

PUBLIC ENTERPRISE MONITORING COMMISSION ACT, 2013*(Act No. 3 of 2013)***ARRANGEMENT OF SECTIONS**

Sections

PART 1 - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application of this Act
4. Objective of a Public Enterprise

PART II - PUBLIC ENTERPRISE MONITORING COMMISSION

5. Establishment of the Commission
6. Objects of the Commission
7. Members of the Commission
8. Funds of the Commission
9. Financial year
10. Audit of accounts
11. Functions of the Commission
12. Powers and Duties of the Commission
13. Chief Executive Officer of the Commission
14. Appointment of employees of the Commission
15. Report
16. Returns and information
17. Furnishing of information to the President
18. Protection for action taken under this Act
19. Offences
20. Power of the Commission to make rules

PART III - CHIEF EXECUTIVE OFFICER

21. Chief Executive Officer
22. Composition of the Board

PART IV - BOARDS

23. Other Employees
24. Criteria for Appointment
25. Positions on Board
26. Remuneration of Board Members
27. Procedures of Board
28. Committees of Board
29. Chief Finance Officer
30. Directions of Responsible Minister
31. Audit
32. Protection for actions in good faith
33. Validity of decisions in certain circumstances

PART V - REPORTING OBLIGATIONS

34. Statement of corporate intent
35. Contents of statement
36. Annual report
37. Annual report to be laid before the National Assembly
38. Monthly report to the Commission
39. Estimates and Projections
40. Other requests
41. Report by the Commission

PART VI - MISCELLANEOUS

42. Powers of Responsible Minister
43. Confidentiality
44. Settlement of certain disputes
45. Liquidation of Public Enterprise
46. Regulations
47. This Act to prevail over certain laws
48. Repeal and savings

SCHEDULES



**PUBLIC ENTERPRISE MONITORING COMMISSION
ACT, 2013**

(Act No. 3 of 2013)

I assent



A handwritten signature in black ink, appearing to read "Michel".

J. A. Michel
President

17th April, 2013

AN ACT to establish a Public Enterprise Monitoring Commission in order to ensure that Public Enterprises are properly controlled and managed for the purposes of better performance, transparency and accountability, to improve efficiency and competitiveness of the economy, to foster and accelerate the macro-economic stability of the country and to provide for matters connected therewith.

ENACTED by the President and the National Assembly.

PART 1 - PRELIMINARY

1. This Act may be cited as the Public Enterprise Monitoring Commission Act, 2013 and shall come into operation on such date as the Minister of Finance may appoint by Notice published in the *Gazette*.

Short title and
commencement

Interpretation

2. In this Act—

“Board” means—

- (a) where a Public Enterprise is a company, the Board of Directors of such company;
- (b) where a Public Enterprise is not a company, the persons occupying responsible positions, that are comparable with those of the Directors of a company, in or in relation to such Public Enterprise under its governing law and regulations;

“Commission” means the Public Enterprise Monitoring Commission established under section 5;

“Commissioner” means a member of the Commission appointed under section 7;

“Director” means a person appointed as Director, trustee or any person being a Member of the Board of a Public Enterprise;

“governing law” means the Act or Decree which establishes and provides for the objectives, purposes and governance of the Public Enterprise;

“Organisation” includes a company, a body corporate, a statutory corporation, a statutory board, a trust, a partnership or a joint venture;

“Public Enterprise” means an organisation specified in column 1 of Schedule 1 and any subsidiary of such organisation;

“Responsible Minister” means the Minister for the time being responsible for the relevant Public Enterprise specified in column 2 of Schedule 1;

Application of
this Act

3. Public Enterprises in respect of which there exist a management contract between the Government of Seychelles and a third party may be exempted from the application of—

- (a) Part III - Chief Executive officers;
 - (b) Part IV - Board,
- of the Act, subject to the approval of the Minister of Finance.

4. The principal objective of a Public Enterprise is to be a successful business organisation and to achieve this objective —

Objective of a Public Enterprise

- (a) a commercially oriented Public Enterprise must strive to be as profitable and efficient as comparable businesses that are not owned by the public; and
- (b) a non commercially oriented Public Enterprise must strive to exhibit a sense of social responsibility and awareness of the interests of the community in which it operates, while ensuring the long term financial sustainability of the Public Enterprise.

PART II - PUBLIC ENTERPRISE MONITORING COMMISSION

5.(1) There is hereby established in accordance with the provisions of this Act a Commission to be known as the Public Enterprise Monitoring Commission (in this Act referred to as "Commission").

Establishment of the Commission

(2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name.

6.(1) The principal object of the Commission is to monitor and evaluate the overall performance of the Public Enterprises, ensure efficient operation of such Enterprises, promote ethics of good governance in all business transactions, including financial matters such as investments and budget, give recommendations to improve performance and thus increase the return on investments.

Object of the Commission

(2) The Responsible Minister shall be responsible for policy formulation and other technical aspects of the operation in respect of such Public Enterprise.

Commissioners

7.(1) The Commission shall consist of not less than 5 and not more than 7 Commissioners as the Minister may from time to time determine.

(2) The Commissioners shall be appointed by the Minister from amongst persons appearing to be qualified, on the reason of having had experience of, and having shown capacity in matters relating to industry, trade, finance, science or administration not including Chief Executive Officer or Member of a Board of a Public Enterprise.

(3) The Minister shall appoint a Chairperson from amongst the Commissioners.

(4) A Commissioner shall hold office for such period, not exceeding 3 years, as the Minister may direct; but any Commissioner shall be eligible for re-appointment.

(5) The Minister may appoint any person appearing to have the qualifications necessary for appointment under the provisions of subsection (2) as a Commissioner to act temporarily in the place of any Commissioner in the case of the absence or inability of such Commissioner to act.

(6) Any Commissioner may at any time resign his office by instrument in writing addressed to the Chairperson, who shall forthwith cause it to be forwarded to the Minister.

(7) The Minister may at any time revoke the appointment of any Commissioner if he thinks it expedient to do so.

Funds of the
Commission

8.(1) The Commission shall have its own Fund.

(2) There shall be paid into the Fund of the Commission—

- (a) all such sums of money as may be voted upon from time to time by National Assembly for the use of the Commission;

- (b) all such sums of money as may be received by the Commission in the exercise, performance and discharge of its powers, duties and functions;
- (c) all such sums of money as may be received by the Commission by way of fees, grants, donations, gifts, bequests from any source whatsoever, whether domestic or foreign; and
- (d) all sums of money borrowed by the Commission.

(3) There shall be paid out of the Fund of the Commission, all such sums of money as may be required to defray any expenditure incurred by the Commission in the exercise, performance and discharge of its powers, duties and functions.

9. The Financial year of the Commission shall be the calendar year.

Financial
year

10.(1) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Commission.

Audit of
accounts

(2) The provisions of Article 158 of the Constitution relating to audit of accounts of Public Corporations shall apply to the audit of accounts of the Commission.

11. The Commission shall —

Functions
of the
Commission

- (a) be responsible for the implementation of this Act and to monitor compliance with the governing law;
- (b) analyze the approved annual budget of a Public Enterprise and advise the appropriate Board as to its adequacy or suitability in compliance with the governing law;

- (c) monitor the implementation of all the actions laid out in the annual plan of Public Enterprises;
- (d) assess the implementation of projects carried out by Public Enterprises to ensure compliance with procedures and regulations of capital expenditure;
- (e) monitor and identify factors inhibiting the realization of set revenue targets of any Public Enterprise;
- (f) ensure adherence by Public Enterprises to policies and procedures formulated by their Responsible Ministry or Board to ensure sound and efficient management, including finances of Public Enterprises;
- (g) arrange investigation or inspection into the affairs of a Public Enterprise where necessary in the public interest;
- (h) submit a report of all its activities on a quarterly basis to the Minister of Finance;
- (i) advise the Minister of Finance of any weaknesses or shortcomings in relation to the functioning of Boards of Public Enterprises; and
- (j) identify issues relating to operational and financial risks of Public Enterprise that may have material impact on the Public Enterprise and the economy as a whole.

Powers and
Duties of the
Commission

12. The Commission shall have power to —

- (a) formulate a framework for a sustainable and stable Public Enterprise performance strategy;

- (b) request any Chief Executive Officer or Chairperson of a Public Enterprise Board to appear before it to clarify any issues regarding the finance, governance or any other aspects covered under this Act;
- (c) request any information on the operation of the Public Enterprise on issues covered in Section 4 of this Act;
- (d) carry out on-site and off-site inspections as deemed necessary for the purpose of carrying out its functions;
- (e) assist the Auditor General with such information as may be necessary to carry out his audit functions;
- (f) make recommendations to the Government on the efficiency of ongoing Public Enterprises which are profit making and are of national importance;
- (g) make rules in respect of the management of the affairs of the Commission;
- (h) enter into such contracts as are deemed necessary for the discharge and performance of its functions and duties;
- (i) appoint, employ, remunerate and exercise disciplinary control over such officers, servants or agents as are necessary for the discharge and performance of its functions and duties;
- (j) enter into agreements for co-operation with educational and other institutions, whether in Seychelles or abroad, for the exchange of

personnel, advisory services and the training of personnel;

- (k) open and maintain current, savings or deposit accounts in any bank or banks;
- (l) issue publications, circulars and press notices;
- (m) act as the agent of the Government, in Seychelles or abroad, for the purposes of any matter or transaction, if so authorised; and
- (n) undertake all such activities as in the opinion of the Commission are necessary to facilitate the discharge and performance of its functions and duties.

Chief
Executive
Officer of the
Commission

13.(1) The President shall appoint a Chief Executive Officer to the Commission on such terms and conditions as may be determined by the President.

(2) The Chief Executive Officer shall be the head of the Commission and be responsible for the —

- (a) day-to-day administration; and
- (b) direction and control of all other employees of the Commission.

Appointment
of employees
of the
Commission

14.(1) The Commission shall have power to appoint for the Commission such other officers and employees as it may deem necessary for the administration and management of the affairs of the Commission and shall determine the remuneration payable to, and the conditions of service of such officers and employees.

(2) Where a public servant is temporarily appointed to the Commission, the terms and conditions of service of such

employee shall be as determined by the Public Sector Commission.

15.(1) The Commission shall, not later than 6 months after the end of each calendar year or within such longer period as the Minister may approve, submit to the Minister a report containing an account of its transactions throughout the preceding calendar year in such detail as the Minister may direct.

Report

(2) A copy of the report together with a copy of the annual accounts and auditor's report thereon shall be laid before the National Assembly.

16.(1) For the purpose of enabling the Commission to exercise, perform and discharge any of its powers, duties and functions under the Act, the Commission or any person authorised in that behalf by the Commission may, by notice in writing, require any person to furnish to the Commission or to the person authorised, within such period as shall be specified in the notice, all such returns or information pertaining to any business affairs or transactions of any Public Enterprise as are known to or in the possession of any person as shall be specified in such notice.

Returns and
information

(2) It shall be the duty of any person who is required to furnish any return or information by a notice under subsection (1) to comply with such requirement within the time specified in such notice, except where such person is precluded from making such return or divulging such information under the provisions of any law.

(3) The Commission or any Member thereof or any officer or servant of the Commission, shall not disclose to any person or use any returns or information furnished under subsection (1), except when required to do so by a court of law or for the purposes of achieving the objects of the Commission.

Furnishing of
information to
the President

17. The President may, from time to time, direct the Commission to furnish to him in such form as he may require returns, accounts and other information with respect to the work of the Commission and the Commission shall carry out every such direction.

Protection for
action taken
under this Act

18.(1) No suit shall be instituted against any Member of the Commission or against any of the officers or servants of the Commission for any act which in good faith is done or purported to be done by such Members, officer or servant under this Act or on the direction of the Commission.

(2) Any expenses incurred by the Commission in any suit or prosecution brought by or against it before any court, shall be paid out of the Fund of the Commission, and any costs paid to, or recovered by the Commission in any such suit or prosecution shall be credited to the Fund of the Commission.

(3) Any expenses incurred by any such person as is referred to in subsection (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission shall, if the court holds that such act was done in good faith be paid out of the Fund of the Commission, unless such expenses are recovered by him in such suit or prosecution.

Offences

19.(1) Any person who —

- (a) fails to furnish any returns or information in compliance with any requirement imposed on him by subsection (1) of section 16;
- (b) knowingly makes any false statement in any return or information furnished by him in compliance with any requirements imposed on him by subsection (1) of section 16; or

- (c) wilfully omits any matter in any return or information furnished by him in compliance with any requirement imposed on him by subsection (1) of section 16;
- (d) contravenes the provisions of subsection (3) of section 16; or
- (e) wilfully obstructs any Member of the Commission or an officer or servant of the Commission in the performance of his duties under this Act,

shall be guilty of an offence.

(2) Where an offence under this Act is committed by a body of persons, then—

- (a) if that body of persons is a body corporate, every Director and officer of that body corporate;
- (b) if that body of persons is a firm, every partner of that firm,

commits an offence.

(3) Any employee of the Commission who accept any gift from any employees or Board of a Public Enterprise shall be guilty of an offence.

20.(1) The Commission may, with the approval of the Minister of Finance, make rules relating to the exercise, performance and discharge of the powers, duties and functions conferred or imposed on or assigned to the Commission.

Power of
Commission
to make rules

(2) Every rule made under subsection (1) shall come into force upon its publication in the Gazette.

PART III - CHIEF EXECUTIVE OFFICER

Chief Executive
Officer

21.(1) The President, in consultation with the Responsible Minister, shall appoint the Chief Executive Officer for each Public Enterprise.

(2) A Chief Executive Officer shall hold office upon such terms and conditions as approved by the President.

(3) The Chief Executive Officer of the Public Enterprise shall, subject to the direction of the Board—

- (a) exercise supervision over the day-to-day affairs of the Public Enterprise;
- (b) sign documents on behalf of the Public Enterprise.

(4) The Chief Executive Officer of a Public Enterprise may, subject to the direction of the Board, delegate any of the powers under subsection (3) to any officer or employee of the Public Enterprise.

Other Employees

22. A Public Enterprise may employ such persons as are necessary to perform its functions.

PART IV - BOARDS

Composition of
the Board

23. Except where the President and a Responsible Minister for the Public Enterprise concerned have otherwise agreed—

- (a) the Chief Executive Officer of a Public Enterprise shall be an *ex-officio* Member of the Board;
- (b) the Chief Executive Officer shall not be the Chairperson of the Board;

- (c) the Board of each Public Enterprise shall consist of not less than five and not more than nine persons including the Chief Executive Officer of that Public Enterprise;
- (d) a representative of the Ministry of Finance shall be a Member of every Board;
- (e) a representative from the Responsible Ministry of the Public Enterprise shall be a Member of its Board;
- (f) upon completion or termination of the term of appointment of a Board Member, all benefits and special privileges received as a Member of the Board shall cease.

24. Every Director of a Public Enterprise —

Criteria for
Appointment

- (a) shall be selected and appointed or reappointed in accordance with section 23 and criteria set out in Schedule 2;
- (b) shall deliver their duties and be liable as Director of the Public Enterprise as stipulated per Schedule 5;
- (c) in delivering their responsibility entrusted into them, shall during their mandate, abide by the code of ethics issued by the Minister.

25.(1) The President, in constituting a Board of a Public Enterprise —

Positions on
Board

- (a) shall appoint one of the non-executive Directors to be the Chairperson and another non-executive Director to be the Vice-Chairperson of the Board;
- (b) shall, before appointing a person as Director, satisfy himself or herself that the person does

not have an interest which is likely to prejudicially affect the discharge of that person's functions as Director.

(2) The Chairperson, in consultation with the Board, shall appoint a person to be the secretary of the Board of a Public Enterprise who shall be responsible for convening meetings of the Board, keeping records of meetings and decisions of the Board, communicating the decisions of the Board, submitting documents on behalf of the Board and, when required by the Board, executing orders of the Board.

Remuneration
of Board of
Members

26. Non-Executive Members of a Board shall be paid such allowances and fees as may be proposed by the Board and approved by the Public Sector Commission.

Procedures of
Board

27. Schedule 3 shall have effect in respect of the meetings, quorum and proceedings of the Board of a Public Enterprise.

Committees
of Board

28. A Board may set up committees to assist the Board in regard to investment, audit, administration and other matters, and determine the terms of reference of such committees.

Chief Finance
Officer

29. The Chief Finance Officer of each Public Enterprise shall be appointed by the Board.

Directions of
Responsible
Minister

30. The Responsible Minister may give the Board of a Public Enterprise written directions on the policy to be followed by the Board or those of a general nature relating to the performance of its functions or its management that does not contradict with this Act or any other governing law and the Board shall comply with the directions.

Audit

31. The Board of each Public Enterprise to which Article 158 (3) of the Constitution does not apply shall

nominate the auditors of the Public Enterprise who shall be appointed, or who may be dismissed, by the Board. The auditor shall be appointed for a period not exceeding 5 consecutive years.

32.(1) A Board, a Director, the secretary or an officer of a Public Enterprise shall not be criminally or civilly liable in respect of an act done or omission made by the Public Enterprise, the Board, the Director, the Secretary or Officer in good faith in the execution or purported performance of a function under this Act or other governing law.

Protection for
actions in
good faith

(2) Subsection (1) shall not apply to exempt a Public Enterprise from criminal or civil liability in respect of an act done or omission made by its Board, a Director, the secretary, or officer of the Public Enterprise.

33. No act or decision of the Board of a Public Enterprise is invalid by reason only—

Validity of
decisions in
certain
circumstances

- (a) of a lack of a quorum at the meeting of the Board;
- (b) of a defect or irregularity in connection with the appointment of a Director;
- (c) of an irregularity in the convening of a meeting of the Board;
- (d) that a person, who is disqualified from being appointed as a Director under this Act or any other written law had been appointed Director; or
- (e) that a Director who was disqualified from voting at or participating in a meeting of the Board had voted at or participated in the meeting at which the decision or the decision in relation to the act was made.

PART V - REPORTING OBLIGATIONS

Statement
corporate
intent

34. The Board of each Public Enterprise shall prepare and deliver to the Responsible Minister and the Commission, not later than one month after the coming into operation of this Act, a statement of corporate intent in respect of the Public Enterprise and thereafter not later than one month after the commencement of each consecutive third financial year a updated statement of corporate intent in respect of the financial year in which it is delivered and in respect of each of the immediately following two financial years.

Contents of
statement

35.(1) A statement of corporate intent shall specify—

- (a) the objectives and mission of the Public Enterprise;
- (b) the nature and scope of the activities to be undertaken by the Public Enterprise;
- (c) where a Public Enterprise has a share capital, the ratio of the shareholders' funds to the value of the total assets of the Public Enterprise;
- (d) the following standard performance targets
 - (i) percentage increase in turnover;
 - (ii) percentage increase in return on assets;
 - (iii) percentage increase in Return on Capital employed;
 - (iv) percentage increase in profit after tax;

and any other measures by which the performance of the Public Enterprise may be judged in relation to its objectives and the underlying assumptions on which the objectives are based—

- (e) an estimate of the amount intended to be distributed as dividends for each year covered by the statement of corporate intent;
- (f) an estimate of the Net Present Value (NPV) of the investments in the Public Enterprise and the manner in which, and the time at which, this value is to be reassessed using a percentage cost of capital applicable to the Enterprise.

(2) The Board of a Public Enterprise may, subject to changes in its core operational strategy, after notifying and agreeing with the Responsible Minister and the Commission, amend the statement of corporate intent and serve a copy of the statement as amended to the Responsible Minister and the Commission.

36.(1) Each Public Enterprise shall, within three months after the end of its financial year prepare an annual report on its operations which, together with a copy of its annual audited accounts as well as any report by the auditors on its management and accounting practices, shall be submitted to —

Annual report

- (a) the Minister of Finance;
- (b) the Responsible Minister; and
- (c) the Commission.

(2) An annual report of a Public Enterprise shall conform to the requirements of Schedule 4.

37. The Minister of Finance shall cause the annual report of each Public Enterprise to be laid before the National Assembly within six months after the end of the financial year of the Public Enterprise.

Annual report to be laid before the National Assembly

38. Each Public Enterprise shall, within fifteen days after the end of every month, submit to the Commission in such

Monthly report to Monitoring Commission

form as the Commission may determine, a statement of the financial and operational performance of the Public Enterprise during that month including details of debt performance, failure to do so may lead to sanctions as per schedule 5 (5)(b).

Estimates
and
projections

39. Each Public Enterprise shall submit to the Commission at such time during a financial year as the Commission may determine estimates of the profit and loss, capital expenditure and cash flow and balance sheet projections in respect of the next financial year of the Public Enterprise.

Other
requests

40. A Public Enterprise shall provide the Commission with any other information, not specified in this Act, but necessary for the implementation of the Act requested in writing by the Commission.

Report by
the
Commission

41. The Commission shall, on the basis of the statement of corporate intent, the annual report and any other information provided by a Public Enterprise, submit to the Responsible Minister a report on the past performance and future plans of the Public Enterprise.

PART VI - MISCELLANEOUS

Powers of
Responsible
Minister

42. The Responsible Minister may at any time —

- (a) order an investigation into the affairs of a Public Enterprise as the Responsible Minister deems necessary;
- (b) after consulting the Minister of Finance and with the approval of the President, by an Order published in the Official Gazette, require the Board of a Public Enterprise to —
 - (i) pay such amount of dividend out of the profits and revenue reserves of the Public Enterprise as the Minister of

Finance may deem fit; after making adequate provision for—

- (a) acquisition, replacement and depreciation of assets;
 - (b) repayment of loans and advances; and
 - (c) interest on, such charges and expenses incurred in connection with a loan;
- (ii) make provision for capital reserves;
 - (iii) increase share capital of the Public Enterprise;
 - (iv) issue shares in the Public Enterprise;
 - (v) authorise any person or body, including the Board of the Public Enterprise to exercise on behalf of the Government the voting rights conferred by the shares of a Public Enterprise;
- (c) on being satisfied that there is sufficient ground for doing so, extend the period of time specified under this Act for the performance of an obligation under this Act.

43. Any information submitted by the Board of a Public Enterprise to the Responsible Minister, Minister of Finance or the Commission shall not be published in a form or manner that will enable the identity of a member of the public dealing with the Public Enterprise to be ascertained.

Confidentiality

44.(1) Any dispute arising among Public Enterprises shall be settled by agreement among those Public Enterprises.

Settlement of certain disputes

(2) A dispute among Public Enterprises which cannot be settled by agreement shall be referred to the Responsible

Minister or Responsible Ministers as the case may be, and whose decision shall be final.

(3) The Responsible Minister or Responsible Ministers may delegate the exercise of their power under subsection (2) to any person or body and the decision of that person or body shall be final.

Liquidation
of Public
Enterprise

45.(1) The Responsible Minister shall, after consulting the Minister of Finance and with the approval of the President, by an Order published in the Official Gazette, dissolve a Public Enterprise and appoint a liquidator for the purpose of discharging the liabilities of the Public Enterprise and for the purpose of distributing the assets remaining thereafter to the Republic or, in the case of a Public Enterprise with a share capital, to the shareholders of the Public Enterprise, subject to recommendations from the Commission.

(2) In discharging the liabilities of the Public Enterprise, the relevant provisions of the Companies Act shall apply against the assets of the Public Enterprise.

Regulations

46. The Minister of Finance may —

- (a) make Regulations for the purpose of giving effect to the principal objects and purposes of this Act; and
- (b) by regulation amend any Schedule.

This Act to
prevail over
certain laws

47.(1) Subject to subsection (2) and notwithstanding the provisions of any law to the contrary, the provisions of this Act shall apply to every Public Enterprise specified in Schedule 1.

(2) Any provision of any written law in operation before the commencement of this Act relating to any Public Enterprise shall, to the extent that it is inconsistent with any provision of this Act, be deemed to have been amended so as to be in accord with the provision of this Act and shall have effect accordingly.

48.(1) The Public Enterprise (Monitoring) Act, 2009 is repealed.

Repeal and
Savings

(2) Statutory Instruments made under the repealed Act shall continue in force as if made under this Act until it is amended or repealed under the provision of this Act.

(3) Anything made, established or done under the repealed Act, which could have been made, established or done under this Act shall continue in force and be deemed to be made under this Act until amended or revoked under this Act or cease to have effect by effluxion of time.

SCHEDULE 1

(Section 47)

LIST OF PUBLIC ENTERPRISES (Section 47)

Column 1	Column 2
Seychelles Public Transport Corporation	Minister of Home Affairs and Transport
Property Management Corporation	Minister of Land Use and Housing
Air Seychelles Limited	Minister of Home Affairs and Transport
Island Development Company Limited	Office of the President
Public Utilities Corporation	Minister of Environment and Energy
Seychelles Civil Aviation Authority	Minister of Home Affairs and Transport
Seychelles Petroleum Company Limited	Minister of Finance, Trade and Investment

Seychelles Trading Company Limited	Minister of Finance, Trade and Investment
Praslin Transport Company Limited	Minister of Home Affairs and Transport
Societe Seychelloise d'Investissement Limited	Minister of Finance, Trade and Investment
Development Bank of Seychelles	Minister of Finance, Trade and Investment
Housing Finance Company Limited	Minister of Finance, Trade and Investment
Seychelles International Mercantile Banking Corporation Limited	Minister of Finance, Trade and Investment
Seychelles Savings Bank	Minister of Finance, Trade and Investment
Seychelles Pension Fund	Minister of Finance, Trade and Investment
Seychelles Ports Authority	Minister of Home Affairs and Transport
Seychelles International Business Authority	Minister of Finance, Trade and Investment
L'Union Estate Company Limited	Minister of Finance, Trade and Investment
Seychelles Postal Services	Minister of Finance, Trade and Investment
National Information Services Agency	Office of the President
Petro Seychelles Limited	Office of the President

SCHEDULE 2*(Section 23)***APPOINTMENT OF DIRECTORS OF PUBLIC ENTERPRISES**

1. The following rules shall apply to the appointment of Board Members of Public Enterprise—
 - (a) In relation to the Board—
 - (i) in each industry or sector, Board Members are required to have specific skills, training and experience to relation to such industry or sector;
 - (ii) a full time Board Director, such as a retired executive, will not occupy Memberships in more than five Boards;
 - (iii) one individual cannot chair more than two Boards at the same time;
 - (iv) no Board Member may delegate their position to a subordinate without the prior approval of the Board and the Responsible Minister. Such delegations to be on a meeting by meeting basis;
 - (v) an ex-Chief Executive Officer of a Public Enterprise cannot be appointed as Chairperson of the Board of such Public Enterprise within the first 3 years of leaving the enterprise.
 - (b) A person is disqualified to be appointed as a Member of the Board if he or she—

-
- (i) is under 18 years of age;
 - (ii) is an un-discharged bankrupt;
 - (iii) is mentally or physically incapable of discharging his or her functions as a Board Member; or
 - (iv) has been convicted in Seychelles or elsewhere of an offence punishable by imprisonment;
 - (v) was a Director or manager of a company at the time the company was placed in receivership or liquidation, whether such receivership or liquidation occurred in Seychelles or elsewhere and the person had been responsible for that receivership or liquidation;
 - (vi) is a Member of the National Assembly, Minister, or a Constitutional Appointee unless—
 - (a) the President has certified that such appointment is necessary in the public interest; and
 - (b) the Membership shall be on a temporary basis for a period not exceeding one term.
2. A Board Member may be removed from office if the Member—
- (a) fails to attend 3 consecutive meetings of the Board without leave of absence granted by the Chairperson of the Board, and in the case of the Chairperson, without notice to the Board and the Responsible Minister;

- (b) becomes bankrupt;
 - (c) becomes mentally or physically incapable of discharging the person's functions;
 - (d) is convicted in Seychelles or elsewhere of an offence punishable by imprisonment;
 - (e) is convicted of an offence relating to the person's functions as a Director.
3. The President may remove any or all the Board Members of a Public Enterprise if the Public Enterprise fails to comply with this Act or the governing law.
4. The application of the above procedures for appointment and reappointment of Members shall apply—
- (a) when each Board Member's current term of appointment ends; or
 - (b) when a Board Member dies, resigns or is removed from office.

SCHEDULE 3
(Section 27)

RULES RELATING TO BOARD MEETINGS

1. Every Board—
- (a) shall hold an Annual Meeting not more than 3 months after the close of the financial year of the Public Enterprise—
 - (i) to consider and approve the report of the Board, the audited financial statements and the auditor's report for the financial year;

-
- (ii) to make recommendations on the payment of dividends by the Public Enterprise; and
 - (iii) to deal with any financial or other matters of the Public Enterprise;
 - (b) shall hold a special meeting not more than 2 months prior to the close of each financial year of the Public Enterprise in order to consider and approve the budget and the calendar of ordinary meetings (of which there shall be at least one every 3 months) of the next following financial year; and
 - (c) shall in addition to the meetings referred to in paragraphs (a) and (b), hold ordinary meetings—
 - (i) in accordance with the calendar of meetings approved under paragraph (b); but the Board may at any of its meetings amend the calendar provided that it holds at least one meeting every 3 months;
 - (ii) when directed in writing (stating the reason for the calling of the meeting) by the Responsible Minister; or
 - (iii) at the request in writing (stating the reason for the calling of the meeting) of any two Directors.
 - 2. Where a meeting is convened in accordance with subparagraph (c) (ii) or (iii) the notice of the meeting shall state the purpose of the meeting.
 - 3. The quorum for a meeting of the Board of the Public Enterprise shall be as follows—

Total number of Members	Quorum
Five	Three
Six	Four
Seven to Eight	Five
Nine	Six

4. The Chairperson or in the absence of the Chairperson, the Vice-Chairperson or, in the absence of both the Chairperson and the Vice-Chairperson, a Director elected by the other Directors for this purpose at the meeting, shall preside at a meeting of the Board.
5. At a meeting of the Board each Director has one vote in respect of any matter which is before the Board for its decision but in the event of an equality of votes, the person presiding at the meeting shall, in addition, have a casting vote.
6. Decisions of the Board shall be by a majority of votes of the Directors present and voting at a meeting.
7. A Director who has a direct or indirect interest in any matter to be decided by the Board of a Public Enterprise shall disclose the nature of the interest at a meeting of the Board and shall not vote on the matter nor take part in any discussion in respect of that matter.
8. All orders, directions or decisions of a Board of a Public Enterprise shall be given or notified under the hand of the Chairperson or such other Director as the Board may appoint for this purpose.
9. Subject to this Schedule, the Board may regulate its own proceedings.

SCHEDULE 4*(Section 36)***MINIMUM REQUIREMENTS FOR ANNUAL
REPORT OF PUBLIC ENTERPRISES**

1. The annual report of each Public Enterprise must contain the following particulars in addition to the requirements set out in the governing law—

(a) the audited financial statements, including a statement of—

(i) financial position;

(ii) profit and loss;

(iii) changes in financial position;

(iv) the dividend payable;

(v) Cash flow, and

such other statements as may be necessary to show the financial results of the Public Enterprise during the financial year; and

(b) the auditor's report on those financial statements which—

(i) identifies those to whom it is addressed and the financial statements to which it relates;

(ii) states whether the accounts have been audited in accordance with the International Standards on Auditing (ISA);

(iii) states whether it is prepared in accordance with the International Financial Reporting

- Standards (IFRS) as set by the International Accounting Standards Board (IASB);
- (iv) details any transactions which the auditor has made for or on behalf of the Public Enterprise;
 - (v) states whether in the opinion of the auditor the accounts have or have not been prepared in accordance with the provisions of applicable laws;
 - (vi) states whether in the opinion of the auditor the accounts do or do not give a true and fair view of the state of affairs of the Public Enterprise and, in the case that they do not, state the reasons for such opinion;
 - (vii) states whether in the opinion of the auditor proper and adequate accounting records have or have not been kept;
 - (viii) states whether the auditor has received all the information necessary for the purposes of audit and whether the auditor is or is not satisfied with the information received;
 - (ix) states whether in the auditors opinion the information given by the Directors in the annual report in relation to the financial year under reference is or is not consistent with the accounts;
 - (x) states any other matter which in the opinion of the auditor needs to be stated.
- (c) a statement of the performance of the Public Enterprise in relation to the performance targets detailed in the statement of corporate intent;

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- (d) a statement that presents an objective, balanced and understandable commentary on the Public Enterprise's financial performance and position, its non-financial performance, and on its future ability to meet its liabilities and commitments;
 - (e) details of any changes in the composition of the Board during the year, including the appointment of new Members, reappointments and any removals;
 - (f) the number of meetings of the Board and of committee meetings held and the committee's composition;
 - (g) brief statement of any significant complaints which have been made against the Public Enterprise;
 - (h) judicial proceedings filed or likely to be filed against the Public Enterprise;
 - (i) where non-financial information was subject to external validation, details in this regard;
 - (j) brief details of the background of any Member of the Board who served at any time during the year;
 - (k) a statement of issues raised and recommendations proposed on the entity by the Commission during the period and consecutive action taken by management. The statement should also include reasons for, if no follow up action is taken;
 - (l) a description of any social service obligations performed during the year;
 - (m) a statement explaining (as a minimum) its responsibility for—

- (i) approving the budget to provide authorisation for the acquisition and use of financial resources;
 - (ii) preparing and providing financial statements that fairly present the state of affairs of the Public Enterprise as at the end of the financial year and the results of its operations for that year;
 - (iii) maintaining an effective framework of internal control, risk management and appropriate governance procedures;
 - (iv) maintaining adequate accounting records and ensuring the consistent use of appropriate accounting policies, supported by reasonable and prudent judgements and estimates and ensuring adherence to applicable accounting standards unless fully disclosed, explained and quantified.
- (n) Public Enterprise's financial statements providing—
- (i) the amounts paid to the external audit for auditor and separately for non-audit services, including a description of the nature and amounts paid for each of the services undertaken;
 - (ii) an outline of the structure of the Public Enterprise;
 - (iii) a review of financial performance;
 - (iv) internal and external factors influencing the Public Enterprise's performance;
 - (v) significant events which may affect the Public Enterprise's future performance;

- (vi) significant post-balance sheet events;
 - (vii) discussion of relations with stakeholders, referring to significant changes;
 - (viii) financial and other effects of directions from the Commission.
2. (a) An Annual Meeting shall be held not later than one month after signing of the Audited Financial Statements at which the annual report will be presented. Members of the Board, the Chief Executive Officer, the Chief Finance Officer and the external auditor should attend the meeting and should be available to answer questions.
- (b) The approved annual report of a Public Enterprise shall be published and made available to all stakeholders.
3. The transition period for preparation of annual financial statements in accordance with IFRS shall be 3 years from the date of commencement of this Act.

SCHEDULE 5

(Section 24 (b))

DUTIES AND LIABILITIES OF DIRECTORS

1. It shall be the duty of the Directors of a Public Enterprise—
- (a) to exercise their powers in accordance with this Act and within the limits and subject to the conditions and restrictions established by the Public Enterprise's memorandum, articles or governing law;

- (b) to obtain the authorisation of the Board before doing any act or entering into any transaction for which the authorisation or consent of a general meeting is required by this Act or by the Public Enterprise's memorandum or articles, or governing law;
- (c) to exercise their powers in good faith in what they reasonably consider to be the interests of the shareholders of the Public Enterprise as a whole and for the respective purposes for which such powers are explicitly or impliedly conferred;
- (d) to declare to the Public Enterprise for any monetary gain, or the value of any other gain or advantage, obtained by them in connection with the exercise of their powers, or by reason of their position as Directors of the Public Enterprise, except remuneration, pensions, provisions and compensation for loss of office in respect of their directorships of any Public Enterprise which are lawfully authorised or approved by a Board resolution and (where necessary) by the Cabinet;
- (e) not to make use of any information received by them respectively as Directors otherwise than for the benefit of the shareholders of the Public Enterprise as a whole, either during their respective terms of office or thereafter;
- (f) not to compete with the Public Enterprise or become a Director or officer of a competing company that operates in the same line or activity;
- (g) if Directors have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or transaction with the Public Enterprise, to disclose each of their respective interests to the Board of the Public

Enterprise at which the contract or transaction is first taken into consideration, and in such written disclosure to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction; and

- (h) not to use any assets of the Public Enterprise for any illegal or improper purpose, and not to do, or knowingly allow to be done, anything by which the Public Enterprise assets may be damaged or lost (otherwise than in the ordinary course of carrying on its business);
 - (i) to transfer forthwith to the Public Enterprise all cash or assets acquired on its behalf (whether before or after its incorporation) or as the result of employing its cash or assets, and until such transfer is effected to hold such cash or assets on behalf of the Public Enterprise and to use it only for the purposes of the Public Enterprise;
 - (j) to attend Board meetings of the Public Enterprise with reasonable regularity, unless prevented from so doing by illness or other reasonable excuse.
2. The duties imposed by this section shall be owed to the Public Enterprise, and not to the Board Members, shareholders, officers or creditors of the Public Enterprise, but—
- (a) an application may be made to the court by any shareholder for a declaration that any act or transaction, or proposed act or transaction, by the Directors or any Director or former Director involves a breach of any of their said duties, and if the court makes such a declaration it may issue an injunction to restrain the Directors or any Director or former Director from doing any such proposed act or entering into any such proposed transaction; and

- (b) an action for damages for breach of the said duties may be brought in the name of the Public Enterprise by the Board.
3. For the purpose of this section, a general notice given to the Board by a Responsible Minister or Director to the effect that he or she is a Member, shareholder, or officer of a specified Public Enterprise and is to be regarded as interested in any contract which may, after the date of the notice, be made with that Public Enterprise, shall be deemed to be a sufficient declaration of interest in relation to any contract so made: Provided that no such notice shall be of effect unless it is given at a Board meeting.
4. Any person who commits a breach of a duty imposed on him by paragraphs (d), (e), (f), (h) or (j) of subsection (1) shall, without prejudice to the generality of the expression, be deemed to have committed a serious breach of duty.
5. A person who —
- (a) knowingly commits a breach of any duty imposed on him by subsection (1) of this section; or
- (b) commits a breach of a duty imposed on him by paragraphs (d), (e), (g), (h) or (i) of Subsection (1); shall be guilty of an offence punishable and hence be held liable as per the legal proceedings of the Penal Code.
6. If a Public Enterprise has a subsidiary, Directors of the Public Enterprise and the subsidiary shall owe the same duties under subsection (1) to the Public Enterprise in respect of the affairs of the subsidiary and their conduct in relation to the subsidiary as though the Public

Enterprise and the subsidiary were one, and the Public Enterprise owned the subsidiary's assets and undertaking, and the whole of this section shall then be applied accordingly, provided that nothing in this subsection shall affect the duties of the Directors of the subsidiary toward the subsidiary and the remedies conferred by this section for the breach of any such duties.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 26th March, 2013.



Azarel Ernesta
Clerk to the National Assembly