



Government of Samoa

PUBLIC BODIES (PERFORMANCE AND ACCOUNTABILITY)  
REGULATIONS 2002

*Arrangement of Provisions*

1. Short Title
2. Commencement
3. Schedules

**PURSUANT** to section 32 of the Public Bodies (Performance and Accountability) Act 2001, **I, MALIETOA TANUMAFILI II**, Head of State of the Independent State of Samoa, acting on the advice of Cabinet, **HEREBY MAKE** the following regulations:-

**DATED** this ..... day of .....2002

.....  
(*Malietao Tanumafili II*)  
**HEAD OF STATE**

## **REGULATIONS**

**1. Short Title** – These Regulations may be cited as the Public Bodies (Performance and Accountability) Regulations 2002.

**2. Commencement** – (1) These Regulations shall come into force on a date nominated by the Minister of Finance.

(2) Notice of commencement shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**3. Schedules** – The Schedules of the Public Bodies (Performance and Accountability) Act 2001 are amended by insertion of the following in correct numerical order:

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<b><u>SCHEDULE 1</u></b> ( <i>section 2(2)</i> )
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**PART A - Public Trading Bodies**

1. Accident Compensation Board
2. Agriculture Store Corporation
3. Airport Authority
4. Computer Services Ltd
5. Development Bank of Samoa
6. Electric Power Corporation
7. Housing Corporation
8. National Provident Fund
9. Polynesian Airlines (Holdings) Ltd
10. Polynesian Airlines (Investments) Ltd
11. Polynesian Ltd
12. Public Trust Office
13. Samoa Land Corporation
14. Samoa Life Assurance Corporation
15. Samoa Ports Authority
16. Samoa Shipping Corporation
17. Samoa Shipping Services
18. SamoaTel

19. Samoa Trust Estates Corporation
20. Samoa Water Authority
21. Televisi Samoa
22. Totalisator Agency Board

**PART B - Public Beneficial Bodies**

1. Apia Park Board
2. Samoa Visitors Bureau
3. Samoa Polytechnic
4. National University of Samoa

<b><u>SCHEDULE 2</u></b> <i>(section 11)</i>
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**PROCEDURES CONCERNING COMMUNITY SERVICE OBLIGATION**

**2. Procedures for the issuing of a direction applied for by the Board of Directors of a Public Trading Body or a Minister (other than the Responsible Minister), for the performance of a Community Service Obligation (CSO)**

2.1 Before the Responsible Minister issues a direction the following procedures have to be complied with:

2.1.1 The Board of a Public Trading Body under Schedule 1 or a Minister, (other than the Responsible Minister) may apply to the Responsible Minister to issue a direction for the performing of a CSO.

2.1.2 An application under sub-clause 2.1.1 for a direction of a CSO shall include:

- (a) the scope of the CSO; and

This section shall provide a description of the function to be performed, service provided or concession allowed.

- (b) the legislative authority under which the CSO is being provided; and

This section shall refer to the legislative authority in section 10 of the Act given to a Public Trading Body to perform the CSO.

(c) any other Government objective being pursued that is not covered in the Act; and

This section shall provide what outcome the Government is achieving from the delivery of this CSO. The implications for this objective of not continuing the CSO should also be examined;

(d) the past or intended results of the CSO; and

This section shall provide details of the past results or intended results of the CSO activity. It shall state the:

- (i) beneficiaries and benefits from providing the CSO; and
- (ii) activity or program of the Public Trading Body that would be affected in the performance of the CSO; and
- (iii) effect on the Public Trading Body of providing the CSO.

(e) the total cost of the delivery of the CSO; and

(f) details of any revenue associated with the CSO; and

This section shall provide the details of the revenue sources associated with providing the CSO, for instance, Government funding or other funding.

(g). The performance measures for delivering the CSO.

2.1.3 Every application in sub-clause 2.1.1 containing any estimated funding by Government shall be subject to the performance budgetary process and submitted to Treasury at a time necessary for the application to be considered in the Estimates but not later than 3 months before the end of the Government financial year.

2.1.4 Every application in sub-clause 2.1.1 shall be forwarded to the Responsible Minister and, where applicable, to the Public Trading Body likely to perform the CSO for an assessment report to be provided no later than one month after receiving the application and including their costing of the delivery of the CSO and, at the same time, to Treasury for an independent review.

2.1.5 Treasury shall provide a report and advise on the independent review of the application in sub-clause 2.1.1 to the Responsible Minister no later than one month after receiving the application.

2.1.6 The Responsible Minister shall forward:

- a) the application for the CSO; and
  - b) the CSO assessment report (if applicable) from the Public Trading Body likely to perform the CSO; and
  - c) Treasury's report and advice on its independent review of the application in sub clause 2.1.1; and
  - d) Treasury's advice on the availability of Government funding (if applicable);
- to Cabinet for review and approval.

2.1.7 Cabinet may or may not approve the application for the direction of a CSO.

2.1.8 In the process of approving the application, Cabinet may select the most appropriate body, organization or business to perform the CSO through a competitive tendering process complying with the normal tendering procedures of Government.

2.1.9 If Cabinet approves the application, the Responsible Minister shall issue the direction for the provision of the CSO by the Public Trading Body in accordance with the requirements stated in this Schedule.

## **2.2 Procedures for the issuing of a direction for Community Service Obligations applied for by the Responsible Minister:**

2.2.1 In the case where a Responsible Minister requires the performance of a CSO by a Public Trading Body, the Minister must:

- a) make an application in accordance with all the requirements in sub-clause 2.1.2; and
- b) forward the application to Treasury for an independent review; and
- c) comply with the performance budgetary process, if such application contains any estimated funding, and submit the application to Treasury within the time limit set for the application to be considered in the Estimates but not later than 3 months before the end of the Government financial year; and
- d) where applicable, forward the application to the Public Trading Body likely to perform the CSO for an assessment report to be provided no later than 1 month after receiving the application; and

- e) forward the application for the CSO, together with the advice provided by Treasury in sub-clause 2.2.1 (b) above and a CSO assessment report from the Public Trading Body likely to perform the CSO, if applicable, to Cabinet for review and approval.

2.2.2 Cabinet may or may not approve the application for the direction of a CSO.

2.2.3 In the process of approving the application, Cabinet may select the most appropriate body, organization or business to perform the CSO through a competitive tendering process, complying with normal tendering procedures of Government.

2.2.4 If Cabinet approves the application, the Responsible Minister shall issue the direction for the provision of the CSO by the Public Trading Body in accordance with the requirements stated in this Schedule.

### **2.3 Requirements to be included in the issuing of a CSO by the Responsible Minister**

2.3.1 Any direction to be issued under this Schedule by the Responsible Minister for the provision of a CSO must state:

- (a). the scope of the CSO; and

This section shall provide a description of the function performed, service provided or concession allowed.

- (b). the legislative authority under which the CSO is being provided; and

This section shall refer to the legislative authority in section 10 of the Public Bodies (Performance and Accountability) Act 2001 given to a Public Trading Body to perform the CSO

- (c). the date or time within which the CSO is to be performed; and
- (d). the performance measures for delivering the CSO; and
- (e). the standards to be achieved in delivering the CSO; and
- (f). that the annual cost of the provision of every CSO shall be published in the Public Trading Body's audited accounts; and
- (g). that upon signing the Agreement for the provision of the CSO, the signed Agreement shall be tabled in Parliament within 14 days if the Legislative Assembly is then in session, and if not, within 7 days of the next ensuing session.

## **2.4 Transitional arrangements for Public Trading Bodies which are currently performing non-commercial services to turn them into CSOs**

2.4.1 The Public Trading Bodies providing existing non-commercial services shall apply to the Responsible Minister to have the future delivery of these services embodied within the CSO framework. A deadline of 12 months from the date of this Schedule coming into force shall be set for the Public Trading Bodies to either embody these services within the CSO framework or have these services delivered under an alternative arrangement.

<b><u>SCHEDULE 3 (section 15)</u></b>
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### **CRITERIA FOR THE SELECTION AND PROCEDURES FOR THE APPOINTMENT, RE-APPOINTMENT, VACATING AND REMOVAL OF DIRECTORS OF PUBLIC BODIES**

#### **Part A Public Trading Bodies**

#### **3.1 Criteria for the selection and re-appointment of Directors of Public Trading Bodies:**

3.1.1 Directors of Public Trading Bodies shall be selected and re-appointed in accordance with the following criteria:

- (a) A person whom in the opinion of the Committee appointed in clause 3.2.1 below can assist in achieving the Public Trading Body's objectives; and
- (b) A person who is disqualified under the following shall not be appointed as a director;
  - i. under 21 years of age; or
  - ii. an undischarged bankrupt; or
  - iii. adjudged to be mentally defective under the Mental Health Ordinance 1961; or
  - iv. disqualified from being a Director under sections 202, 203 or 204 of the Companies Act 2001, or disqualified previously under section 189 of the Companies Act 1955; or
  - v. is convicted in Samoa or elsewhere of an offence punishable by death or by imprisonment for a term of 2 years or more; and

- (c) A person who has attended a Directors' training course before appointment and for re-appointments a refresher training; and
- (d) No director shall be appointed or re-appointed as a director where that person was a director or manager of a company at the time the company has been placed in receivership or liquidation, whether such receivership or liquidation occurred in Samoa or elsewhere; and
- (e) No person shall be appointed or re appointed as a director if that person has or had a history of failing to repay on time any money legally owed by the person to any Public Trading Body; and
- (f) No person shall be appointed or re appointed as a director if such person is an employee, director or shareholder in another body or institution whose business is similar to or potentially in conflict with that of the Public Trading Body; and
- (g) No Member of Parliament, Public Servant or a Constitutional Officer shall be a director or be re-appointed as a director unless Cabinet has certified that such appointment or re-appointment, as the case may be, is necessary; and
  - i. in the national interest; and
  - ii. that the Member of Parliament, Public Servant or Constitutional Officer, as the case may be, has particular qualifications or business experience which the Public Trading Body requires on its Board of Directors and such qualifications or business experience cannot be found elsewhere. Where a Member of Parliament, Public Servant or Constitutional Officer is appointed or re-appointed under this sub-clause the person shall not receive remuneration or other benefits from the Public Trading Body for services as a director; and
- (h) Any other additional criteria drafted by the Committee established under sub-clause 3.2.1 in consultation with Treasury and the existing Board of the Public Trading Body concerned and in accordance with international best practice, which is necessary for scrutinizing a particular appointment or re-appointment of a director of a Public Trading Body.

## **3.2 Procedures for the selection of Directors of Public Trading Bodies**

### 3.2.1



3.2.2 the Public Trading Body concerned, shall draft and apply any additional criteria to the standard criteria in clause 3.1, if necessary, for any particular

3.2.3 vacancies and required criteria as widely as possible both locally and overseas if required and can use television, radio, inviting applications from interested persons.

3.2.4 Those wishing to be considered for the appointment to a board must provide a statutory declaration addressing the selection criteria and provide forwarded to the Committee.

3.2.5 The Committee shall receive and review applications for the purpose of short listing the best candidates for appointment.

The Committee shall advise Cabinet of the applicants short-listed, the

3.2.7 by the Committee.

### **3.3 Terms and conditions under which a Director's position becomes vacant or a Director may be removed from office**

3.3.1 The position of a Director of a Public Trading Body becomes vacant and a Director may be removed from office if the director:

(a) fails to attend 3 consecutive Board meetings of a Public Trading Body without an apology being received and accepted by the Chairman of the Board, and in the case of the Chairman an apology being received and accepted by the Board of Directors; or

(b) attains the age of 70 years and is not recommended by the Committee for reappointment;

(c) becomes bankrupt; or

(d) is convicted in Samoa or elsewhere of an offence punishable by death or by imprisonment for a term of 2 years or upwards; or

(e) is convicted of an offence relating to his or her duties as a director; or

(f) fails to comply with Schedule 4 of the Act.

3.3.2 Cabinet may remove a Director, or all Directors, from a Public Trading Body if the Public Trading Body fails to file its annual reports, quarterly reports or other documents or information relating to a Public Trading Body as required under the Act or the Schedules to the Act.

**3.4 The application of the above procedures for appointment and re-appointment of Board members shall apply:**

3.4.1 when each Board member of a Public Trading Body's current term of appointment ends: and

3.4.2 when a Board member of a Public Trading Body dies, resigns or is removed from office: and

3.4.3 when an ex-officio Board member's position on a Board becomes vacant as decided by Cabinet on the advice of Treasury. The replacement of all ex-officio Board members shall be made within 5 years from the coming into force of this Schedule.

**Part B Public Beneficial Bodies**

The above procedures relating to the selection, re-appointment, vacating and removal of a Director's position in a Public Trading Body shall also apply to Public Beneficial Bodies.

**SCHEDULE 4 (section 5)**

**DECLARATION OF PECUNIARY INTERESTS AND CONVICTIONS**

The form and content of the Declaration of Pecuniary Interests and Convictions under this Schedule shall be as follows:

I, (Name of Director) of (Address) being a Director of (name of public body) do solemnly and sincerely declare that:

1. I consent to my appointment as a Director of (name of public body)

2. My personal details are as follows:

2.1 Full name: .....

2.2 Residential Address: .....

2.3 Business Address: .....

2.4 Date of Birth .....

2.5 Place of Birth including country  
.....

2.6 Business occupation (if any) .....

3. My directorships and other interests are as follows:

3.1 Particulars of any directorships or other offices which I hold in other companies or Public Bodies are set out in Part 1 of this Declaration.

3.2 Particulars of any membership of partnerships and interests in trusts, joint ventures or other arrangements for the sharing of profits, are set out in Part 2 of this Declaration.

3.3 Except as set out in Part 2 to this Declaration, I:

3.3.1 do not have a beneficial interest in any shares; and

3.3.2 do not have a beneficial interest in any securities (howsoever described).

4. Except as set out in Part 3 of this Declaration, I am not directly or indirectly interested in any contract or proposed contract with a Public Body or any of its subsidiaries.

5. Except as set out in Part 4 of this Declaration, I do not have a beneficial interest in any property or office.

6. Except as set out in Part 5 of this Declaration, I have no conviction in Samoa or elsewhere for any offence.

7. Other than the matters detailed in this Declaration, I have no direct or indirect interest which conflicts or which could conflict with my duty as a director of a Public Body.

8. I request that this Declaration be brought up and read at the next meeting of Directors of (name of public body)

9. I declare that if any of the matters referred to in this Declaration change I will execute a further declaration immediately and file it with the Secretary for Justice.

**PART 1**

**OTHER DIRECTORSHIPS OR OFFICES HELD**

[Details]

**PART 2**

**RELEVANT INTERESTS IN PARTNERSHIPS, TRUSTS, JOINT VENTURES, OTHER  
ARRANGEMENTS FOR SHARING PROFITS, SHARES AND SECURITIES**

[Details]

**PART 3**

**INTERESTS IN CONTRACTS WITH ANY PUBLIC BODY OR THEIR SUBSIDIARIES**

[Details]

**PART 4**

**OTHER PROPERTY AND OFFICES HELD**

[Details]

**PART 5**

**CONVICTIONS**

[Details]

Declared at .....this .....day of

.....200.....before me

(Signature)

(Solicitor of the Supreme Court of Samoa)

(or other person authorised to take a statutory declaration)

**SCHEDULE 5 (section 22(3))**

**Part A – Public Trading Bodies**

5.1 Every Board of Director of each Public Trading Body shall prepare a Corporate Plan every year:

- (a) to cover the next year and the following two years; and
- (b) which includes a Statement of Corporate Objectives; and
- (c) which shall be subject to clause 5.4.5.

5.2 The Board of Directors of each Public Trading Body shall forward a draft of its Corporate Plan under clause 5.1 above to each Shareholding Minister, the Controller and Chief Auditor and the Financial Secretary 3 months before each financial year.

5.3 The Board of Directors of each Public Trading Body shall prepare a Corporate Plan, including a Statement of Corporate Objectives, in accordance with the guidelines on format and content issued by Treasury by way of Instructions from time to time.

5.4 Approval of the draft Corporate Plan

5.4.1 When the Financial Secretary receives a Public Trading Body's draft Corporate Plan in clause 5.2 above, the Financial Secretary shall review and advise the Shareholding Ministers on the draft Corporate Plan. The Shareholding Ministers and the Board of the concerned Public Trading Body, after considering the Financial Secretary's review and advice, shall, at their earliest, attempt to reach an Agreement on the Corporate Plan.

5.4.2 If an Agreement cannot be reached between the Shareholding Ministers and the Board of Directors under sub-clause 5.4.1, the Shareholding Ministers shall advise Cabinet on matters relating to the draft Corporate Plan that could not be resolved between them and the concerned Public Trading Body.

5.4.3 Cabinet may, by written notice, direct the concerned Board of the Public Trading Body to make modifications to the draft Corporate Plan.

- 5.4.4 The Board of a Public Trading Body shall immediately comply with a direction issued by Cabinet under sub-clause 5.4.3.
- 5.4.5 Every Public Trading Body's Corporate Plan under clause 5.1 shall only be effective:
- (a) if there has been an Agreement between the Shareholding Ministers and the concerned Public Trading Board on the draft Corporate Plan under sub-clause 5.4.1; or
  - (b) in the case where Cabinet has issued any direction under sub-clause 5.4.3, the Public Trading Body has complied with Cabinet's direction.
- 5.4.6 Every Public Trading Body shall comply with its Corporate Plan once it is effective under subclause 5.4.5.
- 5.4.7 The Board of Directors of each Public Trading Body shall ensure that its Corporate Plan is approved at least 14 days before the commencement of the financial year for which the Plan relates.

## **5.5 Statement of Corporate Objectives (SCO)**

The Chairperson of the Board of a Public Trading Body shall advise the Shareholding Ministers by notice in writing upon becoming aware of any information which may materially affect the achievement of the Public Trading Body's Statement of Corporate Objectives.

## **PART B – Public Beneficial Bodies**

The above provisions shall apply to Public Beneficial Bodies.

<b><u>SCHEDULE 6</u> (section 23 (2))</b>
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### **FINANCIAL REPORTS, ACCOUNTS and INFORMATION**

For the purpose of this Schedule and, in accordance with the Act, Public Body means every Public Trading Body in Part A of Schedule 1 and every Public Beneficial Body in Part B of Schedule 1.

6. Every Public Body shall submit:

6.1 Quarterly reports to Treasury no later than 1 month after the end of every quarter.

6.1.1 Quarterly reports shall include:

- a) accounts prepared for the quarter for management purposes; and
- b) a statement in respect of each member of the Board as to all appointments, offices held or other matters which do or might give rise to a conflict of interest between any member of the board and the Public Body and other interests arising from such appointments, offices and other matters; and
- c) comparison between actuals and performance targets set out in the SCO and forecast or budget performance.

6.2 An annual report and audited accounts to Treasury no later than 4 months after the end of the Public Body's financial year.

6.2.1 Annual reports shall include:

- (a) audited financial statements prepared in accordance with generally accepted accounting principles as defined in the Public Finance Management Act 2001; and
- b) an auditor's report on the financial statements in sub clause 6.2.1 (a); and
- c) a statement in respect of each member of the Board of a Public Body as to all appointments, offices held or other matters which do or might give rise to a conflict of interest between the member and the Public Body and other interests arising from such appointments, offices and other matters; and
- d) the dividend payable by the Public Body to the State for the financial year to which the report relates.

6.3 Treasury may require a Public Body to submit to Treasury additional information necessary to assist Treasury with its reporting responsibilities.

6.4 Every Public Body shall submit to Treasury any information required by Treasury under clause 6.3.

6.5 Every Public Body shall keep Treasury informed of any matters that may adversely affect the achievement of its objectives in the Corporate Plan or SCO.

6.6 All Public Bodies shall prepare their accounts using accounting policy guidelines issued by Treasury from time to time.

**6.7 Audited Accounts to be laid before Parliament**

6.7.1 Within 12 sitting days of receiving the annual report and audited financial statement of the Public Body, the Responsible Minister for the Public Body shall lay the documents before Parliament:

6.7.2 Where the annual report and the audited accounts required by subclause 6.7.1 to be laid before Parliament have not been so laid within 5 weeks of the Responsible Minister receiving them, the Minister shall cause for these to be published not later than 5 weeks after that day.

Treasury may develop a format to be used by Public Bodies for quarterly and annual accounts.



## **SCHEDULE 7 (section 5(4))**

### Model Articles for Public Trading Bodies

#### **A OBJECT OF THE PUBLIC BODY**

*1 This article is reserved to detail the public body objectives.*

#### **B GENERAL PROVISIONS**

##### **1 Interpretation**

- 1.1 In these Articles, “the Companies Act” means the Companies Act 2001.
- 1.2 In these Articles, “PBPAA” means the Public Bodies (Performance and Accountability) Act 2001.
- 1.3 In these Articles, “PFMA” means the Public Finance Management Act 2001.
- 1.4 Terms which are defined in the Act have the same meaning in these Articles.

##### **2 Name of Company**

- 2.1 The name of the company at the time of registration under the Act appears on the application for registration or for reregistration, as the case may be.
- 2.2 The name of the company may be changed in accordance with section 11 of the Companies Act only with the prior approval of all shareholders.

##### **3 The company is a private company**

- 3.1 The company is a private company.
- 3.2 The company must not offer any of its shares or other securities to the public.
- 3.3 The company must not have more than 100 shareholders. If a share transfer is presented to the company for entry on the share register which would result in a breach of this restriction, the directors must decline to register the transfer.

##### **4 The company is a public body**

- 4.1 The company is a public body and must comply with all provisions of the PBPAA as well as the provisions of the Act.
- 4.2 The PFMA is to apply to public bodies to the extent stated within that Act.
- 4.3 If there is any inconsistency between these Articles, the Act, the PBPAA and the PFMA, the PFMA shall prevail to the extent of the inconsistency.
- 4.4 If there is any inconsistency between these Articles, the Act and the PBPAA, the PBPAA shall prevail to the extent of the inconsistency.
- 4.5 If there is any inconsistency between these Articles and the Act, the Act shall prevail to the extent of the inconsistency.

##### **5 The company’s Articles**

- 5.1 The company may adopt new Articles in place of these Articles in accordance with section 5(4) of the Public Bodies (Performance & Accountability) Act 2001.
- 5.2 Subject to the provisions of the Act:
  - (a) These Articles have effect and may be enforced as if they constituted a contract –
    - (i) between the company and its shareholders; and
    - (ii) between the company and each director; and
  - (b) The shareholders and directors of the company have rights, powers, duties, and obligations set out in these Articles.

## C SHARES AND SHAREHOLDERS

### 6 Shares

- 6.1 At the time of registration under the Act the company has the number of shares specified in the application for registration or reregistration, as the case may be.
- 6.2 Each share carries the following rights:
- (a) The right to one vote on a poll at a meeting of the company on any resolution, including any resolution to –
    - (i) approve a major transaction; and
    - (ii) approve an amalgamation of the company; and
    - (iii) approve reregistration of the company as a public company; and
    - (iv) put the company into liquidation; and
    - (v) approve the transfer of registration of the company to another country;
  - (b) The right to an equal share in dividends paid by the company;
  - (c) The right to an equal share in the distribution of the surplus assets of the company in liquidation.
- 6.3 Shares owned by the State are to be registered in the office of shareholding Ministers.
- 6.4 Shareholding Ministers hold their shares in the public body on behalf of the State and at all times the State remains the owner of the shares.
- 6.5 Shareholding Ministers shall exercise the rights attached to the shares in accordance with Government policy.
- 6.6 Shareholding Ministers means the Minister of Finance and the Minister who has responsibility within his portfolio for the public body, or any other Minister decided by Cabinet to be a shareholding Minister for the purpose of the Act.
- 6.7 Each public body shall have two shareholding Ministers.
- 6.8 Shareholding Ministers must at all times have an equal number of shares in the public body.
- 6.9 Each shareholding Minister must at all times be entitled to rights equal to those to which the other shareholding Minister is entitled.
- 6.10 Shareholding Ministers must vote according to the advice of Cabinet for any resolution listed in Article 6.2(a).
- 6.11 If the company was first registered under Part II of the Companies Act, the company must forthwith after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.
- 6.12 The directors may issue shares to shareholders or any other persons on any basis, with the prior approval of all shareholders.
- 6.13 If the company issues share, it must give the prescribed notice to the Registrar within 10 working days of the issue of any shares.
- 6.14 Any sale of shares of the company is subject to Article 8.1.

### 7 Share register

- 7.1 The company must maintain a share register that records the shares issued by the company and states;
- (a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and

- (b) The number of shares held by each shareholder with the last 7 years; and
  - (c) The date of any –
    - (i) issue of shares to; or
    - (ii) repurchase or redemption of shares from; or
    - (iii) transfer of shares by or to –  
each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- 7.2 The share register must be kept:
- (a) In a form that complies with Article 47; and
  - (b) At the company’s registered office, or at any other place in Samoa notice of which has been given to the Registrar under section 98 of the Companies Act.
- 7.3 The company may appoint an agent to maintain the share register.
- 7.4 No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- 7.5 The company must treat the registered holder of a share as the only person entitled to:
- (a) Exercise the right to vote attaching to the share; and
  - (b) Receive notices; and
  - (c) Receive a distribution in respect of the share; and
  - (d) Exercise the other rights and powers attaching to the share except where shares are held by shareholding Ministers in which case these entitlements reside with the State with shareholding Ministers acting on the States behalf.
- 7.6 Where shares are held by shareholding Ministers on behalf of the State, the entitlement to receive notices may be delegated in writing.
- 7.7 Where a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share. Where the sole holder of a share dies, that shareholder’s legal representative is the only person recognised by the company as having any title to or interest in the share.
- 7.8 Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder’s shares upon making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

## **8 Pre-emptive rights on sale of shares**

- 8.1 A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell them to the other holders of shares in accordance with the procedure set out in Articles 8.2 to 8.8, unless all the other shareholders agree otherwise. Any share transfer delivered to the company by a shareholder who has not complied with this requirement is of no effect, and the transfer must not be entered on the share register.
- 8.2 A shareholder who wishes to dispose of some or all of his or her shares (“the selling shareholder”) must give written notice to the company of the number of shares to be sold, and the price at which the selling shareholder is willing to sell the shares.
- 8.3 The company must within 10 working days give a copy of this notice to each shareholder, together with a notice advising each holder of shares:

- (a) That that shareholder is entitled to purchase a proportional number of the shares which the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors);
  - (b) That if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.
- 8.4 The notice referred to in Article 8.3 is deemed to be an offer by the selling shareholder to the recipient to sell the number of shares referred to in the notice at the price specified by the selling shareholder in the notice given under Article 8.2, on the terms set out in these articles.
- 8.5 Subject to Article 8.8, if a notice is given by a shareholder within the specified time agreeing to purchase the shares offered to that shareholder in a notice given under Article 8.3:
  - (a) There is deemed to be a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares;
  - (b) The company must forthwith advise the selling shareholder of the acceptance, and send him or her a copy of the notice given under Article 8.3 by the company and the notice of acceptance given by the shareholder in question.
- 8.6 If any shareholder does not give notice agreeing to purchase the shares offered to that shareholder within the specified time, the shares that were offered to that shareholder must be offered to those shareholders who did accept the shares offered to them, on a fair and equitable basis determined by the directors. Articles 8.4 and 8.5 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this Article.
- 8.7 If no shareholder wishes to purchase the selling shareholder's shares at the specified price, the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder, sell some or all of those shares to any other person at a price not less than the specified price. The directors may require reasonable evidence of the terms (including price) on which the shares were sold to accompany any share transfer in respect of those shares.
- 8.8 The selling shareholder is not obliged to sell some only of the shares that he or she wishes to dispose of. In the event that the selling shareholder has not been notified under Article 8.5 of acceptances by other shareholders in respect of all the shares referred to in the notice given under Article 8.2 within 40 working days of the date on which that notice was given to the company, the selling shareholder may at his or her option give written notice to the company terminating the offer to sell the shares to the other shareholders. If such a notice is given, Article 8.7 applies as if no shareholder had wished to purchase the selling shareholder's shares.

## **9 Transfer of shares**

- 9.1 Where shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.
- 9.2 No shareholding Minister may transfer shares without the authority of the Head of State acting on the advice of Cabinet.
- 9.3 The Head of State on the advice of Cabinet may execute a transfer of State owned shares.

- 9.4 The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.
- 9.5 Subject to Articles 8.1 and 9.6, the company must forthwith upon receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.
- 9.6 The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid. If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder of the shares within five working days of the date of the resolution.

## **10 Share certificates**

- 10.1 A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- 10.2 On receipt of an application for a share certificate under Article 10.1, the company must, within 20 working days after receiving the application :
- (a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
  - (b) In all cases send to the shareholder a certificate stating –
    - (i) the name of the company; and
    - (ii) the number of shares held by the shareholder to which the certificate relates.
- 10.3 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by:
- (a) The share certificate relating to the share; or
  - (b) Evidence as to its loss or destruction and, if required an indemnity in a form determined by the directors.
- 10.4 Where shares to which a share certificate related are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

## **11 Meetings of shareholders**

- 11.1 Articles 12 to 21 set out the procedure to be followed at and in relation to meetings of shareholders.
- 11.2 A meeting of shareholders may determine its own procedure, to the extent that it is not governed by these Articles.

## **12 Notice of meetings**

- 12.1 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than ten working days before the meeting.
- 12.2 The notice must set out:

- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgement in relation to it; and
  - (b) The text of any special resolution to be submitted to the meeting.
- 12.3 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- 12.4 An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.
- 12.5 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

### **13 Methods of holding meetings**

- 13.1 A meeting of shareholders may be held either;
- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### **14 Quorum**

- 14.1 Subject to Article 14.3, no business may be transacted at a meeting of shareholders if a quorum is not present.
- 14.2 A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

### **15 Chairperson**

- 15.1 If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.
- 15.2 If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

### **16 Voting**

- 16.1 In the case of a meeting of shareholders held under Article 13.1(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting:
- (a) Voting by voice; or
  - (b) Voting by show of hands.

- 16.2 In the case of a meeting of shareholders held under Article 13.1(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.
- 16.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with Article 16.4.
- 16.4 At a meeting of shareholders a poll may be demanded by:
- (a) Not fewer than 5 shareholders having the right to vote on the question at the meeting; or
  - (b) A shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote on the question at the meeting.
- 16.5 A poll may be demanded either before or after a vote is taken on a resolution.
- 16.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.
- 16.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.

## **17 Proxies**

- 17.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- 17.2 A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.
- 17.3 A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.
- 17.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

## **18 Corporations may act by representatives**

- 18.1 A corporation which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation. The notice must state whether the appointment is for a particular meeting, or for a specified term.

## **19 Minutes**

- 19.1 The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 19.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

## **20 Votes of joint holders**

- 20.1 Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

## **21 Annual meetings and special meetings of shareholders**

- 21.1 Subject to Articles 21.3 and 22.2, the directors must call an annual meeting of the company to be held:
- (a) Once in each calendar year; and

- (b) Not later than 5 months after the balance date of the company (or, if the time for completing the financial statements of the company has been extended under Article 52.1, not later than 20 working days after the financial statements are required to be completed); and
  - (c) Not later than fifteen months after the previous annual meeting.
- 21.2 The meeting must be held on the date on which it is called to be held.
- 21.3 The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within eighteen months of its corporation.
- 21.4 A special meeting of shareholders entitled to vote on an issue:
  - (a) May be called at any time by a director; and
  - (b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than five percent of the votes which may be cast on that issue.

## **22 Written resolutions of shareholders**

- 22.1 A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more shareholders.
- 22.2 The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with Article 22.1.
- 22.3 Within five working days of a resolution being passed under Article 22.1, the company must send a copy of the resolution to every shareholder who did not sign it.
- 22.4 A resolution may be signed under Article 22.1 without any prior notice being given to shareholders.

## **23 Voting in interest groups**

- 23.1 Where the company proposes to take action which affects the rights attached to shares within the meaning of section 50(2) of the Companies Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 50(3) of the Companies Act.

## **24 Shareholders entitled to receive distributions, exercise pre-emptive rights, and attend and vote at meetings**

### Dividends

- 24.1 The shareholders who are entitled to receive distributions are:
  - (a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
  - (b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the distribution is approved.
- 24.2 A date fixed under Article 24.1(a) must not precede by more than twenty working days the date on which the proposed action will be taken.



### Pre-emptive rights

- 24.3 The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with Article 8.1 are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under Article 8.2.

### Notice of meetings and voting

- 24.4 The shareholders who are entitled to receive notice of a meeting of shareholders are:
- (a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
  - (b) If the directors do not fix a date for this purpose those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- 24.5 A date fixed under Article 24.4(a) must not precede by more than thirty working days the date on which the meeting is to be held.
- 24.6 Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder:
- (a) If a date has been fixed under Article 24.4(a), as at that date; or
  - (b) If no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.
- 24.7 A person named in a list prepared under Article 24.6 is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that:
- (a) That person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and
  - (b) The transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under Article 24.6.
- 24.8 A shareholder may on two working days' notice examine any list prepared under Article 24.6 during normal business hours at the registered office of the company.

## **25 Distributions to shareholders**

- 25.1 The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made:
- (a) The company will be able to pay its debts as they become due in the normal course of business; and
  - (b) The value of the company's assets will not be less than the value of its liabilities.
- 25.2 Subject to Article 25.1, the company may pay a dividend to shareholders in accordance with Government's dividend policy for public bodies as advised by the Financial Secretary from time to time.
- 25.3 A distribution made in breach of Articles 25.1 or 25.2 may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 23 of the Companies Act.

## **26 Company may acquire its own shares and provide financial assistance**

- 26.1 The company may agree to acquire its own shares from a shareholder:
- (a) With the prior approval of all shareholders; and
  - (b) Subject to the solvency test in Article 25.1.
- 26.2 Where the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.
- 26.3 The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if:
- (a) After providing the assistance, the company will satisfy the solvency test in Article 25.1; and
  - (b) All shareholders have approved the giving of the assistance.

## **27 Annual Report to shareholders**

- 27.1 The directors of the company must, within 20 working days after the date on which the company is required to complete its financial statements under section 111 of the Companies Act:
- (a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and
  - (b) Send a copy of that report to each shareholder.
- 27.2 Every annual report for the company must:
- (a) Be in writing and be dated; and
  - (b) Include financial statements for the accounting period which comply with section 111 of the Companies Act; and
  - (c) Be prepared in the format required by Treasury; and
  - (d) Shall include an auditor's report prepared by the Controller and Chief Auditor as required by section 27 of the PBPAA; and
  - (e) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
  - (f) Shall include details of transactions carried out during the year between the company and the directors or business associates of directors or family of directors; and
  - (g) Contain such other information as may be required by regulations made under the Act; and
  - (h) Be signed on behalf of the directors by two directors of the company or, if the company has only one director, by that director.

## **28 Deemed approval by all shareholders for certain purposes**

- 28.1 For the purposes of Articles 6.12, 26.1 and 26.3, a decision is deemed to have been approved by all shareholders if:
- (a) Notice of the proposed decision has been given to all shareholders in accordance with Article 61; and
  - (b) No shareholder has responded within 10 working days objecting to that decision; and
  - (c) Shareholders entitled to cast not less than 75% of the votes in relation to a resolution to alter these Articles have responded within 10 working days approving that decision.

## **D DIRECTORS**

### **29 Appointment and removal of directors**

- 29.1 The shareholders may by ordinary resolution fix the number of directors of the company.
- 29.2 A director shall be appointed or removed in accordance with procedures detailed in Schedule 3 of the PBPAA.
- 29.3 A director vacates office if he or she:
- (a) Resigns in accordance with Article 29.4; or
  - (b) Is removed from office in accordance with schedule 3 of the PBPAA; or
  - (c) Becomes disqualified from being a director under section 67 of the Companies Act; or
  - (d) Dies.
- 29.4 A director may resign by delivering a signed written notice of resignation to the registered office of the company. Subject to Articles 29.5 and 29.6, the notice is effective when it is received at all registered offices, or at any later time specified in the notice.
- 29.5 Where the company has only one director, that director may not resign:
- (a) Until that director has called a meeting of shareholders to receive notice of the resignation; or
  - (b) If the company has only one shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.
- 29.6 A notice of resignation given by the sole director of the company does not take effect, notwithstanding its terms, until the earlier of the appointment of another director of the company or:
- (a) The time and date for which the meeting of shareholders is called under Article 29.5(a); or
  - (b) If the company has only one shareholder, 10 working days after notice of the resignation has been given to that shareholder.
- 29.7 The company must ensure that notice in the prescribed form of :
- (a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or
  - (b) A change in the name or the residential address of a director of the company –
- is delivered to the Registrar. In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

### **30 Powers and duties of directors**

- 30.1 Subject to section 46 of the Companies Act which relates to major transactions, the business and affairs of the company must be managed by, or under the direction or supervision of, the directors. The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company in accordance with the Statement of Corporate Objectives prepared in accordance with the PBPAA.
- 30.2 The directors may delegate any of their powers to a committee of directors, or to a director or employee. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

- 30.3 The provisions of these Articles relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.
- 30.4 The directors have the duties set out in the Act, and in particular:
- (a) Each director must act in good faith and in a manner that the director believes to be in the best interests of the company;
  - (b) Must comply with duties as set out in schedule 8 of the PBPA.
  - (c) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these Articles.

### **31 Standard of care of directors**

- 31.1 A director of the company, when exercising powers or performing duties as a director must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:
- (a) The nature of the company; and
  - (b) The nature of the decision; and
  - (c) The position of the director and the nature of the responsibilities undertaken by him or her.

### **32 Obligations of directors in connection with insolvency**

- 32.1 A director of the company who:
- (a) Believes that the company is unable to pay its debts as they fall due; or
  - (b) Is aware of matters which would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due, must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 65 of the Companies Act.

### **33 Interested directors**

- (i) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power.
- 33.1 A director who is directly or indirectly materially interested in any transaction or proposed transaction must, immediately on becoming aware of that interest, disclose the nature and extent of that interest and follow up within 10 working days in writing:
- (a) If there is at least one other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company;
  - (b) If paragraph (a) does not apply, to all shareholders other than the director.
- 33.2 A director may give a general disclosure in writing to all other shareholders that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of Article 33.2.
- 33.3 A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 91 of the Companies Act.

- 33.4 A transaction entered into by the company as the result of action taken by a director in breach of section 59 or section 60 or section 61 is voidable at the option of the company in accordance with section 91 of the Companies Act.

### **34 Use and disclosure of company information**

- 34.1 A director of the company who has information in his or her capacity as a director or employee of the company, 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) In the interests of the company; or
  - (b) As required by law; or
  - (c) Where there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action-
    - (i) is approved by all shareholders under section 47 of the Act; or
    - (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by shareholders by ordinary resolution. No director may vote on a resolution to approve such terms in relation to himself or herself.

### **35 Indemnities and insurance for directors or employees**

- 35.1 Subject to section 72 of the Companies Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company:
- (a) With the approval of shareholders by ordinary resolution. No director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
  - (b) With the approval of all shareholders under section 47 of the Companies Act.
- 35.2 In article 35.1:-  
“Director” includes:
- (a) A person who is liable under any of sections 59 to 65 by virtue of section 71 of the Companies Act;
  - (b) A former director:
- “Indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and “indemnity” has a corresponding meaning.

### **36 Remuneration of directors**

- 36.1 Directors may receive remuneration and other benefits from the company:
- (a) With the approval of shareholders by ordinary resolution. No director may vote on a resolution concerning remuneration or benefits to be received by him or her; or
  - (b) With the approval of all shareholders under section 47 of the Companies Act.
- 35.2 Public service officers and members of parliament shall not receive remuneration or other benefits from the company for services as directors.

### **37 Procedure at meetings of directors**

- 37.1 Article 38 to 44 set out the procedure to be followed at meetings of directors.

37.2 A meeting of directors may determine its own procedure, to the extent that it is not governed by these Articles.

### **38 Chairperson**

38.1 The directors may elect one of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

38.2 If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

### **39 Notice of meeting**

39.1 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this Article.

39.2 Not less than 72 hours notice of a meeting of directors must be given to every director who is in Samoa, or who can readily be contacted outside Samoa.

39.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

### **40 Methods of holding meetings**

40.1 A meeting of directors may be held either:

(a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

(b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### **41 Quorum**

41.1 A quorum for a meeting of directors is a majority of the directors.

41.2 No business may be transacted at a meeting of directors if a quorum is not present.

### **42 Voting**

42.1 Every director has one vote.

42.2 The chairperson has a casting vote.

42.3 A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

42.4 A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

### **43 Minutes**

43.1 The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

#### **44 Unanimous resolution**

- 44.1 A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- 44.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- 44.3 A copy of any such resolution must be entered in the minute book of the directors' proceedings.

#### **45 Managing director and other executive directors**

- 45.1 The directors may from time to time appoint a director as managing director for such period and on such terms as they think fit.
- 45.2 Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.
- 45.3 A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.
- 45.4 Subject to shareholder approval in accordance with Article 36, the managing director may be paid such remuneration as he or she may agree with the directors. The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.
- 45.5 The directors may delegate to the managing director, subject to any conditions or restrictions which they consider appropriate, any of their powers which can be lawfully delegated. Any such delegation may at any time be withdrawn or varied by the directors. The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.
- 45.6 Subject to shareholder approval in accordance with Article 36, a director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors. The remuneration may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

### **E COMPANY RECORDS**

#### **46 Company records**

- 46.1 The company must keep the following documents at its registered office or at some other place, notice of which has been given to the Registrar in accordance with section 98 of the Companies Act:
  - (a) The Articles of the company;
  - (b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
  - (c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
  - (d) The full names and residential and postal addresses of the current directors;
  - (e) Copies of all written communications to all shareholders or all written communications to all shareholders during the last 7 years, including annual reports made under section 52 of the Companies Act;

- (f) Copies of all financial statements required to be completed under section 111 of the Companies Act for the last 7 completed accounting periods of the company;
  - (g) The accounting records required by section 110 of the Companies Act for the current accounting period and for the last 7 completed accounting periods of the company;
  - (h) The share register.
- 46.2 The references in paragraphs (b), (c), and (e), of Article 46.1 to 7 years and the references in paragraphs (f) and (g) of that Article to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 96(2) of the Companies Act.

#### **47 Form of records**

- 47.1 The records of the company must be kept
- (a) In written form; or
  - (b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be useable for subsequent reference, and convertible into written form.
- 47.2 The directors must ensure that adequate measures exist to:
- (a) Prevent the records being falsified; and
  - (b) Detect any falsification of them.

#### **48 Access to records**

- 48.1 The directors of the company are entitled to access to the company's records in accordance with section 99 of the Act.
- 48.2 A shareholder of the company is entitled:
- (a) To inspect the documents referred to in section 100 of the Act, in the manner specified in section 102 of the Act; and
  - (b) To require copies of or extracts from any document which he or she may inspect within five working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company. The fee may be determined by any director, subject to any directions from the directors.

#### **49 Documents to be sent to the Registrar**

- 49.1 In addition to any annual return required under section 103 of the Act, the company must send the following documents to the Registrar under the Companies Act:
- (a) Notice of the adoption of new Articles by the company, or the alteration of the Articles of the company, under section 14 of the Companies Act;
  - (b) Notice of the issue of shares by the company, under section 20 of the Companies Act;
  - (c) Notice of the acquisition by the company of its own shares, under section 25 of the Companies Act;
  - (d) Notice of the redemption of a share, under section 29 of the Companies Act;



- (e) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 70 of the Companies Act;
- (f) Notice of the making of an order under section 81 of the Companies Act altering or adding to the Articles of a company.
- (g) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 98 of the Companies Act;
- (h) Notice of a change in the registered office of the company, under section 108 of the Companies Act;
- (i) Documents requested by the Registrar under section 187 of the Companies Act.

## **50 Documents to be sent to shareholders**

50.1 In addition to any annual report required under section 52 of the Companies Act, the company must send the following documents to shareholders under the Act:

- (a) Notice of any repurchase of shares to which section 25(4) of the Companies Act applies;
- (b) Notice of a written resolution approved under section 48 of the Companies Act;
- (c) Financial statements required to be sent under section 111 of the Companies Act;
- (d) Any written statements by an auditor under section 114(1)(a) of the Companies Act;
- (e) Any report by an auditor under section 116 of the Companies Act.

## **F ACCOUNTS AND AUDIT**

### **51 Accounting records to be kept**

51.1 The directors of the company must cause accounting records to be kept that:

- (a) Correctly record and explain the transactions of the company; and
- (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
- (c) Will enable the directors to ensure that the financial statements of the company comply with section 111 of the Companies Act; and
- (d) Will enable the financial statements of the company to be readily and properly audited.

51.2 Without limiting Article 50.1, the accounting records must contain:

- (a) Entries of revenues and expenses and the matters to which they relate;
- (b) A record of the assets and liabilities of the company;
- (c) If the company's business involves dealing in goods-
  - (i) a record of goods bought and sold, and relevant invoices;
  - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year;
- (d) If the company's business involves providing services, a record of services provided and relevant invoices.

51.3 If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business:

- (a) Invoices need not be kept in respect of each retail transaction for the purposes of Article 51.2(c); and

- (b) A record of total money received each day in respect of the sale of goods or provisions of services, as the case may be, is sufficient to comply with Article 51.2(c) in respect of those transactions.

51.4 The accounting records must be kept:

- (a) In a form permitted under Article 47; and
- (b) At the registered office of the company, or any other place permitted under section 98 of the Companies Act.

## **52 Financial statements to be prepared**

52.1 The directors must ensure that:

- (a) Within 4 months after the balance date of the company, or with the approval of shareholders by special resolution, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with Article 52.2 are completed in relation to the company and that balance date; and
- (b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 52 of the Companies Act.

52.2 The financial statements of the company:

- (a) Must give a true and fair view of the matters to which they relate; and
- (b) Must be prepared in accordance with International Accounting Standards; and
- (c) Must comply with any applicable regulations, schedules or Treasury Instructions in relation to the form or content of financial statements made under the PBPAA; and
- (d) Must be dated and signed on behalf of the directors by two directors of the company, or, if the company has one director, by that director.

52.3 The period between:

- (a) The date of incorporation of the company and its first balance date; or
- (b) Any two balance dates of the company, must not exceed 15 months.

52.4 In these Articles, the term “financial statements”, in relation to the company and a balance date, means those statements defined by International Accounting Standards.

## **53 Appointment of auditor**

53.1 The Controller and Chief Auditor shall be the auditor of every public body and of every subsidiary of every public body and shall have and may exercise the functions, duties, and powers of an auditor appointed under the Act and shall have all such powers as the Controller and Chief Auditor has under the PFMA.

53.2 Every public body shall pay to the Controller and Chief Auditor for carrying out his or her duties and functions under this section, fees at such rates no greater than those prescribed by the Minister of Finance.

## **54 Controller and Chief Auditor’s attendance at shareholders’ meeting**

54.1 The directors must ensure that the Controller and Chief Auditor:

- (a) Is permitted to attend a meeting of shareholders of the company; and

- (b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
- (c) May be heard at a meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

## **G LIQUIDATION AND REMOVAL FROM THE REGISTER**

### **55 Resolution to appoint liquidator**

- 55.1 The shareholders may resolve to liquidate the company by special resolution.
- 55.2 The directors may resolve to liquidate the company at a meeting called under section 65 of the Companies Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

### **56 Distribution of surplus assets**

- 56.1 The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.
- 56.2 The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose the liquidator may set such value as he or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders.

## **H RESERVE POWERS OF SHAREHOLDING MINISTERS**

### **57 Reserve Power of shareholding Ministers to notify board of public sector policies**

- 57.1 The shareholding Ministers of a public body may notify the public body's board, in writing, of a public sector policy that is to apply to the public body and its subsidiaries if the shareholding Ministers are satisfied that it is necessary to give the notification in the public interest.
- 57.2 The board must ensure that the policy is carried out in relation to the public body and must, as far as practicable, ensure that the policy is carried out in relation to its subsidiaries.
- 57.3 Before giving a notification under this article, the shareholding Ministers must-
  - (a) consult with the board; and
  - (b) request the board to advise them whether, in its opinion, carrying out the policy would not be in the commercial interests of the public body or any of its subsidiaries.

### **58 Reserve power of shareholding Ministers to give directions in public interest**

- 58.1 The shareholding Ministers of a public body may give the public body's board a written direction in relation to the public body and its subsidiaries if the shareholding Ministers are satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest. This written direction is not a Community Service Obligation as defined by the PBPAA.

- 58.2 The board must ensure that the direction is complied with in relation to the public body and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.
- 58.3 Before giving the direction, the shareholding Ministers must-
- (a) consult with the board; and
  - (b) request the board to advise them whether, in its opinion, complying with the direction would not be in the commercial interests of the public body or any of its subsidiaries.

## **59 Notice of suspected insolvency because of direction or notification**

- 59.1 If-
- (a) a public body's board is given a direction or notification by the shareholding Ministers; and
  - (b) the board suspects that the public body, or a subsidiary of the public body, will or may become insolvent; and
  - (c) in the board's opinion, the cause or a substantial cause of the suspected insolvency would be compliance with the direction or notification;
- the board must immediately give written notice to the shareholding Ministers and the Controller and Chief Auditor of-
- (a) the suspicion; and
  - (b) its reasons for the opinion.
- 59.2 The notice must state that it is given under this article.
- 59.3 The giving of the notice operates to suspend the direction or notification until-
- (a) the shareholding Ministers advise the board, in writing, that they are not satisfied-
    - i. that the board's suspicion mentioned in Article 59.1(b) is well-founded; or
    - ii. that the board's opinion mentioned in Article 59.1(c) is justified; or
  - (b) the direction or notification is revoked.
- 59.4 If the shareholding Ministers are satisfied that the board's suspicion is well-founded, the shareholding Ministers must immediately-
- (a) if they are also satisfied that the board's opinion is justified, revoke the direction or notification; and
  - (b) in any case, give the board the written directions that the shareholding Ministers consider necessary or desirable, including any directions necessary or desirable to ensure-
    - i. that the public body or subsidiary does not incur further debts; or
    - ii. that the public body or subsidiary will be able to pay all its debts as and when they become due.
- 59.5 Without limiting Article 59.4, a direction under this article may require the public body or any or its subsidiaries to cease or limit particular activities.
- 59.6 The board must ensure that a direction under this article is complied with in relation to the public body and must, as far as practicable, ensure that it is complied with in relation to its subsidiaries.
- 59.7 This article is in addition to, and does not limit, any other provision of this Act or any other law.

## **60 Public Body and board not otherwise subject to government direction**

- 60.1 Except as otherwise provided by this or any other Act, a public body and its board are not subject to direction by or on behalf of the Government.

## **I MISCELLANEOUS**

### **61 Service of documents on shareholders**

- 61.1 A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:
- (a) Delivered to that person; or
  - (b) Posted to that person's postal address; or
  - (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.
- 61.2 A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 207 or section 209 of the Companies Act, as the case may be.

**Schedule 8**  
**(Sections 16, 17, 18, 19, 21)**

**ROLE AND RESPONSIBILITY OF DIRECTORS**  
**OF PUBLIC BODIES**

**Part A – Public Trading Bodies (PTB)**

**8.1 Management of Public Trading Body**

8.1.1 The directors have the responsibility and the powers necessary for managing, or for directing and supervising the management of, the business and affairs of the Public Trading Body in accordance with the Statement of Corporate Objectives and the Companies Act.

- 8.1.2 Directors must ensure that their management of the PTB fulfils the aims of –
- (a) being as profitable and efficient as comparable businesses that are not owned by the State; and
  - (b) meeting any community service obligations established under Part III of the Act; and
  - (c) being an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.

8.1.3 The directors may delegate any of their powers to a committee of directors, or to a director or employee or any other person. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

8.1.4 Directors are subject to directions given by Shareholding Ministers under this or another Act.

**8.2 Audit Committee**

8.2.1 Apart from committees established under the provisions of 8.1.3 the Board of the PTB shall establish an Audit Committee to provide regular advice to the Board on:

- (a) the internal audit function of the PTB; and
- (b) the PTB's systems of financial reporting and internal control; and
- (c) the resources necessary for the performance of the internal audit function; and
- (d) identifying the major risks to which the PTB is exposed and ensuring that the internal control systems introduced by management are adequate and functioning effectively; and
- (e) reviewing the internal audit plan and the scope of the internal audit; and
- (f) co-ordinating the work of the internal and external auditors; and
- (g) reviewing reports by the internal and external auditors on the weaknesses in internal control and plans by management to rectify the position; and
- (h) reviewing significant financial risk areas; and

- (i) monitoring compliance with statutory requirements; and
- (j) reviewing interim financial information; and
- (k) reviewing the financial statements by both management and the internal auditors prior to their approval by the Board.

8.2.2 The Audit Committee shall be formally constituted by the Board of the PTB with written terms of reference.

8.2.3 The Board of the PTB shall determine the membership of the Audit Committee, subject to the following:

- (a) Persons who are not directors of the PTB may be appointed as members of the Audit Committee.
- (b) Other than persons appointed under the provisions of 8.2.3(a), all members of the Audit Committee shall be non-executive directors of the PTB.
- (c) The chairperson of the Audit Committee must be a director of the PTB.
- (d) The managing director or chief executive of the PTB must not be a member of the Audit Committee.
- (e) The finance manager, the external auditor and the head of internal audit should normally attend meetings of the Audit Committee, but not as members of the Committee.

8.2.4 The Audit Committee shall have unrestricted access to the internal and external auditors and shall meet at least once in each quarter.

### 8.3 **Duties of Directors**

#### 8.3.1 **Fundamental duties.**

- (a) Directors have the duties set out in –
  - (i) the Act and Schedules of the Act; and
  - (ii) the Companies Act 2001,and in particular, each director must act in good faith and in the best interests of the PTB.
- (b) A director must not act or agree to the PTB acting in a manner which contravenes the Public Finance Management Act 2001 or the Public Bodies (Performance and Accountability) Act 2001 or the Companies Act 2001.

#### 8.3.2 **Standard of care of directors**

A director of a PTB, when exercising powers or performing duties as a director must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

- (a) The nature of the PTB; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

### 8.3.3 **Obligations of directors in connection with insolvency**

A director of the PTB who:

- (a) believes that the PTB is unable to pay its debts as they fall due; or
- (b) Is aware of matters which would put any reasonable person on inquiry as to whether the PTB is unable to pay its debts as they fall due,

must call a meeting of directors within 10 days of becoming aware to consider whether the directors should appoint an administrator or liquidator, in accordance with section 65 of the Companies Act 2001 or other applicable law.

### 8.3.4 **Obligation of directors to report**

- (a) A director who has knowledge of any circumstances which may cause him or her to consider that a breach of either the Public Bodies (Performance and Accountability) Act or the Public Finance Management Act or the Companies Act has occurred or may have occurred or who becomes aware of any information or any event which may materially adversely affect the financial position of the PTB must advise the chairperson of the Board and the Shareholding Ministers in writing immediately on becoming aware of the circumstances.
- (b) On receipt of the information, the chairperson shall call a meeting of directors within 10 days to consider the matter, in default of which a Shareholding Minister shall take action under section 24(1) of the Act.

### 8.3.5 **Interested directors**

- (a) A director must not exercise any power as a director in circumstances where he or she is directly or indirectly materially interested in the exercise of that power.
- (b) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, immediately on becoming aware of that interest, disclose the nature and extent of that interest to the board and follow up within 10 working days in writing:
  - (i) If there is at least one other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the PTB;
  - (ii) If paragraph (i) does not apply, to all shareholders.
- (c) A director may give a general disclosure in writing to all shareholders where the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of paragraph 8.3.5(b).



- (d) A transaction entered into by the PTB in which a director is directly or indirectly materially interested is voidable at the election of the PTB in accordance with section 91 of the Companies Act 2001.
- (e) A transaction entered into by the PTB as the result of action taken by a director in breach of section 59 or section 60 or section 61 of the Companies Act 2001 is voidable at the option of the PTB in accordance with section 91 of the Companies Act 2001.

### 8.3.6 Use and disclosure of Public Trading Body information

A director of a PTB who has information in his or her capacity as a director or employee of the PTB, 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) In the interests of the PTB; or
- (b) As required by law; or
- (c) Where there are reasonable grounds for believing that the PTB will satisfy the solvency test after the director takes that action, and that action-
  - (i) is approved by all shareholders under section 47 of the Companies Act 2001; or
  - (ii) is authorised by any contract of employment entered into between that director and the PTB, the relevant terms of which have been approved by shareholders by ordinary resolution. No director may vote on a resolution to approve such terms in relation to himself or herself.

## Part B – Public Beneficial Bodies (PBB)

### 8.4 Interpretation

The following definitions apply to this Part:

“Board” means the persons occupying the positions in or in relation to a Public Beneficial Body that, under its governing legislation, are comparable with those of the board of directors of a company.

“Managing director” or “chief executive” means the person occupying the position in a Public Beneficial Body comparable with the managing director of a company.

“Shareholding Ministers” means the Responsible Minister of a Public Beneficial Body and the Minister of Finance, even though a Public Beneficial Body may not have a share capital.

### 8.5 Management of Public Beneficial Body

8.5.1 The directors have all the powers necessary for managing, or for directing and supervising the management of the business and affairs of the PBB in

accordance with the Statement of Corporate Objectives and its governing legislation.

- 8.5.2 Directors must ensure that their management of the PBB fulfils the aims of –
- (a) meet the purpose of its governing legislation;
  - (b) operate in as efficient and effective manner as comparable organizations that are not owned by the State; and
  - (c) being an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.
- 8.5.3 The directors may delegate any of their powers to a committee of directors, or to a director or employee or any other person. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.
- 8.5.4 Directors are subject to directions given by Shareholding Ministers under this or another Act.

## 8.6 **Audit Committee**

- 8.6.1 Apart from committees established under the provisions of 8.5.3 the board of a PBB shall establish an Audit Committee to provide regular advice to the Board on:
- (a) the internal audit function of the PBB; and
  - (b) the PBB's systems of financial reporting and internal control; and
  - (c) the resources necessary for the performance of the internal audit function; and
  - (d) identifying the major risks to which the PBB is exposed and ensuring that the internal control systems introduced by management are adequate and functioning effectively; and
  - (e) reviewing the internal audit plan and the scope of the internal audit; and
  - (f) co-ordinating the work of the internal and external auditors; and
  - (g) reviewing reports by the internal and external auditors on the weaknesses in internal control and plans by management to rectify the position; and
  - (h) reviewing significant financial risk areas; and
  - (i) monitoring compliance with statutory requirements; and
  - (j) reviewing interim financial information; and
  - (k) reviewing the financial statements by both management and the internal auditors prior to their approval by the Board.
- 8.6.2 The Audit Committee shall be formally constituted by the Board of the PBB with written terms of reference.
- 8.6.3 The Board of the PBB shall determine the membership of the Audit Committee, subject to the following:

- (a) Persons who are not directors of the PBB may be appointed as members of the Audit Committee.
- (b) Other than persons appointed under the provisions of 8.6.3(a), all members of the Audit Committee shall be non-executive directors of the PBB.
- (c) The chairperson of the Audit Committee must be a director of the PBB.
- (d) The managing director or chief executive of the PBB must not be a member of the Audit Committee.
- (e) The finance manager, the external auditor and the head of internal audit should normally attend meetings of the Audit Committee, but not as members of the Committee.

8.6.4 The Audit Committee shall have unrestricted access to the internal and external auditors and shall meet at least once in each quarter.

## 8.7 **Duties of directors**

### 8.7.1 **Fundamental duties**

- (a) Directors of each PBB have the duties set out in the Public Bodies (Performance and Accountability) Act 2001 and the governing legislation of that PBB and in particular, each director must act in good faith and in the best interests of the PBB for carrying out the objects as detailed in its governing legislation and the Statement of Corporate Objectives.
- (b) A director must not act or agree to the PBB acting in a manner which contravenes the Public Bodies (Performance and Accountability) Act 2001 or the Public Finance Management Act 2001 or the PBB's governing legislation.

### 8.7.2 **Standard of care of directors**

A director of a PBB, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation:

- (a) The nature of the PBB; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

### 8.7.3 **Obligations of directors in connection with insolvency**

A director of a PBB who:

- (a) Believes that the PBB is unable to pay its debts as they fall due; or
- (b) Is aware of matters which would put any reasonable person on inquiry as to whether the PBB is unable to pay its debts as they fall due,

must call a meeting of directors within 10 days to consider whether the directors should appoint an administrator or liquidator.

#### **8.7.4 Obligation of directors to report**

- (a) A director who has knowledge of any circumstances which may cause him or her to consider that a breach of either the Public Bodies (Performance and Accountability) Act 2001 or the PBB's governing legislation has occurred or may have occurred or who becomes aware of any information or any event which may materially adversely affect the financial position of the PBB must advise the chairperson of the Board and the Shareholding Ministers in writing immediately on becoming aware of the circumstances.
- (b) On receipt of the information, the chairperson shall call a meeting of directors within 10 days to consider the matter, in default of which a Shareholding Minister shall take action under section 24(1) of the Act.

#### **8.7.5 Interested directors**

- (a) A director must not exercise any power as a director in circumstances where that director is directly materially interested in the exercise of that power.
- (b) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, immediately on becoming aware of that interest, disclose to the board the nature and extent of that interest and provide details within 10 days in writing to the chairperson and all other directors.
- (c) A director may give a general disclosure in writing to all other directors that he or she is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of paragraph 8.7.5(b).
- (d) A transaction entered into by the PBB in which a director is directly or indirectly materially interested is voidable at the election of the PBB.

#### **8.7.6 Use and disclosure of information**

A director of a PBB who has information in his or her capacity as a director or employee of the PBB, 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) In the interests of the PBB; or
- (b) As required by law. ”