise shall submit to the Commission and the Minister responsible for finance -

- (a) before the beginning of the financial year, an estimate revising the budget for the year; and
- (b) within three months of the end of its financial year, a financial plan.

(2) The financial plan of a state-owned enterprise shall include-

- (a) the latest available audited financial statements;
- (b) a budget, approved by the board, for the current financial year;
- (c) trial balances for the current financial year;

- (d) financial projections for the next three years, including projections of the balance sheets and income statements;
- (e) estimates of –
  - (i) income and expenses (on an accrual basis),
  - (ii) acquisitions of fixed assets, and
  - (iii) fixed assets to be disposed of;
- (f) an annual borrowing and recovery plan for the next financial year including –
  - (i) a proposal of the total borrowing limit to be set for the financial year,
  - (ii) a detail profile of outstanding domestic and external borrowing, broken down to each borrowing instrument, and
  - (iii) a detailed profile of guarantees and outstanding guarantees that have been issued by the state-owned enterprise, broken down to each guarantee agreement;
- (g) a copy of the memorandum of understanding that sets out targets for the next financial year;
- (h) a proposal of its dividend policy in the next financial year; and
- (i) an investment plan.

(3) The Minister responsible for finance shall, not later than three months after receiving the financial plan from a state-owned enterprise, cause the financial plan to be laid before the National Assembly.

(4) A state-owned enterprise shall submit to the Commission and to the Ministry responsible for finance, within twenty working days of the end of each quarter, a report on borrowing by the state-owned enterprise, including detailed information on drawdowns and repayment from existing loans and any new borrowing.

(5) The State-owned enterprise shall, from time to time, provide the Minister with such information relating to the affairs of the State-owned enterprise as the Minister may request in writing.

(6) Within one month of the Minister responsible for finance submission of the financial plan to the National Assembly, the State-owned enterprise shall publish a summary of the report that must contain a statement showing actual performance against targets set out in its statement of corporate intent.

(7) Within one month of the Minister responsible for finance submission of the financial plan to the National Assembly, the State-owned enterprise shall ensure that a copy of the plan is available to the public at the office of the State-owned enterprise.

(8) The financial plan shall state the information necessary to enable an informed assessment of the operations of the State-owned enterprise having regard to the information required in the statement of corporate intent including a comparison of the performance of the State-owned enterprise with the statement of corporate intent.

#### **94. Legal proceedings against the Government**

(1) Legal proceedings shall not be commenced against the Government as a result of any act or omission of a State-owned enterprise or of an officer, employee or director of a state-owned enterprise.

(2) Sub-section (1) does not apply to a proceeding to be enforced against the Government in respect of its obligations under a written contract to which it is a party.

#### **95. Protection from personal liability**

An action or other proceeding for damages shall not be brought against a director, officer or employee of a state-owned enterprise as a result of any act done in good faith in the performance or intended performance of any duty under this Act, or in the exercise or intended exercise of any power under this Act, or as a result of any neglect or default in the performance or exercise in good faith of such duty or power.



#### **96. State-owned enterprise not relieved of liability**

Section 95 does not relieve a state-owned enterprise, or any director, officer or staff member of the state-owned enterprise, of any liability to which it or they would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in that section.

#### **97. Collection of personal information**

A state-owned enterprise may collect personal information from a person for the purpose of carrying out its objectives under this Act.

#### **98. Disclosure of personal information**

A state-owned enterprise may disclose information it has collected under this Act and the information it discloses shall not be in any form that expressly or impliedly identifies a person to whom the information relates.

#### **99. Permission before disclosure**

Except where a state-owned enterprise is required under this Act to make a report public, a state-owned enterprise may only make public, reports based on information it has collected under this Act with the permission of the Minister.

#### **100. Copyright**

A State-owned enterprise retains copyright on any reports that it makes public and a person shall not infringe on the copyright of any data that is the subject of such report.

### **101. Liability of the State-owned enterprise limited to its capital**

The liability of the State-owned enterprise shall be limited to the capital of the state-owned enterprise.

### **102. Pension scheme and other benefits for staff**

The Board shall contribute to the national social security scheme on behalf of each employee, in accordance with the body responsible for the administration of the national social security scheme, and may deduct the contributions from the salaries or wages of the employees and may make the contributions to the Scheme or Fund from the revenue of the state-owned enterprise

### **103. Reorganisation of state-owned enterprises**

(1) The approval of the Cabinet shall be required for the reorganisation of a state-owned enterprise.

(2) The reorganisation of a state-owned enterprise shall be announced through mass media outlets.

### **104. Dissolution and liquidation of state-owned enterprises**

(1) Subject to the approval of the Cabinet and the National Assembly dissolution or liquidation of a state-owned enterprise may take place on the proposal of the Commission.

(2) When a state-owned enterprise is merged with another, the assets, liabilities, authorities and duties of the merged state-owned enterprises shall be transferred into a newly formed state-owned enterprise.

(3) If one state-owned enterprise is acquired by another, the assets, liabilities, authorities and duties of the acquired state-owned enterprise shall be transferred to the state-owned enterprise by which the other has been acquired.

(4) In the case of a breakup of a state-owned enterprise, the relevant assets, liabilities, authorities, and duties shall be transferred to existing or newly formed state-owned enterprises.

(5) In case of divesting a part of a state-owned enterprise, the assets, authorities, and duties related to the divested part shall be transferred to existing or new state-owned enterprises.

(6) The liquidation of a state-owned enterprise shall take place under the control of a liquidation committee appointed by the Commission and the procedure related to liquidation and duties of the liquidation committee shall be prescribed in subsequent regulation.

(7) The liquidation of a state-owned enterprise shall be completed within four months but if the liquidation requires more time, such time may be extended by the relevant ministry in agreement with the Commission.

(8) The liquidation committee shall announce the liquidation of a state-owned enterprise through mass media outlets and shall so inform organisations or persons having business with the state-owned enterprise in writing.

(9) The debts of a liquidated state-owned enterprise shall be paid from its assets in accordance with this Act, and the surplus assets, if any, shall be transferred to the Consolidated Revenue Fund.

(10) A liquidation claim filed by creditors may be heard only up to three months from the date of the announcement.

## **PART VII - PROHIBITED ACTIVITIES**

### **105. Multiple directorships**

A person shall not serve as a member of more than one Board at any given time.

### **106. Director prohibited from receiving bribes, gifts, etc.**

A director of a Board shall not accept, in respect of any transaction involving a state-owned enterprise -

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

### **107. Destruction, etc.**

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

**108. Contributing to economic adversity of state-owned enterprise**

A person shall not contribute to the economic adversity or failure of a State-owned enterprise in a material particular.

**109. Failure to execute contract, etc.**

A person who has entered into a contract to execute any public work, including buildings, roads, or to supply goods, materials or services to a state-owned enterprise, shall not without just cause -

- (a) fail to execute the public work or to supply the goods, materials or services; or
- (b) otherwise abandon or fail to complete the performance of the contract.

**110. Failure to supervise performance of contract**

A chief executive officer, director, officer or employee of a State-owned enterprise shall not –

- (a) if the person has the duty or responsibility to supervise the performance of a contract entered into by the state-owned enterprise, without just cause, fail to perform that duty or responsibility; or
- (b) without just cause, pay, authorize or approve or cause to be paid any money from the funds of the State-owned enterprise to the contractor for a contract knowing that the contractor is in default of his or her performance.

**111. Prohibited activities by chief executive officer, director, etc.**

(1) A chief executive officer, director, officer or employee of a State-owned enterprise shall not -

- (a) award, enter into, approve or negotiate the award or otherwise be connected with the negotiation, award or approval of a contract, project or any other transaction or arrangement to any person -
  - (i) contrary to the accepted practice of the state-owned enterprise;

- (ii) with no security, collateral or bond, where such security or collateral is normally required in accordance with accepted practice of the state-owned enterprise,
  - (iii) without the approval or consent of any person or authority whose consent or approval is required under any law; or
  - (iv) without verifying that the State-owned enterprise has sufficient funds to finance or pay for the contract, project, or any other transaction or arrangement;
- (b) award, approve the award of or otherwise be connected with the award or approval of a contract, project, or any other transaction or arrangement which is above his or her limit as may be required under any law;
- (c) award, approve the award of or otherwise be connected with the award or approval of a contract, project, or any other transaction or arrangement, to any person in contravention of any law or any regulation, circular, or procedure, as laid down or approved, from time to time, by the state-owned enterprise;
- (d) receive or participate in sharing, for personal gratification, any money, profit, property or pecuniary benefit towards or after the award, approval or procurement of a contract, project or any other transaction or arrangement to any person;
- (e) award or approve the award of any contract where the contractor is not known to have the ability to perform or complete the contract; or
- (f) negotiate, award, or approve for monetary consideration, without any attempt to determine its fair value,
- (i) the award of a contract at an inflated price; or
  - (ii) the sale or exchange of any properly or non-cash assets of the State-owned enterprise at deflated or undervalued amount.

(2) A director shall not use any information, relating to a state-owned enterprise that comes to the director's knowledge in the discharge of his or her duties as a director of the State-owned enterprise for his or her own or any other person's advantage.

## **PART VIII - MISCELLANEOUS**

### **112. General Penalty**

A person who commits an offence under this Act, for which a penalty has not been provided, is liable on conviction to a fine equivalent in monetary terms to the damage or loss caused or suffered by the state-owned enterprise or imprisonment of not less than six months and not more than ten years, or both.

### **113. Penalty for corporation**

Where a corporation contravenes a section of this Act and is convicted of an offence, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is a fine to be determined by the court.

### **114. Penalty for Directors, officers, employees and agents**

(1) Where a corporation, is convicted of an offence under this Act-

- (a) each Director of the corporation; and
- (b) each officer, employee or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is guilty of an offence unless he or she satisfies the court that he or she took all reasonable care to prevent the commission of the offence.

(2) Where the Court finds a person or corporation guilty of an offence under this Act the Court may require the person or corporation to refund to the State-owned enterprise or the Commission the amount determined by the Court as the equivalent in monetary terms of the loss suffered by the State-owned enterprise as a result of the offence or of such other sum as the Court may deem fair and just in the public interest.

(3) A sum ordered to be refunded by the Court shall be deemed to be a debt owed to the State-owned enterprise and shall be recovered accordingly.

(4) In determining the appropriate punishment to impose on conviction of a person under this Act, the Court shall take into consideration-

- (a) the economic or financial condition or position of the State-owned enterprise, whether it has failed or not;
- (b) whether the future financial viability of the State-owned enterprise is in jeopardy or peril; and
- (c) the extent to which the act or omission of the offender has contributed to the economic adversity or failure of the State-owned enterprise.

(5) The Court may order the confiscation of the property, movable or immovable, of a person or corporation convicted of an offence under the Act, of the value equal to the amount involved in the offence or of such other value as the Court may deem fair and just in the circumstance.

(6) Where a person or corporation is convicted of an offence under this Act and the person or corporation has been found to have received or otherwise been paid any money by the State-owned enterprise under a contract, the Court-

- (a) shall order the person or corporation to refund the moneys or part thereof as the Court shall find due to the State-owned enterprise together with interest at such rate and for such period as the Court may determine or in lieu thereof;
- (b) may order the person or corporation, within a period determined by the Court, to complete the performance of the contract, or the execution of the public works, or the supply of the goods, materials or services; and
- (c) may, in the case of a person, delay the execution of the person's sentence of imprisonment to enable the person to carry out the order of the Court.

### **115. Determination of appropriate punishment, etc.**

(1) Where there is a conviction under the Act the Court may approve the person or corporation convicted of the offence under the Act voluntarily surrendering property, of value equal to the amount involved in the offence or such other value as the person or corporation may decide.

(2) Where, upon a conviction, the Court orders property to be confiscated or surrendered, or where the property is surrendered voluntarily, the property shall be forfeited-

- (a) to the State-owned enterprise that suffered the loss;
- (b) in the case of a failed State-owned enterprise, to the Consolidated Revenue Fund for the benefit of that State-owned enterprise; or
- (c) to such other person who, in the opinion of the Court, deserves to be compensated for the loss suffered.

(3) Where, by reason of the confiscation of property under this section, there is full or substantial recovery of the amount involved in the offence, the Court may, if it deems it equitable, reduce or decline to impose the penalty specified in this Act for the offence.

(4) Where a corporation, other than a bank, is convicted of an offence under the Act, the Court may order that the corporation be wound up and the corporation shall thereupon and without any further assurance but for that order, be wound up and all its assets, after satisfying all the claims of the Commission, shall be forfeited to the Government.

### **116. Sanctions**

(1) Where a State-owned enterprise fails to comply with the requirements of Part VI or does not meet a financial target included in its memorandum of understanding, the Commission, may-

- (a) require the State-owned enterprise to submit a revised financial plan or supply such further financial information that the minister may require;
- (b) publish the fact of the failure, together with the names of the chief executive officer and chief financial officer, in such media as considered appropriate by the Commission;



- (c) require the State-owned enterprise to submit to a special investigation by an officer appointed by the Commission and any Director or any member of the staff of the State-owned enterprise shall, on being requested to do so by the person conducting the investigation, furnish such information within his or her knowledge with regard to the affairs of the State-owned enterprise and produce such books of accounts or documents in his or her custody as that person may require;
- (d) suspend or annul transactions made without the required approvals;
- (e) recommend that the Director, chief executive officer or chief financial officer, as the case requires, be suspended from office until the failure is rectified;
- (f) place an advisor in an office of the State-owned enterprise to assist the State-owned enterprise in meeting its financial targets;
- (g) appoint an administrator to assume the powers of the Board for a specific period of time;
- (h) require the State-owned enterprise to meet such other requirements as may be prescribed;
- (i) recommend the dissolution of the Board and appointment of new members of the Board in accordance with this Act; or
- (j) recommend that the state-owned enterprise be wound up in accordance with section 104 of the Act.

(2) Where a State-owned enterprise fails to submit on time, all or part of a financial plan or report required under Part VI, the Commission may -

- (a) suspend if applicable, non-statutory payments to the State-owned enterprise from the Government budget until the plan or report is submitted; and
- (b) publish the fact of the failure, together with the names of the chief executive officer and chief financial officer, in such media as is considered appropriate by the Commission.

(3) Subject to section 43, the Board may recommend to the Commission that a person be removed as a Director of the Board where he or she has engaged in a prohibited activity described in Part VII.

### **117. Regulations**

(1) The Minister responsible for Finance may make Regulations-

- (a) adopting by reference, in whole or in part, and with such changes as he or she considers necessary, any code, standard, guideline or procedure and require compliance with the thing as adopted,
- (b) prescribing forms and providing for their use,
- (c) prescribing any matter that in the Act is described as being prescribed,
- (d) prescribing additional objects and duties of a State-owned enterprise,
- (e) prescribing financial reporting standards and audit standards to be used by State-owned enterprises;
- (f) designating provisions of the Companies Act that shall apply to State-owned enterprises;
- (g) with respect to capital investment appraisal;
- (h) setting out procurement rules to be followed by a State-owned enterprise;
- (i) with respect to insolvency of a State-owned enterprise and the disposal of assets by a State-owned enterprise; and
- (j) with respect to any matter that he or she considers necessary or advisable to carry out effectively the intent and purpose of the Act.

### **118. Classes**

A Regulation made under section 118, may be applicable to different classes of state-owned enterprises or different classes of services.

**119. Transition**

(1) A Director validly appointed to the Board of a State-owned enterprise prior to this Act coming into force shall, on the date this Act comes into force, remain validly appointed; thereafter, the rules of the State-owned enterprise and the provisions of this Act and any regulations made under this Act shall apply to the selection, appointment, removal and disqualification of Directors of a state-owned enterprise.

(2) A person validly appointed as the Chief Executive Officer of a state-owned enterprise prior to this Act coming into force shall, on the date this Act comes into force, remain validly appointed; thereafter, the rules of the state-owned enterprise and the provisions of this Act and any regulations made under this Act shall apply to the selection, appointment, removal and disqualification of Chief Executive Officers of a state-owned enterprise.

**120. Savings**

A state-owned enterprise established prior to the coming into force of this Act shall be deemed to have been established under this Act.