

[Legal Notice No. 29 A]

STATE OWNED ENTERPRISES ACT 2007
(Act No. 7 of 2007)

STATE OWNED ENTERPRISES REGULATIONS 2010

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STATE OWNED ENTERPRISES ACT 2007
(Act No. 7 of 2007)

STATE OWNED ENTERPRISES REGULATIONS 2010

IN exercise of the powers conferred upon me by section 24 of the State Owned Enterprises Act 2007, I make these Regulations –

PART 1 - PRELIMINARY

Citation and commencement 1. These Regulations may be cited as the State Owned Enterprises Regulations 2010, and come into force on the date of publication in the *Gazette*.

Interpretation 2. In these Regulations, unless the context otherwise requires –

“economic regulatory function” means, in relation to a State Owned Enterprises, any Regulatory Function which involves –

- (a) issuing licences to competitors or potential competitors of the State Owned Enterprises;
- (b) setting prices for the supply of goods or services by the State Owned Enterprise to competitors or potential competitors;
- (c) if retail prices are regulated, setting retail prices or advising on the setting of retail prices;

“preferred candidate” means the candidate selected from a shortlist by the Accountable Ministers under regulation 9;

“shortlist” means a shortlist of candidates for appointment given under regulation 7.

PART 2 - APPOINTMENT OF DIRECTORS

Appointment in accordance with prescribed process 3. (1) A director of a State Owned Enterprises shall be appointed by the Accountable Ministers in accordance with the procedures set out in regulations 4 to 11.

- (2) The appointment must be made by written notice to the director (with a copy to the State Owned Enterprise).

- (3) The notice must –
- (a) state the date on which the appointment takes effect which must not be earlier than the date on which the notice is received; and
 - (b) state the term of the appointment (being a term of 3 years or less, in accordance with regulation 16); and
 - (c) be published by the Accountable Ministers in the *Gazette* as soon as practicable after being given.

4. When a vacancy arises on the board of a State Owned Enterprises, the board of that State Owned Enterprises shall, after consultation with the Accountable Ministers, advise the Accountable Ministers of:

Board to advise Accountable Ministers on desirable skills, etc

- (a) the knowledge, skills and experience currently represented on the board; and
- (b) the knowledge, skills and experience that would be desirable in a new director to be appointed to the board.

5. (1) At least two months before preparing a shortlist the board must advertise that there is a vacancy on the board and must seek applications from interested persons.

Board to advertise vacancy

(2) The Accountable Ministers may jointly recommend nominees for consideration by the board.

6. Before giving a shortlist under regulation 7, the board must –

Board to assess potential candidates

- (a) assess each applicant or nominee against the criteria for disqualification set out in regulation 12, and
- (b) consult with the Minister of Finance.

7. (1) The board must give to the Accountable Ministers a shortlist of candidates for appointment as director of the State Owned Enterprise.

Board to provide a short list to the Accountable Ministers

(2) The shortlist must –

- (a) include at least three candidates; and

- (b) identify the candidate which the board considers most suitable for appointment as a director, being the candidate which the board considers has the knowledge, skills and experience most appropriate to contribute to the functions of the board; and
- (c) record any advice provided to the board by the Minister of Finance following consultation under regulation 6.

(3) The shortlist must not include any candidate who is disqualified from being a director.

Board to certify short listing of MP or public servant

8. Where the person identified under regulation 7(2)(b) is a Member of Parliament, public servant, or a person who holds any other constitutional or government position, the board must certify to the Accountable Ministers the matters set out in regulation 12(2)(b) and (b).

Accountable Ministers to select director from the short list

9. The Accountable Ministers must jointly select a preferred candidate from the shortlist.

Candidate to be briefed

10. Following selection by the Accountable Ministers the preferred candidate must be briefed by –

- (a) the chief executive of the State Owned Enterprise, on the operations of the State Owned Enterprise, including the State Owned Enterprises' most recent statement of corporate objectives, annual report and financial statements; and
- (b) a representative of the Ministry of Finance, on the role, duties and responsibilities of a director of a State Owned Enterprise.

Candidate to certify and consent

11. Before the preferred candidate is appointed as a director the preferred candidate must provide the Accountable Ministers with written notice –

- (a) consenting to being a director; and
- (b) certifying that he or she is not disqualified from being a director under regulation 12; and
- (c) disclosing the nature and extent (including monetary value, if quantifiable) of all interests that he or she has at that time, or is likely to have, in matters relating to a State Owned Enterprise.

PART 3 - DISQUALIFICATION AND REMOVAL OF DIRECTORS

12. (1) The following persons are disqualified from being appointed or holding office as a director of a State Owned Enterprise –

Grounds for
disqualification

- (a) a person who is under 21 years of age or aged 70 years or more;
- (b) a person who is an undischarged bankrupt;
- (c) a person in respect of whom an order has been made under Mental Treatment Act (Cap. 103) that reflects adversely on the person's –
 - (i) competence to manage his or her own affairs in relation to his or her property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of his or her personal care and welfare;
- (d) in relation to any particular State Owned Enterprise, a person who does not comply with any qualifications for directors contained in the rules of the State Owned Enterprise;
- (e) a person who has been convicted in Solomon Islands or elsewhere of an offence punishable by death or by imprisonment of two years or more;
- (f) a person who was director or manager of a company at the time the company was placed in receivership or liquidation, whether such receivership or liquidation occurred in Solomon Islands or elsewhere;

- (g) a person who has a history of failing to repay on time any money legally owed by the person to any State Owned Enterprise;
- (h) in relation to any particular State Owned Enterprise, a person who is an employee, director or shareholder in another company, body, institution or other person if the business of that company, body, institution or other person is potentially in conflict with the business of the State Owned Enterprise, provided that this paragraph shall in no way limited paragraph (i); and
- (i) in relation to any particular State Owned Enterprise, a person who has any conflict of interest that is of such significance that it would impede the person's ability to carry out his duties as director of the State Owned Enterprise;
- (j) a person that is not a natural person.

(2) No person who is a Member of Parliament, public servant, or who holds any other constitutional or government position may be appointed as a director of a State Owned Enterprise unless the board certifies to the Accountable Ministers that –

- (a) the appointment is in the national interest; and
- (b) the person has particular qualifications or business experience which the State Owned Enterprise requires on its board and such qualifications or business experience cannot be found in Solomon Islands.

(3) Where a person who is a Member of Parliament, public servant or who holds any other constitutional or government position is appointed as director, that person shall not receive remuneration or other benefits from the State Owned Enterprise for services as a director.

13. (1) The office of director of a State Owned Enterprise is vacated if the person holding that office –

- (a) resigns in accordance with subregulation (2);
- (b) dies;
- (c) otherwise vacates office in accordance with the rules of the State Owned Enterprise;
- (d) fails to attend three consecutive board meetings of the State Owned Enterprise without an apology being received and accepted by the chairperson of the board, and in the case of the chairperson an apology being received and accepted by the board.
- (e) attains the age of 70 years;
- (f) is convicted of an offence relating to his or her duties as a director;
- (g) fails to comply with the requirements set out in regulations 25 to 27;
- (h) is removed from office in accordance with regulation 14; or
- (i) becomes disqualified from being a director pursuant to regulation 12.

(2) A director of a State Owned Enterprise may resign office by signing a written notice of resignation and delivering it to the address for service of the State Owned Enterprise. The notice is effective when it is received at that address or at a later time specified in the notice.

14. (1) The Accountable Ministers may, at any time and entirely at their discretion, remove a director of a State Owned Enterprise from office.

Accountable
Ministers may
remove a director

(2) The removal must be made by written notice to the director (with a copy to the State Owned Enterprise).

(3) The notice must state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received.

(4) The Accountable Ministers must notify the removal in the Gazette as soon as practicable after giving the notice.

No compensation

15. No person shall be entitled to any form of compensation for vacation for any reasons of his or her office as director of State Owned Enterprise.

Term of office

16. (1) A director of a State Owned Enterprise holds office for three years or any shorter period stated in the notice of appointment.

(2) A director may not serve more than 6 continuous years on the board of a State Owned Enterprise.

(3) A director continues in office despite the expiry of his or her term of office until –

(a) the director is reappointed; or

(b) the director's successor is appointed; or

(c) the Accountable Ministers inform the director by written notice (with a copy to the State Own Enterprise) that the director is not to be reappointed and no successor is to be appointed at that time.

(4) This section is subject to regulation 13.

PART 4 - DIRECTORS DUTIES

17. A director of a State Owned Enterprise, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the State Owned Enterprise. Principal duty of a director
18. A director of a State Owned Enterprise, when exercising a power as a director, must exercise that power for a proper purpose. Power to be exercised for a proper purpose
19. A director of a State Owned Enterprise must not act, or agree to the State Owned Enterprise acting, in a manner that contravenes – Actions of director and State Owned Enterprise to be legal
- (a) the Act;
 - (b) where the State Owned Enterprise is a company, the Companies Act (Cap. 175);
 - (c) where the State Owned Enterprise is a statutory corporation, the establishing legislation for the statutory corporation, or
 - (d) the rules of the State Owned Enterprise.
20. A director of a State Owned Enterprise must not – Prohibition against reckless trading
- (a) agree to the business of the State Owned Enterprise being carried on in a manner likely to create a substantial risk of serious loss to the State Owned Enterprises creditors; or
 - (b) cause or allow the business of the State Owned Enterprise to be carried on in a manner likely to create a substantial risk of serious loss to the State Owned Enterprises creditors.
21. A director of a State Owned Enterprise must not agree to the State Owned Enterprise incurring an obligation unless the director believes at that time on reasonable grounds that the State Owned Enterprise will be able to perform the obligation when it is required to do so. Belief that obligation will be met
22. A director of a State Owned Enterprise, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances. Standard of care

Director can rely
on professional or
expert advice

23. (1) Subject to subregulation (2), a director of a State Owned Enterprise, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) an employee of the State Owned Enterprise whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) a professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
- (c) any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.

(2) Subregulation (1) applies to a director only if the director –

- (a) acts in good faith; and
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that such reliance is unwarranted.

Use of State
Owned
Enterprises
information

24. (1) A director of a State Owned Enterprise who has information in his or her capacity as a director or employee of the State Owned Enterprise, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except –

- (a) for the purposes of the State Owned Enterprise; or
- (b) as required by law; or
- (c) in accordance with subregulation (2); or
- (d) in complying with regulation 11.

(2) A director of a State Owned Enterprise may disclose, make use of, or act on the information if –

- (a) particulars of the disclosure, use, or the act in question are entered in the interests register; and
- (b) the director is first authorised to do so by the board; and
- (c) the disclosure, use, or act in question will not, or will not be likely to, prejudice the State Own Enterprise.

25. (1) A director of a State Owned Enterprise must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the State Owned Enterprise, cause to be entered in the interests register, and disclose to the board of the State Owned Enterprise –

Conflicts to be entered in an interests register

- (a) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

(2) A director of a State Owned Enterprise is not required to comply with subregulation (1) if –

- (a) the transaction or proposed transaction is between the director and the State Owned Enterprise; and
- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the State Owned Enterprises business and on usual terms and conditions.

(3) For the purposes of subregulation (1), a general notice entered in the interests register and disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of a named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

(4) A failure by a director to comply with subregulation (1) does not affect the validity of a transaction entered into by the company or the director.

Board to notify
Accountable
Ministers of
conflicts

26. (1) Within ten days of disclosure of an interest to the board of the State Owned Enterprise in accordance with regulation 11, the board must give the Accountable Ministers written notice of such disclosure. Such written notice must include a copy of the entry on the interests register made under regulation 11.

(2) The Responsible Minister shall table in the National Parliament a copy of the notice provided under subsection (1) within five days after the date on which the Minister receives the notice, provided that if Parliament is not sitting, the copy of the notice may be lodged with the Clerk.

Interested director
may not
participate

27. A director of a State Owned Enterprise who is interested in a transaction entered into, or to be entered into, by the State Owned Enterprise, may not –

- (a) vote on a matter relating to the transaction; or
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; or
- (c) sign a document relating to the transaction on behalf of the State Owned Enterprise; or
- (d) do any other thing in his or her capacity as a director in relation to the transaction,

as if the director were not interested in the transaction.

PART 5 - ECONOMIC REGULATORY FUNCTIONS

Confirmation of
capacity

28. In each case where a State Owned Enterprise exercise any economic regulatory function, the State Owned Enterprise must, before exercising that economic regulatory function, give to the Accountable Ministers written notice which:

- (a) confirms that the State Owned Enterprise has, or has access to, the expertise necessary to exercise that regulatory function; and

- (b) includes a description of the nature of the expertise which the State Owned Enterprise has or has access to, including the names and qualifications of relevant personnel.

29. In each case where a State Owned Enterprise exercise any economic regulatory function, the State Owned Enterprise must, before exercise that economic regulatory function: Process to be followed

- (a) publish a statement which sets out the process the State Owned Enterprise will follow when making any proposed decision or decisions;
- (b) consult with persons that the State Owned Enterprise reasonably considers are likely to be affected by the exercise of the economic regulatory function;
- (c) give those persons the opportunity to make written submissions; and
- (d) consider those submissions

30. A State Owned Enterprise must publish reasons for all decisions that the State Owned Enterprise makes in relation to the exercise of an economic regulatory function. Reasons for decision

31. When exercising an economic regulatory function a State Owned Enterprise must be satisfied that: Technical and safety issues relevant

- (a) all relevant technical and safety standards are or will be complied with; and
- (b) any costs which will be imposed on the State Owned Enterprise as a result of the exercise of the economic regulatory function are recoverable by the State Owned Enterprise.

32. When exercising an economic regulatory function a State Owned Enterprise must not take into account the commercial or competitive position of the State Owned Enterprise. Commercial interests of State Owned Enterprise irrelevant

PART 6 - COMMUNITY SERVICE OBLIGATION

Accountable
Ministers may
submit a proposal

33. The Accountable Ministers may submit to a State Owned Enterprise a proposal which describes the nature and scope of a Community Service Obligation which the Accountable Ministers wish the State Owned Enterprise to provide.

State Owned
Enterprise to
estimate costs of
proposal

34. (1) The State Owned Enterprise must, within ten working days of receiving the Ministers' proposal under regulation 33, give to the Accountable Ministers an estimate of the cost of the State Owned Enterprise of providing the Community Service Obligation in accordance with the Ministers' proposal.

(2) The estimate provided under subregulation (1) is to be the estimate that, in the view of the Board of the State Owned Enterprise, takes into account all available information and includes a prudently conservative view of likely contingencies and future circumstances.

Accountable
Ministers to
accept or reject
estimate

35. (1) The Accountable Ministers must, as soon as practicable after receiving the estimate under regulation 34, by notice in writing to the State Owned Enterprise;

- (a) approve the estimate; or
- (b) decline to approve the estimate

(2) If the Accountable Ministers decline to approve the estimate the Accountable Ministers may amend the proposal submitted under regulation 33 and submit to the State Owned Enterprise such amended proposal.

(3) This regulation and regulations 34 and 36 apply to an amended proposal submitted under subregulation (2).

Accountable
Ministers to give
notice of any
proposal

36. If the Accountable Ministers approve an estimate under regulation 35 the Accountable Ministers must give notice in writing to the State Owned Enterprise of the approval of the estimate, accompanied by a copy of:

- (a) the Ministers' proposal; and
- (b) the approved estimate

(1) The State Owned Enterprise must provide a Community Service Obligation in accordance with any notice given under regulation 36.

State Owned
Enterprise to
provide
Community
Service
Obligation
consistent with
notice

(2) The fact that the State Owned Enterprise incurs costs in providing the Community Service Obligation in excess of the estimate given under regulation 34 does not mean the Community Service Obligation is provided contrary to these Regulations.

MADE AT HONIARA this twelvth day of April, 2010.

HON. SNYDER RINI
Minister for Finance and Treasury

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