Ownership Policy

for

Public Enterprises

Contents

1 Introduction

The Public Enterprises[1] (PEs), which are ultimately owned by the people of Seychelles, play an important role in the Seychelles economy. The Government of Seychelles' (the Government) ownership mandate vis-à-vis PEs is to ensure that the latter are actively and professionally controlled and managed with the aim of obtaining long-term value performance, and where applicable, that public or social obligations policies of the Government are duly performed.

International good practices: specifically, the OECD, recommends that *"Government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in the corporate governance of SOEs, and how it will implement its ownership policy"*[2]. The Government of Seychelles adopted the following *Ownership Policy for Public Enterprises* (the Policy) on 4th December 2020. The Policy applies to all PEs and articulates the Government's expectations, policies, and functional relationships with respect to its PEs in the fulfilment of their mandates.

The Policy is to be complemented by the "Statement of Expectations" issued by representatives of the owner, and the newly established Code of Corporate Governance for PEs. The aim is to provide an overall framework for the governance of PEs under government ownership.

The Policy should be read in conjunction with relevant legislations, such as the Companies Ordinance 1972, the Public Enterprise Monitoring Commission Act 2013 (the Act), the Public Finance Management Act 2012 and regulations and other entity-specific legislations.

The ownership policy applies to all PEs and their subsidiaries. In respect of companies in which the Government has a minority shareholding, the government would engage in a dialogue with the other owners in effort to ensure that the ownership policy is applied as far as possible. In the spirit of transparency and accountability, PEMC, as the ownership entity shall submit an ***Annual Public Enterprises Performance Report*** and ***Fiscal Risks Report*** to the Government. Whilst the Annual Public Enterprises Performance Report shall demonstrate the value of PEs and their operational and financial performance, the Fiscal Risks Report shall provide an account of fiscal risks emanating from PEs on public finance for the preceding year.

[1] As defined in section 2, PEMC Act 2013
[2] OECD 2010; Accountability and Transparency, A Guide for State Ownership, p3-4

2 Definition of Public Enterprises in the Policy

Notwithstanding the definition of PEs in section 2 of the Act, the term Public Enterprises includes the following:

- Companies incorporated under the Companies Ordinance 1972 and in which the Government has a majority shareholding and a financial investment;
- Public Corporations and Institutions established under their enabling legislation or decree in which the Government has financial investment, assets under management or another form of financial assets belonging to the Government; and
- Other persons established under public law (public institutions, public agencies, public funds) in which the Government may have its assets under management.

3 Rationale for Public Enterprises

In establishing PEs, the Government seeks to improve public welfare by ensuring that:

- Service delivery by PEs represents greater value for money than through other modalities such as government departments, public-private partnerships or service contracts with the private sector;
- PEs are as efficient as businesses not owned by the Government;
- PEs focus exclusively on their given mandates;
- Social obligations are delivered efficiently;
- Fair competition is achieved between public and private enterprises; and
- PEs operate with full accountability, transparency and independence from political influence or instruction outside of the agreed provisions in the Act.

In this Policy the Government recognizes that some PEs are commercial enterprises facing commercial risks, and that the markets in which they operate are dynamic. As these markets evolve through innovations, private sector competition, regulations, community needs, economic fundamentals, and financing options, so too does the relative efficiency of the commercial PEs as a service delivery mechanism. The Government must therefore review the rationale and value for money of its investment in PEs on an ongoing basis.

4 Objectives of the Ownership Policy

PEs are not an end in themselves but rather a modality for delivering services to our citizens. They provide a range of services and products and their performance is important to the country's overall fiscal and balance sheet position and its capacity to meet fiscal, social and other government policy decisions.

This implies that each PE should take long term approach, be efficient and profitable, while being given the capacity to develop. To promote long-term sustainable value growth in PEs, the Government recognizes that sustainable business is integrated into corporate governance. PEs should thus serve as role models in the area of sustainable business and employment ethics with the aim of generating public confidence.

The overall objectives of this Policy are:

- To establish one ownership and oversight entity;
- To be clearer to PEs board about the Responsible Minister and the Minister responsible for Finance's "Statement of Expectations" of their respective PE;
- To provide the Responsible Ministers and the Minister responsible for Finance (the Minister) with a greater understanding of, and therefore confidence in, the performance of PEs through enhanced performance indicators;
- To establish suitable capital framework which impose financial disciplines on PEs while ensuring they have enough capital to pursue with their business and investment decisions without the assistance of the national budget; and
- Ensure that requests for government financial assistance are exceptional case and are considered in line with the PE business needs.

5 The Function of the Government

5.1 Role of Government

For an efficient implementation of the ownership policy the Government recognizes that its role as the owner of PEs needs to be clearly separated from its role as the market regulator and as the sector guardian for the development of individual industry sectors, i.e. the implementation of sectoral policy.

5.1.1 Government role as owner of PEs

With the objective of protecting the interest of the general public, the Government will operate as an *"active owner of PEs, ensuring that the governance of PEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness"*[3].

While allowing PEs full operational autonomy to attain their defined purposes, the Government expects that PEs' board of directors and senior management will inform the owner on key business strategies, financial matters, restructurings and on major decisions or any matter that may have significant impact on the shareholders.

The Government should refrain from intervening in the management of PEs. The Government should avoid redefining the objectives of PEs in a non-transparent manner.

Taking into consideration good international best practices[4], the Government understands that its prime responsibilities include:

- Being represented at the general shareholders meetings and effectively exercising voting rights;
- Establishing well-structured, merit-based and transparent board nomination processes in fully- or majority-owned PEs, actively participating in the nomination of all PEs' boards and contributing to board diversity;
- Setting and monitoring the implementation of broad mandates and objectives for PEs, including financial targets, capital structure objectives and risk tolerance levels;
- Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess PE performance, and oversee and monitor their compliance with laws and applicable corporate governance standards;
- Developing a disclosure policy for PEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information;
- When appropriate and permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs; and

---

[3] OECD Guidelines on Corporate Governance of State-Owned Enterprises, G-II, p18

[4] OECD Guidelines on Corporate Governance of State-Owned Enterprises, G-II, p18

- Establishing a clear remuneration policy for PE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals.

The roles and responsibilities of the Government are discharged by respective offices.

5.1.1.1 Roles of the Responsible Minister

Sectoral policies should be developed by the Responsible Ministers[5], and through this they:

- determine the guidelines for the development of individual industry sectors;
- develop the Government's objectives in relation to its investments;
- develop specific legislation; and
- define measurable objectives for determining the operational performance of PEs and the development of individual industry sectors.

The Government recognizes that if the functions are not separated, conflict of interest between the sectoral policy and ownership may arise. Nevertheless, this separation does not prevent any necessary co-operation between the two aforesaid functions.

In strategies prepared by the Responsible Minister, reasons for Government's ownership in PEs and the Government's objectives should be clearly defined and measurable. Objectives may be of ownership nature such as profitability, economic viability and productivity or they may be set with a view to achieving public interests. Therefore, in their sectoral policies, the Responsible Ministers should determine priority tasks whereby they should avoid interventions into the management of PEs and thus respect the autonomy of PEs' governance.

The Responsible Ministers, in protecting public interest have the duty to order investigation into the affairs of a Public Enterprise as necessary[6] and after consultation with the Minister require the Board of PEs to perform corrective action.

[5] Section 6(2), PEMC Act
[6] Section 42, PEMC Act

5.1.1.2 Roles of the Minister Responsible for Finance

In this Policy, the Government established the Minister responsible for Finance as the:

- Responsible Minister for PEs under its ministerial portfolio;
- Shareholding Minister; on behalf of the Government, for its majority shareholding; and
- Minister responsible in consultation with the Responsible Minister and the Commission to take decision in respect of financial viability of Public Enterprises.

The Minister in accordance with its powers under the Act discharges the roles and responsibilities of the Responsible Minister for PEs under its portfolio as stipulated in 5.1.1.1 above.

Moreover, as the Minister responsible for Finance, the Government vests in this Office the role of shareholding minister for the Government majority shareholding in PEs. The shareholding role of the Minister reflects the importance of the PE sector to the country's economic and financial objectives.

6 Establishment of the Ownership & Oversight Entity

The Government recognizes that PEs are often required to implement multiple social obligation policy goals that can negatively affect performance if the objectives and the relative priority among them are left unclear.

Following the current international good practices, the Government recognizes that its "ownership rights should be centralised in a single ownership entity[7]." This would allow the implementation of clearer governance structures. The establishment of a single, competently resourced centralized agency dedicated in PEs supervision and assessment would improve the Government's ability to exercise its ownership efficiently and monitor PEs under its ownership.

Moreover, the step would separate clearly the policy, regulatory and shareholder functions to ensure greater transparency and accountability in decision making. To that effect, the Government establishes PEMC as the ownership entity on behalf of government.

[7] OECD Guidelines on Corporate Governance of State-Owned Enterprises, G-II-D, p18

6.1 PEMC as the single ownership entity

PEMC was established by its enabling legislation[8] to monitor and evaluate the overall performance of the PEs and ensure their efficient operation. The entity promotes ethics of good governance in all PEs' business transactions, including financial matters such as investments and budget, with the aim of improving performance and return on investments.

Since its establishment, PEMC has been fulfilling its oversight mandates as per its enabling legislation. The Act empowers PEMC to monitor set revenue targets. However, PEMC is not empowered by the aforesaid legislation to set targets.

By establishing PEMC as the "single ownership entity, the latter should be held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies"[9].

6.1.1 Setting specific targets for the ownership & oversight entity

As it transfers its ownership function to PEMC, the Government nevertheless, identifies that there is a need to set targets for the PEs' single ownership and oversight entity. Targets should consist of limited number of objectives; agreed by PEMC and other institutions to which it reports, that will allow assessing its ownership and oversight performance in the execution of the Government's ownership policy.

To this end, the Government directs the PEMC to:

- Improve good (corporate) governance by recommending appointment of Directors and CEOs who are highly qualified, well experienced, highly motivated and of high integrity;
- Improve performance of PEs by tracking their performance to ensure sound business management and financial control through setting of performance targets and benchmarks;
- Ensure that the Government obtains a suitable return on investments;
- Ensures the financial stability and viability of PEs;

[8] Section 6, PEMC Act
[9] OECD Guidelines on Corporate Governance of State-Owned Enterprises, G-II-E,p18

- Ensure the analyses and reporting of fiscal risks emanating from PEs that may have a material impact on public finance;
- Monitor financial and operational performance of PEs, to ensure sound business management and financial control through setting performance targets and benchmarks and holding PEs responsible for meeting those targets and benchmarks;
- Ensure a level playing field and fair competition in the marketplace when PEs undertake economic activities, so that PEs do not receive undue economic advantage to compete unfairly;
- Carry out due diligence function, before the appointment of key personnel such as Non-Executive Directors, Executive Directors, Board Secretaries and Internal auditors to the Commission;
- Ensure the submission of Statements of Corporate Intent by PEs;
- Assess PEs' budget and advise PEs' boards and the Government on its adequacy
- Strengthen fiscal risk management of PEs
- Publish the Annual SOE Report and the PEs Fiscal Risks Statement.

Furthermore, in promoting ethics of good corporate governance in business transaction of PEs, the Commission should ensure that all necessary and appropriate corporate governance structures, procedures, practices and controls and safeguards are established, properly implemented and operate effectively in each PE.

The Commission shall ensure that PEs contribute to the foundation of trust between shareholders, directors and management and the public, built on accountability, fairness, transparency and responsibility.

6.1.2 Main functions of PEMC

6.1.2.1 Ownership function

By delegating its ownership and oversight function to the Commission, the Government recognizes that the latter has a vital role in the setting and monitoring of financial and performance oversight of PEs.

6.1.2.1.1 Defining and reviewing PEs' mandates

In discharging the ownership function on behalf of the Government, PEMC recognizes the need for PEs to have clear mandates in the owner's Statement of Expectations. These are high-level objectives and missions of a PE in the long run. However, PEs mandates should from time to time be reviewed to ensure that their goals reflect current economic needs.

For commercially oriented PEs, such enterprises must strive to be as profitable and efficient as comparable businesses that are not owned by the public and operate in a fair competitive playing field. PEMC should ensure as far as possible that the revenues generated by PEs benefit the Seychellois society.

However, some PEs have been established to deliver public service obligations on behalf of the Government. Their mandate is to ensure good national infrastructure and reliable services are being delivered to our citizens. Through the Government ownership, its mains goals are to ensure:

- the rendering of reliable services, and
- that the country has well developed infrastructure with regards to public transport, maritime ports, airports, transmission grid for electricity and provision of potable water and sewage treatment.

Nevertheless, the PEs with public service policy assignments should ensure their long-term financial sustainability. In accordance with good international practice, the Government should compensate the PEs for the quasi-fiscal activities being delivered to the general public.

6.1.2.1.2 Defining specific performance targets and Indicators for PEs

In the spirit of transparency, it is very important that the Government's expectations of PEs be formally, clearly, and publicly communicated in PEs Statement of Corporate Intent. To that effect, PEMC should establish a framework for performance target setting and subsequent monitoring. This would allow the monitoring and evaluation of companies' performance by the ownership entity.

PEMC jointly with other relevant Offices should develop medium-term strategy for each PE. The medium-term strategy should be developed for a period of three to seven years. This would set medium-term targets, business model, and key performance indicators (KPIs) with annual expected values. The strategy should include an estimate for the share of profits that would be distributed as dividends in line with the strategy period and the ‘Dividends Policy’.

Moreover, PEMC should set short-term targets and KPIs that should be reflected in PEs annual operational budget and this should be used for the annual performance evaluation against the PEs medium-term strategy. Strategy should include both financial and non-targets. The latter can include:

- Public social obligations, which are objectives that stem from the main strategic objective of the PE and are assigned to the PE to fulfil a government delegated policy assignment. It should have a clear financial cost and funding source assigned to it. In cases where the government’s reimbursement for fulfilment of such policy is lower than funding required to operate with a profit, the strategy should clearly indicate whether these objectives are financed from another (profitable) business branch or how it translates into setting lower financial targets (lower return or dividends);
- Other non-financial targets that come from the main strategic objective and the business model, including business (operational) targets (such as efficiency targets), Corporate Social Responsibility targets.

6.1.2.1.3 Board selection, nomination and Board Compositions

With the objectives of ensuring effective provision of expertise to Public Enterprise board of directors, the Government through PEMC would ensure that uniform and common principles are applied in the board nomination process.

An analysis of due diligence would be carried out by PEMC at board nomination process to recommend to the President only directors who do not present any conflict of interest. PEMC would also carry out a board evaluation to ensure that board of PEs are performing to an acceptable standard.

6.1.2.1.4 Non-Executive Directors Remuneration

The Government recognizes that the composition of the board of directors must be appropriate, diverse and wide-ranging as regards the competences, experience and background of directors appointed to serves on the board of PEs. The Government would strive to establish Board Directors' Fees considering the need to compensate directors for their effort and for the responsibility that board assignment entails. The Board Fees Policy should be as per the adopted policy of the Cabinet of Ministers.

6.1.3 Monitoring Function

The Commission's oversight role is concerned with the monitoring of performance targets, the reviewing, monitoring and overseeing of the business affairs, practices, activities, behavior and conduct of PEs, in order to be satisfied that PEs' affairs and business are being conducted in a manner expected and in accordance with legislative and agreed norms.

This includes the review, monitoring and overseeing of the fact that the management of the PEs, their strategies and business planning, the conduct of their business operations and their reporting thereon and accounting thereof, is being effectively managed by the PE's executive management and the assets are being properly used, protected and preserved.

6.1.3.1 Monitoring Compliance with laws and regulations

PEMC is mandated by the PEMC Act to ensure that PEs are abiding to laws and regulations of the country. PEMC should ensure that PEs reporting obligations are being abided to. By ensuring compliance with reporting obligations, PEMC as the ownership entity would therefore achieve its set targets.

Table 1 below stipulates PEMC reporting obligations.

Table 1. Reporting Obligations of PEMC

PEMC is mandated under the PEMC Act to:	**Section**
• submit a report of all its activities on a quarterly basis to the Minister of Finance;	**11 (h)**

• a copy of its annual report together with a copy of the annual accounts and auditor's report thereon shall be laid before the National Assembly; and	**15 (2)**
• submit to the Responsible Minister a report on the past performance and plans of the Public Enterprise.	**41**

PEs and foremost their governing body *"should observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance and auditing standards*[10]*"* as enterprises that are not owned by the government. The board should ensure establishment of internal control mechanism and the internal audit function. Moreover, the governing body is responsible for the appointment of the external auditors and that the latter be able to perform the enterprise's valuation effectively.

It is of utmost importance that PEs disclose to the owner, the ownership entity and the public material financial and non-financial information which can be of significant concern. It is the board of directors' mandate to ensure that PEs are being properly controlled and managed and that their respective PE fulfills their reporting obligations.

Table 2 below specifies PEs reporting obligations to the PEMC Act.

Table 2. Reporting Obligations of PEs

PEs are mandated under Part V of the PEMC Act to:	**Section**
• Prepare and deliver a statement of corporate intent (SCI) to the Responsible Minister and Commission	**34**
• Prepare and submit an annual report on its operations, with a copy of its annual audited accounts as well as any report by the auditors on its management and accounting practices, shall be submitted to (a) the Minister of Finance;	**36 (1)**

[10] OECD Guidelines on Corporate Governance of State-Owned Enterprises, G-VI, p24

(b) the Responsible Minister; and (c) the Commission.	
• Submit a statement of their financial and operational performance during that month including details of debt performance, to the Commission, within fifteen days after the end of every month.	**38**
• Submit estimates of the profit and loss capital expenditure and cash flow and balance sheet projections in respect of the PEs' next financial year to the Commission.	**39**
• Provide the Commission with any other information, not specified in this Act, but necessary for the implementation of the Act requested in writing by the Commission.	**40**
PEs are mandated under PFM Regulations to:	
• Prepare, approve, and submit their audit plan to the Government Audit Committee for final approval.	**96 (6) – PFM Reg.**
PEs obligations under the Procurement rules and regulations	**(to identify the)**

6.1.3.2 Reviewing of PEs performance

It is the owner's obligation to review the performance of its PEs. According to the OECD guidelines, the owner's prime responsibilities include "setting up reporting systems allowing regular monitoring and assessment of SOE performance[11]."

For an effective review of PEs performance, PEMC shall have access to accurate and relevant information on a timely basis. The information submitted by PEs should enable PEMC to

[11] Guideline II.F.3

continuously evaluate performance and when necessary communicate its concerns to the respective PE and the Government.

6.1.3.3 Investment and Divestment

6.1.3.3.1 Investment

PEMC shall ensure that PEs pursue investments that are commercially viable, that would have a long-term profitability and positive returns. PEs may also be required to take up certain investments on behalf of the government.

PEs shall submit annually to PEMC for review and approval their annual investment plan which should be drawn from their medium term and long-term plan. Any investment plans that are not within the mandate of a PE would require a separate approval from the ownership entity.

The review and endorsement process shall mainly include a study on:

- whether the plans are aligned with the PE overall mandates;
- whether the investment adversely affects the company's ability to meet returns expected by the Government from the enterprise;
- whether it exposes the PE to unacceptable risks; and
- whether it optimizes use of capital.

PEMC may, if necessary, initiate discussions with the PE to study and review the investment plan in greater detail and in consultation with the PE may revise the document so that it meets the objectives of both the PE and the owner.

PEs' investment plan shall also be used to determine the dividend and reserve policy and the target capital structure of each of the PE.

6.1.3.3.2 Divestment

In consultation with the Government, PEMC shall classify PEs into strategic and non-strategic enterprises. The owner, after due consultation with PEMC, may divest shares either partially or fully in PEs that are not of strategic interest to the government.

In accordance with the principles of transparency and respect to minority shareholders, before any divestment in a strategic PE, the Government shall direct PEMC to carry out a thorough valuation analysis and determine the allowable limits of divestments.

Furthermore, the Government shall consult with PEMC before any planned divestment of:

i. Shares which are held by a PE in other companies; and
ii. Sale of assets other than in the ordinary course of business.

6.1.3.4 Reporting on performance

In the spirit of transparency and accountability, PEMC shall prepare an ***Annual Public Enterprises Performance Report*** and ***Fiscal Risks Report*** to the National Assembly. Whilst the Annual Public Enterprises Performance Report shall demonstrate the value of PEs and their operational and financial performance, the Fiscal Risks Report shall provide an account of fiscal risks emanating from PEs on public finance for the preceding year.

Since PEs are owned by the people of Seychelles and must be actively and professionally controlled and managed with the aim of obtaining long-term value performance the two aforesaid reports shall be disclosed to the public on an annual basis.

7 Oversight Role of PEs by the National Assembly

The Policy recognizes the oversight role of the National Assembly in relation to PEs' performance. Article 93(c) of the Constitution mandates the Minister and Responsible Ministers to attend meetings before the National Assembly for the purpose of dealing with any matters arising in the Assembly relating to business management and oversight of PEs under their responsibility.

Section 37 of the Act obliges the Minister to lay before the National Assembly the Annual and Financial Report of each PE. Moreover, the Finance and Public Accounts Committee established under Article 103 of the Constitution may under the Standing Order and the section 2 (b) of the Pubic Enterprise Monitoring Commission (Amendment) Act 2016 cause the Chairperson, the Chief Executive Officer or any person who is the administrative head of a PE to present the Annual and Financial Report before the aforesaid Committee.