

PUBLIC ENTERPRISE ACT, 1996

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FIJI

ACT NO. 35 OF 1996



I assent.

[L.S.]

K.K.T. MARA
President

[23 December 1996]

AN ACT

TO PROVIDE THE REFORM OF GOVERNMENT COMMERCIAL ENTERPRISES AND, IN PARTICULAR, TO PROVIDE FOR -

- A THE RE-ORGANISATION OF NOMINATED GOVERNMENT ENTITIES;**
- B THE CORPORATISATION OF NOMINATED GOVERNMENT ENTITIES;**
- C THE ESTABLISHMENT OF THE PRINCIPAL OBJECTIVES OF GOVERNMENT COMMERCIAL COMPANIES TO BE PURELY COMMERCIAL;**
- D THE REGULATION OF THE STRUCTURE, AND RELATIONSHIP WITH THE GOVERNMENT, OF GOVERNMENT COMMERCIAL COMPANIES;**
- E THE REGULATION OF THE REPORTING AND ACCOUNTABILITY OF GOVERNMENT COMMERCIAL COMPANIES AND COMMERCIAL STATUTORY AUTHORITIES.**

ENACTED by the Parliament of Fiji -

**PART 1
PRELIMINARY**

Short Title

1. This Act may be cited as the Public Enterprise Act, 1996.

Commencement

2. (1) This Act shall come into force on a date or dates to be fixed by the Public Enterprise Minister by notice in the Gazette.

(2) The Minister may by one or more notices fix different dates for the coming into force of different provisions of this Act.

Definitions

3. In this Act, unless the context otherwise requires, -

"Act" includes regulations and other subsidiary legislation made under the Act;

"articles" means articles of association;

"Board", in relation to a Government Commercial Company, a Commercial Statutory Authority, Re-organisation Enterprise or a government entity, means its Board of directors or governing body, by whatever name called;

"Chief Executive Officer" means the person, (by whatever name called) who has executive control of the relevant entity; and if there is doubt, then the Chief Executive Officer is the position specified by the Public Enterprise Minister in written directions given under section 30 of this Act;

"Commercial Statutory Authority" has the meaning given by section 72; namely - any statutory authority that is declared under section 74 (1) to be a Commercial Statutory Authority and is listed in Schedule 4 of this Act;

"company" means a company formed and registered under the Companies Act (Cap. 247), or an existing company within the meaning of the Act;

"Consultation" - if a provision of this Act requires that the Public Enterprise minister shall consult with another person, or to act only after consultation with another, the Public Enterprise Minister is required to advise the other person of the situation and seek the views of the other, and take into account such views as are provided within a reasonable time (not exceeding one month); and shall not after receiving such views act in his own deliberate judgement without the approval of Cabinet.

"department" means a department of government;

"director", in relation to a Government Commercial Company or Commercial Statutory Authority, includes a chairperson or deputy chairperson by whatever name called;

"Gazette" means the *Fiji Republic Gazette* published by the order of the Government of Fiji and includes supplements thereto and any extraordinary Gazette as published;

"Government Commercial Companies" has the meaning given by section 41; namely any government company that is declared to be a Government Commercial Company under section 44 (1) and listed in Schedule 3 of this Act;

"government company" means a company, all of the stock or shares in the capital of which is or are beneficially owned by the State, whether such shares are held in the name of a Minister, a public officer, a nominee of the State or otherwise;

"government entity " means

(a) a government company or part of a government company;

(b) a statutory authority or a division, branch or other part of a statutory authority, by whatever name called;

(c) a ministry or department or a division, branch or other part of a ministry or department, by whatever name called;

(d) an entity prescribed by regulation,

and includes-

(e) a Government Commercial Company or any part of a Government Commercial Company or a subsidiary of a Government Commercial Company and;

(f) a Commercial Statutory Authority or any part of a Commercial Statutory Authority or a subsidiary of a Commercial Statutory Authority;

"key principles of public enterprise reform" means the principles set out in Schedule 1;

"memorandum" means memorandum of association;

"Minister for Finance" means the Minister to whom responsibility for Finance is for the time being assigned;

"proposed subsidiary" of a Re-organisation Enterprise means a government entity which is declared by regulation to be a proposed subsidiary of a Re-organisation Enterprise;

"Public Enterprise Act" means this Act, as amended from time to time;

"Public Enterprise Minister" means the Minister to whom responsibility for this Act is for the time being assigned;

"regulation" means a regulation made under this Act;

"relevant Minister" -

- (a) in relation to a government commercial company, has the meaning given by section 49;
- (b) in relation to a commercial statutory authority, has the meaning given in section 78; and
- (c) in relation to a re-organisation enterprise has the meaning given in part b of schedule 2;

and if an entity is both a Re-organisation Enterprise and either a Government Commercial Company or a Commercial Statutory Authority, then there may be different relevant Ministers for that entity for the purposes of different Parts of this Act;

"Re-organisation Enterprise" means a government entity that is nominated under section 14 to be a Re-organisation Enterprise and is listed in Part A of Schedule 2, and for the purposes of Division 6 of Part 2, the term includes a subsidiary of the entity;

"re-organisation charter" of a Re-organisation Enterprise means the re-organisation charter as amended from time to time;

"share" means-

- (a) in relation to an entity that has a share capital, a share in that capital of any class;
- (b) in relation to an entity that has a capital but does not have a share capital, an interest in or right to the whole or any part of that capital, other than an interest or right as a creditor;
- (c) in relation to an entity that does not a capital,-
 - (i) an interest in or right to any part of the assets of the company or entity, other than interest or right as a creditor; or
 - (ii) where there are no assets, a direct or contingent obligation to contribute money to or bear losses of the company or entity;

and "shareholder" has a corresponding meaning;

"statement of corporate intent", in relation to a government Commercial Company or a Commercial Statutory Authority means its current statement of corporate intent;

"statutory authority" means a body corporate incorporated by or under any Act (excluding any company merely registered under the Companies Act) (Cap. 247);

"subsidiary" has the meaning given by section 156 of the Companies Act (Cap. 247) and includes, in relation to a Re-organisation Enterprise, a government entity that is declared by regulation to be a subsidiary of that Re-organisation Enterprise;

"tax" includes any tax, fee, duty, levy or charge;

Act binds State

4. This Act binds the State.

Extraterritorial Operation

5. This Act shall apply, as far as possible, to-

(a) land and things outside Fiji; and

(b) acts, transactions and things done, entered into or happening outside Fiji; and

(c) land, things acts and transactions (whether situated, done, entered into or happening) that would, apart from this act, be governed or other-wise affected by the law of another jurisdiction.

PART 2

RE-ORGANISATION AND CORPORATISATION OF GOVERNMENT ENTITIES

Division 1 - Overview of Re-organisation Process

Meaning of re-organisation

6. A re-organisation under this Part is a structural reform process for nominated government entities that changes the conditions and (where required) the structure under which the entities operate so that they operate, as far as practicable, on a commercial basis and in a competitive environment and that -
 - (a) for the time being, provides for the continued public ownership of the entities as part of the re-organisation process; and
 - (b) allows the State, as owner on behalf of the people of Fiji, to provide strategic direction to the entities by setting financial and non-financial performance targets and non-commercial obligations.

Purpose of re-organisation

7. This Part of the Public Enterprise Act sets out a procedure for the re-organisation of government entities so that they can become -
- (a) more efficient and productive;
 - (b) more accountable;
 - (c) better organised

Application of this re-organisation procedure

8. A re-organisation under this Part may be applied to any government entity, namely -
- (a) a government company or part of a government company; or
 - (b) a statutory authority or a division, branch or other part of a statutory authority, by whatever name called; or
 - (c) a ministry or department, or a division, branch or other part of a ministry or department, by whatever name called; or
 - (d) an entity prescribed by regulation,
- and including -
- (e) a government commercial company or any part of a government commercial company or a subsidiary of a government commercial company; and
 - (f) a commercial statutory authority or any part of a commercial statutory authority or a subsidiary of a commercial statutory authority.

Who is to be re-organised

9. The re-organisation process commences for a government entity when it is made a Re-organisation Enterprise under section 14 of this Act.

Key Principles of re-organisation

10. (1) The objective of re-organisation is to make a government entity able to operate in compliance with the key principles of public enterprise reform.
- (2) The key principles of public enterprise reform and their elements are set out in Schedule 1 of this Act.

DIVISION 2
OVERALL DIRECTION OF RE-ORGANISATION

Responsibility for re-organisation

- 11.** (1) Responsibility for the various parts of the re-organisation process may be specified in -
- (a) this Act or any instrument made under it;
 - (b) another law;
 - (c) the re-organisation charter; or
 - (d) any Direction under section 13.
- (2) In all other cases, the Public Enterprise Minister has overall control of the re-organisation process, and where appropriate he is to act in consultation with the relevant Minister, Minister of Finance or the Prime Minister.
- (3) The Public Enterprise Minister may delegate part or all of his functions under this Act.

Ministerial responsibility

- 12.** The detailed rules for determining Ministerial responsibility in any re-organisation are set out in Part B of Schedule 2 of this Act.

Final control of re-organisation process

- 13.** (1) The re-organisation process is designed to work best if all parties can agree, but if there is doubt or delay that is hindering the re-organisation process and subject to any provisions of this Act requiring consultation, the Public Enterprise Minister may, by notice in the Gazette, give a Direction about the re-organisation.
- (2) If such a Direction is not complied with by any government entity or employee or officer of a government entity, the Public Enterprise Minister is hereby empowered to do all things necessary and reasonable to ensure that the Direction is complied with.

DIVISION 3 - RE-ORGANISATION ENTERPRISES

Nomination of government entity to become Re-organisation Enterprise

- 14.** (1) The Public Enterprise Minister may, with the approval of Cabinet, by notice in the Gazette, nominate a government entity to be a Re-organisation Enterprise and insert its name in Part A of Schedule 2 of this Act.
- (2) A nomination is made under this section for the purpose of the government entity being re-organised, and it may be part of a process by which a government entity

becomes a Government Commercial Company, a government company, a part of another government entity or any other government entity or part thereof.

- (3) To remove any doubt, it is declared that the Public Enterprise Minister may nominate two or more government entities whether or not they are already Government Commercial Companies, to be a single Re-organisation Enterprise in order to achieve the purpose of re-organisation.

Public Enterprise Minister to consult relevant Minister and Minister of Finance

15. The Public Enterprise Minister shall not nominate a government entity to be a Re-organisation Enterprise unless he has consulted the relevant Minister and Minister of Finance.

Nomination does not affect legal personality

16. The nomination of an entity as a Re-organisation Enterprise does not, of itself, affect -

(a) the legal status or personality of the entity; or

(b) its functions and powers.

Application of other laws to Re-organisation Enterprises

17. (1) This Act applies to a Re-organisation Enterprise in precedence to anything in an Act that was enacted before the commencement of this Act.
- (2) If there is an inconsistency between this Part and an Act enacted before the commencement of this Act, this Part prevails to the extent of the inconsistency.
- (3) The Public Enterprise Minister may, with approval of Cabinet, make a regulation providing that an Act, or a provision of an Act, that -
 - (a)* was enacted before the commencement of this Act; and
 - (b)* established a government entity that is or becomes a re-organisation enterprise or provides for its structure, functions, powers, management, operation or accountability, applies to the re-organisation enterprise with any modifications that are prescribed by regulation.
- (4) A regulation may be made for the purposes of subsection (3) only to the extent necessary to bring the Act or provision of the Act into conformity with this Act and the purposes of this Part.
- (5) A regulation made for the purposes of subsection (3) may do any one or more of the following:

- (a) change the name or title of the entity, of the Board and of the members of the Board of the re-organisation enterprise;
 - (b) change the number of members of the Board;
 - (c) vest in the Public Enterprise Minister or another person the power to appoint all or any of the members of the Board;
 - (d) determine the qualifications of persons for, or terms and conditions of, appointment to the Board;
 - (e) determine the manner of appointment of the members of the board and the senior executives of the entity;
 - (f) make such other changes to the constitution of the board as the Public Enterprise Minister determines.
- (6) Subsection (5) does not limit subsection (3).
- (7) A regulation may be made for the purposes of subsection (3) only after consultation with the Minister responsible for that Act.
- (8) A regulation may be made for the purposes of subsection (3) only within 2 years from the day on which the particular Re-organisation Enterprise is nominated under section 14, unless the House of Representatives, by resolution, expressly authorises this time period to be extended.

DIVISION 4

PREPARATION OF RE-ORGANISATION CHARTER

Meaning of Re-organisation Charter

- 18.** The re-organisation charter of a Re-organisation Enterprise sets out the steps by which, and the basis on which -
- (a) the key principles of public enterprise reform and their elements, are to be implemented in relation to the re-organisation enterprise;
 - (b) the re-organisation process is to proceed; and
 - (c) a re-organisation enterprise (if applicable) is to become a Government Commercial Company.

Minister may direct re-organisation

- 19.** (1) The Public Enterprise Minister may direct a Re-organisation Enterprise to reorganise its affairs under section 30 following the preparation and approval of a re-organisation charter.
- (2) The Public Enterprise Minister may also issue directions under section 26 to reorganise even if-
- (a) a re-organisation charter has not been prepared or approved; or
 - (b) a re-organisation charter has not been fully prepared.

Re-organisation Enterprise may become Government Commercial Company after charter

- 20.** (1) A Re-organisation Enterprise that is not a Government Commercial Company or that is part of a Government Commercial Company may become a Government Commercial Company following the preparation and implementation of a re-organisation charter.
- (2) A government entity may also become a Government Commercial Company even if-
- (a) it has not been declared to be a Re-organisation Enterprise; or
 - (b) a re-organisation charter has not been fully prepared; or
 - (c) a re-organisation charter has been prepared, but has not been fully implemented; or
 - (d) a re-organisation charter has not been prepared or implemented.

Public Enterprise Minister may cause draft charter to be prepared and submitted

- 21.** (1) If the Public Enterprise Minister, after consulting the relevant Minister of a Re-organisation Enterprise, considers that the preparation and implementation of a re-organisation charter would facilitate the re-organisation process for the Re-organisation Enterprise, the Minister may determine that a draft re-organisation charter should be prepared and submitted to the Public Enterprise Minister and the relevant Minister.
- (2) If the Public Enterprise Minister determines that a draft re-organisation charter should be prepared and submitted to the Public Enterprise Minister and the relevant Minister, the following provisions of this Division apply.

Matters to be included in draft re-organisation charter

22. (1) The Public Enterprise Minister, after consulting the relevant Minister, may determine that the draft re-organisation charter should contain among other things all or any of the following matters -

- (a) an outline of how the key principles of public enterprise reform and their elements are to be applied to the Re-organisation Enterprise and a timetable for their application;
- (b) if the Re-organisation Enterprise is not already itself a Government Commercial Company - a recommendation whether the Re-organisation Enterprise should become a Government Commercial Company and an outline of the reasons for the recommendation;
- (c) an outline of any legislation under which the Re-organisation Enterprise is to operate after it is re-organised;
- (d) target dates for the enactment and commencement of any legislation, including subsidiary legislation;
- (e) a timetable for the adoption of appropriate systems of accounting by the Re-organisation Enterprise;
- (f) a timetable for the adoption of commercial management and performance systems by the Re-organisation Enterprise;
- (g) a timetable and method for valuing the assets of the Re-organisation Enterprise and determining its capital structure;
- (h) recommendations regarding the activities that the Re-organisation Enterprise should undertake during and after its re-organisation;
- (i) if the Re-organisation Enterprise is a company or is to become a company, recommendations regarding whether any part of the Re-organisation Enterprise or of a government entity should become a proposed subsidiary of the company;
- (j) recommendations regarding whether the Re-organisation Enterprise should form or acquire a company that is a wholly owned subsidiary;
- (k) recommendations regarding whether the Re-organisation Enterprise should transfer to a wholly owned subsidiary specified assets, liabilities or undertaking, in exchange for the issue of shares to the Re-organisation Enterprise, or otherwise;

- (l) recommendations regarding whether the Re-organisation Enterprise should transfer to another government entity or to the State specified assets, liabilities or undertakings;
 - (m) recommendations regarding whether the Re-organisation Enterprise should guarantee a particular liability, or the liabilities generally of a wholly owned subsidiary;
 - (n) recommendations regarding whether the Re-organisation Enterprise should sell assets including shares;
 - (o) recommendations as to whether a Re-organisation Enterprise should relinquish or be divested of any license or monopoly.
- (2) The Public Enterprise Minister, after consulting the relevant Minister, may also determine that the draft re-organisation charter should contain a timetable for identifying and dealing with any existing activities for the Re-organisation Enterprise that are of a policy formulation or regulatory nature.

Details about preparation of charter to Part C of Schedule 2

23. The rules about the formulation of a draft re-organisation charter are set out in Part C of Schedule 2 of this Act.

Draft Charter to be given to Ministers

24. (1) When the Re-organisation Enterprise's draft re-organisation charter has been prepared, the Re-organisation Enterprise or the Charter Preparation Committee shall give a copy of the draft charter to the Public Enterprise Minister and the relevant Minister.
- (2) The Public Enterprise Minister, after consulting the relevant Minister, may return the draft charter to the Re-organisation Enterprise or committee and request it to -
- (a) consider or further consider any matter and deal with the matter in the draft charter; and
 - (b) revise the draft charter in the light of its consideration or further consideration.
- (3) If the Public Enterprise Minister is satisfied with the draft re-organisation charter and after consulting the relevant Minister he may approve the charter by Notice in the Gazette.
- (4) If the Public Enterprise Minister is not satisfied with the draft re-organisation charter, the charter has no effect.

Amendment of re-organisation charter

25. The Public Enterprise Minister, after consulting the relevant Minister, may, at any time, in writing approve an amendment of, or make an amendment to, the Re-organisation Enterprises re-organisation charter.

Public Enterprise Minister may give directions

26. (1) In an appropriate case, even if a re-organisation charter has not been prepared or has not been fully prepared or has not been approved, the Public Enterprise Minister, after consulting the relevant Minister, may by Notice published in the Gazette, give written directions to a Re-organisation Enterprise to re-organise its affairs in accordance with those directions.
- (2) Any directions given under subsection (1) may direct a Re-organisation Enterprise to do any one or more of the following -
- (a) to form or acquire a company that is a wholly owned subsidiary;
 - (b) to transfer a wholly owned subsidiary specified assets, liabilities or undertakings, in exchange for the issue of shares to the Re-organisation Enterprise or otherwise;
 - (c) to transfer to another government entity or to the State specified assets, liabilities or undertakings;
 - (d) to guarantee a particular liability, or the liabilities generally of a wholly owned subsidiary;
 - (e) to relinquish or be divested of any licence or monopoly;
 - (f) such other matters as may be specified in the directions.
- (3) The Re-organisation Enterprise shall ensure that a direction given to it under this section is complied with in relation to itself and its subsidiaries.
- (4) The Directions given under this section are, for the purposes of Division 5, deemed to be the Re-organisation Enterprise's re-organisation charter.

DIVISION 5

IMPLEMENTATION OF RE-ORGANISATION CHARTER

Charter to be followed

27. A re -organisation charter shall be implemented in the manner set out in the charter and, if any matter is not covered by the charter, the Public Enterprise Minister after consulting the relevant Minister may issue directions (under section 30 (1) as to implementation.

Charter administration committee may be appointed

28. (1) The Public Enterprise Minister, after consulting the relevant Minister, may appoint a charter administration committee to ensure that the Re-organisation Enterprise's re-organisation charter is implemented in a timely, efficient and effect way.
- (2) The Public Enterprise Minister, after consulting the relevant Minister, may appoint any person, whether or not he is a public officer, to be a member of a charter administration committee.
- (3) A member of a charter administration committee is not, in that capacity, a public officer.

Details about charter administration committee

29. The rules about charter administration committees are set out in Part D of Schedule 2 of this Act.

Directions about charter implementation

30. (1) The Public Enterprise Minister, after consulting the relevant Minister may give the Re-organisation Enterprise written directions in relation to the Re-organisation Enterprise that appear to him to be necessary or desirable to enable the Re-organisation Enterprise's re-organisation charter to be implemented.
- (2) Without limiting subsection (1), if a charter administration committee has been appointed for the Re-organisation Enterprise, the Public Enterprise Minister, after consulting the relevant minister may direct the Re-organisation Enterprise -
- (a) to give to the committee information about the Re-organisation Enterprise and its subsidiaries that the committee considers necessary or desirable for the implementation of the Re-organisation Enterprise's re-organisation charter; or
- (b) to permit the committee to have access to records and other documents about the Re-organisation Enterprise and its subsidiaries that the committee considers necessary or desirable for the implementation of the Re-organisation Enterprise's re-organisation charter; or
- (c) to take steps that the committee considers necessary or desirable for the implementation of the Re-organisation Enterprises re-organisation charter.
- (3) The Re-organisation Enterprise shall ensure that a direction given to it under this section is complied with in relation to itself and its subsidiaries.

DIVISION 6
**BOARD OF DIRECTORS AND CHIEF EXECUTIVE OFFICER OF RE-
ORGANISATION ENTERPRISE**

Boards to be re-appointed

- 31.** (1) When a government entity becomes a Re-organisation Enterprise, its Board (if any) shall be re-appointed within 3 months.
- (2) All existing appointments to the Board are terminable by the Public Enterprise Minister at any time within that period of 3 months, but the Board shall continue to function normally until a new Board is appointed.
- (3) The Public Enterprise Minister after consulting the relevant Minister and with the approval of the Prime Minister, shall appoint the new members of the Board in a re-appointment under subsection (1), in accordance with the applicable legal requirements and as if it was the Public Enterprise Minister who was specified therein as the appointing authority.
- (4) Existing Board members are eligible for re-appointment.
- (5) The Board members' appointments are terminable under this section despite any other provision in an Act or in any agreement or expectation relating to the term or conditions of any appointment to the Board.
- (6) Nothing in this section affects any right to remuneration or compensation for loss of employment or office which might exist under the terms of a contract or otherwise according to law.

Duty of existing Board of Directors

- 32.** (1) If a Re-organisation Enterprise or a subsidiary or proposed subsidiary of the Re-organisation Enterprise has a Board of directors or an equivalent body, it is the role of the Board or body -
- (a) to implement the Reorganisation Enterprise's re-organisation charter and to comply with any directions given in accordance with the provisions of this Act; and
- (b) to ensure that the Re-organisation Enterprise or subsidiary otherwise performs its functions in a proper, efficient and effective way.
- (2) The Public Enterprise Minister, after consulting the relevant Minister, may remove members of the Board of a Re-organisation Enterprise, whether or not the Board has been re-appointed under section 31.

Interim Board of directors

33. (1) If a Re-organisation Enterprise does not have a Board of Directors or an equivalent body, a regulation under section 38 of this Act may provide that, on a specified day, the entity is to have an interim Board of directors.
- (2) It is the role of the interim Board -
- (a) to implement the Re-organisation Enterprise's reorganisation charter and to comply with any directions given in accordance with the provisions of this act; and
- (b) to ensure that the entity otherwise performs its functions in a proper, efficient and effective way.

Chief Executive Officer post to be advertised

34. (1) When a government entity becomes a Re-organisation Enterprise, the post of Chief Executive Officer becomes terminable by the Public Enterprise Minister.
- (2) The person then holding the position of Chief Executive Officer shall remain in post as acting Chief Executive Officer until the advertisement process is completed and the post is filled.
- (3) Within 3 months of the nomination of a government entity as a Re-organisation Enterprise, the position of Chief Executive Officer in the Re-organisation Enterprise shall be advertised.
- (4) If the Re-organisation Enterprise has a Board, there-appointed Board shall choose the best applicant for the post and make an appointment within 3 months of the re-appointment Board being first appointed.
- (5) If the Re-organisation Enterprise has no Board, the Public Enterprise Minister, after consulting the relevant Minister, shall choose the best applicant for the post of Chief Executive Officer and make an appointment within 3 months of first placing the advertisement.
- (6) An existing Chief Executive Officer is eligible for re-appointment.
- (7) The post of Chief Executive Officer becomes terminable as set out in subsection (1) despite any other provision in an Act or in any agreement or expectation relating to the term of appointment to the post.
- (8) Nothing in this section affects any right to remuneration or compensation for loss of employment or office which might exist under the terms of a contract or otherwise according to law.

DIVISION 7
STRUCTURAL CHANGES TOWARDS CORPORATISATION

Rules for interim changes in Part E of Schedule 2

35. The rules for the formation of companies, statutory authorities and other entities during the re-organisation process, are set out in Part E of Schedule 2 of this Act.

Rules for transferring assets and liabilities in Part F of Schedule 2

36. The rules relating to the transfer of assets and liabilities during the re-organisation process are set out in Part F of Schedule 2 of this Act.

Legal rights etc. during re-organisation.

37. (1) This Division has effect despite anything in any instrument.

(2) Nothing done under this Division in relation to a government entity -

(a) places the entity or the State in breach of contract or confidence or otherwise makes the entity or the State guilty of a civil wrong; or

(b) makes the entity or the State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or

(c) is taken to fulfil a condition -

(i) that allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation;
or

(ii) that requires any money to be paid before its stated maturity; or

(d) releases a surety or other obligee (in whole or part) from an obligation.

(3) If, apart from this subsection, the advice or consent of a person would be necessary under an instrument in order to give effect to this Division, the advice is taken to have been obtained or the consent is taken to have been given:

PROVIDED THAT nothing in this Division affects the rights and duties of the Native Land Trust Board.

Regulations may deal with other matters

38. (1) The Public Enterprise Minister after consulting the Minister of Finance and the relevant Minister and with the approval of Cabinet may make regulations with respect to any matter for which it is necessary or convenient to make provision to facilitate the transition of a government entity to -

- (a) a Government Commercial Company or Commercial Statutory Authority; or
 - (b) a subsidiary of a Commercial Statutory Authority or Government Commercial Company.
- (2) Regulations under subsection (1) may make provision with respect to -
- (a) whether and, if so, the extent to which a government entity is the successor-in-law of a particular entity;
 - (b) the assets and liabilities that are, or are not, assets and liabilities of the entity;
 - (c) the instruments that are, or are not, to apply to the entity, including whether or not the instruments are taken to be instruments -
 - (i) to which the entity is a party; or
 - (ii) that were given to, by or in favour of the entity; or
 - (iii) in which a reference is made to the entity; or
 - (iv) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by the entity;
 - (d) the proceedings to which the entity becomes a party in substitution for another person; and
 - (e) the existing officers and employees of the entity and their rights.
- (3) The Public Enterprise Minister with the approval of Cabinet may, by regulation, declare that from such date as is specified, a government entity ceases to be a Re-organisation Enterprise and remove its name from Part A of Schedule 2 of this Act.

Transitional leave entitlements.

39. If -

- (a) a person becomes employed by a Government Commercial Company in a permanent or full-time capacity within 1 year after its nomination under section 14; and
- (b) the person was an officer or employee of a government entity, who was employed in a permanent or full-time capacity, immediately before becoming employed by the Government Commercial Company; and

- (c) the person had leave and other entitlements related to length of service at that time that had been accrued as an officer or employee of a government entity; and
- (d) the person has not been paid in full for such leave and other entitlements, that person shall be treated as having accrued the entitlements as an employee of the Government Commercial Company.

Non-application of taxation on re-organisation

- 40.** (1) The Minister for Finance may certify that a specific matter, instrument, transaction or thing is exempt from tax, and the matter, instrument, transaction or thing is accordingly exempt.
- (2) Without affecting the generality of subsection (1), the following transactions are exempt from the imposition of tax -
- (a) the acquisition of shares in a company in anticipation of the creation of a Government Commercial Company;
 - (b) the transfer of shares of a government company or any of its subsidiaries to the State, a nominee of the State or another government entity;
 - (c) the transfer of assets or liabilities to a State owned company or any of its subsidiaries under this Act.
- (3) In this section, "tax" includes stamp duty and other tax, duty, fee, levy or charge.

**PART 3
GOVERNMENT COMMERCIAL COMPANIES**

Division 1 - Basic Concepts

Meaning of "Government Commercial Company"

- 41.** In this Act "Government Commercial Company" means any government company that is declared to be a Government Commercial Company under section 44 (1) and is listed in Schedule 3 of this Act.

Purpose of listing as Government Commercial Company

- 42.** (1) This Part of the Public Enterprise Act provides a mechanism whereby-
- (a) the Public Enterprise Minister, after consultation with the approval of Cabinet, can declare any government company to be a Government Commercial Company and thereby required to comply with this Act;

(b) Government Commercial Companies become liable to report regularly and be accountable;

(c) Government Commercial Companies can be reformed.

(2) The provisions of this Part are intended -

(a) to allow the State, as owner on behalf of the people of Fiji, to provide strategic direction to the Government Commercial Companies by setting financial and non-financial performance targets and non-commercial obligations; and

(b) to improve the accountability to the Government and the people of Fiji of Government Commercial Companies; and

(c) to regulate the relationship between government and Government Commercial Companies and their Boards.

Principal objective of Government Commercial Company

43. (1) The principal objective of every Government Commercial Company is to operate as a successful business and, to this end, to be as profitable and efficient as comparable businesses which are not owned by the State.

(2) The principal objective of every Government Commercial Company is to be achieved through the application of the key principles of public enterprise reform and their elements - as set out in Schedule 1 of this Act.

DIVISION 2

GOVERNMENT COMMERCIAL COMPANIES MAY BE DECLARED

Minister may declare a Government Commercial Company

44. (1) The Public Enterprise Minister may, after consulting the relevant Minister and Minister for Finance with the approval of the Cabinet, by Notice in the Gazette, declare any government company to be a Government Commercial Company, and insert its name in Schedule 3 of this Act.

(2) The company becomes a Government Commercial Company on the date so specified in the Notice, and if no such date is specified, the date that the Notice is published in the Gazette.

Minister may alter Schedule 3

45. (1) The Public Enterprise Minister may also, after consultation with the relevant Minister and Minister of Finance, by Notice in the Gazette, after Schedule 3 by -

(a) deleting the name of a government company; or

(b) amending any name contained in the Schedule to reflect a change in the name of the government company.

- (2) The company ceases to be a Government Commercial Company on the date so specified in the Notice, and if no such date is specified, the date that the Notice is published in the Gazette.

DIVISION 3

APPLICATION OF LAWS TO GOVERNMENT COMMERCIAL COMPANIES

Status as Government Commercial Company does not affect legal status

46. (1) The listing of a government company as a Government Commercial Company does not, of itself, affect the legal status or personality of the company.
- (2) The listing of a government company as a Government Commercial Company affects the functions and powers of the company to the extent provided for in this Act.

Application of Companies Act to Government Commercial Companies

47. The Companies Act applies to a Government Commercial Company except in so far as it is inconsistent with this Act.

Application of other laws to Government Commercial Companies

48. (1) This Act applies to a Government Commercial Company in precedence to anything in an Act that was enacted before the commencement of this Act.
- (2) If there is an inconsistency between this Act and an Act enacted before the commencement of this Act, this Act prevails to the extent of the inconsistency.
- (3) The Public Enterprise Minister may, with the approval of Cabinet, make a regulation providing that an Act, or a provision of an Act, that -
- (a) was enacted before the commencement of this Act; and
- (b) established a government entity that becomes a Government Commercial Company or provides for its structure, functions, powers, management, operation or accountability,
- applies to the Government Commercial Company with modifications prescribed by regulation.
- (4) A regulation may be made for the purposes of subsection (3) only to the extent necessary to bring the Act or the provision of the Act into conformity with this Act and the purposes of this Part.

- (5) A regulation shall not be made for the purposes of subsection (3) without the approval of the Minister responsible for that Act.
- (6) A regulation may be made for the purposes of subsection (3) in anticipation of a government company becoming a Government Commercial Company.
- (7) A regulation may be made, for the purposes of subsection (3) that reduces or removes any tax exemption previously in force in relation to a Government Commercial Company.
- (8) A regulation may be made for the purposes of subsection (3) only within 2 years from the day on which the particular Government Commercial Company is declared under section 44, unless the House of Representatives, by resolution, expressly authorises this time period to be extended.

Ministers in charge of Government Commercial Company

- 49.** (1) The Public Enterprise Minister has overall ministerial responsibility for Government Commercial Companies.
- (2) The "relevant Minister" of a company which is or which is to become a Government Commercial Company is the Minister nominated by the Prime Minister by Gazette Notice.
 - (3) The Prime Minister may nominate any Minister to be a relevant Minister under subsection (2).
 - (4) The Prime Minister shall make the nomination by nominating the holder of a particular Ministerial office by reference to the title of the office concerned.
 - (5) The Prime Minister may, in an appropriate case, be nominated under subsection (2) to be the relevant Minister of the Government Commercial Company.
 - (6) The Prime Minister may nominate an Assistant Minister to be the relevant Minister of the Government Commercial Company under subsection (2).
 - (7) If the Prime Minister does not nominate a Minister under subsection (2) then despite any other provision of this Act which requires the Public Enterprise Minister to consult with the relevant Minister of a Government Commercial Company before doing an act, the Public Enterprise Minister need not consult with any other Minister before doing that act.

**DIVISION 4
ACCOUNTABILITY**

Reporting and accountability

50. Part 5 of this Act contains the provisions that apply to Government Commercial Companies about -

- (a) corporate plans;
- (b) statements of corporate intent;
- (c) audits;
- (d) half yearly reports;
- (e) annual reports;
- (f) accounts - unaudited and audited; and
- (g) information to be laid before parliament.

**DIVISION 5
EMPLOYEES**

Employment with a Government Commercial Company

- 51.** (1) Every Government Commercial Company shall have an Employment and Industrial Relations Plan.
- (2) The provisions of this Act about such plans are contained in Part 5.

**DIVISION 6
FINANCE**

Payments of dividends

- 52.** (1) Within 1 month after the end of each financial year, a Government Commercial Company's Board shall advise the Public Enterprise Minister and the relevant Minister of the recommendation that, in the light of the information then available to the Board on payment of dividends, it is likely to make under subsection (2).
- (2) Within 3 months after the end of the financial year, the Board shall recommend to the Public Enterprise Minister and the relevant Minister that the Government Commercial Company and its subsidiaries pay a specified dividend, or not pay a dividend, for the financial year.

(3) The Board shall consult with the Public Enterprise Minister before making the recommendation.

(4) Within 2 months after receiving the recommendation, the Public Enterprise Minister shall, after consulting with the Minister for Finance and the relevant Minister, either -

(a) approve the recommendation; or

(b) direct the payment of a specified dividend having regard to the adequacy of the government commercial company's capital in relation to the size and nature of its business and the maximum amount that may be declared under the companies act.

(5) The dividend for a financial year shall not exceed the amount allowed under the Companies Act.

(6) The dividend shall be paid within 6 months after the end of the financial year or any further period that the Public Enterprise Minister allows.

Interim dividends

53. (1) The Public Enterprise Minister may, at any time after the sixth month in a financial year, require the Government Commercial Company's Board to make a recommendation about the payment of interim amounts to the State (including the times at which the amounts are to be paid) on account of the dividend that may become payable under section 52 (Payments of dividends) for the financial year.

(2) Within 1 month after receiving notice of the requirement, the Board shall make a recommendation to the Public Enterprise Minister and the relevant Minister.

(3) The Public Enterprise Minister shall, after consulting the relevant Minister and the Minister for Finance, within 2 months after receiving the recommendation, either-

(a) approve the recommendation; or

(b) having regard to the adequacy of the Government Commercial Company's capital in relation to the size and nature of its business and the maximum amount that may be declared under the companies act, direct the payment, at specified times, of specified amounts, or different specified amounts, on account of the dividend that may become payable for the financial year.

(4) A direction under subsection (3) (b) shall not direct the payment of an amount that exceeds the Government Commercial Company's estimated profit for the first 6 months of the financial year, after -

(a) provision has been made for income tax (if any); and

- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

DIVISION 7
ACQUISITION AND DISPOSAL OF MAIN UNDERTAKINGS AND
SUBSIDIARIES

Acquisition and disposal of main undertakings

54. (1) A Government Commercial Company or a subsidiary of a Government Commercial Company shall not dispose of any of its main undertakings or acquire a main undertaking without the prior written approval of Cabinet on the recommendation of the Public Enterprise Minister.
- (2) The Public Enterprise Minister shall not give his recommendation to Cabinet under subsection (1) unless he has first consulted the relevant Minister and Minister for Finance.
- (3) In subsection (1) -
- "main undertaking" means an undertaking specified in the Government Commercial Company's most recent statement of corporate intent as a main undertaking of the Government Commercial Company or subsidiary.

Acquisition and disposal of subsidiaries

55. (1) A Government Commercial Company or a subsidiary of a Government Commercial Company may -
- (a) form, or participate in the formation of, a company that will become a subsidiary; or
- (b) acquire shares or participate in any other transaction that will result in a body corporate becoming or ceasing to be a subsidiary;
- only with the prior written approval of Cabinet on the recommendation of the Public Enterprise Minister.
- (2) The Public Enterprise Minister shall not give his recommendation under subsection (1) unless he has first consulted the relevant Minister and the Minister for Finance.

DIVISION 8
BOARDS OF DIRECTORS

Boards may be re-appointed

56. (1) The Public Enterprise Minister, at any time after a government company is declared to be a Government Commercial Company, and after consulting the relevant Minister and with the approval of the Prime Minister, is hereby empowered to -
- (a) terminate any or all appointments to the Board, and
 - (b) appoint new members of the Board,
- in accordance with the applicable legal requirements, and as if it was the Public Enterprise Minister who was specified therein as the appointing authority.
- (2) Existing Boards and Board members of a Government Commercial Company are to continue to operate normally after the declaration of the Government Commercial Company, pending the exercise by the Public Enterprise Minister of his power under subsection (1).
- (3) Existing Board members are eligible for re-appointment.
- (4) The board members' appointments are terminable under this section despite any other provision in an Act or in the company's memorandum and the articles or any agreement or expectation relating to the term of any appointment to the Board.
- (5) This section also applies to a subsidiary of a Government Commercial Company unless the context otherwise requires.
- (6) Nothing in this section affects any right to remuneration or compensation for loss of employment or office which might exist under the terms of a contract or otherwise according to law.

Role of Board in a Government Commercial Company

57. The role of a Government Commercial Company's Board includes the following matters -
- (a) responsibility for the Government Commercial Company's commercial policy and direction;
 - (b) the appointment of the company's chief executive officer (by whatever name called);
 - (c) ensuring the Government Commercial Company achieves its principal objective as defined in section 43 of this act;

- (d) ensuring that, as far as possible, the Government Commercial Company achieves, and acts in accordance with, its corporate plan and carries out the objectives outlined in its statement of corporate intent;
- (e) accounting to the Public Enterprise Minister and the relevant minister for its performance as required by this act and other laws applying to the Government Commercial Company;
- (f) ensuring that the Government Commercial Company otherwise performs its functions in a proper, effective and efficient way.

DIVISION 9
GENERAL RESERVE POWER OF
PUBLIC ENTERPRISE MINISTER

Reserve power of Public Enterprise Minister to give directions in public interest

- 58.** (1) The Public Enterprise Minister may give the Government Commercial Company's Board a written direction in relation to the Government Commercial Company and its subsidiaries, if the Public Enterprise Minister is satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.
- (2) The Board shall ensure that the direction is complied with in relation to the Government Commercial Company and shall, as far as practicable, ensure that it is complied with in relation to its subsidiaries.
- (3) Before giving the direction, the Public Enterprise Minister shall -
- (a) consult the relevant Minister and Minister of finance;
 - (b) seek the views of the Board.
- (4) The Public Enterprise Minister shall cause a copy of the direction to be published in the Gazette within 21 days after it is given.

Government Commercial Company and Board not otherwise subject to government direction

- 59.** Except as otherwise provided by this or another Act, a Government Commercial Company and its Board are not subject to direction by or on behalf of the Government (other than in the Government's role as shareholder).

**DIVISION 10
LEGAL CAPACITY AND POWERS**

Status of Government Commercial Company

60. A Government Commercial Company and any subsidiary of a Government Commercial Company -

(a) is not, and does not represent, the State;

(b) is not exempt from any tax imposed by or under any law of the State, merely because it is a Government Commercial Company or a subsidiary of a Government Commercial Company;

(c) cannot render the state liable for any debts, liabilities or obligations of the Government Commercial Company or a subsidiary of the public enterprise -

unless this or any other Act expressly so provides.

**DIVISION 11
SHARES IN GOVERNMENT COMMERCIAL COMPANIES**

Number of shareholders

61. A Government Commercial Company shall have only 2 shareholders.

Shareholders to be nominated by Ministers

62. (1) One shareholder shall be nominated by the Public Enterprise Minister.

(2) One shareholder shall be nominated by the Minister of Finance.

(3) If the Minister for Finance is the Public Enterprise Minister, he shall appoint both shareholders.

(4) A Minister shall make the nomination by nominating the holder of a particular office by reference to the title of the office concerned.

Shareholders shall be certain Permanent Secretaries or Supervising Officers

63. (1) Each shareholder shall be a permanent secretary or supervising officer.

(2) At least one shareholder shall be a permanent secretary or supervising officer within the Ministry of the Public Enterprise Minister.

Shareholders hold shares for the State etc.

64. (1) The State is the owner of all shares in a Government Commercial Company.

(2) A Government Commercial Company's shareholders hold their shares on behalf of the State.

(3) Shares in a Government Commercial Company held in the name of a person described by reference to the title of his office shall be held by the person for the time being holding the particular office.

(4) Notwithstanding any other written law or rule of law, it shall not be necessary to complete or register a transfer of shares consequent upon a change in the person holding the particular office.

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(5) A shareholder may at any time or times, by written notice to the secretary of a Government Commercial Company, authorise (on such terms and conditions as are specified in the notice) such person as the shareholder thinks fit to act as the shareholder's representative at any or all of the meetings of shareholders of the Government Commercial Company or of any class of such shareholders, and any person so authorised shall be entitled to exercise the same powers on behalf of the shareholder as the shareholder could exercise if present in person at the meeting or meetings.

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Transfer, issue etc. of shares

65. (1) Unless otherwise authorised by Cabinet, shares in a Government Commercial Company may be transferred only to another permanent secretary or supervising officer.

(2) The Public Enterprise Minister may execute a transfer of shares in a Government Commercial Company for the purpose of giving effect to this Act.

(3) If the Public Enterprise Minister executes a transfer of shares in a Government Commercial Company, the Government Commercial Company shall register the transfer and take any other action necessary to give effect to the transfer.

(4) Subject to the other provisions of this Division, this Act does not prevent a Government Commercial Company from issuing further shares to its shareholders.

Shareholder to act on advice of Minister

66. (1) A shareholder in a Government Commercial Company shall as far as practicable before exercising any right as a shareholder consult with the Minister who appointed him.

(2) A shareholder in a Government Commercial Company shall in exercising any right as a shareholder act in accordance with any general or special direction given to him in writing by the Minister who appointed him.

Ministers and shareholders not directors etc

- 67.** (1) A Government Commercial Company's shareholders, the Public Enterprise Minister and a relevant Minister, shall not be treated as directors of the Government Commercial Company or any subsidiary or proposed subsidiary of a Government Commercial Company.
- (2) A Minister or a permanent secretary or a supervising officer shall not incur civil liability for an act or omission done or omitted to be done honestly and without recklessness under, or for the purpose of, this Act in relation to a Government Commercial Company or a subsidiary or proposed subsidiary.
- (3) A liability that would, apart from subsection (2), attach to a Minister or a permanent secretary or supervising officer, attaches instead to the State.

DIVISION 12

MEMORANDUM AND ARTICLES OF A GOVERNMENT COMMERCIAL COMPANY

Memorandum and articles shall not be inconsistent with this Act or Companies Act

- 68.** (1) The memorandum and articles of a Government Commercial Company and its subsidiaries shall not be inconsistent with this Act or the Companies Act.
- (2) If there is any inconsistency between this Act and the Companies Act regarding the memorandum and articles of a Government Commercial Company and its subsidiaries, this Act prevails to the extent of the inconsistency.
- (3) If there is any inconsistency between this Act and the memorandum and articles of a Government Commercial Company and its subsidiaries, this Act prevails to the extent of the inconsistency.
- (4) If there is any inconsistency between the Companies Act and the memorandum and articles of a Government Commercial Company and its subsidiaries, then, subject to subsection (2), the Companies Act prevails to the extent of the inconsistency.

DIVISION 13

NON-COMMERCIAL OBLIGATIONS

Non-commercial obligations - general

- 69.** (1) Government Commercial Companies are to operate along commercial lines, but it is recognised that for the benefit of Fiji, there will be occasions when it is beneficial for Government Commercial Companies to undertake non-commercial activities.

- (2) The non-commercial obligations that a Government Commercial Company is to perform are, as far as possible, to be specified in its statement of corporate intent.
- (3) The costing of, funding for, or other arrangements to make adjustments relating to a Government Commercial Company's non-commercial obligations are also to be specified in its statement of corporate intent.

Meaning of "non-commercial obligations"

- 70.** The "non-commercial obligations" of a Government Commercial Company are obligations to perform activities that its Board establishes to the satisfaction of the Public Enterprise Minister and Minister of Finance are not in the commercial interests of the Government Commercial Company.

Payment by the State

- 71.** If the State requires a Government Commercial Company to perform a non-commercial obligation, and there is no agreement between them as to the calculation and payment of the cost thereof, then the State shall pay that the amount the Public Enterprise Minister, after consulting the Minister of Finance calculates is the full cost, direct and indirect, to the Government Commercial Company, after making such adjustments as are reasonable, including an adjustment for any ancillary or contingent benefits that accrue or are likely to accrue to the Government Commercial Company as a result of it providing the goods and services.

**PART 4
COMMERCIAL STATUTORY AUTHORITIES
DIVISION 1 - BASIC CONCEPTS**

Meaning of "Commercial Statutory Authority"

- 72.** In this Act "Commercial Statutory Authority" means any statutory authority that is declared to be a Commercial Statutory Authority under Section 74(1) and is listed in Schedule 4 of this Act.

Purpose of listing as Commercial Statutory Authority

- 73.** (1) This Part of the Public Enterprise Act provides a mechanism whereby -
- (a) the Public Enterprise Minister, after consultation and with approval of Cabinet can declare any statutory authority to be a Commercial Statutory Authority and thereby required to comply with this Act;
 - (b) a Commercial Statutory Authority becomes liable to report regularly and be accountable;
 - (c) Commercial Statutory Authorities can be reformed.

- (2) The provisions of this Part are intended to improve the accountability of Commercial Statutory Authorities, to the Government and the people of Fiji.

DIVISION 2 COMMERCIAL STATUTORY AUTHORITY MAY BE DECLARED

Minister may declare a Commercial Statutory Authority

- 74.** (1) The Public Enterprise Minister may, after consulting the relevant Minister and Minister of Finance and with the approval of Cabinet, by notice in the Gazette, declare any statutory authority to be a Commercial Statutory Authority, and insert its name in Schedule 4 of this Act.
- (2) The statutory authority becomes a Commercial Statutory Authority on the date so specified in the Notice, and if no such date is specified, the date that the Notice is published in the Gazette.

Minister may alter Schedule

- 75.** The Public Enterprise Minister may also, after consulting the relevant Minister and the Minister of Finance, by Notice the Gazette, after Schedule 4 by -
- (a) deleting the name of a statutory authority; or
- (b) amending any name contained in the Schedule to reflect a change in the name of the statutory authority.

DIVISION 3 APPLICATION OF LAWS TO COMMERCIAL STATUTORY AUTHORITY

Status as Commercial Statutory Authority does not affect legal status etc.

- 76.** (1) The listing of a statutory authority as a Commercial Statutory Authority does not, of itself, affect the legal status or personality of the statutory authority.
- (2) The listing of a statutory authority as a Commercial Statutory Authority affects its functions and powers to the extent provided for in this Act.

Application of other laws to Commercial Statutory Authorities

- 77.** (1) This Act applies to a Commercial Statutory Authority in precedence to anything in an Act that was enacted before the commencement of this Act.
- (2) If there is an inconsistency between this Act and an Act enacted before the commencement of this Act, this Act prevails to the extent of the inconsistency.
- (3) The Public Enterprise Minister may, with the approval of Cabinet, make a regulation providing that an Act, or a provision of an Act, that -

(a) was enacted before the commencement of this Act; and

(b) established a government entity that becomes a Commercial Statutory Authority or provides for its structure, functions, powers, management, operation or accountability,

applies to the Commercial Statutory Authority with modifications prescribed by regulation.

- (4) A regulation may be made for the purposes of subsection (3) only to the extent necessary to bring the Act or the provision of the Act into conformity with this Act and the purposes of this Part.
- (5) A regulation may be made for the purposes of subsection (3), only after consultation with the Minister responsible for that Act.
- (6) A regulation may be made for the purposes of subsection (3) in anticipation of a statutory authority becoming a Commercial Statutory Authority.
- (7) A regulation may be made for the purposes of subsection (3) only after consultation with the Minister responsible for that Act.
- (8) A regulation may be made for the purposes of subsection (3) only within 2 years from the day on which the particular Commercial Statutory Authority is declared under section 74, unless the House of Representatives, by resolution, expressly authorises this time period to be extended.

Relevant Minister of Commercial Statutory Authority.

78. (1) The "relevant Minister" of a statutory authority which is or which is to become a Commercial Statutory Authority is the Minister who has the duty to administer the legislation that established or provides for the structure or management of the authority.

(2) If there is not a Minister who is the relevant Minister under subsection (1), the relevant Minister is the Minister nominated by the Prime Minister by Gazette notice.

**DIVISION 4
ACCOUNTABILITY**

Reports and Accountability

79. Part 5 of this Act contains the provisions that apply to Commercial Statutory Authorities about -

(a) corporate plans;

(b) statements of corporate intent;

- (c) audits
- (d) half yearly reports;
- (e) annual reports;
- (f) accounts - unaudited and audited; and
- (g) information to be laid before Parliament.

DIVISION 5 EMPLOYEES

Employment with a Commercial Statutory Authority

- 80.** (1) Every Commercial Statutory Authority shall have an Employment and Industrial Relations Plan.
- (2) The provisions of this Act about such plans are contained in Part 5.

DIVISION 6 FINANCE

Payment of dividends

- 81.** (1) Within 1 month after the end of each financial year, a Commercial Statutory Authority's Board shall advise the Public Enterprise Minister and the relevant Minister of the recommendation that, in the light of the information then available to the Board on payment of dividends, it is likely to make under subsection (2).
- (2) Within 3 months after the end of the financial year, the Board shall recommend to the Public Enterprise Minister and the relevant Minister that the Commercial Statutory Authority and its subsidiaries pay a specified dividend, or not pay a dividend, for the financial year.
- (3) The Board shall consult with the Public Enterprise Minister before making the recommendation.
- (4) Within 2 months after receiving the recommendation, the Public Enterprise Minister, after consulting the relevant Minister and Minister of Finance shall either -
- (a) approve the recommendation; or

- (b)* direct the payment of a specified dividend having regard to the adequacy of the Commercial Statutory Authority's capital in relation to the size and nature of its business.
- (5) A direction under sub-section 4 (b) shall not direct the payment of an amount otherwise than out of profits.
- (6) The dividend shall be paid within 6 months after the end of the financial year or any further period that the Public Enterprise Minister and the relevant Minister allows.

Interim dividends

- 82.** (1) The Public Enterprise Minister may, at any time after the sixth month in a financial year, require the Commercial Statutory Authority's Board to make a recommendation about the payment of interim amounts to the State (including the times at which the amounts are to be paid) on account of the dividend that may become payable under section 81 (Payment of dividends) for the financial year.
- (2) Within 1 month after receiving notice of the requirement, the Board shall make a recommendation to the Public Enterprise Minister, the relevant Minister, and the Minister of Finance.
- (3) The Public Enterprise Minister, after consulting the relevant Minister and Minister of Finance, shall, within 2 months after receiving the recommendation, either -
- (a)* approve the recommendation; or
 - (b)* having regard to the adequacy of the Commercial Statutory Authority's capital in relation to the size and the nature of its business, direct the payment, at specified times, of specified amounts, or different specified amounts, on account of the dividend that may become payable for the financial year.
- (4) A direction under subsection (3)(b) shall not direct the payment of an amount that exceeds the Commercial Statutory Authority's estimated profit for the first 6 months of the financial year, after-
- (a)* provision has been made for income tax (if any); and
 - (b)* any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

DIVISION 7
GENERAL AUTONOMY OF COMMERCIAL STATUTORY AUTHORITIES

Commercial Statutory Authority and Board not otherwise subject to government direction

- 83.** Except as otherwise provided by this Act, the Authority's establishing Act, or another Act, a Commercial Statutory Authority and its Board are not subject to direction by or on behalf of the Government.

DIVISION 8
LEGAL CAPACITY AND POWERS

Status of Commercial Statutory Authority

- 84.** A Commercial Statutory Authority and any subsidiary of a Commercial Statutory Authority -

(a) is not and does not represent, the State;

(b) is not exempt from any tax imposed by or under any law of the State, merely because it is a Commercial Statutory Authority or a subsidiary of a Commercial Statutory Authority;

(c) cannot render the State liable for any debts, liabilities or obligations of the Commercial Statutory Authority or a subsidiary of the Public Enterprise -

unless this or any other Act expressly so provides.

PART 5
REPORTING AND ACCOUNTABILITY

DIVISION 1
GENERAL

Application

- 85.** This applies to all Government Commercial Companies and Commercial Statutory Authorities from the time that they are declared to be and listed as a Government Commercial Company, or a Commercial Statutory Authority, as the case may be.

Purpose of this Part

- 86.** This Part of the Public Enterprise Act is intended to apply to all Government Commercial Companies and Commercial Statutory Authorities, certain provisions to ensure that they are accountable for their actions, that they report to government regularly and uniformly, and that they are properly managed and planned.

**DIVISION 2
CORPORATE PLAN**

**SUB-DIVISION 1
GENERAL**

Government Commercial Company and Commercial Statutory Authority shall have corporate plan

- 87.** (1) A Corporate Plan is an annual document that sets out for future operations of the Government Commercial Company or Commercial Statutory Authority.
- (2) Unless otherwise exempted in writing by the Public Enterprise Minister, after consulting the relevant Minister, each Government Commercial Company and Commercial Statutory Authority shall have a corporate plan and it is the duty of the Board of every Government Commercial Company and Commercial Statutory Authority to ensure that the Government Commercial Company or Commercial Statutory Authority acts in accordance with that corporate plan.

Corporate plan to apply to subsidiaries

- 88.** If a Government Commercial Company or Commercial Statutory Authority has subsidiaries, the corporate plan shall also apply to the subsidiaries.

Guidelines for corporate plans

- 89.** (1) The Public Enterprise Minister may issue guidelines about the format of the corporate plans.
- (2) Every Government Commercial Company or Commercial Statutory Authority shall, unless otherwise exempted in writing by the Public Enterprise after consulting the relevant Minister, comply with the guidelines.
- (3) A corporate plan shall specify for the Government Commercial Company or the Commercial Statutory Authority and its subsidiaries (if any), forecasts relating to the current financial year and the next two financial years of profit and loss account, balance sheet, sources and applications of funds, cash flows and a statement of the assumptions on which the forecasts are based.

**Sub-Division 2
Preparation and Modification of Corporate Plan**

Draft Corporate Plan

- 90.** (1) The Board of a Government Commercial Company or Commercial Statutory Authority shall prepare, and submit to the Public Enterprise Minister and the relevant Minister, a draft corporate plan -

(a) within 1 month of becoming a Government Commercial Company or a Commercial Statutory Authority, as the case may be; and

(b) not later than 1 month after the commencement of each subsequent financial year.

- (2) The Public Enterprise Minister shall consult with the relevant Minister and Minister of Finance on the draft corporate plan and the Board and the Public Enterprise Minister, following such consultation, shall attempt to reach agreement on the draft corporate plan as soon as possible.

Adoption of draft corporate plan

91. (1) The Board of a Government Commercial Company or a Commercial Statutory Authority is to consider any comments on the corporate plan that are made to it within 2 months of the commencement of the financial year by the Public Enterprise Minister, and shall deliver the completed corporate plan to the Public Enterprise Minister and the relevant Minister within 3 months of the commencement of the financial year.

- (2) The corporate plan shall be in accordance with the Government Commercial Company or Commercial Statutory Authority's statement of corporate intent.

Modifications of corporate plan

92. (1) A Government Commercial Company or Commercial Statutory Authority's corporate plan may be modified by its Board at any time, provided that the corporate plan, as so modified, is in accordance with the statement of corporate intent.

- (2) The Public Enterprise Minister and the relevant Minister shall be notified by the Board in writing as soon as possible of any modification of the corporate plan of a Government Commercial Company or Commercial Statutory Authority.

DIVISION 3

STATEMENT OF CORPORATE INTENT

Government Commercial Company and Commercial Statutory Authority shall have statement of corporate intent.

93. (1) A statement of corporate intent is an annual document that contains a summary of the main elements of the Government Commercial Company or Commercial Statutory Authority's corporate plan and other matters set out in this Act.

- (2) Each Government Commercial Company or Commercial Statutory Authority shall have a statement of corporate intent for each financial year.

Statement of corporate intent to apply to subsidiaries

- 94.** If a Government Commercial Company or Commercial Statutory Authority has subsidiaries, its statement of corporate intent shall apply to its subsidiaries.

Matters to be included in statement of corporate intent

- 95.** (1) A statement of corporate intent shall specify the financial and non-financial performance targets for the activities of the Government Commercial Company or Commercial Statutory Authority for the relevant financial year.
- (2) The statement of corporate intent shall include the following additional matters -
- (a) an outline of the objectives of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries;
 - (b) an outline of the nature and scope of the activities proposed to be undertaken by the Government Commercial Company or Commercial Statutory Authority during the relevant financial year;
 - (c) an outline of the Government Commercial Company or Commercial Statutory Authority's main undertakings during the relevant financial year or years;
 - (d) an outline of the borrowing made, and proposed to be made, and the corresponding sources of funds by the Government Commercial Company or Commercial Statutory Authority;
 - (e) an outline of the Government Commercial Company or Commercial Statutory Authority's policies and procedures relating to the acquisition and disposal of major assets;
 - (f) the Government Commercial Company or Commercial Statutory Authority's accounting policies;
 - (g) the ratio of consolidated shareholders' funds to total assets, and definitions of those terms;
 - (h) the financial and non-financial performance targets and other measures by which the performance of the Government Commercial Company or Commercial Statutory Authority may be judged in relation to its objectives;
 - (i) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the state;
 - (j) the procedures to be followed before the Government Commercial Company or Commercial Statutory Authority or any subsidiaries subscribes for, purchases, or otherwise acquires shares in any company or other organisations;

- (k) the Board's estimate of the commercial value of the State's investment in the Government Commercial Company or Commercial Statutory Authority and the manner in which, and the times at which, this value is to be reassessed;
 - (l) the type of information to be given to the Public Enterprise Minister and the relevant Minister during the course of the financial year, including information to be given in half-yearly and annual reports;
 - (m) such other matters as are agreed by the Public Enterprise Minister and the Board or, in the case of a Government Commercial Company, are directed by the public enterprise minister in accordance with the provisions of this.
- (3) The Public Enterprise Minister, after consulting the relevant Minister, may exempt the Government Commercial Company or Commercial Statutory Authority in writing from including any matter, or any aspect of a matter, mentioned in subsection (2) from the statement of corporate intent.
- (4) Subsection (2) does not limit the matters that may be included in a statement of corporate intent.
- (5) The statement of corporate intent of a Government Commercial Company shall also include the matters required by section 69 (Non-commercial obligations).

Draft statement of corporate intent

- 96.** (1) The Board of a Government Commercial Company or Commercial Statutory Authority shall prepare, and submit to the Public Enterprise Minister and the relevant Minister, a draft statement of corporate intent -
- (a) within 1 month of becoming a Government Commercial Company or Commercial Statutory Authority, as the case may be; and
 - (b) no later than 1 month after the commencement of each subsequent year.
- (2) The Public Enterprise Minister shall consult the relevant Minister on the draft statement and the Board and the Public Enterprise Minister, following such consultation shall attempt to reach agreement on the draft statement as soon as possible.

Adoption of statement of corporate intent by Commercial Statutory Authority

- 97.** (1) The Board of the Commercial Statutory Authority is to consider any comments on the draft statement of corporate intent that are made within 2 months of the commencement of the financial year by the Public Enterprise Minister, after consulting the relevant Minister, and shall deliver the completed statement of corporate intent to the Public Enterprise Minister and the relevant Minister within 3 months of the commencement of the financial year.

- (2) The statement of corporate intent shall be in accordance with the corporate plan of the Commercial Statutory Authority.

Adoption of statement of corporate intent by Government Commercial Company

98. (1) The Board of a Government Commercial Company is to consider any comments on the draft statement of corporate intent that are made within 2 months of the commencement of the financial year by the Public Enterprise Minister, after consulting the relevant Minister, and shall deliver the completed statement of corporate intent to the Public Enterprise Minister and the relevant Minister within 3 months of the commencement of the financial year.
- (2) If the Public Enterprise Minister does not agree with a statement of corporate intent delivered by a Government Commercial Company, the Public Enterprise Minister, after consulting the relevant Minister may, by written notice, direct the Board -
- (a) to take specified steps in relation to the draft statement; or
- (b) to make specified modifications to the draft statement.
- (3) The Board shall immediately comply with a direction under subsection (2).
- (4) The Government Commercial Company's statement of corporate intent for the relevant year becomes effective -
- (a) on the day that the Public Enterprise Minister, after consulting the relevant Minister, agrees to it; or if there is no agreement -
- (b) the day that a statement of corporate intent, finalised in compliance with a direction issued under subsection (2) is delivered to the Public Enterprise Minister.

Modifications of statement of corporate intent

99. (1) A Commercial Statutory Authority may amend its statement of corporate intent at any time if the corporate intent, as so amended, is in accordance with its corporate plan and provided that the Board notifies the Public Enterprise Minister and the relevant Minister of the modification as soon as possible.
- (2) A Government Commercial Company's statement of corporate intent may be modified by its Board with the agreement of the Public Enterprise Minister, after he has consulted the relevant Minister.

- (3) The Public Enterprise Minister may, after consulting the relevant Minister, by written notice, direct the Board of a Government Commercial Company to modify the statement of corporate intent of the Government Commercial Company.

**DIVISION 4
AUDITORS, REPORTS, ETC.**

Audit

- 100.**(1) Every Government Commercial Company and Commercial Statutory Authority shall be audited at least once every year.
- (2) The audit shall be conducted in accordance with the audit provisions of the Companies Act and any other legal requirements.
- (3) The auditor shall be appointed by the Board and shall be -
- (a) such person that the minister of finance directs the board in writing to appoint;
or
- (b) if the minister of finance gives no such direction, then such person that the board decides.
- (4) Subsection (3) applies notwithstanding any other law or any contrary provision in a company's memorandum or articles.
- (5) The Minister of Finance may direct the appointment of the Auditor General to act as auditor under subsection (3) (a), and in such case the provisions of the Audit Act will also apply.
- (6) This section applies also to a subsidiary of a Government Commercial Company or Commercial Statutory Authority.

Half yearly reports

- 101.**(1) A Government Commercial Company or Commercial Statutory Authority's Board shall give to the Public Enterprise Minister, the relevant Minister and Minister of Finance a report on the operations of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries for the first half of a financial year.
- (2) A half yearly report under sub-section (1) shall be given -
- (a) within 2 months after the end of the first half of the financial year; or
- (b) if another period after the end of the first half of the year is agreed between the board, after consulting the Public Enterprise Minister and the relevant Minister and the Minister of Finance within the agreed period.

- (3) A half-yearly report shall include the information required to be given in the report by the Government Commercial Company or Commercial Statutory Authority's statement of corporate intent.

Draft annual report and unaudited accounts

- 102.**(1) Within 3 months after the end of each financial year of a Government Commercial Company or Commercial Statutory Authority, its Board shall give to the Public Enterprise Minister, the relevant Minister, and Minister of Finance -

- (a) a draft report of the operations of the Government Commercial Company or Commercial Statutory Authority and those of its subsidiaries during that financial year; and
- (b) unaudited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show as accurately as possible the financial position of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries and the financial results of their operations during that financial year.

- (2) A draft report shall as far as possible contain the information required to be contained in an annual report by sub-sections (2), (3) and (4) of section 103.

Annual report and Audited accounts

- 103.**(1) Within 5 months after the end of each financial year of a Government Commercial Company or Commercial Statutory Authority, the Board shall give to the Public Enterprise Minister, the relevant Minister and the Minister of Finance -

- (a) an annual report of the operations of the Government Commercial Company or Commercial Statutory Authority and those of its subsidiaries during that financial year; and
- (b) audited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show the financial position of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries and the financial results of their operations during that financial year; and

- (c) the auditor's report on those financial statements.

- (2) Each annual report of a Government Commercial Company or Commercial Statutory Authority shall contain such information as is necessary to enable an informed assessment of the operations of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries, including a comparison of its performance with its statement of corporate intent.

- (3) Each annual report of a Government Commercial Company shall also -
- (a) include the matters that are required to be included in, or to accompany, the Government Commercial Company's annual return under the companies act;
 - (b) State the dividend payable to the state for the financial year to which the reports relate.
- (4) This section does not limit the matters that are required -
- (a) to be included in, or to accompany, a Government Commercial Company's annual report by the Companies Act or another Act; and
 - (b) to be done under its establishing act for the auditing of a Commercial Statutory Authority

Deletion of commercially sensitive matters from annual report etc.

- 104.** (1) If a Government Commercial Company or Commercial Statutory Authority's Board requests the Public Enterprise Minister to delete from the copies of its annual report that are to be laid before Parliament or otherwise made public, a matter that is of a commercially sensitive nature, the Public Enterprise Minister may delete the matter from the copies of the annual report (and accompanying documents) that are laid before Parliament or otherwise made public.
- (2) An annual report of a Government Commercial Company or Commercial Statutory Authority may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if -
- (a) the summary indicates that it is a summary only; and
 - (b) a full statement of the matter is laid before Parliament at the same time as a copy of the annual report is laid before Parliament.

Board to keep Ministers informed

- 105.** (1) A Government Commercial Company or Commercial Statutory Authority's Board shall -
- (a) keep the Public Enterprise Minister and the relevant Minister reasonably informed of the operations, financial performance and financial position of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries, including the assets and liabilities, profit and losses and prospects of the Government Commercial Company or Commercial Statutory Authority and its subsidiaries; and
 - (b) give to the Public Enterprise Minister and the relevant Minister such reports and other information as the Public Enterprise Minister may require under

subsection (2) to enable an informed assessment of matters mentioned in paragraph (a) to be made; and

(c) if matters arise that in the Board's opinion may prevent, or significantly affect, achievement of the Government Commercial Company or Commercial Statutory Authority's objectives or targets outlined in its statement of corporate intent or corporate plan - immediately inform the Public Enterprise Minister and the relevant Minister of the matters and its opinion in relation to them.

(2) the Public Enterprise Minister, after consulting the relevant Minister, may require a Government Commercial Company or Commercial Statutory Authority to prepare and deliver, at a specified time and in a specified manner, any further financial information or a report on any other matter.

Information to be laid before Parliament

106.(1) At the next convenient sitting of Parliament and no later than 4 months after receiving the following documents in respect of a financial year of a Government Commercial Company or Commercial Statutory Authority, the Public Enterprise Minister shall lay before Parliament -

(a) the statement of corporate intent of the Government Commercial Company or Commercial Statutory Authority for that year; and

(b) the annual report and audited financial statements of the Government Commercial Company or Commercial Statutory Authority for the preceding financial year.

(2) If a statement of corporate intent for a Government Commercial Company or Commercial Statutory Authority has been modified pursuant to section 99 of this Act, the Public Enterprise Minister shall lay before Parliament a copy of the statement of corporate intent as so modified, at the next convenient sitting of Parliament.

(3) The Public Enterprise Minister shall also each year -

(a) lay before the house of representatives every regulation that has been made that year pursuant to sections 17, 48 and 77; and

(b) report to the house of representatives on the reasons for the exercise of those powers.

**DIVISION 5
EMPLOYEES**

Division applies to subsidiaries

- 107.** This Division applies to a subsidiary of a Government Commercial Company or Commercial Statutory Authority and its employees in the same way as it applies to the Government Commercial Company or Commercial Statutory Authority and its employees.

Employment and industrial relations plan

- 108.**(1) A Government Commercial Company or Commercial Statutory Authority's Board shall prepare an Employment and Industrial Relations Plan.
- (2) The plan shall specify the arrangements for all major employment and industrial relations issues for the Government Commercial Company or Commercial Statutory Authority.
- (3) The plan shall include the following matters -
- (a) the government commercial company or commercial statutory authority's remuneration arrangements, including -
- (i) the remuneration payable to its chief executive officer and other senior executives; and
- (ii) any gain sharing schemes;
- (b) other employment conditions applicable to its employees;
- (c) the approximate number of its employees that are covered by an award or industrial agreement;
- (d) the approximate number of its employees that are employed under an employment contract;
- (e) policies adopted and measures taken to bring staff levels into accordance with work requirements.
- (4) The plan may specify measures to ensure adherence to it.
- (5) The employment and industrial relations plan shall be submitted to the Public Enterprise Minister at the time the Government Commercial Company or Commercial Statutory Authority's statement of corporate intent is submitted.

**DIVISION 6
MISCELLANEOUS**

**Monitoring and assessment of Government Commercial Companies and
Commercial Statutory Authorities.**

- 109.** (1) The Public Enterprise Minister and the relevant Minister of a Government Commercial Company or Commercial Statutory Authority may delegate their powers under section 105 (Board to keep Ministers informed) to any person.
- (2) The Public Enterprise Minister and the relevant Minister of a Government Commercial Company or Commercial Statutory Authority may request the Permanent Secretary or the Supervising Officer of a Department (the "supervising officer") to investigate, and report to them on, any matter relating to the Government Commercial Company, Commercial Statutory Authority or a subsidiary or proposed subsidiary thereof.
- (3) For the purposes of an investigation under this section of a matter relating to a Government Commercial Company or Commercial Statutory Authority or a subsidiary or proposed subsidiary, the supervising officer may give the Government Commercial Company or Commercial Statutory Authority written directions.
- (4) Without limiting subsection (4), the supervising officer may direct the Government Commercial Company or Commercial Statutory Authority -
- (a) to give the supervising officer any information about the Government Commercial Company or Commercial Statutory Authority and its subsidiaries and proposed subsidiaries that the supervising officer considers necessary or desirable in connection with the investigation; and
 - (b) to permit persons authorised by the supervising officer to have access to specified records and other documents about the Government Commercial Company or Commercial Statutory Authority
 - (c) and its subsidiaries and proposed subsidiaries that the supervising officer considers necessary or desirable in connection with the investigation; and
 - (d) to take steps that the supervising officer considers necessary or desirable for the purposes of the investigation.
- (5) The Government Commercial Company or Commercial Statutory Authority shall ensure that any direction given to it under this section is complied with in relation to itself and shall, as far as practicable, ensure that it is also complied with in relation to its subsidiaries and proposed subsidiaries.

- (6) The supervising officer may delegate to an officer of the department, an officer of the relevant Minister's department or another person, the supervising officer's powers under this section (including powers delegated to the supervising officer under subsection (1)).

PART 6
GENERAL

Regulations

- 110.** The Public Enterprise Minister with the approval of Cabinet may make regulations, not inconsistent with this Act, prescribing matters -

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Validity of certain transactions

- 111.** The failure by any government entity or subsidiary to comply with a provision of this Act, or any requirement set out in a statement of corporate intent, does not affect the validity or enforceability of any deed, agreement, right or obligation entered into, obtained or incurred, by the government entity or its subsidiary.

SCHEDULE 1
(Section 10)

KEY PRINCIPLES OF PUBLIC ENTERPRISE REFORM

PART A - OVERVIEW

1. The overall objective of public enterprise reform is to increase the operational efficiency of public enterprises and to improve the allocative efficiency of resources between public enterprises and other sectors of the economy.
2. The Public Enterprise Act covers the first stage of the public enterprise reform programme, that is the re-organisation and corporatisation (transfer into company form) of commercial statutory authorities and commercially oriented government departments, and the regulation of the relationship of Government Commercial Companies with, and their accountability to, Government.
3. The key principles of public enterprise reform apply to government entities that have been re-organised and corporatised and are now, as Government Commercial Companies, in a position to operate as successful commercial businesses, most notably by applying the principles listed in Part B of this schedule.

PART B - KEY PRINCIPLES

The 4 "key principles of public enterprise reform" and their elements, are as follows -

(a) Principle 1 - Clarity of objectives

The elements of this principle are that -

- The principle objective of every Government Commercial Company is to operate as a successful business and, to this end, to be as profitable and efficient as comparable businesses which are not owned by the State;
- Each Government Commercial Company is to focus on commercial activities, and, for this purpose, any activities of a governmental policy formulation or regulatory nature will, wherever possible, be transferred from the Government Commercial Company to a department, separate regulatory authority or other agency;
- Any non-commercial obligations of the Government Commercial Company will be -

- Clearly identified in the Government Commercial Company's statement of corporate intent; and
- Separately costed;
- The Government Commercial Company will be appropriately compensated for its non-commercial obligations and any funding will be made apparent;
- The Government Commercial Company will be set specific financial and non-financial performance targets for its commercial activities;
- The Government Commercial Company will be set performance targets for its non-commercial obligations.

(b) Principle 2 - Management autonomy and authority

The elements of this principle are that -

- Each Government Commercial Company will have a Board of directors;
- The Board will be required to use its best endeavours to ensure that the Government Commercial Company meets its performance target;
- The Board will be given the autonomy and authority to make commercial decisions;
- The role of Ministers in relation to Government Commercial Company will be clearly defined.

(c) Principle 3 - Strict accountability for performance

The elements of this principle are that -

- The Government Commercial Company's Board will be accountable to the Public Enterprise Minister and the relevant Minister for the Government Commercial Company's performance;
- The Government Commercial Company's statement of corporate intent will form the basis for accountability;
- Performance will be monitored by the Government against performance targets specified in the statement of corporate intent;

- Government monitoring of the Government Commercial Company is intended to compensate for the increase in the Government Commercial Company's autonomy.

(d) Principle 4 - Level playing field

The elements of this principle are that -

- The efficiency of overall resource use in the State is prompted by ensuring that markets are not unnecessarily distorted;
- In order to ensure, whenever possible, that each Government Commercial Company competes on equal terms with the private sector and any special advantages (e.g. Government guarantees on borrowings) or disadvantages (e.g. lack of autonomy in decision making) of the Government Commercial Company because of its public ownership or its market power will be removed, minimised or made apparent;
- Where a Government Commercial Company has excessive market power -
 - Structural reform may be necessary to increase competition; and
 - Regulation may be necessary to prevent market abuse.

SCHEDULE 2 - PART A
(Section 14)

LIST OF RE-ORGANISATION ENTERPRISES

SCHEDULE 2 - PART B
(Section 12)

RULES ABOUT MINISTER'S RESPONSIBILITIES FOR RE-ORGANISATION ENTERPRISES

Relevant Ministers of Re-organisation Enterprises

Schedule 2B 1

1. The "relevant Minister" of a statutory authority or part of a statutory authority which is or which is to become a Re-organisation Enterprise is the Minister who has the

duty to administer the legislation (if any) that established, or provides for the structure or management of the statutory authority.

2. The "relevant Minister" of a government ministry or department or part of a government ministry or department which is or which is to become a Re-organisation Enterprise is the Minister to whom responsibility for that ministry or department is for the time being assigned.
3. The "relevant Minister" of a company or part of a company which is or which is to become a Re-organisation Enterprise is the Minister nominated by the Prime Minister by Gazette notice.
4. If there is not a Minister who is the relevant Minister under subsection (1) or (2) the relevant Minister is the Minister nominated by the Prime Minister by Gazette notice.
5. If -
 - (a) the relevant minister under subsection (1) or (2) is the public enterprise minister; and
 - (b) the prime minister is of the opinion that another minister should be the relevant minister,

The "relevant Minister" of the Re-organisation Enterprise is the Minister nominated by the Prime Minister by Gazette notice.

6. If -
 - (a) there is more than one minister who is the relevant minister under subsection (1) or (2); and
 - (b) the prime minister is of the opinion that only one minister should be the relevant minister of the re-organisation enterprise,

The "relevant Minister" of the Re-organisation Enterprise is the Minister nominated by the Prime Minister by Gazette notice.

7. The Prime Minister may nominate any Minister to be a relevant Minister under subsection (6) whether or not he would but for that nomination have been a relevant Minister under subsection (1) or (2).
8. The Prime Minister shall make the nomination by nominating the holder of a particular Ministerial office by reference to the title of the office concerned.
9. The Prime Minister may, in an appropriate case, be nominated under this section to be the relevant Minister of the Re-organisation Enterprise.

10. The Prime Minister may nominate an Assistant Minister under this section to be the relevant Minister of the Re-organisation Enterprise.

11. If -

(a) there is not a minister who is the relevant minister under subsection (1) or (2);
or

(b) if the relevant minister is the public enterprise minister; and

(c) the prime minister does not nominate a minister under this section,

then despite any other provision of this Act which requires the Public Enterprise Minister to consult with the relevant Minister of a Re-organisation Enterprise before doing an act, the Public Enterprise Minister need not consult with any other Minister before doing that act.

12. If the Prime Minister does not nominate a Minister to be the relevant Minister of a Re-organisation Enterprise which is a company or part of a company then notwithstanding any other provision of this Act which requires the Public Enterprise Minister to consult with the relevant Minister of a Re-organisation Enterprise before doing an act, the Public Enterprise Minister need not consult with any other Minister before doing that act.

13. If -

(a) there is more than one minister who is the relevant minister under subsection (1) or (2); and

(b) the prime minister does not nominate one minister under subsection (6) to be the relevant minister of the re-organisation enterprise.

then a reference in this Act to "the relevant Minister" of a Re-organisation Enterprise shall be construed as a reference to each of the relevant Ministers of the Re-organisation Enterprise.

SCHEDULE 2 - PART C
(Section 23)

RULES ABOUT FORMULATION OF DRAFT RE-ORGANISATION CHARTER

Minister may determine other matters relevant to draft re-organisation charter preparation

SCHEDULE 2C1-

1. The Public Enterprise Minister, after consulting the relevant Minister, may determine -
 - (a) the steps to be taken in preparing the draft re-organisation charter; and
 - (b) any other matter with respect to the preparation of the draft re-organisation charter.
2. Without limiting subsection (1), the Public Enterprise Minister, after consulting the relevant Minister, may determine that specified assumptions are to be made in preparing the draft re-organisation charter, including, for example, if the Re-organisation Enterprise is not already a company, the assumption that the Re-organisation Enterprise will become a company.
3. Without limiting subsection (1), the Public Enterprise Minister, after consulting the relevant Minister may determine a timetable or time limit for the preparation of the draft re-organisation charter.

Public Enterprise Minister may give directions to Re-organisation Enterprise about charter preparation

SCHEDULE 2C2 -

1. The Public Enterprise, after consulting the relevant Minister may give the Re-organisation Enterprise and any of its subsidiaries written directions in relation to the Re-organisation Enterprise and its subsidiaries that appear to him to be necessary or desirable to enable the draft re-organisation charter to be prepared.
2. Without limiting subsection (1), if a charter preparation committee has been appointed to prepare the draft re-organisation charter for the Re-organisation Enterprise, the Public Enterprise Minister, after consulting the relevant Minister, may direct the Re-organisation Enterprise and any of its subsidiaries -
 - (a) to give the committee information about the re-organisation enterprise and its subsidiaries that the committee considers necessary or desirable for the preparation of the draft charter; or

- (b) to permit the committee to have access to records and other documents about the re-organisation enterprise and its subsidiaries that the committee considers necessary or desirable for the preparation of the draft charter; or
 - (c) to take steps that the committee considers necessary or desirable for the preparation of the draft charter.
3. The Re-organisation Enterprise shall ensure that a direction given to it under this section is complied with in relation to itself and shall, as far as practicable, ensure that it is also complied with in relation to its subsidiaries.
 4. A subsidiary of the Re-organisation shall ensure that a direction given to it under this section is complied with in relation to itself.
 5. In this section -

"subsidiary" includes proposed subsidiary.

Charter preparation committee may be appointed

SCHEDULE 2 C 3 -

1. The Public Enterprise Minister, after consulting the relevant Minister of a Re-organisation Enterprise, may appoint a charter preparation committee to prepare a draft re-organisation charter for the Re-organisation Enterprise.
2. The Public Enterprise Minister, after consulting the relevant Minister, may appoint any person, whether or not he is a public officer, to be a member of a charter preparation committee.
3. A member of a charter preparation committee is not, in that capacity, a public officer.

Conduct of meetings and other business

SCHEDULE 2 C 4

1. The charter preparation committee of a Re-organisation Enterprise may conduct its business (including its meetings) in the way that it considers appropriate.
2. However, the committee shall comply with any direction given to it, and any determination made, by the Public Enterprise Minister, after consulting the relevant Minister.

Terms of appointment

SCHEDULE 2 C 5

A member of the charter of preparation committee of a Re-organisation Enterprise holds office on any terms of appointment determined by the Public Enterprise Minister after consulting the relevant Minister.

Resignation and removal from office

SCHEDULE 2 C 6

1. A member of the charter preparation committee of a Re-organisation Enterprise may resign by signed notice given to the Public Enterprise Minister.
2. The Public Enterprise Minister, after consulting the relevant Minister, may terminate the appointment of a member of the charter preparation committee for any reason or none.

SCHEDULE 2 - PART D (Section 29)

RULES ABOUT CHARTER ADMINISTRATION COMMITTEE

Conduct of meetings and other business

2D1

1. The charter administration committee of a Re-organisation Enterprise may conduct its business (including its meetings) in the way it considers appropriate.
2. However, the committee shall comply with any direction given to it, and any determination made, by the Public Enterprise Minister, after consulting the relevant Minister.

Terms of appointment

2D2

A member of the charter administration committee of a Re-organisation Enterprise holds office on any terms of appointment determined by the Public Enterprise Minister, after consulting the relevant Minister.

Resignation and removal from office

2D3

1. A member of the charter administration committee of a Re-organisation Enterprise may resign by signed notice given to the Public Enterprise Minister.
2. The Public Enterprise Minister, after consulting the relevant Minister, may terminate the appointment of the charter administration committee for any reason or none.

SCHEDULE 2 - PART E
(Section 35)

RULES FOR INTERIM CHANGES DURING RE-ORGANISATION

Purpose of Rules under this Part

SCHEDULE 2E1.

This Part of the Schedule to the Public Enterprise Act provide mechanisms to facilitate the re-organisation process by enabling, among other things -

- (a) a government entity that is a re-organisation to be in a suitable legal form;
- (b) a re-organisation enterprise which is not a company or which is part of a company, to become a company;
- (c) a government entity to become a subsidiary of another government entity;
- (d) assets, liabilities and functions to be transferred by regulation from or to the state, government entities, or subsidiaries;
- (e) the breaking up of government entities and the return of some functions to statutory authorities and government departments.

Ministers may direct formation or participation in formation of company

SCHEDULE 2E2.

For the purpose of this Act, the Public Enterprise Minister and the relevant Minister may direct a permanent secretary or other supervising officer within their Ministries ("shareholders") on behalf of the State to form, or participate in the formation or acquisition of, and be a member of, a company limited by shares in anticipation of the Re-organisation Enterprise transferring all or part of its undertaking to the company.

Memorandum and articles

SCHEDULE 2E3.

The shareholders may for the purposes of this Act -

- (a) adopt a memorandum and articles for a company; and
- (b) amend the memorandum and articles previously adopted.

Establishment of new statutory authorities

SCHEDULE 2E4.

1. A regulation may provide that, on a specified day -

- (a) a body corporate is established; and
- (b) has the name specified by regulation; and

(c) has a seal; and

(d) may sue and be sued in its corporate name; and

(e) has the functions and powers specified by regulation.

2. A regulation may make provision with respect to any matter for which it is necessary or convenient to make provision to facilitate the change of the entity from a government entity that is not a body corporate to a body corporate that is to become a Government Commercial Company or a subsidiary of a Government Commercial Company.

Entities that are parts of bodies corporate

SCHEDULE 2E5

1. This section applies to a government entity that is part of a body corporate and is to become a Government Commercial Company or a subsidiary of a Government Commercial Company.
2. The body corporate mentioned in subsection (1) may be a body corporate that is -
 - (a) a government company;
 - (b) a statutory authority;
 - (c) a corporation sole;
 - (d) a corporation aggregate; or
 - (e) any other form of body corporate.
3. If this section applies to a government entity, a regulation may make provision with respect to any matter for which it is necessary or convenient to make a provision -
 - (a) to facilitate the change of the entity from a government entity that is part of a body corporate to a body corporate in its own right that is to become a government commercial company or a subsidiary thereof; and
 - (b) to make provision for other parts of the body corporate.

SCHEDULE 2 - PART F
(Section 36)

RULES FOR TRANSFERRING ASSETS AND LIABILITIES

Transfer of assets and liabilities

SCHEDULE 2F1

1. Notwithstanding any Act, rule of law, or agreement, the Public Enterprise Minister, after consulting the relevant Minister, may for the purposes of this Part on behalf of the State, do any one or more of the following -
 - (a) transfer from the state or a government entity to a government company or any of its subsidiaries or to another government entity assets, rights and liabilities of the state or of a government entity (being assets, rights and liabilities relating to the activities to be carried on by the government company or its subsidiary or the entity);
 - (b) authorise the government company or any of its subsidiaries or another government entity to act on behalf of the state in providing goods or services, or in managing assets or liabilities of the state;
 - (c) grant to the government company or any of its subsidiaries or another government entity leases, licenses, easements, permits, or rights of any kind in respect of any assets or liabilities of the state-
 - (d) for such consideration, and on such terms and conditions, as may be agreed with the government company or entity.
2. Assets, rights and liabilities may be transferred from a government entity either by agreement or by regulation under section 38.
3. Assets that are fixed to, or are under any land, may be transferred to a government company or entity pursuant to this Act whether or not any interest in the land is also transferred.
4. Where any such asset is transferred pursuant to subsection (3), the asset and the land shall be regarded as separate assets each capable of separate ownership.
5. Any asset or liability of the State may be transferred to a government company or any of its subsidiaries or to a government entity pursuant to this Act whether or not any Act or instrument relating to the asset or liability permits such transfer or requires any consent to such a transfer.
6. Where a transfer of the kind described in section (5) of this section takes place -

- (a) the transfer shall not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the state, government entity, or the government company or any subsidiary of a government company under any act or agreement;
 - (b) where the transfer is registerable or must be recorded, the person responsible for keeping the register shall register or record the transfer forthwith after written notice of the transfer is received by him from the public enterprise minister or any person authorised for this purpose by the public enterprise minister;
 - (c) the laying before parliament of any contract or other document relating to the transfer or the publication in the gazette of a regulation providing for the transfer shall be deemed to be notice in the transfer, and any third party shall after the date of such contract or document or such publication deal with the government company or subsidiary or other government entity in place of the state or original government entity;
 - (d) the state shall remain liable to any third party as if the asset or liability had not been transferred;
 - (e) any satisfaction or performance by the government company or subsidiary or government entity in respect of the asset or liability shall be deemed to be also satisfaction or performance by the state or original government entity;
 - (f) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the government company or subsidiary or other government entity shall be deemed to be also to the benefit of the state or original government entity.
7. No provision in any agreement limiting the right of the State or a government entity to sell any assets to third parties, or for determining the consideration for the sale of any assets to third parties or obliging the State or a government entity to account to any person for the whole or part of the proceeds of sale by the State or government entity of any assets to the third parties, or obliging the State or a government entity to pay a greater price than otherwise by reason of or as a consequence of the sale of any assets to third parties, shall have any application or effect in respect of any agreement or transfer entered into or effected pursuant to or under this Part or pursuant to such an agreement or transfer.
8. The regulations may provide that references in any Act, or in any subsidiary legislation or in any other instrument, or in any contract or agreement, to:
- (a) the State or a government entity, in connection with any such assets, rights or liabilities or in connection with any such undertaking; or

(b) (without limiting the above) a Minister, a Department, a statutory authority or an officer or employee of a Department or statutory authority,

are to be read as references to a government company or any of its subsidiaries or to the other government entity or to a director, officer or employee of any such government company or subsidiary or other government entity.

9. Where -

(a) rights or obligations to provide goods or services to third parties are transferred to a government company or a subsidiary pursuant to this act; and

(b) those goods or services have previously been provided by the state or a government entity on terms and conditions wholly or partly prescribed by any act; and

(c) regulations declare that this subsection shall apply in respect of those goods and services,

the goods or services shall, to the extent that those terms and conditions are not already contained in contracts between the State and third parties, from the date of transfer be deemed to be provided pursuant to contracts between the government company or subsidiary and the third parties (whether or not the Act is repealed). Each such contract shall be deemed to include such of the terms and conditions contained in that Act (with all necessary modifications), and such of the following provisions as are specified in the regulation -

(d) a condition permitting termination at any time by the third party on giving 28 days' notice to the government company or subsidiary; and

(e) a condition permitting variation or termination at any time by the government company or subsidiary on giving to the third party 1 month's notice in such manner (including newspaper advertising) as the government company thinks fit.

10. Where -

(a) land, interests in land, licenses, permits, or rights created on terms and conditions wholly or partly set out in any act are transferred to a government company or a subsidiary of a government company pursuant to this act; and

(b) regulations declare that this subsection shall apply in respect of that land or those interests, licenses, permits, or rights -

then, whether or not the Act is repealed, such of the terms and conditions set out in the Act as are specified in the regulations (with all necessary modifications) shall continue to apply in respect of that land or those interests, licenses, permits, or rights

after the transfer unless the government company or subsidiary and the holders of that land or those interests, licenses, permits, or rights otherwise agree.

11. Despite any other provision of this Act, where prior to the date on which this Act comes into force any native land was leased to the State, the Public Enterprise Minister shall not, except with the consent of the Native Land Trust Board where the lease so permits, transfer that leasehold interest to a government company or subsidiary, but the Public Enterprise Minister, after consulting the relevant Minister, may enter into an agreement with a government company or subsidiary pursuant to subsection (1) (b) of this section to manage, on behalf of the State, its rights under that lease.

General provisions relating to transfer of assets and liabilities

SCHEDULE 2F2

1. This part of Schedule 2 shall have effect, and assets and liabilities may be transferred pursuant to this Act, notwithstanding any restriction, prohibition, or other provision contained in any Act, rule of law, or agreement that would otherwise apply.
2. Nothing in this Act shall limit any powers or rights that the State or a Minister has other than pursuant to this Act.

SCHEDULE 3
(Section 44)

LIST OF GOVERNMENT COMMERCIAL COMPANIES

SCHEDULE 4
(Section 74)

LIST OF COMMERCIAL STATUTORY AUTHORITIES

Passed by the House of Representatives this fourth day of December, in the year of our Lord, One thousand Nine Hundred and Ninety-Six.

Passed by the Senate this sixteenth day of December, in the year of our Lord One Thousand, Nine Hundred and Ninety-Six.

AN ACT

TO AMEND THE PUBLIC ENTERPRISE ACT

ENACTED by the Parliament of Fiji Islands –

Short title, commencement etc

1. – (1) This Act may be cited as the Public Enterprise (Amendment) Act 2002.
(2) This Act comes into force on a date appointed by the Public Enterprise Minister by notice in the Gazette.
(3) In this Act, the “principal Act” means the Public Enterprise Act 1996.

Purpose of re-organisation

2. Section 7 of the principal Act is amended by substituting a full stop at the end of paragraph (c) with a semi-colon and by adding the following new paragraph –
(d) entities which make a good return on investment.”

Boards to be appointed

3. Section 31 of the principal Act is amended by inserting after subsection (3) the following subsection –
“(3A) The Public Enterprise Minister may, after consulting the relevant Minister and with the approval of the Prime Minister, designate a Chairperson from the members of the Board appointment under subsection (3A);”

Regulations may deal with other matters

4. Section 38(2) of the principal Act is amended by substituting a full stop with a semi-colon at the end and adding the following paragraphs –
(f) the regulation and control of appointment of a person by a Commercial Statutory Authority or Government Commercial Company after it has been declared a re-organisation enterprise;
(g) the regulation of any new contract entered into by a Commercial Statutory Authority or Government Commercial Company during the re-organisation process.”

Boards may be re-appointed

5. Section 56 of the principal Act is amended by inserting (1) the following subsection –

“(1A) The Public Enterprise Minister may, after consulting the relevant Minister, designate a Chairperson from the members of the Board appointed under subsection (1).”

Draft Corporate Plan

6. Section 90 (1) of the principal Act is amended by repealing (b) and substituting the following paragraph –

“(b) at least 3 months prior to the commencement of the financial year”.

Adoption of draft corporate plan

7. Section 91 of the principal Act is amended in subsection (1) –

- (a) by deleting “2months” and substituting “1month prior to”; and
- (b) by deleting “within 3 months” and substituting “at”.

Modifications of corporate plan

8. Section 92 of the principal Act is amended in subsection (2) by inserting “within 3 months of the commencement of the financial year or” after “in writing.”

Draft statement of corporate intent

9. Section 96 of the principal Act is amended in subsection (1) by repealing paragraph (b) and substituting the following paragraph –

“(b) at least 3 months prior to the commencement of the financial year”.

Adoption of statement of corporate intent by Commercial Statutory Authority

10. Section 97 of the principal Act is amended in subsection (1) –

- (a) by deleting “2months” and substituting “1 month prior to”; and
- (b) by deleting “within 4 months of” and substituting “at”.

Adoption of statement of corporate intent by Government Commercial Company

- 11.** Section 98 of the principal Act is amended in subsection (1) –
- (a) by deleting “2months” and substituting “1 month prior to”; and
 - (b) by deleting “3months of” and substituting “at the beginning of the financial year”.

Half-yearly reports

- 12.** Section 101 of the principal Act is amended in subsection (2) (a) by deleting “3 months” and substituting “1 month”.

Draft annual report and audited accounts

- 13.** Section 102 of the principal Act is amended in subsection (1) by deleting “3 months” and substituting “1month”.

Annual report and audited accounts

- 14.** Section 103 of the principal Act is amended in subsection (1) by deleting “Within 5 months after the end of each financial year” and substituting “Within 4 months after the end of the current financial year”.

Passed by the House of Representatives this 4th day of December 2002.

Passed by the Senate this 18th day of December 2002.