REPUBLIC OF THE GAMBIA

MINISTRY OF FINANCE AND ECONOMIC AFFAIRS

CODE OF GOOD CORPORATE GOVERNANCE FOR STATE-OWNED ENTERPRISES IN THE GAMBIA

2016 - 2020

This Code of Good Corporate Governance aims to define the responsibilities and accountabilities of the Board of Directors and Officers of State-Owned Enterprises (SOEs). It is the primary source of guidance on all aspects of governance including statutory guidance under which the SOEs operate if not conflicted with Acts of Parliament. The focus is on commercial SOEs at the national level in which government has significant control through full, majority, or substantial minority ownership.

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PART I: NEED FOR A CODE OF GOOD CORPORATE GOVERNANCE FOR STATE-OWNED ENTERPRISES IN THE GAMBIA

1.1 Introduction

1) Corporate governance refers to the structures and processes for the direction and control of companies. It specifies the distribution of rights and responsibilities among the company's stakeholders (including shareholders, directors, and managers) and articulates the rules and procedures for making decisions on corporate affairs;

2) A recent study of SOEs in The Gambia by the Ministry of Finance and Economic Affairs (MoFEA) in collaboration with World Bank in June 2014 showed that the practice of good Corporate Governance is at a rudimentary stage with no recognized codes of corporate governance in place. Specifically, poor corporate governance is identified as one of the major factors in virtually all known instances of poor SOE performance in The Gambia;

3) This Code of Good Corporate governance therefore aims to provide the structure for defining, implementing, and monitoring a company's goals and objectives and for ensuring accountability to appropriate stakeholders;

4) Over the recent years PAC/PEC conclusions have drawn attention to many shortcomings in SOE performance, governance and management, particularly financial management. Major issues identified by PAC/PEC include the build-up of inter-enterprise arrears, inadequate documentation of financial transactions, breaches of procurement rules, lack of uniform policy on SOE board composition, and inadequately qualified and uninformed SOE board members. Further, issues concerning financial reporting are frequently raised by PAC/PEC and the focus of much regulatory attention. Stakeholder's

confidence in what is being reported in many instances is eroded. Whilst corporate governance development is not just about better financial reporting requirements, the regulation of practices such as risk management will lead to greater transparency and a reduction in risks faced by investors.

5) Good corporate governance systems ensure that the business environment is fair and transparent, that company directors are held accountable for their actions, and that all business contracts made by the company can be enforced;
6) A company committed to good corporate governance has strong board practices and commitment, effective internal controls, transparent disclosure, and well-defined shareholder rights;

7) This code of good corporate governance builds on current statute and the Public Enterprise Act. Compliance with the provisions of this Code is mandatory.

1.2 Corporate Governance Challenges in SOEs

Compared with private sector companies, SOEs face distinct governance challenges that directly affect their performance. A useful lens through which to view these differences is the classic distinction between the interests of a firm's owner (its principal) and its managers (the agents). In any principal-agent relationship, the principal confronts two distinct tasks: to set the goals that the agent is to pursue and to manage the moral hazard problems associated with delegation of responsibility to an agent whose private incentives are likely to differ from those of the principal.

For private companies, the goal-setting challenge is relatively straight- forward: the primary goal of owners is to achieve the best financial performance.

Consequently, much of the focus of private sector corporate governance is to align the incentives of managers with those of the enterprise's owners and shareholders. SOEs face the same challenge of aligning the incentives of managers and owners. However, they can encounter additional governance challenges arising from several sources:

a) Multiple principals

b) Multiple and often competing goals and objectives

c) Protection from competition

d) Politicized boards and management

e) Low levels of transparency and accountability

f) Weak protection of minority shareholders

PART II: PROPOSED CODE OF GOOD CORPORATE GOVERNANCE FOR SOEs IN THE GAMBIA

2.1 The Objective

SOEs should aim to generate sustainable value over the long term. This means, SOEs have to manage effectively the governance, social and environmental aspects of activities as well as the financial.

2.2 Role of the board

The role of the board is to provide effective leadership.

2.3 Board responsibilities

The Board is responsible for:

- providing entrepreneurial leadership/setting the strategic aims;
- setting SOE values/culture and standards;
- regular assessment, review and approval of SOE structure(s) that reflect clearly defined and acceptable lines of responsibility and hierarchy;
- establishing regular training and education of board members on issues pertaining to their oversight functions and budget for it annually;
- hiring independent consultants to advise the board on certain issues;
- ensuring the integrity of systems and overseeing disclosure;
- establishing a framework of prudent and effective controls;
- ensuring all significant risks are regularly assessed and managed;
- regularly monitor, assess and upgrade risk management and internal control arrangements;
- review and approve all policies relevant to the SOE's operations;
- ensuring sufficient resources are available;
- ensuring obligations to shareholders are met;
- meeting regularly, with a formal schedule of matters reserved for it;
- ensuring the annual report explains how the board operates and give details of members and attendance;

- deal with succession issues;
- establishing formal processes for evaluating the work of the board and individual directors;
- the appointment and removal of the company/board secretary;
- aligning remuneration with the individual and SOE performance; and
- assessing time commitment of the chairperson.
- Provide oversight of Internal Audit function.

2.4 Division of responsibilities

The responsibilities of the Board Chairperson should be clearly separated from that of the head of Management, i.e. MD/CEO, such that no one individual/related party has unfettered powers of decision making.

2.5 The chairperson's responsibilities

As a minimum, the chairperson should be responsible for:

- Leading the board and ensuring it is effective;
- establishing the board's agenda and ensuring there is sufficient time for discussion, particularly of strategic matters;
- promoting openness and generating effective debate and discussion about current operations, potential risks and proposed developments;
- promoting constructive relations between executives and non-executives;
- agreeing training and development needs with each director;
- ensuring that the board receives accurate, timely and clear information;
- ensuring effective communication with shareholders;
- in consultation with the MD, call up board meetings.

2.6 The MD/board secretary

The board secretary's responsibilities include:

- arranging meetings of shareholders and the board of directors;
- giving notice of meetings;
- issuing the agenda/board papers in advance of the meetings;
- attending meetings and ensuring proper procedures are followed;

- drafting and circulating board minutes;
- communicating the decisions to the staff of the SOE or to outsiders and making follow ups;
- delivering the annual accounts to the MOFEA/PPP Directorate, Line Ministry PAC/PEC, and Companies Registry at the Ministry of Justice.

2.7 Non-executive directors

Non-executive directors' duties and responsibilities include:

- scrutinizing management's performance and constructively challenge the strategy;
- obtaining assurance about the integrity of financial information and that financial controls and risk management systems are robust and defensible;
- playing a significant role in board changes; and
- acting as an intermediary between other directors and shareholders.

2.8 Directors

All Board directors must (as a minimum)

- have appropriate skills, competence, knowledge and experience;
- Be of suitable character ('fit and proper');
- be selected from a diversity of perspectives relevant to the SOE's business;
- Demonstrate independent judgment;
- Disclose all past and existing board memberships;
- Fulfill their fiduciary duty to shareholders and the SOE;
- Allocate sufficient time to the work of the SOE to discharge their duties effectively;
- Have appropriate knowledge of the SOE and be subjected to re-evaluation once a year;
- Make disclosure in financial statements their responsibilities for preparing financial statements and the going concern status of the SOE;
- use their powers for the purpose intended;
- avoid conflict of interest and make all relevant disclosures; and

- exercise a duty of skill and care.

2.9 Tenure

- In order to ensure both continuity and injection of fresh ideas, non-executive directors should not remain on the board of a SOE continuously for more than 2 terms of 3 years each, i.e. 6 years;
- break period for non-executive directors should be 2 years.

2.10 Board Structure/composition and balance

- SOEs should be headed by an effective Board composed of qualified individuals that are conversant with its oversight functions;
- In line with international best practice, non-executive directors resident in The Gambia shall form the majority in the Board;
- a maximum board size should be limited to seven (7) members;
- there must be diversity including gender at the SOE board;
- neither the current nor a former CEO/MD of an SOE should be the board's chair;
- no two members of the same immediate family should serve in the board of an SOE at the same time;
- board must be balanced in terms of skill and talent, from several specializations relevant to the SOEs situation;
- there should be, as a minimum, the following board committees- Finance Committee, Nomination Committee, and Audit& Risk Management Committee;
- the Board Chairperson/MD should not serve simultaneously as chairperson of any of the board committees.

2.11 Appointments to the board

- the GoTG should establish a clear formal procedure, based on merit, diversity, and objective criteria, for appointing new directors (i.e. fit and proper person test);
- appointment letters shall be accompanied by a clear Terms of Reference

- nomination committee to be composed of members from OP, MOFEA, Line Ministry and the relevant SOE;
- the nomination committee should determine the skills, competence, qualification and experience that members require to achieve SOE objectives;
- there should be orderly succession process in place; and
- at least one (1) non-executive board members should be independent director (who does not represent any particular shareholder interest and hold no special business interest with the SOE).

2.12 Director's remuneration

- The GoTG should establish a formal and clear remuneration policy and procedures detailing defined and agreed performance metrics for both individual directors and the board collectively;
- GoTG should disclose remuneration policies and pay structures, in particular performance metrics. Disclosure should also include justification of annual awards in the context of annual performance;
- However, non-executives remuneration should be limited to monthly allowances;
- Sub-committee members shall be paid an honorarium for each meeting of the subcommittee;
- all remunerations should be effected in local currency, the Dalasi; and
- the remuneration and compensation benefits of each board director should be disclosed as a line item in the annual accounts.

2.13 Evaluation of board and members

- Internal evaluation: there should be annual evaluation of
    - the board as a whole by the line Ministry,
    - individual directors (effective contribution and commitment) by the board chair and board committees.

- covering all aspects of the Board's structure and composition, responsibilities, processes and relationships, as well as individual members' competencies and respective roles in the Board's performance;
- external evaluation: there should also be external evaluation at least once every three years;
- the Board should identify and adopt, in the light of the SOE's future strategy, its critical success factors or key strategic objectives;
- a Board should work effectively as a team towards those strategic objectives;
- the reviews should be carried out by an outside consultant; and
- the review report is to be sent to the nomination committee.

2.14 Quality of Management

- appointments to top management positions should be based on merit and retentions based on performance;
- track record of appointees should be an eligibility requirement. Such records should cover both integrity ('fit and proper') and past performance (visible achievements in previous place(s) of work); and
- officers should be held accountable for duties and responsibilities attached to their respective offices.

2.15 Ethics

- The board should establish a code of ethics that guides the behavior of directors, officers and employees and demonstrate a strong commitment to uphold ethical practices;
- SOE staff should be well inducted on the provisions of the code and each must sign a consent/binding form to acknowledge understanding and commitment to live by it or be penalized/dismissed;
- the Board should ensure that the SOE is, and is seen to be, a responsible corporate citizen.

2.16 Disclosure and Transparency

- SOEs should have a formal disclosure policy approved by the board of directors that addresses the SOE's approach for determining what disclosures it will make and the internal controls over the disclosure process;
- SOEs should implement a process of assessing the appropriateness of their disclosures, including valuation and frequency;
- SOEs should disclose their internal and external control procedures;
- SOEs should disclose their risk management procedures to the public;
- where any company/entity/or person related to a Board member is being considered for employment or engagement(as an employee, a service provider or a supplier to the SOE)the Board member in question is required to disclose any such interest or relationship to the Board meeting and to MoFEA; and the said Board member shall thereafter excuse himself/herself from any discussions on the matter;
- Chief Executive Officers and Chief Finance Officers of SOEs should certify in each statutory return submitted to the MoFEA that they (the signing officers) have reviewed the reports, and that based on their knowledge:
    - The reports do not contain any untrue statement of a material fact;
    - The financial statements and other financial information in the report, fairly represent, in all material respects the financial condition and results of operations of the SOE as of, and for the periods presented in the report.
- false rendition to GoTG/MoFEA shall attract fines and sanctions including suspension of the CEO for six months in the first instance and removal and blacklisting in the second. In addition, the erring staff would be referred to the relevant professional body for disciplinary action;
- the use of Anticipatory Approvals by Board Committees should be limited strictly to emergency cases only and ratified within one month at the next committee meeting;

- the Chair of the Board Audit Committee of each SOE should certify each year to the GoTG that they are not aware of any other violation of the Corporate Governance Code;
- the corporate governance compliance status report should be included in the audited financial statements;
- all SOEs must submit to GoTG/MoFEA annually a governance statement reporting compliance status and any planned changes for the coming year;
- Financial reports (Annual accounts and other) of information should continue to be prepared and disclosed in accordance with GoTG prescribed standards in force;
- the board should present a balance and understandable assessment of the SOE's position and prospects in the annual and interim reports;
- the directors should explain their responsibility for preparing the accounts;
- the external auditors should state their reporting responsibilities in the annual and interim accounts;
- the directors should explain in the annual and interim accounts/reports the basis on which the SOE generates and preserves value and the strategy for developing the SOE's long term objectives;
- the directors should report the going concern status of the business;
- SOEs should also disclose appropriate data about major shareholders and relationships within the group;
- all directors and their related parties must disclose their interest/facilities in the annual and interim accounts;
- SOEs' should disclose or quote outstanding tax arrears, contingent liabilities and duty waivers describing the overall composition (both due to and due from) in the annual and interim accounts;
- all SOEs should disclose and report fraud/theft to board, and when material to GoTG/MoFEA and shareholders on a timely manner;
- any other relevant and non-material financial information must be disclosed.

2.17 Role of Board Audit and Risk Management Committee and Auditors

2.17.1 Board Audit and Risk Management Committee

- SOEs should have a board audit and risk management committee consisting of independent non-executive directors;
- at least one member should have recent and relevant financial experience;
- members of the Board Audit and Risk Committee should be independent nonexecutive directors knowledgeable in Risk management and internal control processes. One of such appointed directors should serve as the Chairperson of the Committee;
- the Audit and Risk Committee will be responsible for the review of the integrity of the SOE's financial reporting and establishing policies on risk oversight and management;
- the audit and Risk committee should have access to internal/external auditors to seek for explanations and additional information without management presence.
- the audit and Risk committee should also:
    - monitor the accounts, review internal financial controls and also other risk and internal controls systems;
    - consider the external auditors independence and objectivity;
    - consider the effectiveness of the audit and risk management process and whether the external auditor should provide non-audit services;
    - recommend to the board recruitment and dismissal of the Head of Internal Audit and Risk Management; and
    - review internal audits work or the need for an internal audit.

- SOEs should put in place a risk management framework including a risk management unit that should be headed by a senior manager who is suitably qualified and experienced for the role;

- The Head of Internal Audit and Risk Management should report directly to the Board Audit and Risk Management Committee but forward a copy of the report to the MD/CEO of the SOE;
- quarterly Audit and risk management reports must be made to the Risk Committee, and made available to examiners on field visits;
- the Audit and Risk Committee will be responsible for setting the enterprise risk culture/appetite/level and ensuring compliance with approved risk policies, procedures and practices; and
- external auditors should render reports to the GoTG/MoFEA on SOEs' risk management practices and level of compliance with regulatory directives.

2.17.2 Internal Auditors

- internal auditors should be largely independent, highly competent and people of integrity;
- the Head of Internal Audit and Risk management should not be below the rank of senior manager and should be a member of a relevant professional body;
- he should report directly to the Board Audit Committee but forward a copy of the report to the MD/CEO of the SOE;
- quarterly audit reports must be made to the Audit and Risk Committee, and made available during field visits;
- internal Audit and Risk management Unit/department should be adequately staffed; and
- the internal control and Risk Management system should be documented and designed to achieve efficiency and effectiveness of operations; reliability of financial reporting and compliance with applicable laws and regulations at all levels of the SOE.

2.17.3 External Auditors

- external auditors for SOEs must be of suitable size and character ('fit and proper') and licensed or certified by the appropriate authority;
- appointment of External Auditors will continue to be approved by the Auditor General;
- Auditor General to meet auditors without prior notice/approval by SOEs;
- SOEs may take legal action against external auditors when term(s) of the engagement/contract are breached;
- all SOEs should have a formal and clear arrangements with the external auditors including arrangements for applying financial reporting and internal control principles;
- external auditors should maintain independent and arms-length relationship with the SOEs they audit;
- the tenure of the auditors in a given SOE shall be for a maximum period of five years after which the audit firm shall not be reappointed in the SOE for a period of another five years;
- an SOE's external auditors should NOT provide other unrelated or unapproved services to their clients;
- quality assurance auditing should be engaged whenever the Auditor General deems it appropriate, and the Auditor General shall have the authority to blacklist, or suspend any auditing firm that is proven to have provided unsatisfactory and/or unprofessional service;
- an audit firm should not be eligible to be an audit services provider to an SOE if any one of the SOE's senior management officials (Directors, CFO, and CAO etc.) had been in the employ of the said auditing firm and/or had in any other capacity had cause to conduct an audit on the SOE within the past two years;
- external auditors should render reports (contained in The Management Letter) to the board on SOEs' corporate governance practices and level of compliance with regulatory directives and copies sent to MOFEA, Auditor General and Ministry of Justice.

2.18 Role of Finance Committee

- SOEs should have a board finance committee comprising mostly independent non-executive directors;
- the finance committee is primarily responsible for providing the Board with advice and guidance on all issues affecting the financial policies, strategy and performance of the SOE;
- committee members should have skills and qualifications relevant to financial forecasting, management and analysis;
- an appropriate individual shall be nominated as the finance committee Chair by the Board or the Board nomination committee;
- the Chair of the Board shall not be the finance committee Chair;
- in performing its functions, the committee should be given unrestricted access (to the extent permitted by law) to the SOE's financial and operational documents, reports, and any information considered useful/important for carrying out their tasks;
- management should make available monthly, quarterly, and annual financial statements to the Board (board finance committee);
- MD, CFO (Director of Finance), other employees or consultant of the SOE may be invited by the Committee to a meeting of the Committee if deemed necessary; each invitee must undertake to keep the communications of the proceedings of the committee meeting confidential.
- the MD, CFO (Director of Finance), Board/Company Secretary shall have direct access to the Committee on a needs basis.

2.19 Role of Nomination Committee

- a nomination committee shall comprise of members from Office of the President, Ministry of Finance and Economic Affairs, the concerned SOE and its Line Ministry;
- the nomination committee is responsible for:

- establishing a transparent formal procedure for making their identification, selection and recommendation of Board members;
- conducting an annual review/evaluation at the end of each fiscal year of appointed board members and Board committee members to ensure the highest levels of integrity, diversity and performance from SOE Boards.
- monitoring corporate governance issues;
- ensuring the desired composition of SOE Boards are upheld;
- managing succession plans for key Board positions (i.e. Chairman)

2.20 Shareholders

- Shareholders should actively participate in governance by:
    - appointing 'fit and proper' directors and auditors; and
    - satisfy themselves that appropriate governance structures are in place;
- Annual meetings (AM) must be held at least once every year at Public Accounts and Public Enterprise Committee (PAC/PEC ;
- There should be a resolution covering the report and accounts;
- The MD, and board chair should be available to answer questions at the AM;
- Papers/ documents should be sent to the national assembly at least (10) working days before the AM;
- Major changes affecting the equity, economic interest or share ownership rights of existing shareholders should not be made without prior shareholder approval;
- Institutional shareholders should effectively discharge their fiduciary duties to vote; and
- All classes of shareholders should be treated equally. The interest of minority shareholders should be protected from all forms of abuse.

2.21 Effective Date

The effective date of the CODE shall be January01, 2017.

3.0 References

1) Corporate Governance of state-owned enterprises: A toolkit (2014) International Bank for Reconstruction and Development / The World Bank Group.

2) KPMG (2012), Toolkit for the Company Director, 3rd edn, KPMG Services Proprietary Limited, South Africa.

3) See UK Corporate governance, http://www.frc.org.uk/Our-Work/CodesStandards/Corporate-governance/UK-Corporate-Governance-Code.aspx

4) See OECD Principles of Corporate Governance, April 2004, available at http://www.oecd.org/daf/corporateaffairs/corporategovernanceprinciples/315 57724.pdf

5) See Principles for Enhancing Corporate Governance, Basel Committee on Banking Supervision, October 2010, available at http://www.bis.org/publ/bcbs176.htm

6) See Code of Corporate Governance for Banks in Nigeria Post Consolidation, Central Bank of Nigeria, March 2006, available at http://www.cenbank.org/documents/bsdcirculars.asp?beginrec=141&endrec=1 60

7) See WAMI Proposal for Good Corporate Governance in the WAMZ, November 2012

8) See CPA Australia Ltd Finance Committee Charter, available at https://www.cpaaustralia.com.au/~/media/corporate/allfiles/document/about/finance-committe-charter.pdf?la=en