FOREWORD

It is a great privilege to present the first Directors Handbook 2019. This handbook serves as a guide and resource to Public Bodies Board Directors. It seeks to inform Directors of their duty of care to the Public Body Boards they have been appointed to and in so doing strengthen the corporate governance capacities of these organizations.

It is my hope that each Director will use this handbook to better understand what is expected of them in the exercise of their duties and responsibilities as Board Directors. More importantly I hope Directors will appreciate the value Government places on your skills and experience and the stewardship you have been given to ensure our Public Bodies are delivering the quality of service expected by our people.

“The key to successful leadership today is influence, not authority” (Ken Blanchard). As the Minister responsible for the performance of Public Bodies I encourage all Directors to make use of this Handbook. It contains significant information that will enable you to effectively influence the way our public bodies are performing.

Finally I commend the Independent Selection Committee for this initiative and collaborating with the Ministry for Public Enterprises to make the 2019 Directors Handbook a reality.

Soifua ma manuia.

Hon. Lautafi Fio Selafi Purcell
MINISTER FOR PUBLIC ENTERPRISES

Preface

This Handbook was initiated by the Independent Selection Committee and the Ministry for Public Enterprises (MPE). The purpose of this Handbook is to provide guidance to Directors as to what is expected of them as a member of the Board of a Public Body.

Directors who clearly understand their roles, responsibilities and accountabilities as members of the Board will provide the governance needed to strengthen the performance of Public Bodies.

Table of Content

FOREWORD **PAGE**

MANDATE………………………………………………………………………………. 05

The Public Bodies (Performance & Accountability) Act 2001

The Companies Act 2001

The Public Financial Management Act 2001

GOVERNANCE……………………………………………………………………….. 08

Governance Structure

- The Shareholding Ministers
- The Responsible Minister
- The Sector Minister
- The Ministry for Public Enterprises

THE BOARD………………………………………………………………………….. 12

Role and Responsibility of the Board

- Policy Making
- Financial Management & Accountability
- Planning
- Reporting & Performance
- Risk Management
- Recruitment & Selection of the General Manager

Annual Work Plan

Meetings

The Chair

Board Committees

- Audit Sub-Committee
- Recruitment, Selection and Performance Review

THE DIRECTOR…………………………………………………………….……. 22

Recruitment and Selection

Appointments

- Warrant of Appointment
- Declaration of Pecuniary Interest

Vacancies and Removals

Remuneration and Fees

Code of Conduct

Performance Assessment

RELATIONSHIP MANAGEMENT ………………………………………………… 31

The relationship between the Minister and the Board

The relationship between the Board and the General Manager

- General Managers support to the Board
- Board's monitoring of General Manager's performance

The relationship between the Sector Minister and the General Manager

The role of the Ministry for Public Enterprises

Mandate

The Public Bodies (Performance & Accountability) Act 2001

The Public Bodies (Performance & Accountability) Act 2001 (referred to hereafter as the PB Act 2001) is the principal legislation governing all Public Bodies. The purpose of the PB Act 2001 is to enhance the performance and accountability of public bodies so that they provide the best possible service for the people of Samoa, and in so doing contribute to the country's social, cultural, economic and commercial development.

Under the PB Act 2001 a public body is defined as any corporation where the Government (1) has more than 50% of the membership of the Board of Directors; (2) controls more than 50% of the voting power of the Directors and (3) holds more than 50% of the issued share capital.

There are two types of Public Bodies explicitly referred to in the PB Act 2001. They are Public Trading Bodies and Public Beneficial Bodies.

Public Trading Bodies shall be registered as companies under the Companies Act 2001 and are expected to operate as successful businesses. They are required to:

- be as profitable and efficient as other businesses that are not owned by Government.
- meet any community service obligations expected of them.
- comply with the provisions of the Labour and Employment Relations Act 2013.
- exhibit a sense of social responsibility to the community.

Public Beneficial Bodies are expected to provide a service to its users and by doing so:

- meet the purpose and objectives for which they were legislatively set up (empowering Act).
- operate in an efficient and effective manner similar to other businesses that are not owned by Government.
- comply with the provisions of the Labour and Employment Relations Act 2013.
- exhibit a sense of social responsibility to the community.

An indirect reference is made to a third type of Public Body in the PB Act 2001, those that are incorporated as **Mutual Societies**. Mutual Societies are expected to comply with the provisions of the PB Act 2001 but are not required to register as a company under the Companies Act 2001.

Schedule 1 of the PB Act 2001 provides a list of the Public Bodies.

The Companies Act 2001

The Companies Act 2001 provides for the formation and governance of Companies. It outlines among other things, the administration of shares, the payment of dividends and the rights and obligations of shareholders. The Companies Act also provides additional clarification as to the roles and responsibilities of Directors.

All Public Trading Bodies are required to be registered on the Companies registry and as such are expected to comply with the provisions of the Companies Act 2001.

The Public Financial Management Act 2001

The Public Financial Management Act 2001 (hereafter referred to as the PFM Act 2001) aims to foster and enhance effective and responsible economic and financial management by Government. It puts in place accountability requirements for the use of government funds and provisions outlining the processes and systems for complying with those arrangements. Government-owned shares in Public Bodies are subject to the compliance provisions in the PFM Act 2001.

The PFM Act 2001 also provides additional clarification on the definition of a public body. In section 91 it states that a corporation is taken to be a public body if the Government (1) controls the composition of the Board of Directors, (2) controls more than 50% voting power of the corporation, and (3) controls more than 50% of the shared capital. A corporation that meets any one of these three conditions is considered to be a public body whether it is listed or unlisted in the relevant Schedule.

Governance

Governance is all about how decisions are made, implemented and how the outcomes of those decisions are accounted for. The World Bank defines governance as the 'traditions and institutions by which authority in a country is exercised'. Simply put, governance is about 'the way power is exercised through a country's economic, political and social institutions" (World Bank 1992). Because countries have different economic, political and social institutions in place the type of governance they observe differs from one country to the next. Despite these differences it is possible to identify three governance pillars: authority, decision making and accountability.

Good Governance

Good governance takes the three pillars of authority, decision-making and accountability and applies them to public institutions, in particular the way public institutions conduct themselves and manage the public resources they have been given. Some of the defining characteristics of good governance are adhering to the rule of law, efficiency & effectiveness, accountability and transparency.

Corporate Governance

Corporate Governance concerns itself with the procedures and processes in which an organization is directed and controlled. The focus of corporate governance is the distribution of rights and responsibilities among the different stakeholders within an organization and the accountabilities that are in place when it comes to compliance and decision-making.

The Organization for Economic Cooperation and Develop (OECD)'s Principles of Corporate Governance (2004) describes corporate governance as a set of relationships between a company's management, its Board, its shareholders and other stakeholders. Corporate governance provides a structure through which the objectives of a company are set, the means of attaining those objectives is determined, progress is monitored and performance assessed.

The PB Act 2001 together with the Companies Act 2001 and the PFM Act 2001 sets out the governance requirements for all public bodies when it comes to decision-making, accountability and the type of structures and processes that should be in place to enable this to happen.

Governance Structure

The Shareholding Ministers

In the PB Act 2001 the Shareholding Ministers refers to the Minister of Finance and the Minister for Public Enterprises. Government's shares in a public trading body are held ex officio by the Shareholding Ministers on behalf of the State of Samoa. The Shareholding Ministers are therefore responsible for safeguarding the ownership interest of Government. It is the responsibility of the Minister for Public Enterprises to monitor the performance of public bodies while the Minister of Finance is concerned with the effects public bodies have on Governments budget and the economy as a whole.

The Responsible Minister

In the PB Act 2001 the Responsible Minister is the Minister for Public Enterprises. He or she is solely responsible for the performance and accountability of all public bodies. It is the Minister for Public Enterprises, as the Responsible Minister who shall:

- be provided with the Shareholding Minister an approved copy of the Public Body's Corporate Plan (PB Act 2001, Section 22).
- table before Parliament the Statement of Corporate objective that all Public Bodies are required to prepare in conjunction with their Corporate Plans (PB Act 2001, Section 22 (4)).
- be provided with the Shareholding Minister an Annual Report and audited statement from the Public Body within four months after the end of each financial year (PB Act 2001, Schedule 6 (6.2)).
- table before Parliament the Annual Report and audited financial statements (PB Act 2001, Schedule 6 (6.7.1)).

Other Ministers

Public Bodies do not operate in isolation. They are expected to contribute to the achievement of priorities identified for the sectors in which they are engaged. For example The Samoa Shipping Corporation (SSC), Samoa Shipping Services (SSS) and the Samoa Ports Authority SPA) are key players in the transport and infrastructure sectors. There are development priorities & activities in these sectors that the Minister for Works, Transport & Infrastructure (WTI) is responsible for achieving. These priorities & activities are often described in sector plans.

Some public bodies also have their own governing legislations. These governing legislations identify the purpose, mandate and key functions for these public bodies. These governing legislations also identify specific responsibilities for the Minister who is responsible for ensuring that the purpose, mandate and key functions of the public body are achieved. In the context of these governing legislations these other Ministers are also referred to as 'responsible Ministers'. However their responsibilities are specific to the duties and responsibilities outlined in the public bodies governing legislations.

As far as the PB Act 2001 goes and what is expected of public bodies in terms of their performance, accountability and overall governance the 'responsible Minister' is the Minister for Public Enterprises.

The Ministry for Public Enterprises

The Ministry for Public Enterprises is responsible for providing strategic leadership and oversight of the State Owned Enterprises (SOE) sector. Its primary focus is to monitor the performance of all public bodies to ensure they are operating efficiently & effectively in order to make sure they are making a significant contribution to economic growth while delivering quality service to the people of Samoa.

The Ministry's vision is to have "high performing public bodies delivering quality services". Its mission is to "monitor and assess the performance and quality of service delivery by public bodies to ensure they are making a valuable contribution to economic and social development" (Ministry for Public Enterprises Corporate Plan 2017-2010).

The Ministry provides policy advice to the Minister, Public Enterprises on all matters in relation to public bodies. It is expected to develop and implement effective governance and regulatory frameworks and monitor public bodies to make sure they achieve what is required under the PB Act 2001 and other Acts that regulate their performance.

The Ministry provides both the Responsible Minister and the Shareholding Ministers with regular overviews of the performance of public bodies and makes recommendations for their improvement.

The Ministry is the link between the Responsible Minister and the Board of Directors.

The Board

The establishment of Boards for Public Bodies and the appointment of Directors to these Boards are governed by the PB Act 2001 and the Companies Act 2001. Through the provisions of these Acts, Boards are given the responsibility and power to manage, direct and supervise the management and business affairs of public bodies.

Role and Responsibility of the Board

The Board is the governing body whose role is to make sure the organization is well managed, that its financial situation is sound, that Government's interest as the major shareholder is protected and that the organization is providing an efficient and quality service that is expected of it by the community.

The Board of Directors provides the strategic leadership necessary to ensure public bodies meet their performance expectations under the PB Act 2001 and other relevant legislations that govern their operations. The intention is to make sure public bodies are operating successfully in line with their key objectives under the Act to deliver the best services to the people of Samoa.

The Board's key responsibilities include the following:

Policy Making

Policies are intended to provide clear guidelines for the implementation of the various operational elements of the public body to make sure the organization is achieving its corporate objectives.

The Board is expected to:

- provide overall leadership and strategic oversight to the public body.
- develop policies that provide clear direction and guidance to the public body in the performance of its duties.
- develop strategies and frameworks that identify the outcomes expected of the public body.

- develop compliance policies that will detail the public body's commitment to meetings its requirements under the legislation(s).
- review and endorse policies and proposals developed by the General Manager of the public body and makes sure these are aligned to the overall vision and statement of Corporate Intent.

Financial Management & Accountability

The Board has a core duty to ensure the financial integrity and viability of the public body. This involves oversight of all financial processes and systems, regular reviews of financial results and approving the organization's annual financial plan and budget.

The Board is expected to:

- review and monitor the implementation of governance level financial policies in particular those related to the PB Act 2001, the Companies Act 2001 and the PFM Act 2001.
- provide guidance on budget parameters and priorities and approve the annual budget and financial plan including capital expenditure.
- approve expenditure outside budget parameters.
- review and approve all annual financial statements, reports and outcomes.
- make sure annual audits are initiated/conducted and all recommendations are implemented.

Planning

In accordance with the provision set out in the PB Act 2001 all Public Bodies are required to submit to the Ministry for Public Enterprises a Corporate Plan and a Statement of Corporate Objective.

The Board is expected to:

- oversee the preparation of the Corporate Plan and Statement of Corporate Objective.
- ensure the Corporate Plan contains measureable targets against which the performance of the public body will be assessed.

- ensure the Board's policy decisions are reflected in the Corporate Plan and are consistent with the public body's purpose and intent.
- only initiate and endorse activities that are consistent with the principal objective of the Corporate Plan.
- ensure the Corporate Plan and the Statement of Corporate Objective are prepared and submitted to the Ministry for Public Enterprises on time.

When the Corporate Plan and Statement of Corporate Objective are finalized the Ministry shall forward these to the Responsible Ministers for approval. Both the Corporate Plan and the Statement of Corporate Objective must be endorsed by Cabinet.

Once approved by Cabinet the Statement of Corporate Objective is then tabled before Parliament as required under the PB Act 2001. By tabling the Statement of Corporate Objective in Parliament it then becomes a public document to inform the public of the outcomes expected from the public body.

Reporting & Performance

The PB Act 2001 requires all public bodies to submit annual and quarterly reports. The Annual Report must be submitted to the Minister for Public Enterprise (Responsible Minister) no later than four months after the end of the financial year, by the 31 October each year. Quarterly reports must be submitted to the Ministry for Public Enterprises no later than one month after the end of each quarter.

The Ministry for Public Enterprises has developed guidelines for preparing both the Annual and Quarterly Reports and the format each report should be in.

It is the duty of the Board to make sure the public body complies with the reporting requirements under the Act.

If the Board cannot report on the financial and operational positions of the public body within the time frames specified then the Board has failed to meet one of its fundamental obligations under its duty of care.

The Board is expected to:

- monitor the preparation of the public body's annual and quarterly reports to make sure the reports are completed on time.
- ensure the format of the public body's annual and quarterly reports comply with the template and guidelines specified by the Ministry for Public Enterprises.
- ensure that the accounts accompanying the annual and quarterly reports prepared using international accounting standards or any other policies issued by the Ministry for Public Enterprises in relation to the provisions of the PB Act 2001.
- endorse the annual and quarterly reports before they are submitted to the Ministry for Public Enterprises.

It is important for Boards to remember that depending on whether they are a Public Trading Body or a Public Beneficial body they have specific objectives under the PB Act 2001. Therefore any indicator used must be relevant to the public bodies primary objective. For example all public trading bodies are required to pay a dividend to Government (50% of their recorded, audited Nett Profit After Tax - NPAT) while public beneficial bodies are expected to operate in an efficient and effective manner and should be financially viable to cover their costs such as maintenance and asset replacement.

It is the overall duty of the Board to make sure relevant indicators are developed and used when reporting on the performance of a public body. There should be financial and non-financial indicators in place.

Risk Management

A risk is anything that threatens the achievement of an objective. Being able to anticipate and identify options to deal with or reduce the impact a risk will have is referred to as risk management.

Public bodies face a number of risks (organizational, financial, political, personnel, environmental etc) that if not properly managed will impact on their performance. It is the responsibility of the Board to make sure a strong risk management culture is promoted in the organization and that risk management strategies are in place to deal with them.

The Board is expected to:

- oversee the development and implementation of a risk management policy that addresses the risks that threaten the long term strategic objective & targets of the public body.
- develop a framework that will enable the Board to identify, assess, monitor and manage long term strategic risks and communicate these to the executive management of the public body.
- be aware of the organizational risks faced by the General Manager in the day-to-day management of activities undertaken by the public body and provide advisory support where necessary.
- integrate risk management into the Board's strategic and business planning processes.

The benefit of effectively managing risks is that it will enable the Board to better anticipate challenges and make timely policy interventions that will allow the public body to address those risks.

Recruitment & Selection of the General Manager

One of the primary responsibilities of the Board under its accountability duty to the Responsible Minister is to appoint the General Manager of the public body. The Board shall appoint a General Manager who shall be responsible for the day to day management of the public body.

The Board is expected to:

- review the job description for the General Manager's position and develop appropriate selection criteria.
- make sure the position is widely advertised.
- review all the applications and develop a shortlist of applicants for interviewing.
- conduct interviews of shortlisted applicants and prepare a submission to Cabinet.
- prepare a written performance contract with key performance indicators for the selected applicants and submit this to the Ministry for Public Enterprises for endorsing.

- monitor and review the performance of the General Manager.

The final approval for the appointment of a General Manager is made by Cabinet whose decision is based on the recommendations of the Board. The termination of a General Manager is also based upon the recommendations of the Board to Cabinet.

The performance contract signed between the Board and the General Manger must be in line with the provisions of the PB Act 2001 and the empowering legislation of the public body. The contract should be tied to the Corporate Plan and the Statement of Corporate Objective. Therefore it is important that the Board identifies key performance indicators (KPIs) for the General Manager and include these in the performance contract.

Annual Work Plan

The Board is encouraged to develop and annual work plan to provide specific direction as to what it is going to do. An annual work plan will greatly enhance the Board's governance role. An annual work plan that clearly identifies what the Board expects to do and how it will do it over a 12-month period will serve not only to guide the work of the Board, but enable it to establish benchmarks against which it can assess its performance.

This work plan should reflect the duty of care (policy setting, financial accountability, reporting & performance management etc) expected of the Board under the PB Act 2001. The plan should be signed off by the Board at the end of June each year and aligned to the financial year ahead (1 July - 30 June).

The Chair

The Chair provides leadership to the Board, ensuring that the Board's processes and actions are consistent with its policies. It is the role of the Chair to encourage a culture of stewardship, collaboration and co-operation amongst Board directors.

The Chair is appointed by Cabinet on the recommendations of the Independent Selection Committee (ISC).

The Chair shall make sure that the Board follows good governance practices by developing and implementing processes and systems that will ensure the Board is effective. These processes shall include:

- developing, reviewing and monitoring of the public body's Corporate Plan and risk management framework.
- identifying the financial and non-financial performance indicators that will be used to monitor the public body's performance.
- reviewing Management's detailed performance reports on a monthly basis.
- developing a succession plan and a professional development plan for both the Board and its directors.
- overseeing the performance review and evaluation of the Board and its directors.

The Chair shall ensure that the Board meetings are properly planned, an agenda is set and that the development and distribution of Board papers is done in a timely manner. The Chair shall also make sure meetings follow the rules of procedure approved by the Board and that all Directors understand the decisions made and that these decisions are properly recorded.

The Chair has no authority to unilaterally change any aspects of Board policy.

The Chair shall make sure that all performance reports are submitted to the Ministry for Public Enterprises by the due dates and those reports are complete in every respect, as required under the PB Act 2001.

In the event that the Chair is unavailable a Deputy Chair may need to stand in for the Chair during approved absences. The Board shall elect from its membership a Deputy who shall provide leadership and direction to the Board in the Chair's absence. A director who assumes the role of Deputy Chair must demonstrate the same strategic and leadership qualities as the Chair.

Meetings

The purpose of the Board is governance. What does this mean? It means the work of the Board should be concerned with the way authority is established, decisions are made and accountability is demonstrated by public bodies. When the Board meets, it should be meeting to address governance related issues as required under the PB Act 2001.

There are four key reasons for holding Board meetings. These are:

1. to agree on the overall strategic direction of the public body and regularly assess the effectiveness of this against the organization's Statement of Corporate Objective.
2. to make sure the operations of the public body are in line with its strategic direction.
3. to monitor the financial performance of the public body against approved budget.
4. to make sure procedural and compliance issues in the provisions of the PB Act 2001, the Companies Act 2001 and other empowering legislations as well as policy directives from the Ministry for Public Enterprises are properly addressed.

Board meetings shall:

- be held once a month as directed by Cabinet directive FK(16)07 dated 24 February 2016. Any special meetings shall be at the discretion of the Chair depending on the need.
- be held in accordance with established rules of procedure approve by the Board and will set out how meetings will be held, the rules of engagement and the conduct expected of Directors during meetings.
- be based on a pre-prepared agenda set by the Chair or in the Chair's absence by the Deputy Chair. The agenda should reflect the Board's governance role and should be circulated to Board members no less than four working days before the meeting.
- be held with the expectation that Directors will come prepared, having read the agenda and the supporting documentation and

are prepared to participate in discussions within the boundaries of behaviour considered acceptable to the Board.

- keep a record of the discussion and decisions made together with a summary of action items that need to be monitored. The Minutes of a Board meeting are legal documents. While it is important to record all motions, decisions and action items, it is equally important that some attempt be made to capture the context to how those decisions were made.

The Board has a duty of care to both the Responsible Minister and the Shareholding Minister to ensure the Public Body meets its performance expectations under the PB Act 2001. Holding regular, structured meetings is one way the Board meets its duty of care obligation.

Board Committees

The Board may set up committees to help do its work. Board Committees often deal with important issues that require a comprehensive review and often specialized skills and knowledge. In such situations the Board delegates the matter to a relevant committee that will review the issues and make recommendations to the full Board as to the action that should be taken.

Board Committees should have a set of responsibilities aligned to the purpose for which they were set up. The Board should make sure that the role, procedures, functions and limitations of a Committee are clearly defined.

The Board may invite the Management of the public body or even external people to be members of Board Committee's from time to time if additional skills and expertise are needed or even an independent perspective.

Audit Committee

Under the Schedule 8, section 8.2 of the PB Act 2001 all Boards shall establish an Audit Committee. The Audit Committee shall provide advice to the Board on:

- the internal audit functions of the public body.

- the public body's systems of financial reporting and internal controls.
- the resources necessary for the performance of the internal audit function.
- identifying the major risks to the public body and ensure that financial internal control systems introduced by Management are adequate and functioning effectively.
- reviewing the internal audit plan and the scope of the internal audit.
- coordinating the work of the internal and external auditors.
- reviewing reports by the internal and external auditors on the weaknesses in internal control and plans by management to rectify the position.
- reviewing significant financial risk areas and monitor compliance with statutory requirements.
- monitoring compliance with statutory requirements.
- reviewing interim financial information.
- reviewing financial statements by both management and the internal auditors prior to approval by the Board.

General Manager's Performance Review Committee

Each Board is encouraged to put in place a General Manager Performance Review Committee to review the performance of the General Manager. This Committee shall consist of the Chair and two other Directors.

All other ad hoc Committees set up are automatically disestablished once they have completed their work and reported to the Board.

The Director

The key role of a Director is to enforce and implement the provisions of the PB Act 2001 and any other relevant legislations relating to the operation of the public body Board that he or she is appointed to.

Recruitment and Selection

The recruitment and selection of Directors is governed by the PB Act 2001. It specifically states the principles and procedures for the appointment of Directors and establishes an Independent Selection Committee (ISC) tasked with overseeing this process. The Independent Selection Committee consists of three members who provide an independent, private sector assessment of every individual who has expressed an interest in serving on the Board of a public body.

The Independent Selection Committee's duties are described in Schedule 3, PB Act 2001. Their general terms of reference, which have been approved by Cabinet include:

- developing criteria for vacant Board positions.
- advertising all vacant Board positions.
- receiving and reviewing all applications.
- developing a shortlist of applicants for interviewing.
- conducting interviews of shortlisted applicants and initiate reference checks where necessary.
- preparing submissions to Cabinet with recommendations on the most appropriate candidate for Cabinet's approval.
- reviewing Board composition, roles and responsibilities.
- reviewing Director remuneration and making recommendations to the Government Remuneration Tribunal.
- assisting MPE to review the performance of Directors and Public Body Boards when required.

- Developing policies and guidelines for strengthening the recruitment & selection and performance monitoring of Directors and recommending these to Cabinet.

Under the normal recruitment & selection cycle all Board positions are advertised. The advertisement will include information on the public body, the number of Directorship positions available and the key skill set (financial, legal, technical community etc) that is being sought.

Those interested in becoming a Director are required to complete a Public Bodies Directors Application Form. The completed application form together with a curriculum vitae and covering letter addressed to the Chair, Independent Selection Committee must be submitted to the Ministry for Public Enterprises.

A detailed list of what is required when applying to become a Board Director will be outlined when the Directorship positions are advertised.

At the end of their appointments all Directors who are interested in continuing their service on the Boards they were appointed to must re-apply.

Outside of the normal recruitment & selection cycle for Board positions the Independent Selection Committee may choose not to advertise but instead refer to its applicant database for suitable candidates.

Appointments

Director appointments are for a set period of time, usually three years. Some public body Board appointments are longer depending on the requirements set out in their governing legislation.

All Director appointments to the Board of a public body are made by Cabinet. While the Independent Selection Committee is responsible for overseeing the recruitment & selection process and making recommendations as to who it feels is the most appropriate candidate, it is the Cabinet who makes the final decision. Cabinet may choose to accept the Independent Selection Committee's recommendation, refuse it or appoint a person who was not recommended.

Once Cabinet has approved the appointment of a new Board Director the Ministry for Public Enterprises will prepare a "Letter of Offer" wherein the appointee will be given ten (10) days to accept or decline their appointment. The acceptance or otherwise must be made in writing. The acceptance of offer by the new Director can be by letter or email.

Warrant of Appointment

For those who accept the Letter of Offer, a Warrant of Appointment (WOA) will be prepared by the Office of the Attorney General (OAG). The WOA is signed by the Head of State. It is the Ministry of the Prime Minister & Cabinet (MPMC) that is responsible for ensuring that the Head of State signs the WOA. The Ministry for Public Enterprises will follow up with MPMC the signing of WOA by the Head of State and will advise the new Director and the Public Body once it is done.

The validity of the WOA varies depending on the legislative requirements for the Public Body in question.

A Directorship appointment is not official until the WOA has been signed by the Head of State. A Director must not participate or be involved in Board decision making without a valid WOA in place.

Declaration of Pecuniary Interest and Conviction

Section 20, PB Act 2001 states that all Directors must make a Declaration of Pecuniary Interest and Convictions (DPIC). This Declaration must be made within one month of being appointed. A pecuniary interest is any situation where there is a likelihood or expectation of a monetary gain or loss to a person or others with whom that person associates.

In the context of the PB Act 2001 a pecuniary interest is discussed in terms of a conflict of interest. It is said to occur when a Director of a Public Body knowingly makes or takes part in the making of any decision where they have a pecuniary or other interest that conflicts with the interest of the public body.

There are three types of conflict of interest commonly found in the public sector. They are:

- *Actual* **-** where a conflict of interest exist between one's official duties and responsibilities as a public servant and their private, personal interests.
- *Apparent* **-** where there is an appearance that one's private/personal interests could improperly influence the performance of their official duties and responsibilities whether or not this is in fact the case.
- *Potential* **-** where one's private & personal interest could interfere or influence the performance of their official duties and responsibilities in the future.

The PB Act 2001 states the format the Declaration should be made in and that it should be approved by the Chief Executive Officer, Ministry for Public Enterprises. In making a Declaration Directors are required to state:

- if they hold any directorship or office in any other Company or Public Body.
- if they hold membership in any trust, joint ventures or other arrangements for the sharing of profits.
- they do not have a beneficial interest in any shares.
- they do not have a beneficial interest in any securities.
- they are not directly or indirectly interested in any contract or proposed contract with the Public Body.
- they do not have a beneficial interest in any property or office of the Public Body.
- they do not have direct or indirect interests which conflicts with or could conflict with the exercise of a Director's duties.

The Ministry for Public Enterprises will provide all Directors with a DPIC form to complete. Once the completed DPIC form is returned, the Ministry will send a copy to the Chair for reading at the next Board meeting.

The DPIC is a Director's commitment to avoid any conflict of interest, corruption and risk of undue or inappropriate influence that may impact on the Board's independence.

The Board is accountable to the Shareholding Ministers for the performance of the Public Body. The Board has an obligation to protect the Board's deliberations and functions from any conflict of interest, corruption and interference from internal and external sources.

Directors must be vigilant al all times of situations that may compromise their independence and put at risk their duty of care to the Public Body.

In Schedule 3, section 3.3.1(f) of the PB Act 2001 it states that a Director may be removed from the Board for failing to complete the DPIC form.

Vacancies and Removals

A Board position becomes vacant when:

- A Director resigns from the Board.
- A Director passes away (death).
- A Director is disqualified due to the following:
    - missing three consecutive Board meetings without a valid apology, that is an apology that is accepted by the Chair, and in terms of the Chair an apology accepted by members of the Board.
    - bankruptcy.
    - convicted of an offence in Samoa or elsewhere punishable by death or imprisonment for a term of 2 years or more.
    - convicted of an offence relation to his or her duties as a Director.
    - fails to complete and adhere to the Declaration of Pecuniary Interest & Convictions form required under the PB Act 2001.
    - attaining the age of 70 years and is not recommended by the Independent Selection Committee for re-appointment.

- Cabinet decides to remove a Director or all Directors from a Public Body that consistently fails to comply with its reporting (Annual, Quarterly, Corporate etc.) and financial performance requirements under the PB Act 2001 (Schedule 3, section 3.3.2).
- A Director is not re-appointed at the end of their term as a result of the performance evaluation conducted by the Independent Selection Committee in conjunction with the Ministry for Public Enterprises.

Once the Ministry for Public Enterprises is made aware of a Board vacancy it will advise the Independent Selection Committee to commence the recruitment & selection process to fill it.

Remuneration and Fees

Under the PB Act 2001 Directors may receive remuneration and other benefits from the Public Body Board they have been appointed to. Cabinet in its Directive FK(15)31 dated the 21 September 2015 set the Annual Sitting Fees for Public Body Boards of Directors at $22,500.00 for the Chairperson and $18,000.00 for members of the Board.

Director's Sitting Fees are subject to salary & wage income tax in accordance with the Income Tax Act 2012. Under the Tax Administration Act 2012 the tax deduction on Director's fees is to be made fortnightly.

By Cabinet Directive FK(16)07 dated 24 February 2016 the payment of the Director's fees shall be on a fortnightly basis and subject to the deduction of the taxable amount required under the Income Tax Act 2012.

Director's fees are to be paid for services provided, that is Directors are expected to attend all Board meetings and actively contribute to work of the Board. If a Director is unable to attend a meeting of the Board but can demonstrate that he or she has contributed to the work of the Board by reviewing meeting documents, providing input on agenda items, taking part in site visits etc. then the payment of the fortnightly Director's fee is at the discretion of the Chair.

Director's sitting fees cannot be paid in advance.

Directors are not entitled to any other form of financial reward for carrying out the duties expected of them as Board members. Any accommodation, transport or meal expenses associated with project reviews, site inspections and other Board approved events are to be paid by the Public Body directly to the service provider. The same principle applies to overseas promotional activities and meetings unless there is a Cabinet directive stating otherwise (DSA, per diems, incidentals, clothing etc.).

Fees associated with the professional development of a Director should also be paid by the Public Body.

Members of Board Sub-committees who are not Directors shall be paid a sitting fee of $250.00 per meeting as approved by Cabinet in its Directive FK(16)07 dated 24 February 2016.

Directors are not entitled to nor should expect the payment of any end of year bonus for their services as Directors.

Code of Conduct

While there is no formal Code of Conduct in place for Directors, both the PB Act 2001 and the Companies Act 2001 addresses conflict of interest and basic Director obligations. The Acts bestows a fiduciary obligation on the Board of Directors to act in the best interest of the Public Body and in doing so implies that a certain standard of care is expected from Directors when exercising their duties.

Some of these include:

- being honest and impartial, acting in good faith at all times.
- disclosing any conflict of interest.
- using care and diligence in exercising one's duties.
- complying with all laws, regulations, rules and policies governing the Public Body.
- respecting the confidentiality of all information received.
- using the power of the office of Director in the best interest of the Public Body.

- not acting or agreeing for the Public Body to act in any way so as to violate or go against the PB Act 2001, the PFM Act 2001 or the Companies Act 2001.

Though there is no formal Code of Conduct it is nevertheless expected that Directors will act in an ethical way and observe the values of honesty, impartiality, respect, transparency and accountability.

Performance Assessment

Cabinet through the Minister for Public Enterprises requires all Boards and their Directors to undergo performance evaluations. The purpose of this evaluation is to ensure that the Board is operating effectively, that Directors are making appropriate contributions to the Board and that the skills and knowledge of Directors is current and relevant to the Board's purpose.

Performance evaluations play an important part in informing the Shareholding Ministers and the Responsible Minister if the Board is meeting its duty of care and fiduciary obligation to the public Body. It is also an important tool used by the Independent Selection Committee to determine whether or not a Director should be re-appointed or replaced at the end of their appointments.

Evaluations will be conducted for each Director, the Chair and the Board as a whole. The Performance Assessment Framework used will be set by the Ministry for Public Enterprises in close consultation with the Independent Selection Committee. The Performance Assessment Framework will evaluate the performance of Director's and the Chair against a set of core competencies and agreed key performance indicators (KPIs).

Directors and the Chair will be subject to two performance evaluations during their appointments, one mid-way and another at the end of their term.

A whole of Board performance review will be undertaken. It will coincide with the performance evaluation mentioned above and focus on three key areas. They are:

1. Defining governance roles.

- role of the Board.
- role of the Chair.
- role of the Directors.

2. Improving Board processes.
    - meetings, agendas.
    - information - Board papers, minutes, entity & sector information.
    - annual work plan.
    - Board communication.
    - Board Director induction/orientation.
    - conflict of interest
    - teamwork.
3. Key Board functions & responsibilities and the Board's involvement and effectiveness.
    - Policy making
    - Financial management & accountability
    - Planning
    - Reporting & performance
    - Risk management
    - Recruitment & selection of the General Manager

Relationship Management

The Relationship between the Responsible Minister and the Board

The Minister for Public Enterprises is responsible for and accountable to Parliament for the performance of Public Bodies. Therefore it is important that the Board understands the nature of its relationship with the Minister and the Ministry that provides advisory and administrative support.

The channel of communication between the Minister for Public Enterprises and the Public Body is through the Board, in particular the Chair. It is not necessary for the Minister for Public Enterprises and the Chair to meet frequently unless there are urgent, exceptional issues that need resolving.

Unless a meeting is to discuss the General Manager's performance, the Chair is encouraged to include the General Manager in meetings with the Minister.

The Relationship between the Board and the General Manager

It is the Board that appoints the General Manager. It is the Board that is responsible for monitoring the performance of the General Manager in accordance with the KPIs and performance contract signed between the Board and the General Manager.

The channel of communication between the Board and the General Manager is the Chair. The Chair is the Board's conduit to the General Manager and through that office to the management. The Chair is the formal link between the Board and the General Manager.

The relationship between the Chair and the General Manager is critical to the Board's effectiveness. It enables the General Manager to seek policy guidance and support from the Board between Board meetings and at the same time keeps the Chair informed of various operational matters so that effective governance can take place. The relationship should be productive, open and consultative.

General Manager's Support to the Board

The General Manager shall fully inform the Board of issues and concerns that may impact on the Board's duty of care and its ability to carry out its responsibilities effectively. The General Manager must:

- provide support and information in a timely, accurate and understandable way and addressing the issues to be monitored by the Board.
- provide financial reports showcasing significant trends, data relevant to benchmarks and other measures agreed to by the Board and information on any variances from plans & forecasts.
- inform the Board of significant external trends, adverse media publicity and any other risks that may hinder the achievement of the objectives of the public Body agreed to by the Board.
- inform the Board of any incidents of actual or anticipated non-compliance by the Public Body with Board policies.
- inform the Board of any serious legal conflict or dispute or potential serious legal conflict of dispute that will affect the Public Body.
- bring to the Board's attention such occasions when the Board is in breach of its policies particularly when these relation to the General Manager's ability to carry out his or her duties.
- provide secretariat support in preparing and holding or Board meetings.

Board's Monitoring of General Manager's Performance

The General Manager is accountable and answerable to the Board. Therefore it is the responsibility of the Board to put in place a performance monitoring process that will evaluate the General Manager's performance against the KPIs in his or her performance contract.

The Board will follow the Performance Management Framework for General Managers established by the Ministry for Public Enterprises.

Reviewing the performance of the General Manager is critical. When doing so the Board shall take into account the following:

- Planning

  The Board clearly states the desired results for the year which should be aligned to what is expected of the Public Body. There need not be any substantive distinction between the General Manager's executive achievements and those of the Public Body. The only exception to this is if the General Manager controls the resources necessary to achieve the stated results or has not been delegated that authority.

- Performance Monitoring

  Monitoring of the General Manager's performance should be an on-going process through continuous informal feedback from the Board through the Chair. The General Manager's monthly report to the Board forms the basis of this continuous monitoring and gives the whole Board the opportunity to be involved in the process. There should be a final year-end performance review that provides the opportunity to formally 'wrap-up' the process for the year.

- Final Performance Review

  This review should be undertaken by a sub-committee set up by the Board to monitor the General Manager's performance. Ideally it should be held in October following the auditing of the Public Body's accounts. The results of the Committee's review is shared with the wider board who will then have the chance to contribute to the final assessment Report of the General Manager.

The Relationship between the Minister & Sector Minister and the General Manager

The General Manager is responsible first and foremost to the Board. Except in exceptional circumstances and within defined policy parameters established by the Board, meetings between the General Manager and the Responsible Ministers should not be held without the Board Chair being present.

When a General Manger goes directly to the Responsible Minister(s) it undermines the duty of the Board. It is the Board that is accountable to the Responsible Ministers and Shareholding Ministers under the PB Act 2001. Therefore it is the Chair that should be the channel of communication between them.

In the event that meetings are held between the Responsible Ministers and the General Manager, the General Manager shall inform the Chair of the reasons for the meeting and the nature of the discussion. This should occur as soon as possible. This is to avoid undermining the role and responsibility of the Board who has been vested with stewardship of the Public Body.

General Managers who want to meet frequently with the Minister for briefings on operational issues is a misuse of the Minister's time and should be discouraged. The PB Act 2001 establishes clear duties and lines of accountability. The Act removes the Responsible Minister from being involved in operational matters that could expose him or her to commercial, legal and political risk from being 'deemed' a Director.

The Role of the Ministry for Public Enterprises

The Ministry for Public Enterprises plays both a coordinating and facilitative role in managing the relationship between the Minister for Public Enterprises and the Board and again between the Minister and the General Manager of a Public Body.

The Minister for Public Enterprises may communicate to the Board, through the Ministry, particularly where are questions regarding the Public Bodies performance. The Ministry should be included in meetings or consultations between the Minister for Public Enterprises and the Chair of the Board. This will enable the Ministry to better understand the Public Bodies operations and clarify any issues to the Minister that may arise. It also enables a transparent report & information sharing processes and protects the Minister from being accused of acting as a 'deemed Director'.

It is also important that the Ministry be included in any meetings or consultations between the Minister and the General Manger of a

Public Body (with or without the presence of the Chair). The General Manager should notify the Ministry of any such meetings and its purpose so that the Ministry's representative can prepare and attend.