



SAMOA

PUBLIC BODIES (PERFORMANCE AND ACCOUNTABILITY) ACT 2001

Arrangement of Provisions

PART 1 PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Act binds State
4. Purpose

PART 1A FORMATION AND OWNERSHIP OF PUBLIC TRADING BODIES

5. Transfer to the Companies Act 2001
6. Ministerial shareholding
7. Disposal of shares

PART 2 OBJECTIVES OF PUBLIC TRADING BODIES

8. Principal objective to be a successful business

PART 3 COMMUNITY SERVICE OBLIGATION BODIES

9. Definition of Community Service Obligation
10. Minister may direct a Community Service Obligation

11. Minister to follow procedure concerning Community Service Obligation
12. Procedure for the issuing of a directive for a Community Service Obligation
13. Offence to unlawfully direct Directors or Board

PART 4 OBJECTIVES OF PUBLIC BENEFICIAL BODIES

14. Principal objective to be successful beneficial body

PART 5 APPOINTMENT AND ROLE OF DIRECTORS

15. Selection and Appointment of Directors
- 15A Board may request attendance
16. Role of Directors of Public Trading Bodies
17. Decisions by Directors of Public Trading Bodies
18. Role of Directors of Public Beneficial Bodies
19. Decisions by Directors of Public Beneficial Bodies
20. Declaration of Pecuniary Interests and Convictions
21. Decision by Directors involving a conflict of interest

2 *Public Bodies (Performance and Accountability) Act 2001*

**LOANS, ETC.,
PROCUREMENT AND
CONTRACTS**

**PART 6
ACCOUNTABILITY**

- 22. Corporate plan
- 22A Budget and Appropriation
- 23. Reports, Financial Statements and Financial activities
- 23A Records and accounts
- 23B Bank accounts
- 24. Performance Audit
- 25. Directors liable to be dismissed
- 26. Financial Secretary to undertake assessment of performance
- 27. *Repealed by Act No.22, 2013*
- 27A Reporting of suspected offence

**PART 7
SUPPORT FOR PUBLIC
BODIES AND DIRECTORS**

- 28. Support by the Financial Secretary

- 28A Loans by the State
- 28B On-lending by the State
- 28C Private borrowing and overdrafts
- 28D Investment and moneys of public body
- 28E Contracts for works, supplies and services

**PART 8
OTHER MATTERS**

- 29. Transfer of employment from the Public Service
- 29A Suspension with salary for one month
- 30. Powers
- 31. Delegation by Shareholding Ministers, Auditor and Financial Secretary
- 32. Regulations

Schedules

PART 7A

**PUBLIC BODIES (PERFORMANCE AND
ACCOUNTABILITY) ACT 2001**

2001

No. 13

AN ACT to promote improved performance and accountability in respect of Public Bodies and, to this end, to:

- (a) specify principles governing the operation of Public Bodies; and
- (b) specify the principles and procedure for the appointment of Directors of Public Bodies; and
- (c) establish requirements concerning accountability for Public Bodies; and

- (d) provide support for Shareholding Ministers and the Ministry of Public Enterprises on matters relating to Public Bodies.

[Assent date: 21 December 2001]

[Commencement date: 6 March 2003]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Public Bodies (Performance and Accountability) Act 2001.

(2) This Act comes into force on the date to be determined by Cabinet and published in the Savali. (*Sav: 26/3/03*)

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“Act” means the Public Bodies (Accountability and Performance) Act 2001;

“Board” means:

(a) for a public body that is a company, the board of directors of the public body;

(b) for a public body that is not a company, the persons occupying the positions in or in relation to the public body under governing legislation that are comparable with those of the board of directors of a company;

“chief executive” means the person appointed as the chief executive (however called) of a public body, and includes a person appointed as the acting chief executive of a public body;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“empowering Act” means an Act which provides for the establishment, purposes, functions and governance and purposes of an individual public body;

“Financial Secretary” has the same meaning in section 2 of the Public Finance Management Act 2001;

“Ministry” means the Ministry for Public Enterprises;

4 *Public Bodies (Performance and Accountability) Act 2001*

“organisation” includes a company, a body corporate, a statutory corporation, a statutory body, a trust, a partnership and a joint venture;

“public body” means an organisation (whether called a state-owned enterprise or otherwise under any other enactment) that is:

(a) listed in Schedule 1; or

(b) deemed a public body if the Government—

(i) has more than 50% of membership on the board of directors of the corporation; or

(ii) controls more than 50% of the voting power on the board of directors of the corporation; or

(iii) holds more than 50% of the issued share capital of the corporation either directly or through other public bodies (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital); and

(c) includes a subsidiary of a public body; but

(d) does not include the Central Bank of Samoa;

“public beneficial body” means an organisation that exists mainly for the provision of service to the community in accordance with government policy and includes the organisations listed in Part B of Schedule 1 and any subsidiary of a public beneficial body;

“public trading body” means an organisation that exists mainly for the purpose of optimising returns on investment of public funds and includes the organisations listed in Part A of Schedule 1 and any subsidiary of a public trading body;

“responsible Minister”; means the Minister for Public Enterprises;

“shares” means:

(a) for a company that has issued shares, a share of any class;

- (b) for an organisation (other than a company) that has a capital, an interest in or right to the whole or any part of that capital, other than an interest or right as a creditor;
 - (c) for a company or other organisation that does not have a capital—
 - (i) an interest in or right to any part of the assets of the company or organisation other than an interest or right as a creditor; or
 - (ii) if there are no assets, a direct or contingent obligation to contribute money to or bear losses of the company or organisation; and“shareholder” has a corresponding meaning;
- “shareholding Ministers” means the Minister of Finance and the Responsible Minister and, where the Minister of Finance is also the Responsible Minister, a Minister who is approved by Cabinet to be a shareholding Minister for the purpose of this Act;
- “subsidiary” has the same meaning as in section 2 of the Companies Act 2001.

(2) Part A of Schedule 1 provides the list of public trading bodies and Part B of Schedule 1 provides the list of public beneficial bodies.

3. Act bind State – This Act binds the State.

4. Purpose – The purpose of this Act is to enhance the performance and accountability of public bodies so that they provide the best possible service for the people of Samoa and as a result contribute to Samoa’s social, cultural, economic and commercial development.

PART 1A FORMATION AND OWNERSHIP OF PUBLIC TRADING BODIES

5. Transfer to the Companies Act 2001 – (1) Despite the provisions of any other law and subject to subsection (2), each public trading body shall register as a company under the Companies Act 2001.

6 Public Bodies (Performance and Accountability) Act 2001

(2) A public trading body which is incorporated as a mutual society shall not be required to comply with subsection (1) but, despite the provisions of any other law, shall comply with the provisions of this Act as if the shareholding Ministers were the major shareholders of the public trading body. For the purposes of this Act, Samoa National Provident Fund, Samoa Life Assurance Corporation and Accident Compensation Corporation are mutual societies.

(3) Except for the organisations referred to in subsection (2), each public trading body shall have articles of incorporation under the Companies Act 2001 and the articles of incorporation shall be the articles of incorporation in Schedule 7 with such amendments and modifications as may be approved by the responsible Minister on the advice of the Chief Executive Officer.

(4) Despite any other law:

- (a) if there is any inconsistency between an individual public trading body's empowering Act, the Companies Act 2001 and the Public Finance Management Act 2001 and this Act, the provisions of this Act prevail to the extent of the inconsistency;
- (b) if there is any inconsistency between an individual public trading body's empowering Act and the Companies Act 2001 and the Public Finance Management Act 2001, the provisions of the Public Finance Management Act 2001 prevail to the extent of the inconsistency;
- (c) if there is any inconsistency between an individual public trading body's empowering Act and the Companies Act 2001, the Companies Act 2001 prevail to the extent of the inconsistency;
- (d) if there is any inconsistency between the Companies Act 2001 and a public trading body's Articles of Incorporation, the provisions of the Articles of Incorporation prevail to the extent of the inconsistency.

6. Ministerial Shareholding – (1) Shares in a public trading body held by shareholding Ministers are:

- (a) held *ex officio* on behalf of the State of Samoa; and

(b) to be registered in accordance with paragraph (a).

(2) If a public trading body has entered into a joint venture or other legal entity such that the shareholding of the Government is less than 100% this section shall only apply to the shares of such joint venture or other legal entity which are owned by the Government.

(3) The number of shares in a public trading body held by each shareholding Minister under subsection (1) shall be the same.

(4) Any money required to be paid by a shareholding Minister on subscribing or applying for, or being allotted, shares under subsection (1) shall be paid out of money appropriated by Parliament for the purpose.

(5) The responsible Minister is responsible to Parliament for the performance of all public bodies.

(6) The board of a public trading body shall be accountable to the shareholding Ministers.

(7) The board of a public beneficial body shall be accountable to the shareholding Ministers.

7. Disposal of Shares – (1) Subject to this section, a shareholding Minister shall not, except under this Act:

- (a) sell or otherwise dispose of any shares in a public trading body held in the Minister's name; or
- (b) permit shares in the public trading body to be allotted or issued to any person other than a shareholding Minister.

(2) A share in a public trading body held by a shareholding Minister may only be sold or otherwise disposed with the approval of the Head of State acting on the advice of Cabinet.

(3) Cabinet may call for investments in any public trading body by way of subscriptions for the purchase and acquisition of shares in the public trading body or by any other scheme of investment as approved by Cabinet.

(4) Cabinet may:

- (a) approve the sale of shares or any other scheme of investment in any Public Trading Body; and
- (b) as part of any sale of shares or other scheme of investment, approve the sale or transfer of some or all of the shares held by a Shareholding

8 *Public Bodies (Performance and Accountability) Act 2001*

Minister on such terms and conditions as determined by Cabinet.

(5) Subject to subsection (6), the Shareholding Ministers shall table before the Legislative Assembly a report on the sale of shares or other scheme of investment approved by Cabinet concerning any public trading body within 14 days of Cabinet approving the sale of shares or other scheme of investment or, where the Legislative Assembly is not meeting, within seven days of the commencement of the next meeting, after Cabinet's approval.

(6) Where, in the opinion of the Shareholding Ministers, the tabling of a report under subsection (5) would have the effect of decreasing the value of any public trading body or any shares in a public trading body, the Minister shall:

- (a) delay the tabling of the report until he or she is satisfied that the value of the public trading body or shares in the public trading body will not be adversely affected by the tabling of the report; and
- (a) if the report is ultimately tabled, provide a written statement with the report explaining the delay.

PART 2
OBJECTIVE OF PUBLIC TRADING BODIES

8. Principal objective to be a successful business – (1) Subject to the Companies Act 2001, the principal objective of a public trading body is to operate as a successful business and, to this end:

- (a) be as profitable and efficient as comparable businesses that are not owned by the State; and
- (b) meet any community service obligations established under Part 3; and
- (c) comply with the provisions of the Labour and Employment Relations Act 2013, despite the provisions of that Act; and
- (d) be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.

PART 3
COMMUNITY SERVICE OBLIGATIONS

9. Definition of Community Service Obligation – (1) A Community Service Obligation shall be made solely for the objective of alleviating hardship in Samoa and according to the policies set out by the Ministry under section 28.

(2) For the purposes of this Act a Community Service Obligation means:

- (a) the provision of a good or service by a public trading body to a consumer or user on any terms other than normal commercial terms applying from time to time; or
 - (b) the entering into an agreement by a public trading body on any terms other than normal commercial terms applying from time to time.
- (3)** Nothing in this Part:
- (a) prevents a public trading body from exercising a commercial judgment to make donations to worthy causes or to price goods and services at or below the cost of their production; and
 - (b) allows for the compensation of any losses incurred from the provision of goods and services in paragraph (a).

10. Minister may direct a Community Service Obligation – The Shareholding Ministers, acting on the advice of Cabinet may direct a public trading body to provide a Community Service Obligation if the performance of the obligation is necessary to ensure:

- (a) access to a necessary good or service to alleviate hardship in Samoa; and
- (b) the Community Service Obligation is in line with the policies set up in section 28.

11. Minister to follow procedure concerning community service obligation – (1) In performing any power or duty under this Part, the responsible Minister shall follow the procedures provided in Schedule 2 concerning the issuing of a direction to a public trading body to provide a community service obligation.

(2) A direction by a Responsible Minister under this Part which fails to follow the procedures provided in Schedule 2 is void.

12. Procedure for the issuing of a direction for a community service obligation – The procedures to be followed by a responsible Minister concerning the issuing of a direction to a public trading body to provide a community service obligation are provided in Schedule 2.

13. Offence to unlawfully direct directors or Board – (1)
A person who knowingly directs or attempts to direct a director or the Board of a public trading body to perform a community service obligation other than in accordance with the provisions of this Act commits an offence and is liable to a fine of up to 100 penalty units.

(2) A person who, whilst acting in the capacity of a director of a public trading body, knowingly makes or takes part, or attempts to make or take part, in the making of a decision to perform a community service obligation, other than in accordance with the provisions of this Act commits an offence and is liable to a fine of up to 100 penalty units.

PART 4

OBJECTIVES OF PUBLIC BENEFICIAL BODIES

14. Principal objective to be a successful beneficial body –
(1) The principal objective of a public beneficial body is to provide service to its users and to this end:

- (a) meet the purposes and objectives of its empowering Act; and
- (b) operate in an efficient and effective manner as comparable organisations that are not owned by the State; and
- (c) comply with the provisions of the Labour and Employment Relations Act 2013, despite the provisions of this Act; and
- (d) be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.

PART 5

APPOINTMENT AND ROLE OF DIRECTORS

15. Selection and appointment of directors – (1) A director of a public body shall be selected and appointed or reappointed in accordance with the criteria for selection and procedure for appointment of directors in Schedule 3.

(2) The appointment or reappointment of a director of a public body which fails to follow the criteria for selection and procedure for appointment in Schedule 3 is void.

(3) The criteria for selection and procedure for appointment of directors of public bodies are set out in Schedule 3.

15A. Board may request attendance - A Board of a public trading body or a public beneficial body may request the attendance of a Chief Executive Officer or General Manager of a Government agency for the discussion of any matter before the Board.

16. Role of directors of public trading bodies – A director of a public trading body shall:

- (a) ensure that the public trading body complies with the provisions of the Companies Act 2001 and the provisions of this Act, to the extent that they are applicable; and
- (b) comply with the requirements of Schedule 8 in so far as such requirements apply to a director of a public trading body.

17. Decisions by directors of public trading bodies – (1) A decision by each director of a public trading body and a decision by each board of directors of a public trading body shall be made solely in compliance with the Companies Act 2001 and this Act.

(2) A person who, whilst acting in the capacity of a director of a public trading body, knowingly makes any decision other than for the purpose of complying with the Companies Act 2001 and this Act commits an offence and is liable to a fine of up to 100 penalty units.

18. Role of directors of public beneficial bodies – A director of a public beneficial body shall:

- (a) ensure that the public beneficial body provides service to its users in accordance with section 14; and

- (b) comply with the requirements of Schedule 8 in so far as such requirements apply to a director of a public beneficial body.

19. Decisions by directors of public beneficial body – (1)

A decision by each director of a public beneficial body and by each board of directors of a public beneficial body shall be made solely for the purpose of ensuring that the public beneficial body provides service to its users in accordance with section 14.

(2) A person who whilst acting in the capacity of a director of a public beneficial body, knowingly makes any decision other than for the purpose of ensuring that the public beneficial body provides service to its users in accordance with section 14 commits an offence and is liable to a fine of up to 100 penalty units.

20. Declaration of pecuniary interests and convictions –

(1) A director of a public body shall provide a declaration of pecuniary interests and convictions:

- (a) within a month of appointment and at any time where there is a change thereafter;
- (b) in the form approved by the Chief Executive Officer of the Ministry of Finance, and made available from time to time; and
- (c) to the Secretary of the Board and the Chief Executive Officer of the Ministry of Finance.

(2) A director of a public body who fails to perform his or her duty under subsection (1) shall forfeit his or her position as a director forthwith.

(3) Repealed by Public Bodies (Performance and Accountability) Amendment Act 2012.

(4) Repealed by Public Bodies (Performance and Accountability) Amendment Act 2012.

(5) The form and content of the declaration of pecuniary interests and convictions are set out in Schedule 4.

21. Decisions by directors involving a conflict of interest –

(1) A person who whilst acting in the capacity of a director of a public body, knowingly makes or takes part in the making, or attempts to take part in the making of a decision where the person has a pecuniary or other interest which conflicts with the interests

of the public body commits an offence and is liable to a fine of up to 100 penalty units.

(2) A person convicted under this section shall immediately forfeit his or her directorship of the particular public body and any other public body of which the person is a director.

PART 6 ACCOUNTABILITY

22. Corporate plan – (1) The board of directors of each public body shall prepare a corporate plan in accordance with instructions issued by the Chief Executive Officer and shall forward a copy of the approved corporate plan to each Shareholding Minister, the Controller and Auditor General and the Financial Secretary prior to the commencement of each financial year.

(2) The corporate plan shall include a statement of corporate objectives.

(3) The approval process for the corporate plan is set out in Schedule 5.

(4) The statement of corporate objectives referred to in subsection (2), once approved, shall be tabled before the Legislative Assembly by the responsible Minister within 14 days of the approval of the public body's corporate plan, or where the Legislative Assembly is not meeting, at the commencement of the next meeting.

(5) Repealed by the Public Bodies (Performance and Accountability) Amendment Act 2015.

22A. Budget and appropriation- (1) This section applies when a public body requests the Government for a grant, subsidy, guarantee or other similar assistance.

(2) The Chief Executive Officer and the Financial Secretary may, within a time specified by them, require the chief executive of a public body to submit its corporate plan for the following financial year, as its justification for the request to be considered for preparing its estimates.

(3) A public body to which this section applies shall, no later than 3 months before the end of the Government's financial year, submit to the Chief Executive Officer and the Financial Secretary estimates of its receipts, expenditures and cash flows for the

following Government's financial year, in a form approved by the Financial Secretary.

(4) If money is appropriated by Parliament for the purposes of a public body, the money is payable at any time and in any amounts determined by the Financial Secretary.

23. Reports, Financial Statements and Financial activities

– (1) A public body shall prepare reports and financial statements in accordance with the requirements of Schedule 6 and shall forward such reports and financial statements in the manner provided in Schedule 6.

(2) The chairperson of a Board shall, by notice, immediately advise the Shareholding Ministers and the Responsible Minister upon becoming aware of any information or event, which may materially affect the financial position of the public body.

(3) The notice shall:

- (a) be in writing; and
- (b) specify the nature of the information or event; and
- (c) quantify when practicable the possible and likely effects of the information or event on the public body; and
- (d) specify what steps have been taken, or are being taken or proposed, to rectify any adverse effects.

(4) If the chairperson of a Board is a Minister or the Responsible Minister, the Board shall, by ordinary resolution, appoint another director to advise under subsection (2).

23A. Records and accounts - A public body shall:

- (a) keep proper accounts and records of its transactions and financial position –
 - (i) in such a way so as to facilitate the preparation of financial statements and enable the statements to be conveniently and properly audited as required in Schedule 6; and
 - (ii) pursuant to generally accepted accounting principles and practice and other requirements under any other relevant enactment; and

- (iii) for a period of seven (7) years after completion of the transactions to which they relate; and
- (b) maintain adequate control over its assets, or assets in its custody, and over the incurring of liabilities by it; and
- (c) do any other thing necessary to ensure that all payments out of its money are correctly made and properly authorised.

23B. Bank accounts - A public body shall:

- (a) maintain at least one (1) bank account; and
- (b) subject to section 28(E)(2), pay all its moneys into a bank account maintained under paragraph (a).

24. Performance Audit – A public body is subject to a performance audit under Part 6 of the Audit Act 2013.

25. Director liable to be dismissed – If, following a performance audit, it is found that a director of a public body has failed to perform any duty or function required of the director under this Act, the Companies Act 2001 or an empowering Act, Cabinet, acting on the advice of the responsible Minister, may dismiss the director from the public body.

26. Chief Executive Officer to undertake assessment of performance – (1) At any time, the Shareholding Minister:

- (a) may direct the Chief Executive Officer to undertake an assessment as to the performance of a public body and its capacity to meet its obligations under this Act, the Companies Act 2001 or any empowering Act; and
- (b) must advise the Responsible Minister in writing that an assessment is to be undertaken.

(1A) Despite subsection (1), the Financial Secretary or the Chief Executive Officer may carry out a performance review or initiate an investigation into, or inspection of, the records of a public body, if the Financial Secretary or the Chief Executive Officer considers it appropriate or has reason to believe:

- (a) that a public body has or may have failed to implement the corporate plan as submitted under section 22;
or
 - (b) that there may have been an irregularity in the management of money or property in the ownership or custody of the public body.
- (2) The assessment under subsection (1) may take the form of an inquiry in such manner as the Minister of Finance thinks fit.
- (3) In conducting an assessment under (1), the Chief Executive Officer has all such powers as are necessary or expedient to enable the Chief Executive Officer to carry out his or her functions under this section.
- (4) Without limiting subsection (3), the CEO of the Ministry of Finance may perform all the functions and exercise all the powers conferred on the Controller and Auditor General under the Audit Act 2013 and the provisions of that Act extend to the CEO of the Ministry of Finance accordingly.

27. Repealed by Audit Act 2013, No.22

27A. Reporting of suspected offence-(1) This section applies to a person who has knowledge of any circumstances which may cause the person to consider that a public body has or may have failed to implement the corporate plan as submitted under section 22 or that there has been an irregularity in the management of money or property in the ownership or custody of a public body.

(2) A person to whom this section applies shall:

- (a) in writing, report those circumstances to the Financial Secretary and either of the shareholding Ministers; and
- (b) send a copy of the report to the Chief Executive Officer.

(3) A person who in good faith alleges a breach of the Act under subsection (1) is immune from civil suit and shall not be penalised in any way (whether the allegation is proved or not) because of the person's actions in reporting the matter.

PART 7

SUPPORT FOR SHAREHOLDING MINISTERS

28. Support by the Financial Secretary and the Chief Executive Officer – (1) The Financial Secretary and the Chief Executive Officer shall where necessary provide Shareholding Ministers with:

- (a) advice concerning corporate plans, statements of corporate objectives and financial reports ; and
- (b) analysis, advice and information concerning the performance of any public body and compliance with this Act by any public body or person; and
- (c) advice on expenditure, advances, credit support and guarantees to be made, sought or provided in relation to a public body; and
- (d) financial, commercial and public policy analysis and advice in relation to public bodies and in relation to corporatisation or privatisation of public bodies; and
- (e) advice on the appointment of directors and boards of public bodies so as to encourage and enhance efficiencies and service delivery; and
- (f) information and advice in relation to best practice by public bodies so as to encourage and enhance efficiencies and service delivery; and
- (g) other information and advice as requested by a shareholding Minister.

(2) The Financial Secretary shall be responsible for monitoring the performance of public bodies on behalf of the shareholding Ministers and advising them in respect of the Government's investment in public bodies.

(3) The Financial Secretary may issue instructions as deemed necessary or expedient to give full effect to this Act and for the administration thereof and, without limiting this section, such instructions may cover:

- (a) government policy, including policies on dividends, investments, community service obligations and the procedures on how such policies are to be regulated;
- (b) the form and content of corporate plans; and
- (c) the form and content of annual reports.

(4) Public bodies shall observe any instructions issued by the Financial Secretary under subsection (3).

PART 7A
LOANS, ETC., PROCUREMENT
AND CONTRACTS

28A. Loans by the State - The Government may, on behalf of the State, lend money to a public body, under section 86 of the Public Finance Management Act 2001.

28B. On-lending by the State - (1) Subject to the terms of the relevant loan agreement entered into by the State under section 79 of the Public Finance Management Act 2001, the State may on-lend to a public body for the purposes specified in the relative loan agreement, any amount of money on any terms and conditions, specified in the subsidiary loan agreement.

(2) A subsidiary loan agreement made under this section must be presented by the Minister to the Legislative Assembly pursuant to its Standing Orders by delivering it to the Clerk of the Assembly.

(3) For purposes of this section, “subsidiary loan agreement” has the same meaning as in section 74 of the Public Finance Management Act 2001.

28C. Private borrowing and overdrafts - (1) A public body:

- (a) may borrow money for its purposes, on terms agreed to between the public body and a lender; and
- (b) shall repay the money under the terms of the borrowing.

(2) A public body may borrow for its purposes, by overdraft, within the limits approved by its Board.

(3) The State or Government is not liable, in any way, for any borrowing made under this section.

28D. Investment and moneys of public body - (1) Money of a public body may be applied only in payment or discharge of expenses, obligations and liabilities of the public body arising under this Act, the Public Finance Management Act 2001, its empowering Act or any other enactment.

(2) Moneys of a public body that are not immediately required may be invested:

- (a) in any securities of, or guaranteed by, the State; or

- (b) in any manner in which a trustee may, under any law, invest trust moneys; or
 - (c) on deposit with a bank; or
 - (d) in an account established under section 59(2) of the Public Finance Management Act 2001; or
 - (e) in any other manner approved by the Minister of Finance.
- (3) The Financial Secretary may, by Treasury Instructions, issue investment guidelines and reporting requirements.
- (4) Details of investments in public bodies in which the Government owns a shareholding must be disclosed in the financial statements under section 107 of the Public Finance Management Act 2001.

28E. Contracts for works, supplies and services - (1) A public body entering into a contract for the acquisition, disposal or management of goods, services and construction works must comply with its empowering Act or rules approved by its Board.

(2) Despite subsection (1), the Financial Secretary may, by Treasury Instructions or direction, issue procurement guidelines, subjecting a public body to Part 12 of the Public Finance Management Act 2001.

(3) Despite subsection (1), a public body shall comply with any procurement guideline issued under subsection (2) instead of any procurement guideline under its empowering Act or rules approved by its Board.

PART 8 OTHER MATTERS

29. Transfer of employment from the Public Service – (1) Except as otherwise provided in this Act, a public body shall consult with the Public Service Commission over the conditions of employment to be included in any agreement to be entered into with any employee transferring from employment in the Public Service, for the purpose of ensuring that such agreement contains terms that are no less favourable than those upon which the employee is employed immediately prior to transfer.

(2) For the avoidance of doubt, on the establishment of a public body all employees transferring employment from the

Public Service to the public body shall be transferred on terms no less favourable than those applicable immediately prior to transfer.

(3) An employee transferring employment from the Public Service to a Public Body is entitled, in accordance with any regulations made under this Act, to the payment of such entitlements as they have accumulated during their employment in the Public Service.

29A. Suspension with salary for one month – (1) As an exception to any suspension rule under empowering Act, if a chief executive or an employee of any public body is suspended, the chief executive or an employee is entitled to receive one (1) month's remuneration only effective from the date of the suspension.

(2) If a chief executive or employee is acquitted of any charge that resulted in suspension, the chief executive or employee must be reinstated without loss of any benefit or status and be paid the salary the chief executive or employee lost as a result of any suspension from duty.

(3) The Chief Executive Officer or employee is not entitled to his or her salary if, as a result of the investigation relating to the subject of his or her suspension, he or she is not reinstated.

(4) Employee under this section includes "contract employees".

30. Powers – The Head of State, Cabinet, Ministers, Controller and Auditor General, Financial Secretary, Chief Executive Officer, Secretary for Justice, Ombudsman, Commissioner of Police Service, each public body and each director of a public body have the power to do all lawful things necessary or convenient to be done for or in connection with the performance of their respective powers, functions and duties under this Act.

31. Delegation by Shareholding Ministers, Controller and Auditor General and Financial Secretary – (1) The shareholding Ministers, the Controller and Auditor General, the Chief Executive Officer and the Financial Secretary may delegate any of their respective powers, functions and duties under this Act in writing, except for this power of delegation.

(2) Where a delegation has occurred in accordance with this section, any decision or action taken by the person to whom the power, function or duty is delegated shall be regarded for all purposes as if it were a decision or action of the shareholding Minister, the Controller and Auditor General, the Chief Executive Officer or the Financial Secretary, as the case may be.

32. Regulations – (1) The Head of State acting on the advice of Cabinet may make regulations prescribing matters:

- (a) required or permitted by this Act to the prescribed including amendment of, or addition to, the Schedules; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) to impose penalties for any matter under this Act.

(2) All regulations made under this section shall be tabled before the Legislative Assembly by the Minister of Finance within 14 days of the date of the making thereof if the Legislative Assembly is then meeting, and if not, at the commencement of the next meeting.

SCHEDULES

SCHEDULE 1 **(Section 2(2))**

PART A - Public Trading Bodies

1. Accident Compensation Corporation
2. Agriculture Store Corporation
3. Airport Authority
4. Development Bank of Samoa
5. Electric Power Corporation
6. Gambling Control Authority
7. Housing Corporation
8. National Provident Fund
9. Land Transport Authority
10. Polynesian Airlines (Holdings) Ltd
11. Polynesian Airlines (Investments) Ltd
12. Polynesian Ltd
13. Public Trust Office

14. Samoa International Finance Authority
15. Samoa Land Corporation
16. Samoa Life Assurance Corporation
17. Samoa Ports Authority
18. Samoa Post Limited
19. Samoa Shipping Corporation
20. Samoa Shipping Services
21. Samoa Trust Estates Corporation
22. Samoa Water Authority
23. Unit Trust of Samoa (Management) Ltd

PART B - Public Beneficial Bodies

1. Samoa Sports Facilities Authority
2. Samoa Tourism Authority
3. National University of Samoa
4. National Health Services
5. National Kidney Foundation
6. Samoa Fire Emergency Services Authority
7. Samoa Health Promotion Foundation
8. Samoa Qualifications Authority
9. Scientific Research Organisation of Samoa

SCHEDULE 2

(Section 11)

**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, for the performance of a Community Service Obligation (CSO)**
 - 2.1 Before the Minister of Finance 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 may apply through the Ministry of Finance to issue a direction to provide a CSO.
 - 2.1.2 An application under subclause 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; and

- (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 should 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; and

- (g) the performance measures for delivering the CSO; and

- (h) approved application for Community Service Obligation will be registered in the registry for CSO with the Ministry of Finance, and would not be required to provide the requirements in 2.1.2(a) – (d) the next time they file an application under this Schedule.

- 2.1.3 Every application in subclause 2.1.1 containing any estimated funding by Government shall be subject to the

24 Public Bodies (Performance and Accountability) Act 2001

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 – 2.1.9 *Repealed by section 4(e) of the Public Bodies (Performance and Accountability) Amendment Regulations 2011.*

2.2, 2.2.1 – 2.2.4: *Repealed by section 4(e) of the Public Bodies (Performance and Accountability) Amendment Regulations 2011.*

2.3 Requirements to be included in the issuing of a CSO by the Shareholding Ministers

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 clause refers to the authority in section 10 of the Act 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.
- (g) *repealed by section 4(e) of the Public Bodies (Performance and Accountability) Amendment Regulations 2011.*

2.4 Transitional arrangements for public trading bodies who 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.

SCHEDULE 3
(Section 15)

**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 Act 2007; or
 - (iv) disqualified from being a Director under section 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;
- (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; and
- (h) Any other additional criteria drafted by the Committee established under subclause 3.2.1 in consultation with the Ministry and the existing board of the public trading body concerned and in accordance with international best practice, which is necessary for scrutinising a particular appointment or re-appointment of a director of a public trading body.

3.1.2 As an exception to any enactment, the following persons are not entitled to remuneration or other benefits for serving as a director of the board of a Public Trading Body or Public Beneficial Body:

- (a) a Member of Parliament;
- (b) a person employed or engaged under the Public Service Act 2004 or taken to be employed as a public servant under an enactment;
- (c) a person employed in any office of the Government or State established by an enactment;
- (d) *ex-officio* members of the board of a Public Trading Body or Public Beneficial Body;
- (e) a person employed or engaged by a Public Trading Body or Public Beneficial Body.

3.1.3 For the purposes of section 28 and subject to the empowering Act, the Cabinet may, in writing, direct the Chief Executive Officer of the Ministry of Finance to attend and participate in the meeting of any board of a public trading body of which the Chief Executive Officer is not a member.

3.1.4 If the Chief Executive Officer of the Ministry of Finance is unavailable to attend under Item 3.1.3, he or she may authorise a senior officer from the Ministry of Finance to attend, and participate in that meeting as his or her representative.

3.1.5 The Chief Executive Officer of the Ministry of Finance or his or her authorised representative does not have voting rights.

3.1.6 Items 3.1.3 to 3.1.5 do not apply to a board of a public trading body where the Chief Executive Officer of the Ministry of Finance is a member.

3.2 Procedures for the selection of directors of public trading bodies

3.2.1 An ad hoc Independent Selection Committee (“the Committee”) of at least 3 members, appointed by Cabinet for a term determined by Cabinet, to select persons to fill vacancies on a board. The Committee shall carry out responsibilities required by Cabinet in its terms of

- reference in addition to the Committee's responsibilities under this Schedule.
- 3.2.2 The Committee, in consultation with the Ministry and the existing board of 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 appointment.
- 3.2.3 The Committee shall advertise all public trading body boards' vacancies and required criteria as widely as possible both locally and overseas if required and can use television, radio, internet and newspapers, 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 at least two references. The statutory declaration and application are to be 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.
- 3.2.6 The Committee shall advise Cabinet of the applicants short-listed, the Committee's recommendation and reasons for its recommendation.
- 3.2.7 Cabinet may:
- (a) approve the appointment of the candidate recommended by the Committee to a board of a public trading body for which the candidate applied; or
 - (b) refuse the appointment of the candidate recommended by the Committee; and
 - (c) despite the recommendations by the Committee and the procedure for the selection of directors under clauses 3.2.1, 3.2.3, 3.2.4, 3.2.5 and 3.2.6, select or appoint a suitable person as a director to fill a vacancy on a board of a public trading body as Cabinet decides, even if that person was not recommended by the Committee.
- 3.2.8 A decision, or selection, or appointment, by Cabinet, of a person to fill a vacancy on a board of a public trading body under clause 3.2.8 is final.

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 two years or upwards; or
 - (e) is convicted of an offence relating to his or her duties as a director; or
 - (f) fails to complete the form for declaration of pecuniary interests and convictions as approved by the Chief Executive Officer under section 20 of this 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 the Ministry.

Part B Public Beneficial Bodies

The above provisions in Part A shall apply to Public Beneficial Bodies.

**SCHEDULE 4
(Sections 2 and 20(5))**

Repealed by section 6 of the Public Bodies (Performance and Accountability) Amendment Regulations 2011.

**SCHEDULE 5
(Section 22(3))**

Part A – Public Trading Bodies

- 5.1 A board of director of each public trading body shall prepare a corporate plan every 2 years:
- (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 first draft of its corporate plan under clause 5.1 above to the Financial Secretary 3 months before each planning year.
- 5.3 The board of directors of each public trading body shall forward a final draft of its corporate plan under clause 5.1 above to each of the shareholding Ministers and the Financial Secretary after review and advice of the Ministry of Finance.
- 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 subclause 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 subclause 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 A 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 planning period 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.

SCHEDULE 6

(Section 23(2))

**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. A Public Body shall prepare and submit:
 - 6.1 Quarterly reports to the Ministry 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 on the operations of the public body and a budget performance for that financial year together with audited financial statements to the Shareholding Ministers and Ministry within 4 months after the end of the public financial body's financial year.
 - 6.2A If the Financial Secretary requires from the Chief Executive Officer or a public body any information relating to any of the documents submitted under clause 6.2, the Chief Executive Officer or that public body must comply.
 - 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 subclause 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 The Ministry may require a public body to submit to the Ministry additional information necessary to assist the Ministry with its reporting responsibilities.
- 6.4 A public body shall submit to the Ministry any information required by the Ministry under clause 6.3.
- 6.5 A public body shall keep the Ministry 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 the Ministry 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 immediately if it is in session, and if not, at the commencement of the next following session.
- 6.7.2 Once the annual report and audited accounts required under clause 6.7.1 are laid before Parliament, the Minister shall publish the same.
- 6.7.3 When a public body's annual report is reproduced for publication or for other purposes, the financial statements and the report of the Chief Auditor General must be included in the reproduction.
- 6.7.4 The Ministry 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

1. Name of company – (1) The name of the company at the time of registration under the Act appears on the application for registration or for re-registration, as the case may be.

(2) The name of the company may be changed under section 11 of the Act only with the prior approval of all shareholders.

2. Private company – (1) The company is a private company.

(2) The company must not offer any of its shares or other securities to the public.

(3) The company must not have more than 100 shareholders.

(4) 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.

3. Rules – (1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act:

(a) these rules have effect and may be enforced as if they constituted a contract—

(i) between the company and its share-holders;
and

(ii) between the company and each director; and

(b) the shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2

SHARES AND SHAREHOLDERS

General provisions

4. Number of shares – (1) At the time of registration under the Act the company has the number of shares specified in the application for registration or re-registration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately 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.

5. Rights attaching to shares – Subject to clause 7(2), each share carries the following rights:

- (a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to—
 - (i) appoint or remove a director or auditor -
 - (ii) adopt new rules;
 - (iii) alter the company's rules;
 - (iv) approve a major transaction;
 - (v) approve an amalgamation of the company;
 - (vi) approve re-registration of the company as a public company;
 - (vii) put the company into liquidation;
 - (viii) 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 a liquidation.

6. Issue of shares – The directors may issue shares:

- (a) under clause 7; or
- (b) to shareholders or any other persons on any other basis, with the prior approval of all shareholders.

7. Process for issuing shares – (1) The directors may issue shares in accordance with the following process:

- (a) the shares must first be offered to all shareholders proportionally, pursuant to an offer that if accepted by all shareholders would not affect relative voting or distribution rights, on such terms as the directors think fit. The shareholders must have a reasonable opportunity to consider and respond to the offer;
- (b) any shares not accepted by the shareholders to whom they were offered under paragraph (a) must then be offered to those shareholders who did accept the shares offered to them under paragraph (a), on

a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under paragraph (a);

- (c) any shares offered under paragraph (b) but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).

(2) With the prior approval of all shareholders, the company may issue more than 1 class of shares. In particular, shares may be issued that:

- (a) are redeemable; or
- (b) confer preferential rights to distributions of capital or income; or
- (c) confer special, limited, or conditional voting rights; or
- (d) do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8. Transferability of shares – The shares of the company are, subject to clauses 12(1) and 21(4) and their terms of issue, transferable by entry in the share register under clause 21(1) to (3).

Share register

9. Company to keep share register – (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 last known address of each person who is, or has within the last 7 years been, a shareholder; and
- (b) the number of shares of each class held by each shareholder within 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.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

10. Form and location of share register – The share register must be kept:

- (a) in a form that complies with clause 65; 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 119 of the Act.

11. Status of registered shareholder – (1) 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.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If 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.

(4) A 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 on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

Pre-emptive rights

12. Restriction on selling shares – (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 of the same class under the procedure set out in clauses 13 to 20, unless all the other shareholders agree otherwise.

(2) Any share transfer delivered to the company by a shareholder who has not complied with subclause (1) is of no effect, and the transfer must not be entered on the share register.

13. Selling shareholder to give written notice to company – A shareholder who wishes to dispose of some or all of his or her shares (selling shareholder) must give written notice to the company of:

- (a) the number of shares to be sold; and
- (b) the price at which the selling shareholder is willing to sell the shares.

14. Company to give written notice to shareholders – The company must within 10 working days give a copy of the written notice referred to in clause 13 to each shareholder, together with a notice advising each holder of shares of the same class:

- (a) that that shareholder is entitled to purchase a proportional number of the shares that the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors); and
- (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.

15. Written notice is offer by selling shareholder – The notice referred to in clause 14 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 clause 13, on the terms set out in these rules.

16. Notice agreeing to purchase shares given within specified time – Subject to clause 19, 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 clause 14:

- (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; and
- (b) the company must immediately advise the selling shareholder of the acceptance, and send him or her a copy of—
 - (i) the notice given under clause 14 by the company; and
 - (ii) the notice of acceptance given by the shareholder in question.

17. Notice agreeing to purchase shares not given within specified time – (1) 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.

(2) Clauses 15 and 16 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this clause.

18. No shareholder wishes to purchase selling shareholder's shares – 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.

19. Selling shareholder not obliged to sell some shares – (1) The selling shareholder is not obliged to sell some only of the shares that he or she wishes to dispose of.

(2) In the event that the selling shareholder has not been notified under clause 16 of acceptances by other shareholders in respect of all the shares referred to in the notice given under clause 13 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.

(3) If such a notice is given, clause 18 applies as if no shareholder had wished to purchase the selling shareholder's shares.

20. Directors may require evidence of terms – 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.

Transfer of shares

21. Transfer of shares – (1) If 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.

(2) 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.

(3) Subject to clause 12 and subclause (4), the company must immediately on receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.

(4) 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.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

22. Share certificates – (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.

(2) In receipt of an application for a share certificate under subclause (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;

1 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 class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If 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.

(4) If shares to which a share certificate relates 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.

Meetings of shareholders

23. Meetings of shareholders – (1) Clauses 24 to 32 set out the procedure to be followed at and in relation to meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

24. Notice of meetings – (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 10 working days before the meeting.

(2) The notice must set out:

(a) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) the text of any special resolution to be submitted to the meeting.

(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.

(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.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

25. Methods of holding meetings – 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.

26. Quorum – (1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(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.

(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.

(4) 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.

27. *Chairperson (repealed by Composition of Boards of Public Bodies Act 2012, No.15 (Note that this was previously Clauses 38, 38.1 and 38.2))*

28. Voting – (1) In the case of a meeting of shareholders held under clause 25(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.

(2) In the case of a meeting of shareholders held under clause 25(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.

(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 under subclause (4).

(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% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

29. Votes of joint shareholders – If 2 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.

30. Proxies – (1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder.

(4) The notice must state whether the appointment is for a particular meeting, or for a specified term.

(5) 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.

31. Corporations may act by representatives – (1) A corporation that 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.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

32. Minutes – (1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

Miscellaneous

33. Annual meetings and special meetings of shareholders

– (1) Subject to subclause (3) and clause 34(3), 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 clause 70(1)(a), not later than 20 working days after the financial statements are required to be completed); and
- (c) not later than 15 months after the previous annual meeting.

(2) The meeting must be held on the date on which it is called to be held.

(3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.

(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 5% of the votes that may be cast on that issue.

34. Written resolutions of shareholders – (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.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.

(3) 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 subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

(5) A resolution may be signed under subclause (1) without any prior notice being given to shareholders.

35. Voting in interest groups – If the company proposes to take action that affects the rights attached to shares within the meaning of section 54 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 54(3) of the Act.

36. Shareholders entitled to receive distributions – (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.

(2) A date fixed under subclause (1) must not precede by more than 20 working days the date on which the proposed action will be taken.

37. Shareholders entitled to exercise pre-emptive rights –

The shareholders who are entitled to pre-emptive rights to acquire shares under clause 12 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 clause 13.

38. Shareholders entitled to attend and vote at meetings –

(1) 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.

(2) A date fixed under subclause (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) 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 subclause (1)(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.

(4) A person named in a list prepared under subclause (3) 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 subclause (3).

(5) A shareholder may on 2 working days' notice examine a list prepared under subclause (3) during normal business hours at the registered office of the company.

39. Distributions to shareholders – (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.

(2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders:

- (a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or
- (b) on any other basis, with the prior approval of all shareholders.

(3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons approving the distribution, under section 29 of the Act.

40. Company may acquire its own shares and provide financial assistance – (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 clause 39(1).

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(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 clause 39(1); and
- (b) all shareholders have approved the giving of the assistance.

41. Annual report to shareholders – (1) Subject to subclause (2), 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 130:

- (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.

(2) The directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring such a report to be prepared.

(3) If the directors are not required to prepare an annual report in respect of an accounting period, they must send a notice to each shareholder to that effect within the period referred to in subclause (1).

(4) An annual report for the company must:

- (a) be in writing and be dated; and
- (b) include financial statements for the accounting period that comply with section 130; and
- (c) if an auditor's report is required in relation to the financial statements included in the report, include that auditor's report; and
- (d) 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
- (e) contain any other information that may be required by regulations made under the Act; and
- (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

42. Deemed approval by all shareholders for certain purposes – For the purposes of clauses 6, 7(2), and 40(1) and (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 clause 75; 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 rules have responded within 10 working days approving that decision.

PART 3 DIRECTORS

43. Appointment and removal of directors – (1) The shareholders may by ordinary resolution fix the number of directors of the company.

(2) A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 34(1).

(3) A director vacates office if he or she:

- (a) is removed from office in accordance with subclause (2); or
- (b) resigns in accordance with clause 44; or
- (c) becomes disqualified from being a director under section 85 of the Act; or
- (d) dies.

44. Resignation of director – (1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), a notice of resignation is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 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 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(4) A notice of resignation given by the sole director of the company does not take effect, despite 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 subclause (3)(a); or
- (b) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

45. Notice of change in directors – (1) The company must ensure that notice in the prescribed form of the following is delivered to the Registrar:

- (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;
- (b) a change in the name or the residential address of a director of the company.

(2) 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.

46. Powers and duties of directors – (1) Subject to section 50 of the 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.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

(4) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(5) These rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) 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 interests of the company; and
- (b) a director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

47. Standard of care of directors – 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.

48. Obligations of directors in connection with insolvency – (1) A director of the company 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 71 of the Act, if the director:

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

(2) At a meeting called under section 71 of the Act the directors must consider whether to:

- (a) appoint an administrator or liquidator; or
- (b) continue to carry on the business of the company.

49. Interested directors – (1) 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 unless:

- (a) the Act expressly authorises the director to exercise the relevant power despite such an interest; or
- (b) the director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either—

- (i) these rules expressly authorise the director to exercise the relevant power despite such an interest; or
- (ii) the matter in question has been approved by shareholders under section 51 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing:

- (a) if there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company; or
- (b) if paragraph (a) does not apply, to all shareholders other than the director.

(3) 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 subclause (2).

(4) 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 111 of the Act.

(5) A transaction entered into by the company as the result of action taken by a director in breach of section 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

50. Use and disclosure of company information – (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) if 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 51 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.

(2) No director may vote on a resolution to approve such terms in relation to himself or herself.

51. Indemnities and insurance for directors or employees

– (1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of:

- (a) shareholders by ordinary resolution.; or
- (b) all shareholders under section 51 of the Act.

(2) No director may vote on a resolution concerning an indemnity or insurance to be provided for the director.

(3) In this clause:

“director” includes:

- (a) a person who is liable under any of sections 65 to 67 of the Act by virtue of section 73 of the Act; and
- (b) a former director,

“indemnify” includes relieve or excuse from liability, whether before or after the liability arises; and
“indemnity” has a corresponding meaning.

52. Remuneration of directors – (1) Directors may receive remuneration and other benefits from the company with the approval of:

- (a) shareholders by ordinary resolution; or
- (b) all shareholders under section 51 of the Act.

(2) No director may vote on a resolution concerning remuneration or benefits to be received by the director.

53. Procedure at meetings of directors – (1) Clauses 54 to 60 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

54. Chairperson – (1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(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 1 of their number to be chairperson of the meeting.

55. Notice of meeting – (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 clause.

(2) Not less than 24 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.

(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.

56. Methods of holding meetings – 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.

57. Quorum – (1) A quorum for a meeting of directors is a majority of the directors.

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

58. Voting – (1) A director has 1 vote.

(2) The chairperson has a casting vote.

(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.

(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.

59. Minutes – The directors must ensure that minutes are kept of all proceedings at meetings of the directors.

60. Unanimous resolution – (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.

(2) The resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of the resolution must be entered in the minute book of the directors' proceedings.

61. Managing director and other executive directors – (1)

The directors may, appoint a director as managing director for such period and on such terms as they think fit.

(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.

(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.

62. Delegation to managing director – (1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that can be lawfully delegated.

(2) The delegation may be withdrawn or varied by the directors.

(3) 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.

63. Remuneration of managing director and director – (1)

Subject to shareholder approval under clause 52, the managing director, or a director (other than the managing director) who is employed by the company, may be paid such remuneration as he or she may agree with the directors.

(2) 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.

**PART 4
COMPANY RECORDS**

64. Company records – (1) The company must keep all 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 119 of the Act:

- (a) the rules 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 holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;
- (f) copies of all financial statements required to be completed under section 130 of the Act for the last 7 completed accounting periods of the company;
- (g) the accounting records required by section 129 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;
- (h) the share register.

(2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) 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 117(2) of the Act.

65. Form of records – (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 usable for subsequent reference, and convertible into written form.
- (2) The directors must ensure that adequate measures exist to:
- (a) prevent the records being falsified; and
 - (b) detect any falsification of them.

66. Access to records – (1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

(2) A shareholder of the company is entitled:

- (a) to inspect the documents referred to in section 121 of the Act, in the manner specified in section 123 of the Act; and
 - (b) to require copies of or extracts from any document that he or she may inspect within 5 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.
- (3) The fee may be determined by any director, subject to any directions from the directors.

67. Documents to be sent to Registrar – In addition to any annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act:

- (a) notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;

- (b) notice of a change in the registered office or postal address of the company under section 18 of the Act;
- (c) notice of the issue of shares by the company, under section 26 of the Act;
- (d) notice of the acquisition by the company of its own shares, under section 31 of the Act;
- (e) notice of the redemption of a share, under section 35 of the Act;
- (f) 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 88 of the Act;
- (g) notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;
- (h) 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 119 of the Act;
- (i) documents requested by the Registrar under section 312 of the Act.

68. Documents to be sent to shareholders – In addition to any annual report required under section 56 of the Act, the company must send all the following documents to shareholders under the Act:

- (a) notice of any repurchase of shares to which section 31(4) of the Act applies;
- (b) notice of a written resolution approved under section 52 of the Act;
- (c) financial statements required to be sent under section 130 of the Act;
- (d) any written statement by an auditor under section 136 of the Act;
- (e) any report by an auditor under section 138 of the Act.

PART 5 ACCOUNTS AND AUDIT

69. Accounting records to be kept – (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 130 of the Act; and
 - (d) will enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting clause 68, the accounting records must contain:
- (a) entries of money received and spent each day and the matters to which it relates; and
 - (b) a record of the assets and liabilities of the company; and
 - (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; and
 - (d) if the company's business involves providing services, a record of services provided and relevant invoices.
- (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 subclause (2); and
 - (b) a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.
- (4) The accounting records must be kept:
- (a) in a form permitted under clause 65; and
 - (b) at the registered office of the company, or any other place permitted under section 119 of the Act.

70. Financial statements to be prepared – (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 subclause (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 56 of the Act.
- (2)** The financial statements of the company must:
- (a) give a true and fair view of the matters to which they relate; and
 - (b) comply with any applicable regulations made under the Act; and
 - (c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.
- (3)** The following periods must not exceed 15 months:
- (a) the period between the date of incorporation of the company and its first balance date:
 - (b) the period between any 2 balance dates of the company.
- (4)** In this clause, “financial statements”, for the company and a balance date, means:
- (a) a statement of financial position for the entity as at the balance date; and
 - (b) in the case of—
 - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company

in relation to the accounting period ending at the balance date; and

- (c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
- (d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and
- (e) any notes or documents giving information relating to the statement of financial position and other statements.

71. Appointment of auditor – (1) If required to do so under subclause (2), the company must appoint an auditor who is qualified to hold that office under section 135 of the Act to:

- (a) audit the financial statements of the company in respect of an accounting period; and
- (b) hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under subclause (3).

(2) The company must appoint an auditor within 30 working days if:

- (a) a shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of an accounting period requiring the financial statements of the company for that period to be audited; or
- (b) a vacancy in the office of auditor arises before the financial statements in respect of a period for which an audit is required have been audited.

(3) An auditor ceases to hold office if he or she:

- (a) resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
- (b) is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her

- place, following notice to the auditor in accordance with section 133 of the Act; or
- (c) becomes disqualified from being the auditor of the company under section 135; or
 - (d) dies; or
 - (e) is adjudged to be mentally defective under the Mental Health Act 2007; or
 - (f) ceases to hold office under subclause (5); or
 - (g) is removed by all shareholders under subclause (6).
- (4)** An auditor may be appointed:
- (a) by ordinary resolution; or
 - (b) if the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must within 10 working days give notice of the appointment to all shareholders.
- (5)** If the company is required to appoint an auditor in respect of an accounting period but is not required to do so in respect of a subsequent accounting period:
- (a) the audit of the financial statements of the company for the accounting period in respect of which an audit is required must be completed in accordance with this section; and
 - (b) the directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that the company is no longer required to appoint an auditor, and that the auditor will cease to hold office unless a notice is given by shareholders under subclause (2)(a) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and
 - (c) if a notice has been given under paragraph (b), and no notice under subclause (2)(a) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of—
 - (i) the date specified in the notice; or
 - (ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.
- (6)** Despite the other provisions of this clause, all shareholders may agree in writing:

- (a) to dispense with an audit for any accounting period;
and
 - (b) to remove the auditor of the company.
- (7) The fees payable to the auditor must be agreed between the auditor and the directors.

72. Auditor's attendance at shareholders' meeting – The directors must ensure that an auditor of the company:

- (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 that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6

LIQUIDATION AND REMOVAL FROM REGISTER

73. Resolution to appoint liquidator – (1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

74. Distribution of surplus assets – (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.

(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 or different classes of shareholders.

PART 7

MISCELLANEOUS

75. Service of documents on shareholders – (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) faxed to a fax number used by that person.

(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 345 or 347 of the Act, as the case may be.

76. Interpretation – (1) In this Schedule, “Act” means the Companies Act 2001.

(2) Unless the context otherwise requires, a term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

SCHEDULE 8 **(Sections 16, 17, 18, 19 and 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 3 of the Act; and
- (c) Being an organisation that exhibits a sense of social responsibility by having regard to the interests of

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 47(2) of the Audit Act 2013.

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 under 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, 60 or 61 of the Companies Act 2001 is voidable at the option of the PTB under 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

In 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; and
- (b) operate in as efficient and effective manner as comparable organisations 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 Act, 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 Act 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 47(2) of the Audit Act 2013.

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.

REVISION NOTES 2008 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 to 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Amendments have been made to up-date references to offices, officers and statutes. (e.g. reference to the Companies Act 2001);
- (c) Insertion of the commencement date;
- (d) References to the male gender made gender neutral;
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
- (i) “Every” and “any” changed to “a/an” or “each”;
- (ii) Present tense drafting style:
- “shall be” changed to “is/are”;
 - “shall have” changed to “has”;
 - “from time to time” removed;
- (iii) Offence provisions: “shall be guilty” changed to “commits”;
- (iv) Use of plain language:
- “notwithstanding” changed to “despite”;
 - “save” changed to “except”;
 - “lay” changed to “table”;
 - “in relation to” changed to “for”;

74 Public Bodies (Performance and Accountability) Act 2001

- “where” changed to “if”;
- (v) Numbers in words changed to figures;
- (vi) Removal of superfluous terms:
 - “the generality of”;
 - “null and” before “void”;
 - “the provisions of”;
- (vii) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections;
- (viii) Section divided and re-paragraphed:
 - Section 24(9) divided into subsection (9A), (9B) and (9C);
 - Section 26(1) re-paragraphed with paragraphs (a) and (b);
- (f) Under section 6(3) and (4) substitute “pursuant to” with “under”.

The following amendments have been made to specific sections of the Act to incorporate amendments not noted in the publication of the *Consolidated and Revised Statutes of Samoa 2007* –

By the Public Bodies (Performance and Accountability) Regulations 2002
(commenced 19 March 2003)

Schedules - Schedules 1-8 were inserted by regulation 3.

By the Public Bodies (Performance and Accountability) Amendment Act 2005
(No. 5), (commenced on 22 April 2005):

- Section 2(1)** - The definition of “Governing legislation” was deleted and replaced with a definition of “Empowering Act”. The definitions for “Public Body”, “Public Beneficial Body”, “Public Trading Body” and “Shareholding Ministers” were deleted and replaced with new definitions for those terms. The word “bare” was replaced with “bear” in the definition of “Shares”. Subsections (2) and (4) were deleted.
- Section 2(2)** - The words “Schedule 1 provides the list of Public Bodies” were deleted.
- Section 5** - This section was repealed and replaced with its current form.
- Section 6** - Subsection (1) was deleted and replaced with its current form. All words after “purpose” were deleted from subsection (4). Subsection (5) was deleted and replaced with its current form. The words “Responsible Minister” were deleted from

- subsection (7) and replaced by “Shareholding Ministers”.
- Section 8** - This section was repealed and replaced with its current form.
- Section 9** - Paragraph (c) of subsection (1) was deleted and replaced with its current form. Paragraph (d) was deleted from subsection (1).
- Section 10** - The word “universal” was deleted from paragraph (a).
- Section 12** - Subsections (2) and (3) were deleted. The numbering for subsection (1) was deleted.
- Section 13** - The fines expressed in the Samoan tala were removed.
- Section 14** - This section was repealed and replaced with its current form.
- Section 15** - Subsections (4) and (5) were deleted.
- Section 16** - This section was repealed and replaced with its current form.
- Section 17** - The words “section 8 of the Act” were deleted and replaced with references to this Act in subsections (1) and (2). The word “act” was replaced with “Act” in subsection (2). The fine expressed in the Samoan tala was removed.
- Section 18** - This section was repealed and replaced with its current form.
- Section 19** - The word “excellent” was deleted from subsections (1) and (2). The fine expressed in the Samoan tala was removed.
- Section 20** - Subsections (1), (3) and (4) were repealed and replaced with their current forms. Subsection (6) and (7) were deleted.
- Section 21** - The fine expressed in the Samoan tala was removed.
- Section 22** - Subsections (1), (3) and (6) were repealed. Subsections (1) and (3) were replaced with their current forms. Subsections (4) and (5) were repealed. New subsections (4) and (5) were inserted.

76 Public Bodies (Performance and Accountability) Act 2001

- Section 23** - This section was repealed and replaced with its current form.
- Section 24** - The words “governing legislation” were deleted in subsection (4) and replaced with “empowering Act”.
- Section 25** - The words “any governing legislation” were deleted and replaced with the words “an empowering Act, Cabinet acting on the advice of”.
- Section 26** - The words “governing legislation” were deleted in subsection (1) and replaced with “empowering Act”.
- Section 27** - The words “governing legislation” were deleted from subsection (1) and replaced with “empowering Act”. The word “prescribed” was deleted from subsection (2) and replaced with “set”. Subsection (3) was deleted and replaced with its current form.
- Part 7** - A new Part was inserted.
- Section 30** - The word “lawful” was inserted.
- Section 31** - The words “save for this power of delegation” were deleted.
- Section 32** - A new subsection (2) was inserted and the original provision became subsection (1). Subsection 1(a) was deleted and replaced with its current form.
- Schedules** - The heading of Schedule 5 was amended. Schedules 7 and 8 were inserted. Note: All Schedules are blank. This represents the current state of each Schedule.

The following amendments have been made since the publication of the *Consolidated and Revised Statutes of Samoa 2007*–

By the *Public Bodies (Performance and Accountability) Amendment Regulations 2011* signed by Head of State on 30 May 2011:

- Schedule 1** - Part A amended as follows:
 - (a) for “Accident Compensation Board” substituted with “Accident Compensation Corporation”.

- (b) by deleting Computer Services Limited, SamoaTel, Televisé Samoa and Totalisator Agency Board.
- (c) by inserting “Land Transport Authority” after “National Provident Fund”.
- (d) by inserting “Samoa Post Limited” after “Samoa Ports Authority”.
- (e) by inserting “Unit Trust of Samoa (Management) Ltd” after “Samoa Water Authority”.

- Part B amended as follows:

- (a) for “Apia Park Board” substituting “Samoa Sports Facilities Authority”.
- (b) for “Samoa Visitors Bureau” substituting “Samoa Tourism Authority”.
- (c) by deleting “Samoa Polytechnic”.
- (d) by inserting the following after “National University of Samoa”:
 - “4. National Health Services”.
 - “5. National Kidney Foundation”.
 - “6. Samoa Fire and Emergency Services Authority”.
 - “7. Samoa Qualifications Authority”.
 - “8. Scientific Research Organisation of Samoa”.

Schedule 2

- amended as follows:

- (a) in clause 2, by omitting “(other than the Responsible Minister)”.
- (b) in clause 2.1, by omitting “Responsible” and inserting “of Finance” after “Minister”.
- (c) by substituting subclause 2.1.1 with the current clause 2.1.1.
- (d) by inserting a new subclause 2.1.2(h).
- (e) by repealing clauses 2.2 and subclauses 2.1.4, 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.9, 2.2.1, 2.2.2, 2.2.3 and 2.2.4.
- (f) in clause 2.3, by omitting “Responsible” and inserting “of Finance” after “Minister”.
- (g) By repealing subclause 2.3.1(g).

Schedule 3

- amended as follows:

- (a) by substituting subclause 3.3.1(f) with the current subclause 3.3.1(f).
- (b) in subclause 3.4.3, by omitting “The replacement of all ex-officio Board members shall be made within 5 years from the coming into force of this Schedule.”.

78 *Public Bodies (Performance and Accountability) Act 2001*

- Schedule 4** - Schedule 4 is repealed.
- Schedule 5** - amended as follows:
- (a) in clause 5.1, for “every year” substituting “every two years”.
 - (b) in clause 5.2:
 - o by inserting “first” before “draft of its Corporate Plan”.
 - o By omitting “each Shareholding Minister, the Controller and Chief Auditor and”.
 - o For “financial year” by substituting “planning period”.
 - (c) by substituting clause 5.3 with the current clause 5.3.
 - (d) in subclause 5.4.7, for “financial year” substituting “planning period”.
- Schedule 7** - Although section 8 of the Amendment Regulations refers to Schedule 1 (as containing the Model Rules for Private Company), the Model Articles for Public Trading Bodies were deleted and substituted with the Model Rules for Private Company in Schedule 2 (and not Schedule 1) of the Companies Act 2001 (as Schedule 2 is the correct Schedule containing the Model Rules for Private Company).

By the *Public Bodies (Performance and Accountability) Amendment Regulations 2011* signed by Head of State on 22 November 2011:

- Schedule 3** - Item 3.2.7 of Schedule 3 was substituted with the current item 3.2.7.
- A new item 3.2.8 was inserted.

By the *Composition of Boards of Public Bodies Act 2012, No.15*, (commenced on 1 April 2012)

- Schedule 7** - clause 27 (previously clauses 38, 38.1 and 38.2) was repealed.

By the *Public Bodies (Performance and Accountability) Amendment Regulations 2013* signed by the Head of State on 6 May 2013:

- Schedule 3 - item 3.1.1(g)(ii) amended
- new item 3.1.2 inserted

By the *Public Bodies (Performance and Accountability) Amendment Regulations 2013* signed by the Head of State on 11 June 2013:

- Schedule 3 - new item 3.1.3 – 3.1.6 inserted. The amending Regulations incorrectly numbered these items as 3.1.2 – 3.1.5. The revision powers of the Attorney General under the Revision and Publication of Laws Act 2008 have been invoked to correct these errors.
- Part B – substituted.

By the *Public Bodies (Performance and Accountability) Amendment Act 2012* (commenced on 26 January 2012 – Date of Assent):

Sections 9, 10, 20(1) and 28(3)(a)

- repealed and substituted

section 20(3) and (4)

- repealed

section 22(1)

- amended to replace “draft” with “approved”.

By the *Audit Act 2013, No.22* (commenced on 27 January 2014):

- references to “Controller and Chief Auditor” replaced with the “Controller and Auditor General”
- section 26 amended and 27 repealed.

NB: The title of “Financial Secretary” has been retained but this should be read as a reference to the Chief Executive Officer of the Ministry of Finance.

By the *Health Promotion Foundation Act 2015* (commenced on 1 January 2016):

- Schedule 1** inserted “Samoa Health Promotion Foundation” in its correct alphabetical position.

By the *Public Bodies (Performance and Accountability) Amendment Act 2015* (commenced on 25 April 2014):

Long Title (paragraph (d)) - After “Shareholding Ministers” insert “and the Ministry of Public Enterprises”;

Section 2 for the definitions of “responsible Minister” and “public body”, substituted new definitions; inserted new definitions in their alphabetical order;

Section 5(1) Deleted “at a time and in such form of registration as determined by the Minister of Finance”;

Section 5(3) For “shareholding Ministers on the advice of the Financial Secretary” substituted “responsible Minister on the advice of the Chief Executive Officer”;

80 *Public Bodies (Performance and Accountability) Act 2001*

- Section 6(5)** Deleted “public bodies under the Minister’s portfolio”, substitute “all public bodies”
- Section 7(5), (6)** Deleted “Minister of Finance” and substitute “Shareholding Ministers”
- Section 22** inserted new section 22A;
Subsection (5) is repealed;
- Section 23** for section heading, substitute “Reports, Financial Statements and Financial activities”;
inserted new subsections (2),(3) and (4);
inserted new sections 23A and 23B;
- Section 26** For subsections (1)(a), (3), (4) and section heading, delete “Financial Secretary” and substitute “Chief Executive Officer”;
inserted new subsection (1A);
- Section 27** inserted new section 27A;
- Part 7a** inserted new “Part 7A”;
- Section 28** for subsection (1) and section heading, after “Financial secretary” insert “and the Chief Executive Officer”, and after “shall” insert “where necessary”;
inserted new sections 28A, 28B, 28C, 28D and 28E.
- Section 30** After “Financial secretary” insert “Chief Executive officer,”
- Section 31** For subsection (1) and section heading after “Auditor General” insert “the Chief Executive officer”
For subsection (2) after “Auditor General” insert , the Chief Executive Officer”;
- Schedule 1** After “5. Electric Power Corporation” insert “6. Gambling Control Authority”;
After “12. Public Trust Office” Insert “Samoa International Finance Authority”, and renumbered accordingly.
- Schedule 2** For clause 2.3 delete “Minister of Finance” and substitute with “Shareholding Ministers”;
- Schedule 6** For clause 6 after “shall” insert “prepare and”;
For clause 6.2, delete “An annual report and audited accounts to Treasury no later than 4 months after the end of the public body’s financial year” and substituted with “An annual report on the operations of the public body and a budget performance for that financial year together with audited financial statements to the Shareholding Ministers and Ministry within 4 months after the end of the public body’s financial year”;
Inserted new clause 6.2A;
For clause 6.7.2 deleted “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’s receiving them, the Minister shall cause for these to be published not later than 5 weeks after that day.” and substituted with “Once the annual report and audited accounts required under clause 6.7.1 are laid before

Parliament, the responsible Minister shall publish the same.”;

Inserted new clauses 6.7.3 and 6.7.4;

substituted “Financial Secretary” with “Chief Executive Officer where necessary throughout the Act;

substituted “Minister of Finance” with “Shareholding Ministers” where necessary throughout the Act;

substituted “Treasury” with “Ministry” where necessary throughout the Bill.

By the *Miscellaneous (Board of Public Bodies) Amendment Act 2020, No 6*, (commenced on 28 January 2020):

Section 15A new section 15A inserted after section 15.

By the *Miscellaneous (Salary Conditions Upon Suspension) Amendment Act 2021 No. 6* (commenced on 3 March 2021):

Section 29A inserted new section.

*This Act is administered
by the Ministry of Finance.*