
State Owned Enterprises Act 2007

SOLOMON ISLANDS

THE STATE OWNED ENTERPRISES ACT 2007

(NO. 7 OF 2007)

Passed by the National Parliament this sixteenth day of August 2007.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

*Taeasi Sanga (Mrs)
Clerk to National Parliament*

Assented to in Her Majesty's name and on Her Majesty's behalf this twenty-seventh day of August 2007.

*Sir Peter Kenilorea
Acting Governor-General*

*Date of commencement: see section 1.
(Commencement date: 1 November 2007
-As per Legal Notice 171 of 2007:)*

AN ACT TO PROMOTE IMPROVED PERFORMANCE OF GOVERNMENT TRADING ACTIVITIES, BY SPECIFYING PRINCIPLES GOVERNING THE OPERATION OF STATE ENTERPRISES; ESTABLISHING REQUIREMENTS FOR THE ACCOUNTABILITY OF STATE ENTERPRISES, AND THE RESPONSIBILITY OF MINISTERS; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the National Parliament of Solomon Islands.

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PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the State Owned Enterprises Act 2007 and shall come into force on such date as the Minister may appoint by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires,-

"Accountable Ministers" means the Minister of Finance and the Responsible Minister;

"board" means-

(a) in relation to a State Owned Enterprise that is a company, the board of directors of the State Owned Enterprise; and

(b) in relation to a State Owned Enterprise that is not a company, the persons occupying the positions in relation to the State Owned Enterprise that are comparable with those of the board of directors of a company;

"Community Service Obligation" means -

(a) the provision of a good or service by a State Owned Enterprise to a consumer or user on terms that are not expected to generate a normal return to the State Owned Enterprise;

(b) the entering into an agreement by the State Owned Enterprise on any terms other than normal commercial terms applying from time to time;

(c) the forbearance by a State Owned Enterprise to exercise a right or entitlement other than on normal commercial terms applying from time to time;

(d) the forgiveness or reduction by a State Owned Enterprise of a debt or an amount of money owed to the State Owned Enterprise other than on normal commercial terms applying from time to time; but

(e) does not include the State Owned Enterprise exercising its commercial judgement to make donations to worthy causes or to price goods and services at or below the cost of their production.

"company" means a company formed and registered under the Companies Act or an existing company within the meaning of that Act;

"crown" has the meaning assigned thereto in the Constitution;

"director" means -

(a) in relation to a company, a director as defined in the Companies Act; and

(b) in relation to an organisation other than a company, a person that performs a role comparable to the role of a director of a company;

"government assistance" means any value provided to a State Owned Enterprise by the Crown other than value provided on terms consistent with an arms length commercial transaction or

standard government policy, and includes (without limitation) tax rebates or waivers, government guarantees provided for less than fair value, and loans on terms more favourable than would be expected in an arms length transaction;

"Minister" means a Minister of the Crown;

"organisation" includes a company, a body corporate, a partnership, and a joint venture;

"Regulatory Function" means any statutory power or function exercised by a State Owned Enterprise other than a power or function that provides for the supply of services by the State Owned Enterprise;

"Responsible Minister", in relation to a State Owned Enterprise means the Minister for the time being responsible for that State Owned Enterprise;

"rules" -

(a) in relation to a State Owned Enterprise that is a company, means the memorandum of association and articles of association of the State Owned Enterprise; and

(b) in relation to a State Owned Enterprise that is not a company, includes the documents relating to the State Owned Enterprise that are comparable to the memorandum of association and articles of association of a company.

"share" means -

(a) in relation to a company that has issued shares, a share of any class;

(b) in relation to 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) in relation to 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) where 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.

"solvent" means -

(a) the State Owned Enterprise is able to pay its debts as they become due in the ordinary course of business; and

(b) the value of the assets of the State Owned Enterprise is greater than the value of its liabilities, including contingent liabilities;

"State Owned Enterprise" means an organisation that is named in the Schedule;

"statement of corporate objectives" means the current statement of corporate objectives for the State Owned Enterprise prepared pursuant to section 13 of this Act; and

"subsidiary" has the same meaning as assigned thereto in section 148 of the Companies Act.

Act to bind the Crown

3. This act shall bind the crown.

PART II PRINCIPAL OBJECTIVES AND ROLES

Purpose

4. The purpose of this Act is to enhance the performance of State Owned Enterprises so that they provide the best possible service for the people of Solomon Islands and contribute to the long term economic and social development of Solomon Islands.

Principal objective to be a successful business

5. (1) The principal objective of every State Owned Enterprise shall be to operate as a successful business and, to this end, to be -

- (a) as profitable and efficient as comparable businesses that are not owned by the Crown or established as statutory bodies by an Act of Parliament; and
- (b) a good employer; and
- (c) an organisation that exhibits a serve of social responsibility by having regard to the interests of the community in which it operates.

(2) For the purposes of this section, a "good employer" is an employer who operates a personnel policy containing provisions generally acceptable as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring-

- (a) good and safe working conditions; and
- (b) an equal opportunities employment programme; and
- (c) the impartial selection of suitably qualified persons for appointment; and
- (d) opportunities for the enhancement of the abilities of individual employees.

Directors and their role

6. (1) The directors of a State Owned Enterprise shall be persons who, in the opinion of those appointing them, will assist the State Owned Enterprise to achieve its principal objective.

(2) Every director of a State Owned Enterprise shall be selected and appointed, reappointed, removed or disqualified in accordance with the rules of the State Owned Enterprise and the criteria for selection and procedure for appointment, reappointment, removal or disqualification prescribed by regulations made under section 24(a).

(3) The appointment of a director of a State Owned Enterprise that fails to follow the criteria for selection and the procedure for appointment or reappointment prescribed by regulations made under section 24(a), or at any time meets the criteria for removal or disqualification prescribed by regulations made under section 24(a), shall be null and void.

(4) All decisions relating to the operation of a State Owned Enterprise shall be made by or pursuant to the authority of the board of the State Owned Enterprise in accordance with its statement of corporate objectives.

(5) A director of a State Owned Enterprise must act in good faith and in what the director believes to be the best interests of the State Owned Enterprise.

(6) The board of a State Owned Enterprise shall be accountable to the Accountable Ministers in the manner set out in Part III of this Act and in the rules of the State Owned Enterprise.

(7) Directors of a State Owned Enterprise shall act consistently with any regulations made

under section 24(b).

(8) Any person who knowingly acts contrary to subsections (5) or (7) is guilty of an offence and shall be liable to a fine of up to \$100,000.

Responsibility of Ministers

7. The Accountable Ministers of a State Owned Enterprise shall be responsible to Parliament for the performance of the functions given to them by this Act or the rules of the State Owned Enterprise.

Non-commercial activities

8. (1) Subject to this section and any regulations made under section 24(c) the Responsible Minister may direct the State Owned Enterprise to provide a Community Service Obligation.

(2) In making any direction under subsection (1) the Minister must act consistently with any regulations made under section 24(c).

(3) Any direction to a State Owned Enterprise to provide a Community Service Obligation that is not made consistently with any regulations made under section 24(c) shall be null and void.

(4) Any person who knowingly directs or encourages a Director or the Board of Directors of a State Owned Enterprise to make a decision that the State Owned Enterprise shall perform a Community Service Obligation other than in accordance with the provisions of this Act and any regulations made under section 24(c) is guilty of an offence and shall be liable to a fine of up to \$50,000.

(5) Any person who, while a director of a State Owned Enterprise, knowingly makes or takes part, or attempts to make or take part, in the making of a decision that the State Owned Enterprise shall perform a Community Service Obligation, other than in accordance with the provisions of this Act and any regulations made under section 24(c) is guilty of an offence and shall be liable to a fine of up to \$50,000.

Regulatory functions

9. (1) The board of a State Owned Enterprise shall ensure any Regulatory Functions performed by the State Owned Enterprise are performed consistently with any regulations made under section 24(d).

(2) Any Regulatory Function performed by a State Owned Enterprise in a manner that is not consistent with the requirements of any regulations made under section 24(d) shall be null and void.

PART III OWNERSHIP AND CORPORATE OBJECTIVES

Ministers may hold shares in State Owned Enterprises

10. (1) Where a State Owned Enterprise is a company or other entity that has issued shares, the number of shares held by an Accountable Minister in that State Owned Enterprise shall be the same as the number of shares in that State Owned Enterprise held by the other Accountable Minister.

(2) The Accountable Ministers may from time to time, on behalf of the Crown, subscribe for or otherwise acquire shares in the State Owned Enterprise named in the Schedule.

(3) Any money required to be paid by an Accountable Minister on subscribing for or otherwise acquiring shares pursuant to subsection (2) of this section shall be paid out of money appropriated by Parliament for the purpose.

Ministers may exercise powers in relation to State Owned Enterprises

11. Where a State Owned Enterprise is a statutory corporation or other entity that has not issued shares, the Accountable Ministers shall exercise jointly the powers available to the responsible Minister in relation to that State Owned Enterprise.

Powers of Accountable Ministers in respect of statement of corporate objectives

12. (1) Subject to section 12 (2) but notwithstanding any other provision of this Act or other Act or the roles of any company: -

- (a) the Accountable Ministers may from time to time, by written notice to the board, direct the board of a State Owned Enterprise to include in, or omit from, a statement of corporate objectives for that State Owned Enterprise any provision of a kind referred to in paragraphs (a) to (h) of section 13(2) of this Act; and
- (b) the Accountable Ministers may, by written notice to the board, determine the amount of dividend payable by any State Owned Enterprise in respect of any financial year, and any board to whom such a notice is given shall comply with the notice.

(2) Before giving any notice under this section, the Accountable Ministers shall -

- (a) have regard to Part I of this Act; and
- (b) consult the board concerned as to the matters to be referred to in the notice; and
- (c) where the notice is to be given under section 12(1)(b), have received a certificate from the board that the State Owned Enterprise will be solvent after the dividend is paid.

(3) Within 5 days after a notice is given to a board pursuant to this section, the Responsible Minister for the State Owned Enterprise concerned shall table a copy of the notice and any certificate received under section 12(2)(c) before the National Parliament.

PART IV ACCOUNTABILITY

Statement of corporate objectives

13. (1) The board of every State Owned Enterprise shall deliver to the accountable Ministers a draft statement of corporate objectives not later than 1 month before the commencement of each financial year of the State Owned Enterprise.

(2) Each statement of corporate objectives shall specify for the group comprising the State Owned Enterprise and its subsidiaries (if any), in respect of that financial year and each of the immediately following 2 financial years, the following information: -

- (a) the objectives of the group;
- (b) the nature and scope of the activities to be undertaken;
- (c) the ratio of consolidated shareholders' funds to total assets, and definitions of those terms;
- (d) the accounting policies;
- (e) the performance targets and other measures by which the performance of the group may be judged in relation to its objectives;
- (f) a statement of the principles adopted in determining the annual dividend together with an estimate of the amount or proportion of annual tax paid earnings (from both capital and revenue sources) that is intended to be distributed to the Crown;
- (g) the kind of information to be provided to the Accountable Ministers by the State Owned Enterprise during the course of those financial years, including the information to be included in each half-yearly report;
- (h) the procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation;
- (i) any activities for which the board seeks compensation from the Crown (whether or not the Crown has agreed to provide such compensation), including any direction pursuant to section 8 to provide a Community Service Obligation; and
- (j) such other matters as are agreed by the Accountable Ministers and the board.

(3) Each statement of corporate objectives shall also include the board's estimate of the current commercial value of the Crown's investment in the group and a statement of the manner in which that value was assessed.

(4) An Accountable Minister may require that all or any of the information identified in section 13(2) be provided separately for the State Owned Enterprise and all or any subsidiaries, if any.

(5) The board shall consider any comments on the draft statement of corporate objectives that are made to the board not later than 14 days before the commencement of the financial year by the Accountable Ministers, and shall deliver the completed statement of corporate objectives to the Accountable Ministers on or before the commencement of the financial year or such later date as the Accountable Ministers may determine.

(6) A statement of corporate objectives for a State Owned Enterprise may be modified at any time by written notice from the board to the Accountable Ministers, so long as the board has

first given written notice to the Accountable Ministers of the proposed modification and considered any comments on the proposed modification made by the Accountable Ministers within 1 month of the date on which that notice was given.

Annual report, accounts, and dividend

14. (1) Within 3 months after the end of each financial year of a State Owned Enterprise, the board of the State Owned Enterprise shall deliver to the Accountable Ministers: -

- (a) a report of the operations of the State Owned Enterprise and a separate report of each of its subsidiaries during that financial year; and
- (b) audited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show separately the financial position of the State Owned Enterprise and each of its subsidiaries and the financial results of their operations during that financial year; and
- (c) the auditor's report on those financial statements.

(2) Every report under section (1) (a) of this section shall: -

- (a) contain such information as is necessary to enable an inform assessment of the operations of the State Owned Enterprise and of the operations of each of its subsidiaries, including a comparison of the performance of the State Owned Enterprise and subsidiaries with the relevant statement of corporate objectives; and
- (b) state the dividend payable to the Crown by the State Owned Enterprise or the financial year to which the report relates.

Half-yearly reports

15. (1) Within 2 months after the end of the first half of each financial year of a State Owned Enterprise, the board of the State Owned Enterprise shall deliver to the Accountable Ministers a report of its operations and the operations of each of its subsidiaries during that half-year.

(2) Each report required by this section shall include the information identified by the statement of corporate objectives.

Government assistance to be disclosed

16. Any report prepared pursuant to section 14 or section 15 shall disclose whether the State Owned Enterprise or any of its subsidiaries have received any government assistance, and if so quantify in financial terms the amount of that assistance. Where the government assistance is not directly quantifiable an estimate must be made.

Information to be laid before the National Parliament

17. (1) Within 5 days of receiving all the following documents in respect of a financial year of a State Owned Enterprise, the responsible Minister of State Owned Enterprise shall table the documents in the National Parliament: -

- (a) the statement of corporate objectives of the State Owned Enterprise relating to that year and the succeeding 2 years; and
- (b) the annual report and audited financial statements of the State Owned Enterprise for the preceding financial year; and
- (c) the auditor's report on those financial statements.

(2) Where a statement of corporate objectives for a State Owned Enterprise has been modified pursuant to section 13(6) of this Act, the Responsible Minister shall table in the National Parliament a copy of the notice making the modification within 5 days after the date on which the Minister receives the notice.

(3) Within 5 days after half-yearly report is given to a Responsible Minister pursuant to section 15 of this Act, the Responsible Minister shall table a copy of the report in the National Parliament.

(4) Where a director has been appointed to, reappointed to or retires from the board of a State Owned Enterprise, or any appointment is terminated, the Responsible Minister shall table in the National Parliament a notice to this effect within 5 days of the appointment, reappointment, retirement or termination.

(5) Where under the Act a report or other document is required to be tabled in Parliament by a Minister by a certain time, and the Parliament is not sitting, such report or document may be lodged with the Clerk. Any report or document lodged with the Clerk is-

- (a) on presentation, and for all purposes, deemed to have been laid before Parliament;
- (b) for all purposes, deemed to be a document published by order or under the authority of the Parliament; and
- (c) to be recorded in the Minutes of the Proceedings of the Parliament.

Information to be published

18. Where information has been tabled in the National Parliament under section 17, the State Owned Enterprise shall separately and independently publish that same information within one week of tabling by publishing a summary in the Gazette and in a news-paper circulated in Solomon Islands, and marking full copies available free of charge at the offices of the State Owned Enterprise.

Other information

19. (1) Subject to subsection (3) of this section, the board of a State Owned Enterprise shall supply to the Accountable Ministers or to such other person as either of those Ministers specifies such information relating to the affairs of the State Owned Enterprise, or any of its subsidiaries, as either of those Ministers requests after consultation with the board (whether or not the information is of a kind referred to in the statement of corporate objectives).

(2) An Accountable Minister may request information to be supplied whether or not the supply of the information is required for the purposes of, or is contemplated by, this Act.

(3) The board of a State Owned Enterprise shall not be obliged by subsection (1) of this section to supply to any Minister any information relating to an individual employee or customer of the State Owned Enterprise, or of any subsidiary of it, or any other person, if the information supplied would enable the identification of the person concerned.

(4) Notwithstanding any Act or rule of law, the board of a State Owned Enterprise may direct an officer or employee of the State Owned Enterprise to comply with a request under subsection(1) of this section and the officer or employee shall comply with the request on being directed to do so.

(5) No person who acts in accordance with a request or direction under this section is liable to any person under any Act or rule of law by reason of acting in accordance with that request or direction.

Auditor-General to be auditor of State Owned Enterprises and subsidiaries

20. (1) Every State Owned Enterprise and every subsidiary of every State Owned Enterprise shall have as its auditor the Auditor-General.

(2) Without limiting subsection (1), the board of a State Owned Enterprise may, after consultation with the Auditor-General and if its Responsible Minister so approves, appoint a person or firm that is qualified for appointment as an auditor of a company to be an additional auditor of the State Owned Enterprise or any subsidiary of a State Owned Enterprise.

(3) For the avoidance of doubt, section 20(1) applies notwithstanding section 35(2) of the Public Finance and Audit Act.

Protection form disclosure of sensitive information

21. Nothing in this Act shall be construed as requiring the inclusion in any statement of corporate objectives, annual report, financial statements, or half-yearly report referred to in sections 13 to 15 of this Act of any information if to do so would, having regard to generally accepted standards of disclosure in commercial reporting, lessen the value of the State Owned Enterprise.

PART V MISCELLANEOUS PROVISIONS

Saving of transaction

22. Except where this Act explicitly provides, a failure by a State Owned Enterprise to comply with any provision contained in Part 1 of this Act or in any statement of corporate objectives shall not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by a State Owned Enterprise or any subsidiary of a State Owned Enterprise.

Provisions relating to Ministers' Shareholding

23. (1) Shares in a State Owned Enterprise held in the name of a person described as the

Minister of Finance or the Responsible Minister shall be held by the person for the time being holding the office of Minister of Finance or Responsible Minister, as the case may be.

(2) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of shares of the kind referred to in subsection (1) of this section consequent upon a change in the person holding the office of Minister of Finance or Responsible Minister, as the case may be.

(3) Each Accountable Minister may exercise all the rights and powers attaching to the shares in a State Owned Enterprise held by that Minister.

(4) An Accountable Minister may at any time or times, by written notice to the secretary of a State Owned Enterprise, authorise (on such terms and conditions as are specified in the notice) such person as the Minister thinks fit to act as the Minister's representative at any or all of the meetings of shareholders of the State Owned Enterprise or of any class of such shareholders, and any person so authorised shall be entitled to exercise the same powers on behalf of the Minister as the Minister could exercise if present in person at the meeting or meetings.

Regulations may be made

24. The Minister of Finance may make regulations for: -

- (a) the selection, appointment, reappointment, removal and disqualification of directors of a State Owned Enterprise;
- (b) the duties of directors owed to a State Owned Enterprise;
- (c) the making of directions to a State Owned Enterprise to provide a Community Service Obligation; and
- (d) the performance of Regulatory Functions by a State Owned Enterprise.

Relationship to other legislation

25. (1) Where a State Owned Enterprise is registered under the Companies Act the provisions of this Act apply in addition to the Companies Act.

(2) Where the provisions of this Act or any regulations made under this Act conflict with the provisions of any other enactment, the provisions of this Act or regulations made under this Act, shall prevail.

Relationship to enabling Acts

26. (1) Where an Act to which this section applies gives a power or function to a Minister under the respective enabling Acts, that power or function is to be exercised jointly by the Accountable Ministers.

(2) Notwithstanding any other section in an Act to which this section applies, a Minister may only give a direction to the Corporation or Authority established by an Act to which this section applies relating to the supply of services by the Corporation or Authority where this is provided for in this Act.

(3) The provisions of this Act and any regulations made under this Act apply to the selection, appointment, reappointment and test duties of members of any Corporation or Authority established by an Act to which this section applies.

(4) Where any Corporation or Authority established by an Act to which this section applies is supplying services: -

(a) the principal objective of the Corporation or Authority shall be to operate as a successful business, as that term is defined in this Act;

(b) all decisions shall be made by or pursuant to the authority of the members of the Corporation or Authority in accordance with its statement of corporate objectives established under this Act; and

(c) the provisions of this Act apply to the supply of any Community Service Obligations.

(5) When any Corporation or Authority established by an Act to which this section applies is performing any Regulatory Function, the provisions of this Act and any regulations made under this Act shall apply.

(6) The Corporation or Authority established by an Act to which this section applies shall meet the reporting requirements in this Act, and any reporting requirements in an Act to which this section applies shall be modified accordingly.

(7) Where there is any inconsistency between the provisions of an Act to which this section applies and this Act and any regulations made under this Act, the provisions of this Act and any regulations made under this Act shall prevail.

(8) This section applies to: -

(a) Broadcasting Act (Cap 112);

(b) Commodity Export Marketing Authority Act (Cap 36);

(c) Electricity Act (Cap 128);

(d) Investment Corporation of Solomon Islands Act (Cap 143);

(e) Ports Act (Cap 161);

(f) Solomon Islands Postal Corporation Act 1996 (No. 2 of 1996); and

(g) Solomon Islands Water Authority Act (Cap 130).

Transitional provision

27. A director validly appointed to the board of a State Owned Enterprise prior to this Act coming into force shall, on the date this Act comes into force, remain validly appointed. Thereafter, the rules of the State Owned Enterprise and the provisions of this Act and any regulations made under this Act shall apply to the selection, appointment, reappointment, removal and disqualification of directors of a State Owned Enterprise.

Power to amend the Schedule

28. The Cabinet, through the Responsible Minister, may, from time to time, by notice in the gazette, add to or remove from the Schedule the name of a company or statutory corporation.

SCHEDULE
(Section 2)

STATE OWNED ENTERPRISES

- (a) Commodities Export and Marketing Authority
- (b) Investment Corporation of Solomon Islands
- (c) Solomon Airlines Ltd
- (d) Solomon Islands Broadcasting Corporation
- (e) Solomon Islands Electricity Authority
- (f) Solomon Islands Home Finance Ltd
- (g) Solomon Islands Ports Authority
- (h) Solomon Islands Postal Corporation
- (i) Solomon Islands Water Authority