

POLICY ON CORPORATE GOVERNANCE FOR LESOTHO **PUBLIC ENTERPRISES, GOVERNMENT AGENCIES AND ENTITIES**

PREAMBLE

The Government of Lesotho has noted the increasing demand of the citizens for better control and accountability on the part of Public Enterprises and other government agencies. This relates to the mandates of these Agencies, and to their effectiveness and efficiency in the delivery of services to the public. Government is aware of the need for a sensitive balance between the desired level of autonomy and commercial independence of these enterprises and agencies on the one hand, and the need for a reasonable level of conformity and effective control by government on behalf of the public, as well as Parliament in its oversight role, on the other. It is as a result of these considerations that government introduces this policy document, whose purpose is to provide overall guidance with regard to Public Enterprises and Government Agencies, and to enhance their levels of corporate governance. This policy, the codes and guidelines that emanates from the policy shall apply to all Public Enterprises, Government Agencies and Entities in which the Government either wholly own or hold majority shares.

1. MINISTERIAL RESPONSIBILITY AND CONTROL

All Public Enterprises and Agencies shall be under the supervision of Boards of Directors, who shall be directly accountable to Portfolio Ministers. Portfolio Ministers are, in turn, accountable to Parliament, on which the public has complete sway. In this way, and in the ultimate sense, the employees of Public Enterprises, Government Agencies and Entities are, like all other public servants, accountable to the public who receive their services.

2. THE RESPONSIBILITIES OF PORTFOLIO MINISTERS

The autonomy granted to Public Enterprises, and the required commercial independence and flexibility which they must enjoy, should not, however, relieve them from public scrutiny and accountability. Therefore, Portfolio Ministers will ensure control and accountability in the following ways:

The Portfolio Minister shall, from time to time, and when necessary, issue general policy guidelines for the enterprise agency or entity;

The Portfolio Minister shall not exercise day-to-day control over the enterprise agency or entity. However, the ministry shall exercise supervisory control through the Board of Directors;

The Board of Directors shall be appointed and removed by the Portfolio Minister. The Director or head of the relevant department shall be an ex-officio member of the Board of Directors.

The Portfolio Minister shall, after obtaining approval from Cabinet, approve and ratify strategic plans of all Public Enterprises, Agencies and or Entities under his/her jurisdiction;

The Portfolio Minister shall, from time to time, receive financial and performance reports from the Public Enterprise, Agency and or Entity;

The Portfolio Minister shall monitor the operations of the enterprises Agencies and Entities under his/her jurisdiction to ensure alignment with government policy;

The Portfolio Minister shall approve all strategic directions which the enterprise, Agency and or Entity wants to take, including, but not limited to, investment proposals, restructuring, proposed mergers, de-mergers and closures;

The Portfolio Minister shall account on an annual basis to Parliament for both the operational and financial performance of the enterprise Agency and or Entity;

The Portfolio Minister may give directions to the Board of Directors, where in his/her judgment, this needs to be done in order to protect the public interest.

3. THE ESTABLISHMENT AND ROLE OF THE PUBLIC ENTERPRISES UNIT

There shall be established in the Ministry responsible for Finance a Public Enterprises Unit, whose primary purpose shall be to set and to monitor the Corporate Governance and performance of Public Enterprises in the country. The Unit, in consultation with the Board of Directors and the Portfolio Minister, shall be responsible for:

Setting government policy on Public Enterprises, Government Agencies and Entities;

Developing a corporate governance framework and ensuring its implementation;

Setting performance objectives and reviewing strategic plans, annual plans and budgets of the Public Enterprises, Government Agencies and Entities;

Monitoring and evaluating the performance of Public Enterprises, Government Agencies and Entities;

Developing private sector partnerships for the Enterprises, Agencies and Entities;

Providing induction, training and development of members of the Boards of Directors of Public Enterprises Agencies and Entities;

Monitoring and advising on tariffs and service regulations.

4. THE RESPONSIBILITY OF OTHER MINISTERS

In order to provide for a framework within which salaries, benefits and conditions of service across Public Enterprises, Government Agencies and Entities are determined in a standardized, coordinated but flexible manner, in order to attract and retain high caliber personnel, the Public Enterprises Unit, in consultation with the Ministry responsible for the Public Service and the Ministry responsible for Trade, shall establish a Public Enterprises Remuneration Committee.

4.1 The Public Enterprises Remuneration Committee shall consist of:

- a) The Principal Secretary for the Ministry responsible for the Public Service (chairperson);
- b) The Principal Secretary for the Ministry responsible for Finance;
- c) The relevant Principal Secretary in the Office of the Prime Minister;
- d) The Principal Secretary for the Ministry responsible for Trade;
- e) A representative of the Boards of Directors of Public Enterprises in Lesotho;
- f) A representative of the Private Sector;
- g) A qualified and experienced Human Resource practitioner;
- h) A representative of a recognized Consumer Organization.

4.2 The Minister responsible for Finance shall approve and ratify the decisions of the Public Enterprises Remuneration Committee.

4.3 The Minister responsible for the Public Service, in consultation with the Minister responsible for Finance, and Portfolio Ministers responsible for Public Enterprises Government Agencies and Entities shall, from time to time, determine and establish a remuneration framework for Public Enterprises Agencies and Entities;

4.4 The Public Enterprises Remuneration Committee shall work within the established remuneration framework in deciding on salaries, allowances, benefits and conditions for Public Enterprises Government Agencies and Entities;

4.5 Notwithstanding the reports to the Portfolio Minister, the Minister responsible for Finance shall, at his/her request, be given reports, including interim reports on

the operational and financial performance of any Public Enterprise, Agency and or Entity;

- 4.6 The Minister responsible for Finance shall be consulted on any matter that concerns finances and assets, and if necessary, his/her approval shall be sought.

5. STATUTORY ACCOUNTABILITY AND CONTROL

- 5.1 Parliament shall enact legislation that will provide a legislative framework with a set of generic accountability measures, with emphasis, among other things, on performance, propriety and accountability of Public Enterprises;
- 5.2 There shall be specific legislation creating a Public Enterprise, which shall describe the mandate of such an enterprise, outlining the rationale for its creation and providing the basis for its public policy objectives;
- 5.3 Over and above its mandate, all the necessary public accountability and control issues specific to a Public Enterprise shall be drafted into the relevant legislation.

6. THE ROLE OF THE AUDITOR GENERAL

The Auditor General shall be responsible for carrying out financial and performance audits of public enterprises, agencies and entities and, through the Portfolio Minister, shall cause the audits to be presented before Parliament. Where the Auditor General is unable to carry out the audits of a Public Enterprise Agency and or Entity, he/she shall appoint an Auditor to meet the Audit requirements, provided that the Auditor General shall nevertheless give a report on the Financial Statements of such a Public Enterprise Agency and or Entity. The Auditor General shall conduct two types of audits as follows:

- 6.1 Financial statement audits which involve a review of the financial operations and performance of the enterprise, agency and or entity .
- 6.2 Performance audits which involve a review of the efficiency and effectiveness of the operations of the enterprise, agency or entity and its contribution to the economy, especially in the sector in which the it operates.

7. THE ROLE OF PARLIAMENT

All Public Enterprises, Government Agencies and Entities shall be accountable to Parliament for their operations and performance. This will be achieved in the following two ways:

All Public Enterprises, Agencies and Entities shall be established by an act of Parliament;

Annual reports on both the operational and the financial performance of all Public Enterprises, Agencies and Entities shall be presented before Parliament for scrutiny by the Portfolio Minister with a copy to the Minister responsible for Finance.

8. CORPORATE GOVERNANCE

The Public Enterprises Unit in the Ministry responsible for Finance shall, from time to time, set out and issue a Corporate Governance Code or framework for Public Enterprises Government Agencies and Entities. All Public Enterprises Agencies and Entities shall adhere to the strict application of the code. The code shall include, but will not be limited to, the following:

8.1 Discipline

Public Enterprises, Government Agencies and Entities shall be committed to corporate discipline, which is the adherence to behaviour that is universally recognised and acceptable, correct and proper.

8.2 Transparency

Public Enterprises, Government Agencies and Entities shall make available necessary information in a candid, accurate and timely manner to all stakeholders, so that they can easily make a meaningful analysis of the actions of the enterprise, its economic fundamentals and the non-financial aspects pertinent to it.

8.3 Autonomy and Commercial Independence

The autonomy granted to Public Enterprises, Agencies and Entities, and the required commercial independence and flexibility, shall not relieve them from public scrutiny and accountability. This notwithstanding, mechanisms shall be put in place to minimise and avoid any potential conflict of interest or undue influence by any member of the Board of Directors, the Chief Executive and or Management. Decisions shall be objective, shall be based on expert knowledge, and shall be in the public interest.

8.4 Accountability

Individuals and groups in an Enterprise or Agency, who make decisions and take actions on specific issues, shall be accountable for their decisions and actions.

Mechanisms shall be put in place to allow for effective monitoring and implementation of accountability measures.

8.5 Responsibility

Responsibility shall be maintained towards all stakeholders, including the Enterprise, Agency or Entity itself, and towards the public. Corrective action and dealing with mismanagement when such need arises shall not be compromised. In this regard, instruments such as grievance procedure, disciplinary procedure, conflict resolution procedure and dispute codes, shall be put in place in all Public Enterprises, Agencies and Entity.

8.6 Fairness

The rights of various groups and stakeholders shall be acknowledged and respected, and the principle of equitable consideration shall be followed.

8.7 Corporate Social Responsibility

Public Enterprises, Agencies and or Entities shall be aware of, and shall respond to, social issues, placing a high priority on ethical standards. Public enterprises, Agency and Entity shall be non- discriminatory, non-exploitative and shall act responsibly with regard to the environment and human rights.

8.8 Corporate Structure

Every Public Enterprise, Agency and Entity shall have a Board of Directors, who shall be the focal point of the corporate governance system, and who shall be sufficiently independent from Management. The Board of Directors shall be ultimately accountable and responsible for the performance and the affairs of the Enterprise, Agency or Entity. It shall be constituted as follows:

- 8.8.1 The Board of Directors shall comprise a balance of executive and non-executive members, with a majority of non-executive members;
- 8.8.2 There shall be a clearly acceptable division of responsibility between the Chairperson of the Board of Directors and the Chief Executive;

8.9 Committees of the Board of Directors

When need arises the Board of Directors shall establish committees to assist its members in discharging their duties and responsibilities. However, these committees shall not take the place of the Board of Directors.

8.10 The Governance Officer

Each enterprise, Agency or Entity shall consider appointing a Governance Officer, whose duties shall include:

8.10.1 In liaison with the Unit for Public Enterprises arrange and carryout the induction of Board Members;

8.10.2 The development of a work plan for the Board of Directors and the general administration thereof, in consultation with the Chairperson of the Board and the Chief Executive;

8.10.3 In consultation with the Unit for Public Enterprises, organize and arrange for regular reviews, monitoring and evaluation of the Board of Directors.

8.11 Meetings of the Board of Directors

The Board of Directors shall meet regularly, at least once a quarter. The number of meetings held and a detailed attendance record of each member shall be included in the annual report.

9. THE APPLICATION OF THE POLICY AND THE CODE

This policy shall apply in all Public Enterprises, Government Agencies and Entities wholly owned or where the Government holds majority shares.

10. IMPLEMENTATION

All Public Enterprises, Government Agencies and Entities in the country shall adhere to, and commit to, this policy, which shall itself be reviewed from time to time by the Public Enterprises Unit.