



Technical Assistance Consultant's Report

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Tuvalu: Capacity Development for Public Financial Management (Co-Financed by the Government of Australia)

Progress Report No.1

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For Ministry of Finance and Economic Planning, Tuvalu

This consultant's report does not necessarily reflect the views of ADB or the Government concerned, and ADB and the Government cannot be held liable for its contents. (For project preparatory technical assistance: All the views expressed herein may not be incorporated into the proposed project's design.)

Asian Development Bank

ABBREVIATIONS

ADB	Asian Development Bank
DBT	Development Bank of Tuvalu
MFEP	Ministry of Finance and Economic Planning
MTFF	Medium Term Fiscal Framework
MYOB	Mind Your Own Business accounting software
NBT	National Bank of Tuvalu
PE	Public Enterprise
PERMU	Public Enterprise Reform and Monitoring Unit
TEC	Tuvalu Electricity Corporation
PFM	Public Financial Management
DCC	Development Coordination Committee
TOR	Terms of Reference
TA	Technical Assistance
OIASA	Outer Island Agency Suspense Account
HRM	Human Resource Management
PFTAC	Public Financial Technical Assistance Center
FIA	Financial Institutions Act

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ADB	Asian Development Bank
DBT	Development Bank of Tuvalu
MFEP	Ministry of Finance and Economic Planning
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NOTES

- (i) The fiscal year (FY) of the Government and its agencies ends on December 31.
- (ii) In this report, "\$" refers to Australian dollars, unless otherwise stated

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I. INTRODUCTION

1. The purpose of this progress report is to identify the progress made as at 28 August 2009. The TOR requires that a Medium Term Fiscal Framework (MTFF) be developed, and a policy and legislative environment for improving the performance of public enterprises (PEs) established. A copy of the Terms of Reference is attached as Appendix 1. The principal tasks called for under the TOR are:

- Establish a performance monitoring framework for all PEs, including a Public Enterprise Act, policy and reporting regime;
- Establish a Public Enterprise Reform and Monitoring Unit (PERMU) and Project Steering Committee;
- Provide public financial management (PFM) capacity building inputs in the areas of debt management, banking regulations and MTFF;
- Identify capacity building needs within Ministry of Finance and Economic Planning (MFEP) and public enterprises; and
- Establish standard Human Resource Management (HRM) practices within PEs

2. The TA is also supporting Government's efforts to meet the conditions for the release of the second tranche from an Asian Development Bank (ADB) program grant which is scheduled to be released in December 2009. The release of the second tranche is subject to the following conditions:

- Government approval of Debt Risk Management and Mitigation policy;
- Government repayment of Outer Island Agency Suspense Account (OIASA) overdraft using proceeds from first tranche;
- Government approval of PE reform strategy;
- Government submission to Parliament of a draft Public Enterprise Act;
- MFEP to undertake a detailed assessment of private sector development potential;
- National Bank of Tuvalu to adopt written and Board approved policies relating to lending and delinquent debt collection; and
- Parliament to adopt a legal framework for licensing, supervision and regulation of banking institutions.

3. These conditions have placed demanding time constraints on the originally proposed work program, which has been substantially amended as a result to ensure that second tranche conditions can be met. This amended workplan was agreed by the Steering Committee.

4. In addition to the introduction, this report consists of the following sections:

- Workplan;
- Achievements and issues arising;
- Progress towards second tranche conditions; and
- Conclusion.

5. Team members for this project are:

- Colin Ward – Team Leader and PE Specialist;
- Darrell Freund – PFM Capacity Development and PFM Specialist;
- David Burrowes – HRM and Planning Specialist; and
- Mose Saitala – Facilitator.

6. Members of the Steering Committee are:

- Minute Taupo, Secretary, MFEP (Chairman);
- Tito Isala, Secretary Supernumerary, PM Office (Member);
- Limasene Teatu, Senior Assistant Secretary, MFEP (Member);
- Temate Melitiana, Assistant Secretary, MFEP (Member);
- Sunema Simati, Acting Director of Planning, MFEP (Member); and
- Stephen Boland, Advisor, MFEP (Member).

7. The committee meets monthly or more frequently when required.

II. WORKPLAN

8. The agreed workplan for this project is shown overleaf. This identifies the principle consulting activities, which are required by the TOR (contained in Appendix 1).

9. The workplan identifies completed consulting activities in green. Activities not yet commenced are shown in blue.

10. There are a number of consulting inputs awaiting final approval by MFEP and Cabinet. These are identified in Section III of this report.

	ACTIVITY	2009						2010												2011									
		N	J	A	S	C	N	D	J	F	M	A	M	J	J	A	S	C	N	D	J	F	M	A	M	J	J	A	S
3.0	Component 3: Results-Based Planning and Management Assistance for PEs																												
3.1	Develop & implement PE Corporate Plans																												
3.2	Introduce basic accounting skills in PEs																												
3.3	Strengthen organizational structures for PEs																												
3.4	Job descriptions & performance appraisal formats																												
3.5	Develop assistance for displaced workers																												
3.6	Establish wage structures across PEs																												
3.7	Define private sector development potential																												
4.0	Component 4: Capacity Building and Maximizing Ownership																												
4.1	Prepare diagnostic tool																												
4.2	Diagnostic analysis of MFEP capacity																												
4.3	Prepare diagnostic analysis report																												
4.4	Undertake ongoing capacity building																												
4.5	Raise public and stakeholder awareness																												

III. ACHIEVEMENTS AND ISSUES ARISING

11. The commentary overleaf identifies achievements and issues arising in relation to individual activities. The focus of the commentary is naturally on completed activities. Where relevant, specific comments are made relating to activities scheduled for future completion.

12. A major effort in this phase of the project has been the drafting of the Public Enterprise Policy (see Appendix 2) and the Public Enterprise Bill (see Appendix 3). The Public Enterprise Bill is based on the Public Bodies Act of Samoa. This Act is regarded by ADB as Pacific best practice¹. These are required under second tranche conditions. Both have now been considered by Development Coordination Committee (DCC) and will be forwarded to Cabinet for approval. It is conceivable that Cabinet may amend these drafts, as is their prerogative.

13. The PFM Capacity Development Advisor has undertaken a detailed assessment of existing PFM capacity within MFEP. The following aspects of the assessment have been agreed with the Steering Committee:

- Areas for capacity development and their sequence;
- A detailed terms of reference for the first proposed intervention; and
- Baseline competency levels in various areas for capacity development, with a clear methodology for measuring the achievement of the competency level required to implement the next intervention.

14. An additional note regarding capacity building and stakeholder consultation may be helpful. The consultative process followed by the TA team has included:

- Visiting every PE, most of them twice, to discuss the project, future directions and potential legislation. Each PE was requested to complete an evaluation questionnaire of current capacities. This questionnaire is contained in the Inception Report.
- The TA Team also consulted widely with the DCC, the priority stakeholders, assisted by the Steering Committee, with regard to the PE Policy and the draft Act. This has involved two separate meetings with DCC to assist their understanding of the policy and Act.
- Consultations with the Steering Committee, including the person identified as the potential Head of PERMU, at a collective level and with individual members, have been exhaustive.
- The TA Team has also provided a briefing to the Prime Minister on the background to the project and its aims.
- In addition the PFM Capacity Development Advisor has consulted widely with almost all MFEP staff in developing recommendations for capacity development.

15. It is also worth noting that the membership of the DCC is comprised of the Secretaries of all line Ministries: the current 'owners' of PEs under statutory corporation legislation now in force. The DCC has now considered the Policy Paper – it is now a proposal for Cabinet to approve after the Steering Committee incorporate DCC comments. The PE legislation is a derivative of the PE Policy and, therefore, the construction of the former needs to follow

¹ *Finding Balance: Making State-Owned Enterprises Work in Fiji, Samoa, and Tonga*. Mandaluyong City, Phil.: Asian Development Bank, 2009.

closely the latter. Other stakeholders will certainly be consulted during the normal legislative process.

16. Intensive capacity building efforts are scheduled for the October-December period, both within PERMU and individual PEs. The topics for these inputs are corporate planning, accounting, organizational restructuring and performance reporting.

Table 2: Status Report

	ACTIVITY	STATUS	ISSUES ARISING
Component 1: Management Services			
1.1	Establish Steering Committee	Steering Committee is established.	
1.2	Establish PERMU	Proposal for the establishment of PERMU has been approved by the Steering Committee.	Decision required by Cabinet regarding location of PERMU: either MFEP or PM's department. Either is acceptable in terms of international practice. Decision required before October 1 to facilitate TA inputs.
1.3	Develop implementation plan	Complete, agreed and presented in Inception Report.	
1.4	Coordinate with other donor activities	Discussions have been held with AusAID, and the Public Financial Technical Assistance Center (PFTAC).	
1.5	Review lessons in enterprise management	Completed as part of inception phase.	
1.6	Regular monitoring of TA and reporting	In progress.	
Component 2: Strengthening Fiscal and Enterprise Management			
2.1	Develop and implement MTFF		
2.2	Establish PERMU role and responsibilities	Detailed proposal presented to Steering Committee and contained in Inception Report. Role agreed.	See comments above relating to location of PERMU.
2.3	Strategic policy on PE governance reform	Draft strategic policy completed and considered by DCC for Cabinet approval. See Appendix 2.	Cabinet endorsement of draft required before mid-September to allow for preparation of PE Act.
2.4	Prepare Public Enterprise Bill	Draft Bill completed and considered by DCC for Cabinet approval. Attorney General has copy of draft awaiting Cabinet endorsement before	Cabinet endorsement required before mid-September to allow for finalization of PE Bill and presentation in Parliament during

	ACTIVITY	STATUS	ISSUES ARISING
		finalising for November Parliamentary session. See Appendix 3.	November session
2.5	Develop a regulatory and legal framework for PEs	Reporting and planning requirements included in draft PE Bill. To be completed in October/November.	
2.6	Review debt management strategy & risk analysis	In progress.	
2.7	Develop Financial Institutions Bill & advise NBT	PFTAC has forwarded a draft Financial Institutions Act which requires updating. This aspect is currently in progress. NBT policies and procedures for credit management will be completed as part of the corporate planning process in October/November.	See second tranche conditions in next section of this report.
2.8	Assess the tariffs of TEC and TTC	To be completed 2010.	
Component 3: Results-Based Planning and Management Assistance for PEs			
3.1	Develop & implement PE Corporate Plans	To be completed October/November 2009.	
3.2	Introduce basic accounting skills in PEs	Application made to ADB for funding of MYOB software and training. Awaiting decision.	Decision required before mid-September.
3.3	Strengthen organizational structures for PEs	To be completed as part of corporate planning process	
3.4	Job descriptions & performance appraisal formats	To be completed as part of corporate planning process	
3.5	Develop assistance for displaced workers	To be developed October/November 2009	
3.6	Establish wage structures across PEs	To be developed October/November 2009	
3.7	Define private sector development	To be developed November/December 2009	

	ACTIVITY	STATUS	ISSUES ARISING
	potential		
Component 4: Capacity Building and Maximizing Ownership			
4.1	Prepare diagnostic tool	Complete	
4.2	Diagnostic analysis of MFEP capacity	Complete	
4.3	Prepare diagnostic analysis report	Complete	
4.4	Undertake ongoing capacity building	In progress – see separate preceding note.	
4.5	Raise public and stakeholder awareness	In progress – see separate preceding note.	

IV. PROGRESS TOWARDS SECOND TRANCHE CONDITIONS

17. The table overleaf identifies Government progress towards achievement of second tranche conditions. This is a slightly modified form of a progress report prepared by MFEP.

Table 3: Progress of Second Tranche Conditions as at 21 August 2009

No	Condition	Achieved	Responsibility	Actions	Comments	Expected date of completion
1	Maintaining conditions satisfied under the first tranche	Yes	MFEP	Ongoing	Should clarify what new documentation ADB needs to satisfy this condition.	Complete, ADB input required
2	Debt risk management and mitigation policy including: (a) Processes and responsibilities for the analysis and approval of proposed new guarantees and debt (b) Processes for prioritizing and scheduling debt repayment including debt which is currently not being repaid; and (c) A schedule of timely and standardized reporting on Government's debt	No	MFEP, Steering Committee, TA Team	In progress.	The Government has a <i>Government Borrowing and Guarantee Ordinance, 1973</i> in place - obviously an inheritance from colonial days. This is not adhered to in most cases.	13 October 2009
3	The Government to prepay part of the OIASA Overdraft using the counterpart funds generated from the proceeds of the first	Yes	MFEP, Treasury	Payment of first tranche made to NBT to offset OISA debt in June 2009		Complete

No	Condition	Achieved	Responsibility	Actions	Comments	Expected date of completion
	tranche					
4	<p>Approve PE Governance Reform Strategic Policy including</p> <p>(a) Service delivery priorities</p> <p>(b) Identification of strategic assets and position on ownership of each enterprise</p> <p>(c) A process for review of the social and sustainability implications of changes in ownership of government assets; and</p> <p>(d) Identification of small government business-like activities for possible transfer to the private sector</p>	No	MFEP, Steering Committee	DCC has provided input. Given DCC's detailed concerns MFEP and Steering Committee need to consider what comments to incorporate into Policy before presenting policy to Cabinet.	Steering Committee needs to prepare documentation for Cabinet. Once policy is approved then Attorney General can be directed to draft necessary legislation/legislative changes to present to Parliament.	Steven Boland to confirm when Cabinet approval expected.
5	<p>Submission to Parliament of a draft Public Corporations Act including</p> <p>(a) Roles of the Board of directors and management of a public</p>	No	MFEP, Steering Committee, Office of the Attorney General	As above for 4. Attorney General is awaiting drafting instructions once policy is finalised and Agreed Cabinet.	Draft legislation has been prepared though Attorney General wants more direction on the contents of the policy which will determine what legislative changes are required. Parliament Session set for 4 November with	Steven Boland to confirm when Cabinet approval expected.

No	Condition	Achieved	Responsibility	Actions	Comments	Expected date of completion
	<p>corporations, and procedures and criteria for their appointment and dismissal</p> <p>(b) Requirements for periodic disclosure of information and filing of audited accounts</p> <p>(c) A procedure for decorporatization; and</p> <p>(d) A provision for the introduction of performance contracts for management</p>				legislation needed by 21 October. Next Parliamentary session after November likely to be June 2010.	
6	<p>MFEP shall undertake (with community consultation) an assessment of private sector potential that shall cover</p> <p>(a) Private sector capacity to undertake small scale management contracts</p> <p>(b) Additional upstream and downstream business potential as a result of management contracts and untapped potential from existing</p>	No	MFEP, PEM TA Team	MFEP wrote to ADB seeking assistance. It appears that the assistance may be available through the ADB regional Pacific Economic Management TA to deal with the impacts of the global financial crisis. MFEP are preparing a TOR to submit to team leader for consideration.	ADB should have included this in the PFM TA. Appears to have been an oversight. Study requires consultation and assessment of outer-islands business opportunities which is likely to be time consuming. This could have implications for meeting 2 nd tranche conditions before year-end.	Steven Boland to confirm when Cabinet approval expected.

No	Condition	Achieved	Responsibility	Actions	Comments	Expected date of completion
	<p>businesses</p> <p>(c) Identification of new business niches</p> <p>(d) Assessment of business support requirements, including business and accounting services; and</p> <p>(e) Assessment of outer-island business opportunities</p>					
7	<p>NBT to adopt written and board-approved policies, as proposed by PFTAC (July 2008) for:</p> <p>(a) The timely collection of past due loans and advances of credit; and</p> <p>(b) Measuring, monitoring and maintaining adequate liquidity.</p>	No	MFEP, NBT Board, TA Team	No action so far. To be completed as part of PE corporate planning exercise in October/November.	Secretary of MFEP is Chairman of NBT Board. Will need to seek advice from General Manager of DBT to see if there has been any progress on these.	November 2009
8	Parliament to adopt a legal framework for the licensing and ongoing supervision and regulation of banking	No	MFEP, Office of Attorney General, TA Team	No action so far. Draft Financial Institutions Act (FIA??) provided by PFTAC in PDF format. Currently being reviewed for	No legislation for banking supervision currently exists. Legislation will need to be introduced in November session to get tranche this year.	Expected draft completion by 13 October 2009

No	Condition	Achieved	Responsibility	Actions	Comments	Expected date of completion
	institutions adhering to Basel Core Principles for Effective Banking Supervision			appropriateness by TA Team and Steering Committee.	If draft FIA is viewed as appropriate by Steering Committee and MFEP may adopt legislation from a similar constituency as a model for drafting appropriate legislation.	

V. CONCLUSION

18. The project is making good progress to date. There have been no significant impediments encountered by the TA Team. If second tranche conditions are to be met, the decisions identified as required within this report demand timely resolution by all agencies involved.

APPENDIX 1: TERMS OF REFERENCE

1. The consultants will work as a cohesive team to deliver the tasks below. The team will comprise five consultants: the (i) team leader and advisor on institutional strengthening and public enterprise development, (ii) specialist in developing public financial management capacity, (iii) public financial management advisor, (iv) human resource development advisor, and (v) project facilitator. There will be a project manager, who may be the team leader or a different person.
2. All advisors must have the interpersonal skills to undertake formal and on-the-job capacity building and mentoring throughout the project and work as a cohesive unit to best utilize the skills of the team and its counterparts. They must have extensive international experience, particularly in the Pacific, and be adept at applying lessons in reforms in a small, fragile environment.
3. TA implementation will commence with a diagnostic analysis of Ministry of Finance and Economic Planning (MFEP) capacity, and progress in this activity shall be reported to ADB and the Executing Agency through short monthly reports. This activity shall be the focus of a separate draft final report with an executive summary of not more than 5 pages, to be submitted to ADB and the Executing Agency for comments 1 week after the completion of the diagnostic analysis. A final report shall be submitted in one CD-ROM and three hard copies each to ADB and the Executing Agency with comments received incorporated.
4. The remaining activities will commence with an inception report prepared for ADB and the Government by the team leader within 4 weeks of the start of field activities, which will include an overall work plan for the full period and a detailed work plan for the first year. Brief quarterly progress reports will be prepared in consultation with the public enterprise unit and provided to ADB. Semiannual progress reports will be submitted throughout the TA, and a draft final report submitted by 30 October 2011. The final report will be submitted within a month of the receipt of ADB and government comments on the draft final report. The final report shall be submitted in one CD-ROM and three hard copies each to ADB and the Executing Agency with comments incorporated.
5. All reports shall be written in accordance with ADB's *Handbook of Style and Usage*.²
 1. **Project Manager** (international, intermittent)
6. The project manager will ensure continuity for the 3 years of the project and that management and logistics are effectively organized throughout. The project manager will provide professional, office, and logistical support and ensure continuity in all aspects of the project.
7. The project manager will oversee component 1 and provide coordination of all TA components. This will include establishing mechanisms for capacity building and coordination beyond just the tasks in the terms of reference. He or she will undertake or facilitate capacity-building and community awareness tasks as required to ensure the enterprise reforms and their rationale are widely understood.
8. More specifically, the project manager will
 - (i) facilitate the establishment of a steering committee and define its role and composition;

² ADB. 2002. *Handbook of Style and Usage*. Manila.

- (ii) facilitate the establishment of a public enterprise unit, including helping the steering committee define the terms of reference for staff recruitment or reallocation and procedures and mechanisms necessary to establish a working unit;
- (iii) confirm an overall strategy and implementation plan for the TA in close consultation with the Government, steering committee, and TA team;
- (iv) coordinate all TA inputs, including coordination with other externally-funded activities;
- (v) help the Government review lessons in enterprise ownership and management and facilitate their application;
- (vi) promote positive and productive relationships with the Government, enterprises, development partners, and ADB; and
- (vii) ensure the provision of quarterly and annual reports of TA progress and associated reporting to the Government and ADB.

9. The project manager will have experience in managing international projects in long-term public sector reform. The manager will have extensive project management experience internationally and be able to ensure that management, technical, and reporting deadlines are met throughout the project. He or she will model the hands-on approach required for the success of the project and ensure that the TA team, steering committee, and new public enterprise unit operate cohesively. The manager will review TA inputs and may, with ADB agreement, reallocate the total person-months to best meet changing project requirements.

2. Team Leader and Advisor on Institutional Strengthening and Public Enterprise Development (international; 12 person-months, intermittent)

10. This person will have extensive experience in public sector reform and enterprise development across a range of geographic, technical, and possibly political settings. He or she will be able to handle broad technical requirements competently at both the Government level and regarding enterprise development. In addition, a deep understanding of the political economy dimension of reform is essential, with proven ability to navigate the interface between political and bureaucratic decision making.

11. More specifically, the consultant will undertake the following:

- (viii) support the setting up of a public enterprise unit and provide initial and ongoing training for staff on its role and responsibilities;
- (ix) facilitate the development and implementation of a strategic plan and policy outlining the Government's position on enterprise ownership and options for divestment;
- (x) prepare, with support from the Attorney General's Office and in conjunction with the public finance advisor, and after assessing best practice models, the Public Corporations Act as overarching legislation that sets out requirements for enterprises' monitoring, management, and reporting to the Government;
- (xi) develop, in consultation with the public finance advisor, a regulatory framework for monitoring enterprises and a framework for both establishing and divesting enterprises;
- (xii) work with general managers and boards of directors to develop and implement a corporate plan and an action plan for each enterprise, based on the Government's overarching strategic policy and plan, and help them to meet the requirements of the Public Corporations Act;

- (xiii) advise the steering committee on any issues within the scope of the TA.
- (xiv) collate and prepare inception, quarterly, annual, draft final, and final reports as required by ADB.

3. Specialist in Developing Public Financial Management Capacity
(international, 2.5 person-months, intermittent)

12. This person must have an appropriate background to undertake the task as outlined below but should, in addition, be able to act as an efficient facilitator. Knowledge of how to assess competency and measure it against set targets is essential.

13. More specifically, the specialist will undertake a participatory diagnostic analysis with the involvement of all staff of MFEP to reach agreement on the necessary areas for capacity development in public financial management, their sequential order, and a monitoring framework to measure the impact of individual interventions. This analysis will be a direct follow-on activity to the public expenditure and financial accountability (PEFA) review conducted in 2007.³ The main role of the consultant should be facilitator, with MFEP in the driver's seat. The diagnostic should typically comprise a series of short workshops or discussion groups involving staff. They should use the questions below to guide investigation and help establish (i) where the institution is in regard to effectiveness, (ii) what prevents its improving performance, and (iii) what needs to be done to improve performance.

14. The analysis should use the following five sets of questions

(i) Clarity of results

- Does the institution have clarity on the expectations of its clients? Does it know who its priority clients are in the first place?
- Are these expectations reflected in its key results areas and annual targets that it sets for itself periodically?
- Are its annual targets reduced to a select number of clear, monitorable, and achievable targets that are regularly updated?
- Does it monitor and assess its performance regularly? Is this monitoring and assessment built into its ongoing performance management systems?
- What are its current key performance gaps? These gaps have causes that can be found in one or more of the four areas described by the points below. The diagnostic needs to work back from these performance gaps to find the root causes of underperformance. Then the capacity-building exercise can be better targeted.
- Has budget credibility been established? To what degree has post-PEFA development work progressed? What remains to be done?

(ii) Availability of resources

- Analysis of the answers to the questions above will reveal key performance gaps. Is inadequacy of budget, staff numbers and skills, or assets responsible for these gaps?
- Is there proportionality between expected results and available resources?
- Do results need to be pared down to fit the resources available?

³ ADB. 2007. *Tuvalu Public Expenditure and Financial Accountability Final Report*. Consultant's Report. Manila.

- (iii) Strategy, structure, and systems (recognizing that the business of management is to facilitate the conversion of resources into expected results, which it does through strategy, staff structure, and systems)
 - How effective is the institutional operating strategy? Does it recognize constraints in resources? Does it ensure the effective use of available resources? Does it ensure effective collaboration with stakeholders?
 - Is the institution's structure suitable to its mandate? Does it promote efficiency and support delegation and responsiveness to clients?
 - Are the systems of finances, human resources management, asset management, and performance management efficient (examine each set of systems for their efficiencies)?
- (iv) Mobilizing stakeholder support
 - Have key stakeholders been identified? Is there a clear strategy to mobilize their support?
 - Which stakeholders are constraining the achievement of results? Why? How can they be persuaded to become collaborators?
- (v) Leadership
 - Does the leadership promote key values that improve performance?
 - Does it lead by example?
 - Does it provide clear direction to staff?
 - Does it show commitment to meeting clients' needs and achieving results?

15. The consultant will produce

- (i) a detailed write-up of the diagnostic analysis exercise;
- (ii) identified areas for capacity development and their sequential order, with more than one intervention implemented in parallel, if needed;
- (iii) detailed terms of reference for the first capacity-development exercise; and
- (iv) baseline competency levels in various areas for capacity development, with a clear methodology for measuring the achievement of the competency level required to implement the next intervention.

4. Public Financial Management Advisor (international, 8 person-months, intermittent)

16. This person must have extensive experience in facilitating financial planning and fiscal management, both at the Government level and in reviewing and facilitating financial planning against reporting requirements within enterprises.

17. More specifically, the financial management advisor will

- (i) support the specialist in developing public financial management capacity in undertaking the diagnostic review;
- (ii) facilitate the development of a medium-term fiscal framework, working in close consultation with MFEP;

- (iii) review the debt-management strategy and risk analysis prepared by MFEP, integrate with MTEFF as appropriate, and facilitate dialogue on the use and scope of the tools and their capacity for integration with other financial planning and management tools;
- (iv) work with the public enterprise unit, in conjunction with the institutional advisor, to build understanding of financial analysis for improved enterprise monitoring;
- (v) develop, in consultation with the institutional advisor, a regulatory framework for monitoring enterprises and a framework for both establishing and divesting enterprises;
- (vi) work with general managers and boards of directors to help them to meet the financial reporting requirements of the Public Corporations Act;
- (vii) coordinate with the Pacific Financial Technical Assistance Center regarding assistance to develop the Financial Institutions Act and provide support to National Bank of Tuvalu policy and practice changes to improve performance;
- (viii) assess the tariffs required for the financial sustainability of the Tuvalu Electricity Corporation and the Tuvalu Telecommunications Corporation and suggest how to introduce negotiations on community service obligations required of them by the Government.

5. Planning and Human Resource Development Advisor (international, 3 person-months, intermittent)

18. This person must have a broad human resources background and understanding of how to link strategic planning and human resources development. The advisor will

- (i) work with general managers and boards of directors to develop and implement a corporate plan and an action plan for each enterprise, based on the Government's overarching strategic policy and plan, and help them to meet the requirements of the Public Corporations Act, focusing particularly on issues of human resource planning;
- (ii) facilitate the preparation of appropriate organization structures for all enterprises, based on corporate plan requirements;
- (iii) develop a job description format for use by all enterprises;
- (iv) develop a basic performance appraisal system for use by all enterprises;
- (v) undertake a basic job evaluation to review current salaries and wages across all enterprises and make broad recommendations on wage and salary parity across enterprises and between enterprises and the public sector;
- (vi) make recommendations on staffing and skills requirements to meet performance outputs; and
- (vii) provide ongoing training to the enterprise staff on the rationale for and use of the tools listed above.

6. Project Facilitator (national, 8 person-months, intermittent).

19. The project facilitator will have a strong background in training, education, and participatory processes. He or she will have extensive experience in technical assistance in those fields in small island states.

20. Under the guidance of team leader or advisors, the project facilitator will

- (i) prepare and facilitate a series of participatory public workshops to develop awareness and understanding of the implications of public enterprise performance and reforms, and undertake similar outreach among parliamentarians and relevant Government and public enterprise staff;
- (ii) facilitate trainings in financial management for public enterprise staff and board members to develop their ability to understand and perform the financial tasks in keeping with their role; and
- (iii) reach out to the public through appropriate media on issues within the scope of the TA as identified by the team leader and/or advisors.

APPENDIX 2: DRAFT PUBLIC ENTERPRISE POLICY

DRAFT

Policy Submission on Government Ownership of Enterprises, Enterprise Performance and Private Sector Participation

Section 1. Background

The Government currently owns eight Public Trading Enterprises, one Public Beneficial Enterprise and one Minority Shareholdings (see Appendix 1).

As part of ADB TA 7161 TUV the Team now submit background and policy recommendations relating to ownership, performance and divestment of public enterprises (PEs). This policy will enable Government to target strategic PEs for greater performance improvement and will form the basis of strategy for scoping and private sector participation in enterprises which Government might consider it no longer should own.

Section 2. Background and Guiding Principles

Issues of ownership and issues of divestment are the two sides of the same coin. Once enterprises of strategic importance have been identified it is then possible to investigate private sector participation options and priorities for enterprises the government no longer needs to own.

When framing public enterprise policy the following principles also require consideration:

- Government must be very clear about what it wishes to own and why; without this clarity it will become involved in enterprises that are best left to the private sector or may entail higher levels of risk than Government would normally accept.
- A clear policy is required on ownership so that the public understand why the government is in business.
- Any divestment or private sector participation must be managed carefully to ensure returns from sale or management contracts are acceptable without compromising land ownership issues or public interest.
- There are social and political costs to the sale of most government owned assets which must be considered and addressed.
- Sale of government assets is generally irreversible. Policy issues of monopoly and foreign ownership must be resolved before divestment. Examples, especially within the Pacific, of the consequences of sale without a policy and governance framework, provide opportunities for Tuvalu to build upon lessons elsewhere rather than repeat mistakes.
- Enterprises which the Government wishes to continue to own must either make a profit or work toward becoming self sufficient as a service organisation.

- The Government must support the Public Enterprise Monitoring Unit to ensure it can provide skilled custodial care and monitoring of the enterprises, in the interests of Government revenue and public services.

Section 3. Purpose

This Policy Paper addresses three main issues:

- What does the Government need to own and why?
- How can Government improve the performance of the enterprises it wishes to continue to own?
- What are the options and priorities for divestment of or private sector participation in enterprises, which the Government no longer needs to own?

Key principles and a summary policy statement are provided for each issue.

Section 4. Public Enterprise Ownership

What does the Government need to own and why?

Principles

- 4.1 Government requires a framework and rationale for what it *must* own, first, as a basis for then deciding what it does *not* need to own.
- 4.2 Many enterprises now owned by Government were set up when the Tuvalu private sector could not sustain these businesses without Government assistance. Some businesses required Government support as a condition of donor assistance (e.g. Republic of China, European Investment Bank Schemes). The private sector has increasing capacity to undertake many businesses which Government currently owns.
- 4.3 In principle, Government should only own enterprises which have such significant strategic, security or social importance that they cannot be entrusted to the private sector, or where a government monopoly is deemed preferable to a private sector monopoly. This list of essential and strategic enterprises may be reviewed from time to time. As the Tuvalu private sector becomes more robust, other enterprises may be divested.
- 4.4 The enabling and regulatory frameworks are not yet sufficiently well developed to ensure that service quality and cost will be maintained or improved under private ownership. Industry-specific regulatory and supervisory mechanisms must be put in place for all enterprises of strategic, security or social importance. This activity should commence in conjunction with the robust, performance based corporate planning process, in 2009. Regulatory frameworks for other key sectors are also required prior to divestment.
- 4.5 Pacific 'lessons learned' indicate that government monopolies may be preferable to private monopolies. In some sectors such as electricity transmission, the Tuvalu market is unlikely to be able to support more than one national operator.

Government Policy on Enterprise Ownership:

Government should only own enterprises, which have such significant strategic, security, or social importance that they cannot be entrusted to private ownership. This includes the Tuvalu Electricity Corporation, and Tuvalu Marine Training Institute. Other embedded cases include the airport, port and inter-island shipping. The rationale for these enterprises includes the following:

- TEC is a monopoly power supplier which is not amenable to competitive pressure, especially if private sector participation is allowed. As noted, Tuvalu could not support more than one power supplier.
- TMTI has a unique strategic character. It is TMTI that ensures that Tuvalu maintains its position on the shipping 'white list' and thus assures the flow of seafarers' remittances.
- The port and airport are also national strategic assets. Private sector participation can be encouraged in the provision of some services but asset sales would have the potential to hold the country to ransom.
- Inter-island shipping in Tuvalu (as in many other Pacific countries) is the principal lifeline between Funafuti and other islands. Private sector participation (and its potential failure) may place this national function under threat.

Section 5. Performance Improvement

How can Government improve the performance of the enterprises it wishes to continue to own?

Principles

- 5.1 All PEs must be strengthened and run as commercial businesses. Most enterprises are currently not operating profitably. Appendix 3 provides details of enterprise performance over the last 4 years.
- 5.2 The new Public Enterprise Act will enforce Government's insistence that Public Enterprises operate on a commercial and profitable basis.
- 5.3 The Public Enterprise Monitoring Unit (PEMU) must be established in such a way as to enable it to best protect Government's financial interest in PEs through effective monitoring and assistance with improving management capacity. Industry-specific regulation will be required and should be the subject of separate policy papers once broad ownership principles are approved.
- 5.4 All PEs are required under the Public Enterprise Act to submit Corporate Plans and time-bound, measurable performance indicators, commencing November 2009. All Government or donor-funded assistance should be tied to ensuring performance measures can be met and PEMU should be involved in the process. Donor funded assistance must strengthen adherence to performance targets consistent with the approved Corporate Plan and links between planning, management and outputs. All PEs will need to become very clear about performance standards.
- 5.5 The relationships between Ministers and PEMU staff responsible for each PE must be established so as to ensure Ministers have regular access to current, objective performance information, in addition to their relationship with the Chairperson of the Board. The Minister of Finance and the Relevant Minister are the Government

'Watchdogs' and must be free to provide objective information to Cabinet and to question the Chairman of the Board on any matter relating to performance or accountability.

5.6 Some activities, which Government requires PEs to perform, cannot be run profitably even if they are run more efficiently. Under the Public Enterprise Act, Government has responsibility for meeting the cost of non-profitable Community Service Obligations (CSOs) which PEs are obliged to perform. PEs and Government must enter into a 'Sale and Purchase' agreement. This makes the cost of non-profitable operations transparent, enables Government to agree to meet the cost of CSOs before they are undertaken by the PE and ensures un-profitability is not masked through a PE undertaking Community Service Obligations. Government may wish to consider contracting private organisations or NGOs to undertake CSOs through a tender process, if these organisations can perform the services better or more efficiently than the PE.

Government policy on Public Enterprise performance:

Commercialisation is mandatory for all Public Enterprises. Trading enterprises must operate profitably.

All PEs, both Trading and Beneficial must be run as efficiently as a similar private sector business. Public Beneficial Enterprises are not legally required to operate profitably but they should be planning to achieve cost recovery and eventual self-sufficiency, within a defined period which is specified in their Corporate Plan.

Community Service Obligations must be costed separately and agreed with the Government. Their fulfilment must not interfere with the profitable operation of the Company.

Other options for the supply of Community Service Obligations should also be explored including small private operators and NGOs.

Responsibility for performance monitoring of all Public Enterprises (including embedded business) is the function of the Public Enterprise Performance Monitoring Unit (PEMU). This function includes the scoping and analysis of potential new business ventures regardless of the Line Ministry responsible.

Section 6. Divestment

What are the options for divestment of enterprises which the Government no longer needs to own?

Principles

6.1 Government is committed to divesting businesses which it no longer needs to own. In some cases these can be sold profitably; in some cases performance can be improved to ensure better returns; in other cases, consistent underperformance may result in the business being wound up or passed to shareholders or employees through a variety of 'buy in' options. A scoping study must be undertaken for each enterprise targeted for divestment, to determine the best options from the perspective of both financial return and protection of services.

6.2 All enterprises except those designated as essential or strategic by Government are candidates for divestment. The issue of ownership of national monopolies must be addressed in industry case-by-case policy papers. However, in principle the Government should continue to own utility monopolies until or unless viable private sector options can be negotiated whilst maintaining service and performance targets.

- 6.3 'Lessons Learned' in previous divestment exercises elsewhere, must be analysed and applied to ensure costly mistakes are not repeated. This is particularly the case with monopolies, where private ownership in the Pacific has sometimes resulted in services amongst the most costly in the world. For example, international telephone calls in the Cook Islands can cost as much as USD2.36 per minute.
- 6.4 Government should consider a range of divestment options, not just privatisation. This will generally include corporatisation as a first stage, where Government wishes to retain the enterprise in the medium term. Other options will include: management contracts, worker 'buy in' schemes, closure and asset sale. In some cases Government may wish to purchase or retain ownership of the assets and enter into a lease agreement with the new business.
- 6.5 Divestment options should not result in Government becoming a minority shareholder unless there is no other viable option.
- 6.6 Where privatisation is the preferred option, it should be approached on commercial principles, although the capacity of any prospective owner to maintain the operation should be assessed to the degree possible as part of the tender process, especially where the business may have an impact on other commercial interests. For example, privatisation of either banking public enterprise may have implications for the development of the private sector.
- 6.7 Government should now begin the process of commercializing the embedded business units within each Ministry. These should form new public enterprises with a view to their potential divestment or private sector participation after assessing their strategic and national importance. Opportunities for merging smaller units to achieve a commercially viable business unit should be scoped. This does not mean that all these enterprises will necessarily be privatised. Scoping studies should identify a range of options and recommend an option in the best overall interests of the government – considering upstream and downstream business impact not just short term financial return. The PEMU can be charged with undertaking these scoping studies.
- 6.8 Some businesses can be sold quickly without public controversy or legal complications. Others will require an elongated process, especially because of land ownership, donor input or the need to unbundle business activities. Options and implications must be investigated before proceeding with any tender process. As a principle a scoping study should therefore be undertaken first, before any divestment, to ensure Government is aware of the options and implications. In some instances an additional due diligence will be required to determine enterprise value. Scoping is not a substitute for due diligence but is necessary as a first step.
- 6.9 Some businesses which can be sold are responsible for important services where the public interest must be protected. Mechanisms for government regulation and supervision must be set up before the business is sold so that the new owners are obligated to perform certain services to agreed standards. There is much work to do in this area.
- 6.10 An Action Plan is required to assist with scoping priorities and divestment planning and management. The Action Plan must be reviewed by Cabinet at least annually, recognizing that the priority order may change in response to the results of the Scoping Studies, market forces prevailing at any given time and the capacity of the local private sector to participate, where this is the preferred divestment option.

6.11 Some foreign ownership is inevitable, since the asset value of many of the enterprises which the Government may approve for sale is likely to be greater than the local investment pool can accommodate. A separate policy paper on foreign ownership should be prepared. The private sector is still very thin in terms of its capacity to assimilate privatised PEs without foreign investment. However, no thorough review of private sector interest and financial capacity has been undertaken to determine *how* thin or *how* interested the Tuvalu private sector may be, in investing in privatised PEs. A review must be undertaken to assess the private sector capacity and interest. The review itself will generate interest, since it will open up options not previously thought of, or available in Tuvalu.

Government policy on Divestment:

Government should divest all enterprises (other than those designated as essential or strategic), according to an agreed Action Plan. Government recognizes that divestment priorities will change in response to scoping and market forces.

Scoping Studies should be undertaken for each enterprise before divestment, to protect Government's investment interests and identify the preferred options.

The local private sector is unlikely to be able to absorb all investment opportunities from divestment. The level and type of foreign ownership acceptable to Government must be carefully defined in a separate policy paper. A thorough market review must be undertaken, both to assess interest and capacity, as well as to generate interest.

Section 7. Private Sector Development

7.1 Divestment can contribute to private sector development but training and support systems for local private owners must be in place first. Otherwise important privatised businesses may fail. Available donors should be encouraged to assist. 'Lessons Learned' in previous private business start ups indicate that the Tuvalu private sector requires time and business development assistance if privatised enterprises are to survive. Pre-emptive assistance, including collaboration with finance institutions will offer greater benefits than business failure.

7.2 Small-scale investors can take some of the Community Service Obligation load off Government, if they are given support and funding. For example, waste collection and recycling within Public Works. Small-scale investors should not be overlooked as an important source of investment and development.

7.3 Public information and consultation must be carefully managed to reduce the likelihood of misinformation and negative reaction.

7.4 Performance improvement, efficiency improvement, and divestment are all are likely to incur social consequences, including redundancy. Government policy and support mechanisms for PE redundancies must be put in place as part of improving PE management.

Summary

Four important imperatives must guide Government decisions regarding Enterprise ownership, performance improvement and divestment.

- We *must* reduce the size of the Government Enterprise portfolio and focus on essential social and strategic businesses;
- We *must* insist on improved and sustainable performance from government enterprises. In particular, improved financial performance, quality of service, Board management, and compliance with the relevant Acts. Improved performance must result in the payment of tax and dividends;
- We *must* apply the lessons learned in privatisations elsewhere before we proceed with the round of divestment;
- We *must* proceed as quickly as possible with the scoping (feasibility studies) for privatising the organisations listed above, recognising that some of the issues emerging will lead to further debate on divestment.

Recommendations:

That Cabinet endorse the following policy statements, based on the above principles:

Government Policy on Enterprise Ownership:

Government should only own enterprises which have such significant strategic, security, or social importance that they cannot be entrusted to private ownership. At present these are: Tuvalu Electricity Corporation and Tuvalu Marine Training Institute.

Government Policy on Public Enterprise performance:

Commercialisation is mandatory for all Public Trading Bodies. Trading bodies must operate profitably and pay dividends and tax.

All PEs, both Trading and Beneficial must be run as efficiently as a similar private sector business. Beneficial Bodies may not be required to operate profitably but they should be planning to achieve cost recovery and eventual self-sufficiency within a defined period, as described in their corporate plans.

Community Service Obligations must be costed separately and agreed with Government. Their fulfilment must not interfere with the profitable operation of the Company. Other options for the supply of Community Service Obligations should also be explored including small private operators and NGOs.

Embedded business units within Ministries will be scoped and incorporated as public enterprises in preparation for private sector participation, if appropriate. If not appropriate they will be managed on strictly commercial principles in compliance with the Public Enterprise Act.

Responsibility for performance monitoring of all Public Enterprises (including embedded business) is the function of the Public Enterprise Performance Monitoring Unit (PEMU). This function includes the scoping and analysis of potential new business ventures regardless of the Line Ministry responsible.

Government policy on Divestment:

Government should divest all enterprises (other than those designated as essential or strategic), according to an agreed Action Plan. Government recognizes that divestment priorities will change in response to scoping and market forces.

Scoping Studies should be undertaken for each enterprise before divestment, to protect Government's investment interests and identify the preferred options. Work should proceed as soon as possible on scoping.

The local private sector is unlikely to be able to absorb all investment opportunities from

divestment. The level and type of foreign ownership acceptable to Government must be carefully defined in a separate policy paper.

Performance improvement, efficiency improvement, and divestment are all are likely to incur social consequences, including redundancy. Government policy and support mechanisms for PE redundancies must be put in place as part of improving PE management.

Annex 1: List of Public Trading and Public Beneficial Enterprises

Annex 2: Lessons Learned

Annex 3: Summary of Enterprise Performance, 2007

Annex 4: Embedded business units

Annex 1: Tuvalu Public Enterprises and Establishment Status

PART A - Public Trading Enterprises

1. National Bank of Tuvalu (NBT)
2. Tuvalu Development Bank
3. Telecommunications Corporation
4. Vaiaku Lagi Hotel
5. Electricity Corporation (TEC)
6. Media Corporation
7. Fishing Corporation (in suspension), and
8. Philatelic Bureau.

PART B - Public Beneficial Enterprises

1. Maritime Training Institute (MTI)

PART C – Minority Shareholding

1. Air Fiji

ADB TA 7161 TUV PUBLIC ENTERPRISE CORPORATE GOVERNANCE AND MANAGEMENT MATRIX

Public Enterprise	Formed under Act of Parl't	Ministry	Board Memb'p	Board Meeting Req'd Freq.	Actual Freq.	Corp. Plan?	Internal account function?	Last audited accts	Audit report qualified	Staff	Salary scale	Job desc's	CEO term	Perf Evaluat System
National Bank of Tuvalu (NBT)	1980	MoFEP	MoFEP Sec Plus 4	Not every 2 mths	> 8 / per year	√	√	2007		47	Equiv to Govt	√	5 years	√
Development Bank of Tuvalu (DBT)	1990	MoFEP	MoFEP Sec Plus 5	Not every 2 mths	> Bi-monthly	05/07 08 in progress	√	2007	X	11 plus 1 agent / island	Tied to Govt	√	5 years	√
Tuvalu Telecom Corp (TTC)	1993	MoCTT	MoCTT Secy Plus 5	Not than every 2 mths	> Monthly	In draft	√	2007	X	50	Less than Govt	√	3 years	√
Vaiaku Lagi Hotel (VLH)	1998	MoCTT	MoCTT Sec plus 4	Not every 2 mths	> Bi monthly	05/08	√	2007	X	33	Less than Govt	√	5 years	√

Public Ent.	Formed under Act of Parl't	Ministry	Board Memb's	Board Meeting Req'd Freq.	Actual Freq.	Corp. plan	Internal Account function?	Last audited accts	Audit report qualified	Staff	Salary scale	Use job desc's	CEO Contract term	Have Perf Eval Syst?
Elect. Corp (TEC)	1990	MoPUI	Secy MoPUI plus 4	Not every 2 mths	> 2 3-4 per year	None current	√	2007	X	66	Tied to govt	√	3 years	√
National Fishing Corp NAFICOT	1981 & 1987	MoNR	MoNR Secy plus 4 <i>NB Board dissolved</i>	Not every 2 mths	> 2 No Board	No But see plan for JV purse seiner	With Dir of Fisheries	None current	N/A	4 staff into MoNR	N/A	N/A	N/A	N/A
Philatelic Bureau. (PB)	1982	MoFEP	MoFEP Sec plus 4	Not every 2 mths	> 2 Bi-monthly	√	√	In draft only	X	5 perm + 6-7 casuals	Equiv to govt	√	Act does not specify term	√
Tuvalu Maritime Training Institute (TMTI)	2000	MoEYS	MoEYS Sec plus 5	Not once per mth	> per mth Monthly	√	√	2007	X	17	Tied to similar posts on govt ships	√	3 years	√

MoPUI – Ministry of Public Utilities and Industry

MoNR – Ministry of Natural Resources

MoFEP – Ministry of Finance and Economic Planning

MoCTT – Ministry of Communications, Transport and Tourism

MoEYS – Ministry of Education Youth and Sports

Annex 2: Lessons Learned in Public Enterprise Management

This brief but searching review of 'Lessons Learned' was undertaken as part of the inception of ADB TA 7161 in June 2009.

- Evidence suggests that many individual public enterprises and Ministries have in the past and are continuing to pursue private sector participation deals. These range from contracting out part of a public enterprise's or Ministry's activities to undertaking major joint venture negotiations with foreign interests. Many of these initiatives, including major investment decisions in joint venture vehicles, appear to take place without oversight by the Ministry of Finance and without detailed financial analysis.
- There is a need for clear policy and high level strategic goals on which public enterprise ownership and private sector participation decisions can be based. This will provide the broad framework. Specific sector-based policies can then be developed, consistent with the overall framework. This will provide a cohesive and comprehensive approach to ownership and divestment and will allow both the public sector and civil society to understand the rationale for Government decision - making regarding enterprises.
- Clear links must be made at a strategic and public level, between government ownership, PE strengthening activities, corporatisation, and privatisation. At present there is a lack of understanding within the public sector that decisions regarding ownership and decisions regarding divestment must go 'hand in hand'.
- There is a need to win political commitment for private sector participation based on understanding of the opportunity costs of NOT privatising as well as the benefits of doing so. This will require careful media management by Government once a policy on Enterprise Ownership and Divestment has been endorsed.
 - Previous private sector participation initiatives occurred in the absence of scoping studies and proper financial analyses. This meant that often the real issues did not arise until the process was underway (Air Fiji, Korean Fishing Vessels, Housing Maintenance). Scoping studies would have highlighted many of the problems, much earlier. This would have enabled progress to be made on 'untangling' problems of asset ownership, donor requirements, land ownership, poor performance and lack of documentation, before commencing the negotiation and sale process.
- Clear delegation of responsibilities is required, for each stage of the scoping and divestment process. PEMU should oversee the process and a single person within PEMU should follow the process to completion. Once commenced, progress must be maintained or unnecessary cost and re-working will be required. Where private sector lawyers or accountants are involved, they must have clear reporting responsibilities and deadlines. Previously, private sector participation has occurred in a haphazard manner, with unclear responsibilities and lack of supervision of those hired to assist. This may have been costly in both time and money.
- Poor financial records, lack of monitoring, lack of corporate plans and lack of performance targets has resulted in enterprises: under-performing; continuing to operate whilst insolvent: and, reducing in value, without any Government intervention. Government must set and monitor performance targets, and ensure records are kept.

- Lack of accurate financial information places Government in a weak negotiating position, especially when a private sector player wishes to buy out Government but Government has an incomplete set of financial records or lacks sound financial projections. PEMU must now enforce that all enterprises comply with the requirement for timely and accurate financial statements. It is up to Government to protect its assets - not to rely on the integrity or discipline of the Board or CEO.
- Documents of incorporation favour non-government shareholders and make it difficult for Government to divest and protect its position in negotiations (Air Fiji). The smaller the share package, generally the weaker the position of Government to negotiate. It is in the interests of the private owner to have Government as a 'sleeping' partner, but this is seldom in Government's interest.
- Government should no longer own minority shares and should divest these as a priority. Partial sale of shares tends to reduce the negotiating position on remaining shares.
- PE performance needs to be publicised as a matter of public information and Government accountability. This should be done, whether the performance is good or bad. If the public are unaware of the poor performance of an enterprise until Government announces plans to sell, this further reduces public perception of privatisation as positive. The public expect privatisation to result in profits. They require education on enterprise ownership and on the privatisation process and rationale. This includes understanding that the sale of under-performing enterprises may result in losses, not profits.

Next Steps

1. Develop a strategy for ownership of Public Enterprises, based on the requirements of the new Public Enterprise Act, including a clear statement of which enterprises Government decides it must keep-and why.
2. Divest any minority shareholdings as soon as possible. Scoping studies should be undertaken first, so that Government understands the true status of the enterprise and options for divestment.
3. Use the PE Ownership policy to develop a divestment strategy covering all remaining enterprises, including embedded businesses. The strategy should be reviewed by Cabinet at least annually and the order of enterprises for divestment revised, where necessary, to reflect: market forces, availability of finance (some enterprises will cost more to divest than others), political climate and any other important issues. It is unlikely that more than four enterprises can be divested in any given year (although more may be scoped). Divestment requires considerable allocation of scarce financial and human resources.
4. Improve the performance of the PEs Government wishes to retain, through: introduction of a rigorous Corporate Planning process with time bound specific and measurable targets; provision of access to and information on management training especially for middle managers; establishment of a rigorous PE monitoring system and process in PEMU; coaching of PEMU staff to enable them to have the competence and confidence to monitor effectively and enforce standards and compliance, where necessary.

Annex 3: Public Enterprise Performance

1. Historically the performance of PEs has been dismal. This section of the report identifies PE performance in terms of returns, profits, and dividends. It should be noted that all statistics are taken from the annual reports supplied by individual PEs for the financial year 2007. These statistics are supplemented by information available within the Auditor General's office where necessary.

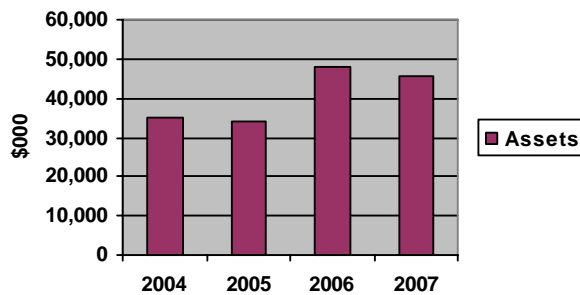
2. Over the four-year period, aggregate return on equity has varied between almost break even and (12.6%). This consolidation is generous though. The only PE to consistently make a profit is NBT. At the other end of the scale, DBT, VLH, TEC and PB have never made a profit in the four year period.

3. Major loss making SOEs in 2007 included:

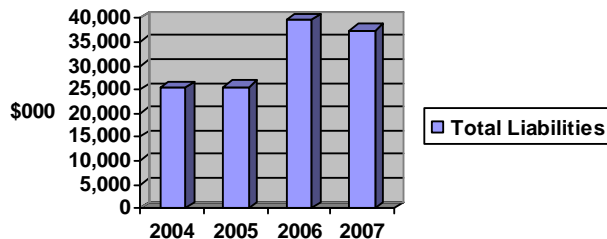
- TEC \$(262,861)
- TTC \$(478,100)
- PB \$(41,470)

4. Some PEs have for some time had negative equity. This indicates a need for recapitalisation either through further Government funding or identifying a potential equity partner from the private sector. PEs currently having negative equity are TEC and PB.

5. As might be expected, payment of dividends to Government has very much mirrored the return on equity, with only NBT making any dividend payment in the past four years. However, asset values (a measure of Government investment in PEs) have continued to grow.



6. At the same time, the level of indebtedness of these enterprises has increased.



7. A brief but searching review of annual reports for 2007 was undertaken. This review identified the following issues:

- Only NBT and TTC prepare their financial statements, despite most PEs having an internal accounting function and all being provided with a template by external accountants.
- Of the audited accounts presented, only NBT and TTC had unqualified audit reports indicating a lapse in accounting standards in a majority of PEs.
- PEs accounts are prepared to comply with IFRS accounting standards. This is commendable. However, there is a lack of uniformity in some accounting standards applied. For example, depreciation rates used are not uniform:

PE/Depreciation Rate	Buildings	Office Equipmt	Furniture & Fittings	Plant & Equipmt	Vehicles
NBT	3.6%	20%	5-20%		20%
DBT	10%	20%	25%		25%
VLH	5%	20%	20%		20%
TEC	5%	10-20%		2-25%	20%
TTC	4-20%	20-50%		3-14%	20-50%
PB		20-50%			
TMTI	5%	10-25%	5%	5-10%	

This makes comparative judgements of financial performance difficult.

- Most PEs appear to have protracted timetables for completion of annual reports. In some instances, this timetable can be as much as one year. In more than one case it was 2 years.
- The performance of a number of PEs is a cause for grave concern in terms of results and cash flow. Several are moving towards insolvency including VLH, TTC, TEC, DBT.
- The PEs that operate in the finance sector appear to have overlapping functions.
- Government exposure through loans and loan guarantees may be a concern. This exposure is not directly evident from financial results, but is clearly large. It is acknowledged that many IFI loans are on soft terms and are therefore unlikely to represent a burden. However, management of loans requires more than debt servicing – it requires good accounting.

8. Some PEs are in breach of their legislative guidelines. The following examples are illustrative:

- Most PEs are required to report annually against their corporate plan. No PE does so. Reporting deadlines are routinely ignored as indicated above.
- Board meetings are mandated to take place no less frequently than every two months. TEC appears to have Board meetings 2-3 times per year.
- The operations of NAFICOT were suspended and the remaining four staff transferred to Fisheries Department. The Board of Directors was dissolved. NAFICOT held significant assets including six vessels, freezers, buildings and outboard motors. Some assets (consisting of two vessels subject to Government loan) were disposed of by donating one to TMTI and selling the other. The accounting records for these transactions have not been inspected. Revenue (rental of \$100 per month and charter fees) appears to be allocated to Fisheries Department. NAFICOT was established by Act of Parliament. This appears to require a corresponding disestablishment Act. Currently a joint venture scheme is being negotiated with Taiwanese interests in the name of NAFICOT by Fisheries Department. It is questionable whether any of these transactions are legal without a disestablishment Act transferring assets, revenue and staff to

Fisheries Department. In addition these actions may be in breach of Tuvalu's Leadership Code.

9. In summary, the portfolio of public enterprises is characterised by:

- No overarching management framework or commercial discipline.
- Aggregate negative returns.
- High and increasing levels of Government investment and debt.
- Non-existent dividends.
- A lack of rigorous reporting and compliance with accounting standards.
- Confusing and/or overlapping roles within the finance sector.
- A lack of observance of legislated guidelines.
- No active performance monitoring and management of the portfolio.

10. Clearly, any programme of work must address these issues as a matter of high priority.

This information is an abstract from ADB TA 7161 TUV Inception Report as at July 2009

Annex 4: Embedded Business Operations

1. Many Ministries in Tuvalu undertake business activities with funding for these operations being by Budget appropriation. These activities include:

Business Activity	Parent Ministry
Tuvalu Radio	Office of Prime Minister
Port	MoCTT
Stevedoring	MoCTT
Inter-island shipping	MoCTT
Govt ISP	MoCTT
Post Office	MoFEP
Airport	MoCTT
Housing and Maintenance	MoPUI
Travel Agent	MoCTT

2. These activities are all business activities and should form the basis to establish public enterprises, as they have in many other Pacific countries including Fiji, Samoa, Tonga and the Cook Islands. Many are significant undertakings in terms of finance and some offer the potential for bundling up with other activities to create commercial propositions. The following figures are taken from the budget for 2008:

Business Activity	Revenue	Budget Expenditure
Tuvalu Radio	120,000	553,087
Port	432,724	173,388
Stevedoring	Inc in port	Inc in port
Inter-island shipping	1,379,159	2,043,975
Govt ISP	243,204	155,995
Post Office	21,749	72,896
Airport	151,000	32,502
Public Works	145,600	845,775
Travel Agent	75,000	Inc in airport

3. These figures may not include all costs and revenue by activity but serve to illustrate the scale of the activities.

4. Some activities clearly offer opportunities for private sector participation, dependent on Government policy and strategy. The Public Works function for example contains the following micro-enterprises: Housing maintenance, furniture making, motor repairs and equipment hire. However, considerable preparation work will be required in terms of identifying viable business propositions and providing small business advisory services before these enterprises come to fruition. The existing small business training service within MoPUI will need to be ramped up if it is to meet this demand.

5. Policy regarding private sector participation and development has been articulated within Te Kakeega II – the National Strategy for Sustainable Development. However this policy is fragmented and dealt with under three separate headings:

- *Public Sector Reform*: Identify departments that can be reorganised for commercialisation.
- *Public Enterprise Management*: Assess the viability of privatising selected public enterprises.

- *Private Sector and Employment*
 - (i) Reduce subsidies to public enterprises
 - (ii) Increase by 50% the private sector share of GDP and level of national employment.

6. Despite these policy objectives there is no clear policy or strategy regarding either the ownership of public enterprises (Which enterprises does Government need to own? Why?) or the commercialisation of 'embedded business activities'. The need for such a strategy and policy is urgent – the most significant private sector opportunities in the short term are likely to be via private sector participation in either public enterprises or embedded business activities.

7. This lack of policy is reflected in the Kakeega Matrix Returns prepared for the Donor Round Table Meeting in Suva in June 2008. Relevant sections of the matrix appear in Appendix 2 of this report. The matrix is designed to report progress against Government strategic objectives. It includes several projects of relevance to this TA including:

- Identify departments (if any) that can be reorganised for commercialization.
- Assess the viability of privatising selected public enterprises.
- Assess the financial and operational viability of current and alternative management options for NAFICOT, such as joint ventures.
- Lease out or privatise management of the Vaiaku Lagi Hotel (VLH).
- Privatisation of PWD Services
- Strengthen public–private partnership to upgrade telecommunications to encourage the establishment of internet services to emerge (including wireless technology).

8. No substantive progress is reported in terms of action, despite reports being produced. This is symptomatic of a lack of clear policy and strategy for private sector participation.

9. In summary, the embedded businesses currently appear to offer good potential for private sector participation and commercialisation. Significant assistance will be required to identify viable businesses and bring them to market. The first step in this process is the urgent development of a clear policy for the ownership and divestment of public enterprises and the commercialisation of embedded businesses.

This information is an abstract from ADB TA 7161 TUV Inception Report as at July 2009

APPENDIX 3: DRAFT PUBLIC ENTERPRISE BILL**2009, Draft Public Enterprise (Performance and Accountability)****PUBLIC ENTERPRISE (PERFORMANCE AND ACCOUNTABILITY) ACT 2009**
Arrangement of Provisions**TITLE**

1. Short Title and commencement
2. Interpretation
3. Act to bind the State
4. Purpose

PART I FORMATION AND OWNERSHIP OF PUBLIC TRADING ENTERPRISES

5. Transfer to the Companies Act 1991
6. Ministerial shareholding
7. Disposal of shares

PART II OBJECTIVES OF PUBLIC TRADING ENTERPRISES

8. Principal objective to be a successful business

PART III COMMUNITY SERVICE OBLIGATION

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 Director or Board of Directors

PART IV OBJECTIVES OF PUBLIC BENEFICIAL ENTERPRISES

14. Principal objective to be successful beneficial enterprise

PART V APPOINTMENT AND ROLE OF DIRECTORS

15. Selection and Appointment of Directors
16. Role of Directors of Public Trading Enterprises
17. Decisions by Directors of Public Trading Enterprises
18. Role of Directors of Public Beneficial Enterprises
19. Decisions by Directors of Public Beneficial Enterprises
20. Declaration of Pecuniary Interests and Convictions
21. Decision by Directors involving a conflict of interest

PART VI ACCOUNTABILITY

22. Corporate Plan

- 23. Financial Reports, Accounts and Information
- 24. Performance Audit
- 25. Directors liable to be dismissed
- 26. Secretary for Finance to undertake assessment of performance
- 27. Auditor General to be Auditor of Public Enterprises and subsidiaries

PART VII SUPPORT FOR PUBLIC ENTERPRISES AND DIRECTORS

- 28. Support by the Secretary for Finance

PART VIII OTHER MATTERS

- 29. Transfer of employment from the Public Service.
- 30. Powers
- 31. Delegation by Shareholding Ministers, Auditor and Secretary for Finance
- 32. Regulations

Public Enterprises (Performance and Accountability)

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

- (a) Specify principles governing the provision of the operation of Public Enterprises; and
- (b) Specify the principles and procedure for the appointment of Directors of Public Enterprises; and
- (c) Establish requirements concerning accountability for Public Enterprises; and
- (d) Provide support for Directors of Public Enterprises.

BE IT ENACTED by the Parliament of Tuvalu in Parliament assembled as follows:

1. Short Title and Commencement -(1) This Act may be cited as the Public Enterprises (Performance and Accountability) Act 2009.

(2) This Act shall come into force on the date to be determined by Cabinet and published in the Gazette.

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

“Act” means the Public Enterprises (Accountability and Performance) Act 2009:

“Board” means (a) In relation to a Public Enterprise that is a company, the board of directors of the Public Enterprise;

(b) In relation to a Public Enterprise that is not a company, the persons occupying the positions in or in relation to the Public Enterprise under governing legislation that are comparable with those of the board of directors of a company.

“Governing legislation” means the Act or Acts which establishes and provides for the objectives governance and purposes of a Public Beneficial Enterprise.

“Organization” includes a company, a enterprise corporate, a statutory corporation, a statutory enterprise, a trust, a partnership and a joint venture.

“Public Enterprise” means an organization included in Schedule 1 of the Act and any subsidiary of a Public Enterprise

“Public Beneficial Enterprise” means an organization included in Part B of Schedule 1 of the Act and any subsidiary of a Public Beneficial Enterprise.

“Public Trading Enterprise” means an organization included in Part A of Schedule 1 of the Act and any subsidiary of a Public Trading Enterprise.

“Responsible Minister” in relation to a Public Enterprise means the Minister for the time being responsible for that Public Enterprise:

“Share” means (a) In relation to a company that has issued shares, a share of any class:

(b) In relation to an organization (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 organization that does not have a capital,

- (i) An interest in or right to any part of the assets of the company or organization 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 organization; and “shareholder” has a corresponding meaning.

“Shareholding Ministers” means the Minister of Finance and the Responsible Minister

“Subsidiary” has the same meaning as in the Companies Act 1991.

(2) Part A of Schedule 1 provides the list of Public Trading Enterprises and Part B of Schedule 1 provides the list of Public Beneficial Enterprises. Schedule 1 provides the list of Public Enterprises.

(3) Schedule 1 may be amended from time to time by regulation made by the Governor General acting on the advice of Cabinet and such regulations may provide for amendment of the list of Public Enterprises, the list of Public Trading Enterprises and the list of Public Beneficial Enterprises, including the transfer of an organization from Part B to Part A and vice versa.

(4) Any regulations made pursuant to this section shall be laid before Parliament within fourteen days of the making of the regulations or, where Parliament is not sitting, within seven days of the commencement of the next sitting after the promulgation of the regulations.

3. Act to bind the State – This Act shall bind the State.

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

PART I FORMATION AND OWNERSHIP OF PUBLIC TRADING ENTERPRISES

5. Transfer to the Companies Act 1991 -Despite the provisions of any law each Public Trading Enterprise shall register as a company under the Companies Act 1991 at a time and in such form of registration as determined by the Minister of Finance.

6. Ministerial Shareholding -(1) Subject to Subsection (2) the Minister of Finance and each Responsible Minister may, from time to time on behalf of the Government, subscribe for or otherwise acquire all of the shares in a Public Trading Enterprise.

(2) Where a Public Trading Enterprise 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 Enterprise held by each shareholding Minister pursuant to subsection (1) shall be 51% allocated to the Minister of Finance and 49% allocated to the responsible Minister.

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

(5) The shareholding Ministers shall be responsible to Parliament for the performance of Public Enterprises under this Act.

(6) The Board of a Public Trading Enterprise shall be accountable to the shareholding Ministers.

(7) The Board of a Public Beneficial Enterprise shall be accountable to the shareholding Ministers.

7. Disposal of Shares -(1) Subject to this section a shareholding Minister shall not;

- (a) Sell or otherwise dispose of any shares in a Public Trading Enterprise held in the Minister's name; or
 - (b) Permit shares in the Public Trading Enterprise to be allotted or issued to any person other than a shareholding Minister; except in accordance with this Act.
- (2) A share in a Public Trading Enterprise held by a shareholding Minister may only be sold or otherwise disposed with the approval of the Governor General acting on the advice of Cabinet.
- (3) Cabinet may call for investments in any Public Trading Enterprise by way of subscriptions for the purchase and acquisition of shares in the Public Trading Enterprise 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 Enterprise; 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 Minister on such terms and conditions as determined by Cabinet.
- (5) Subject to subsection (6) the Minister of Finance shall lay before the Parliament a report on the sale of shares or other scheme of investment approved by Cabinet concerning any Public Trading Enterprise within fourteen days of Cabinet approving the sale of shares or other scheme of investment or, where the Parliament is not sitting, within seven days of the commencement of the next sitting, within seven days of the commencement of the next sitting, after Cabinet's approval.
- (6) Where, in the opinion of the Minister of Finance, the tabling of a report under subsection (5) would have the effect of decreasing the value of any Public Trading Enterprise or any shares in a Public Trading Enterprise the Minister shall delay the tabling of such report until he or she is satisfied that the value of the Public Trading Enterprise or shares in the Public Trading Enterprise will not be adversely affected by the tabling of such report and, where such report is ultimately tabled, the Minister of Finance shall provide a written statement with the report explaining the delay.

PART II OBJECTIVES OF PUBLIC TRADING ENTERPRISES

8. Principal objective to be a successful business -(1) Subject to the Companies Act 1991 the principal objective of every Public Trading Enterprise shall be to operate as a successful business and, to this end, to:

- (a) Be as profitable and efficient or better than comparable businesses that are not owned by the State; and
 - (b) Meet any community service obligations established under Part III of the Act; and
 - (c) Be a good employer (as defined in subsection (2)); and
 - (d) Be an organization that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.
- (2) For the purposes of the Act a "good employer" is an employer who:
- (a) According to the law, treats every employee properly, fairly and impartially; and
 - (b) According to the law, provides good and safe working conditions; and
 - (c) Selects, promotes and rewards employees on merit; and
 - (d) Provides employees with opportunities for training and development.
 - (e) Provides due process for the consideration of complaints by employees and redressing their grievances.

PART III COMMUNITY SERVICE OBLIGATIONS

9. Definition of Community Service Obligation -(1) For the purposes of this Act a Community Service Obligation means:

- (a) The provision of a good or service by a Public Trading Enterprise 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 Enterprise on any terms other than normal commercial terms applying from time to time; or
 - (c) The forbearance by a Public Trading Enterprise to exercise a right or entitlement other than on normal commercial terms applying from time to time; or
 - (d) The forgiveness or reduction by a Public Trading Enterprise of a debt or an amount of money owed to the Public Trading Enterprise other than on normal commercial terms applying from time to time.
- (2) Nothing in this part shall prevent a Public Trading Enterprise 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.

10. Minister may direct Community Service Obligation -Subject to this Part the Responsible Minister may direct a Public Trading Enterprise to provide a Community Service Obligation if the performance of the obligation is necessary to ensure:

- (a) That there is universal access to a necessary good or service; or
- (b) The promotion of a policy vital to the national interest as declared by the Governor General acting on the advice of Cabinet; or
- (c) That there is a proper and timely response to a local, regional, national or international emergency; or
- (d) The correction of an injustice as declared by the Ombudsman.

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 Enterprise to provide a Community Service Obligation;

(2) Any direction by a Responsible Minister under this Part which fails to follow the procedures provided in Schedule 2 shall be null and void.

12. Procedure for the issuing of a direction for a Community Service Obligation -(1) The procedures to be followed by a Responsible Minister concerning the issuing of a direction to a Public Trading Enterprise to provide a Community Service Obligation are provided in Schedule 2.

(2) Schedule 2 may be amended from time to time by regulation made by the Minister of Finance acting on the advice of Cabinet.

(3) Any regulations made pursuant to this section shall be laid before the Parliament within fourteen days of the making of the regulations or, where the Parliament is not sitting, within seven days of the commencement of the next sitting after the promulgation of the regulations.

13. Offence to unlawfully direct Director or Board of Directors -(1) Any person who knowingly directs or attempts to direct a Director or the Board of Directors of a Public Trading Enterprise to perform a Community Service Obligation other than in accordance with the provisions of the Act is guilty of an offence and shall be liable to a fine of up to \$10,000.

(2) Any person who, whilst acting in the capacity of a Director of a Public Trading Enterprise, 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 the Act is guilty of an offence and shall be liable to a fine of up to \$10,000.

PART IV OBJECTIVES OF PUBLIC BENEFICIAL ENTERPRISES

14. Principal objective to be a successful beneficial enterprise -(1) The principal objective of every Public Beneficial Enterprise shall be to provide excellent service to its users and to this end:

- (a) Meet the purposes and objectives of its governing legislation; and
- (b) Operate in as efficient and effective manner as comparable organizations that are not owned by the State; and
- (c) Act as a good employer; and
- (d) Be an organization that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.

(2) The term “good employer” shall have the same meaning as provided for in section 8(2) of the Act.

PART V APPOINTMENT AND ROLE OF DIRECTORS

15. Selection and Appointment of Directors -(1) Every Director of a Public Enterprise 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 Enterprise which fails to follow the criteria for selection and procedure for appointment in Schedule 3 shall be null and void.

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

(4) Schedule 3 to the Act may be amended from time to time by regulation made by the Minister of Finance acting on the advice of Cabinet.

(5) Any regulations made pursuant to this section shall be laid before the Parliament within fourteen days of the making of the regulations or, where the Parliament is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

16. Role of Directors of Public Trading Enterprises -Every director of a Public Trading Enterprise shall ensure that the Public Trading Enterprise complies with the provisions of the Companies Act 1991 and section 136 of the Act.

17. Decisions by Directors of Public Trading Enterprises -(1) Every decision by each director of a Public Trading Enterprise and every decision by each Board of Directors of a Public Trading Enterprise shall be made solely in compliance with the provisions of the Companies Act 1991 and in accordance with section 136 of the Act.

(2) A person who, whilst acting in the capacity of a director of a Public Trading Enterprise, knowingly makes any decision other than for the purpose of complying with the provisions of the Companies Act 1991 and in accordance with section 136 of the Act is guilty of an offence and shall be liable to a fine of up to \$10,000.

18. Role of Directors of Public Beneficial Enterprises – Every Director of a Public Beneficial Enterprises shall ensure that the Public Beneficial Enterprise provides excellent service to its users in accordance with section 14 of the Act.

19. Decisions by Directors of Public Beneficial Enterprise – (1) Every decision by each Director of a Public Beneficial Enterprise and each Board of Directors of a Public Beneficial Enterprise shall be made solely for the purpose of ensuring that the Public Beneficial Enterprise provides excellent service to its users in accordance with section 14 of the Act.

(2) Any person who whilst acting in the capacity of a Director of a Public Beneficial Enterprise, knowingly makes any decision other than for the purpose of ensuring that the Public Beneficial Enterprise provides excellent service to its users in accordance with section 14 of the Act shall be guilty of an offence and shall be liable to a fine of up to \$10,000.

20. Declaration of Pecuniary Interests and Convictions -(1) Every director together with his/her spouse, sons and daughters of a Public Enterprise within 2 months of the commencement of the Act and annually thereafter by the 30th day of June shall provide the shareholding Ministers and the Auditor General, the Secretary for Finance and the Attorney General with a Declaration of Pecuniary Interests and Convictions in the form provided in Schedule 4 of the Act.

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

(3) Each Declaration of Pecuniary Interests and Convictions shall be available for public inspection at the Office of the Attorney General during normal business hours upon payment of a fee set by regulation.

(4) The Attorney General shall keep a register of Declarations of Pecuniary Interests and Convictions to enable the public to exercise their rights under subsection (3).

(5) The form and content of the Declaration of Pecuniary Interests and Convictions are set out in Schedule 4.

(6) Schedule 4 to the Act may be amended from time to time by regulation made by the Minister of Finance acting on the advice of Cabinet.

(7) Any regulations made pursuant to this section shall be laid before the Parliament within fourteen days of the making of the regulations or, where the Parliament is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

21. Decisions by Directors involving a conflict of interest -(1) A person who whilst acting in the capacity of a director of a Public Enterprise, 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 Enterprise is guilty of an offence and shall be liable to a fine of up to \$10,000.

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

22. Sections 20-21 are Temporary Provisions - (1) The contents of Sections 20-21 will be superseded by Sections 29-36 and all other relevant provisions of the Leadership Code Act of 2006 when the latter comes into operation.

PART V ACCOUNTABILITY

23. Corporate Plan -(1) The Board of Directors of each Public Enterprise shall prepare a Corporate Plan in accordance with Schedule 5 to the Act and shall forward a copy of the Corporate Plan to each shareholding Minister, the Auditor General and the Secretary for Finance prior to the commencement of each financial year.

(2) The Corporate Plan shall include a Statement of Corporate Objectives.

(3) The form and content of the Corporate Plan are set out in Schedule 5.

(4) Schedule 5 to the Act may be amended from time to time by regulation made by the Minister of Finance acting on the advice of Cabinet.

(5) Any regulations made pursuant to this section shall be laid before the Parliament within fourteen days of the making of the regulations or, where the Parliament is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

(6) The Statement of Corporate Objectives referred to in subsection (2) shall be laid before the Parliament within fourteen days of the Responsible Minister receiving the Statement of Corporate Objectives from the Public Enterprise or where the Parliament is not sitting, within seven days of the commencement of the next sitting after the Statement of Corporate Objectives has been received by the Responsible Minister.

24. Financial Reports, Accounts and Information -(1) In addition to the financial reports, accounts and information required by the Companies Act 1991 or governing legislation, as the case may be, each Public Enterprise shall prepare financial reports, accounts and information in accordance with the requirements of Schedule 6 and shall forward a copy of such financial reports, accounts and information to each shareholding Minister and to the Auditor General and the Secretary for Finance in accordance with the requirements of Schedule 6.

(2) The form of financial reports, accounts and information and the requirements concerning the provision of copies of such financial reports, accounts and information are set out in Schedule 6.

(3) Schedule 6 to the Act may be amended from time to time by regulation made by the Minister of Finance acting on the advice of Cabinet.

(4) Any regulations made pursuant to this Section shall be laid before the Parliament within fourteen days of the making of the regulations or, where the Parliament is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

25. Performance Audit -(1) A shareholding Minister or the Secretary for Finance may require the Auditor General to conduct a performance audit of a Public Enterprise.

(2) Upon being requested in writing by a shareholding Minister or the Secretary for Finance the Auditor General shall conduct a performance audit forthwith.

(3) Of his or her own motion the Auditor General may conduct a performance audit, hiring appropriate technical expertise if necessary..

(4) For the purposes of the Act a performance audit shall take the form of an enquiry by the Auditor General as to the circumstances and performance of a Public Enterprise and shall include an enquiry as to the performance of any duty or responsibility under the Act, the Companies Act 1991 or any governing legislation by any person, director, board of directors or Public Enterprise.

(5) Upon completion of a performance audit the Auditor General shall forward a report to each shareholding Minister, the Secretary for Finance and the Speaker of the Parliament.

(6) Upon receipt of any report provided under subsection (5) the Speaker shall lay the report before the Parliament forthwith

(7) In conducting a performance audit the Auditor General shall have all such powers as are necessary or expedient to enable the Auditor General to carry out his or her functions under this section.

(8) Without limiting the generality of subsection (7) the Auditor General shall have the power:

(a) to inspect and take copies of any document, file, bank statement or record (whether paper, electronic or in any other form);

(b) to seize any document, file, record (whether paper, electronic or in any other form), bank statement, or any computer or other electronic device, recording system or database;

(c) to enter any premises, if necessary by force, to search for and seize any item the Auditor General believes on reasonable grounds is needed to assist with the conduct of a performance audit; and the Commissioner for Police Service and the Secretary for Finance shall render any assistance the Auditor General may request to enable a performance audit to be completed.

(9) (i) Notwithstanding any law now existing or in the future the Auditor General shall have the power to require any bank, financial institution, trust, trustee, accountant, lawyer, any other legal entity, Minister, Member of Parliament, Government Department, Government organization, departmental head, public servant or any other person to answer any question which the Auditor General may require the entity or person to answer.

(ii) The powers of the Auditor General under subsection 9(i) are subject only to the right of any person to refuse to answer a question if the person believes that the answer would incriminate the person.

(iii) Where a person refuses to answer a question on the grounds of self-incrimination the Auditor General shall include details of the refusal in the report of the performance audit.

26. Director liable to be dismissed -If, following a performance audit it is found that a director of a Public Enterprise has failed to perform any duty or function required of the director under the Act , the Companies Act 1991 or any governing legislation the Responsible Minister may dismiss the director from the Public Enterprise.

27. Secretary for Finance to undertake assessment of performance -(1) At any time the Secretary for Finance may undertake an assessment as to the performance of a Public Enterprise and its capacity to meet its obligations under the Act, the Companies Act 1991 or any governing legislation.

(2) The assessment under subsection (1) may take the form of an inquiry in such manner as the Secretary for Finance thinks fit.

(3) In conducting an assessment under (1) the Secretary for Finance shall have all such powers as are necessary or expedient to enable the Secretary for Finance to carry out his or her functions under this section.

(4) Without limiting the generality of subsection (3) the provisions of subsections (8) and (9) of section 24 of the Act shall apply to any assessment conducted by the Secretary for Finance under this section and where the Auditor General is referred to in subsections (8) and (9) of section 24 of the Act the references shall be read as referring to the Secretary for Finance and the powers of the Secretary for Finance.

28. Auditor General to be Auditor of Public Enterprises and Subsidiaries – (1) Notwithstanding the provisions of the Companies Act 1991 and any governing legislation the Auditor General shall be the auditor of every Public Enterprise and of every subsidiary of every Public Enterprise, and, for the purposes of the Companies Act 1991 shall have and may exercise the functions, duties, and powers of an auditor appointed under the Act and all such powers in respect of public moneys trust money and public property.

(2) Every Public Enterprise shall pay to the Auditor General or an external auditor so appointed by the Auditor General for carrying out the duties and functions under this section fees at such rates no greater than those prescribed by the Minister of Finance.

(3) The Auditor General may after consultation with the Board of a Public Enterprise, appoint a person or firm that is qualified for appointment as an auditor of a company to audit the Public Enterprise. Consistent with his or her constitutional powers, it shall be the responsibility of the Auditor General to certify that a completed audit has been carried out in accordance with internationally recognised best practices of auditing and the opinion expressed therein are supported. In this context best practice includes ensuring adequate experience and skills are possessed by the individuals who are to perform the audit..

PART VI SUPPORT FOR PUBLIC ENTERPRISES AND DIRECTORS

29. Support by the Public Enterprise Monitoring Unit, Ministry of Finance – (1) The Public Enterprise Monitoring Unit, Ministry of Finance shall provide any shareholding Minister, director and board of directors of a Public Enterprise with:

- (a) advice and assistance concerning Corporate Plans, Statements of Corporate Objectives and financial reports;
- (b) analysis, advice and information concerning the performance of any Public Enterprise and compliance with the Act by any Public Enterprise or person;
- (c) advice to shareholding Ministers on expenditure, advances, credit support, and guarantees to be made, sought or provided in relation to a Public Enterprise;
- (d) financial, commercial and public policy analysis and advice in relation to Public Enterprises and in relation to corporatization and/or privatization of Public Enterprises;

- (e) advice on the appointment of directors and boards of Public Enterprises and the performance of such directors and boards;
 - (f) information and advice relating to best practice by Public Enterprises so as to encourage and enhance efficiencies and service delivery; and
 - (g) information and advice to shareholding Ministers when requested to do so.
- (2) The Public Enterprise Monitoring Unit, Ministry of Finance shall be responsible for monitoring the performance of Public Enterprises on behalf of the Shareholding Ministers and advising the Shareholding Ministers in respect of the Government's investment in Public Enterprises

PART VII OTHER MATTERS

30. Transfer of employment from the Public Service -(1) Except as otherwise provided in the Act every Public Enterprise 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 Enterprise an employee transferring employment from the Public Service to the Public Enterprise shall transfer on terms no less favourable than those applicable to him or her immediately prior to transfer.

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

30. Powers -The Governor General, Cabinet, Ministers, Auditor General , Secretary for Finance, Attorney General, Ombudsman, Commissioner of Police Service, each Public Enterprise and each Director of a Public Enterprise shall have the power to do all things necessary or convenient to be done for or in connection with the performance of their respective powers, functions and duties under the Act.

31. Delegation by Shareholding Ministers, Auditor General and Secretary for Finance

-(1) The Shareholding Ministers, the Auditor General and the Secretary for Finance may delegate any of their respective powers, functions and duties under this Act in writing.

(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 Auditor General or the Secretary for Finance, as the case may be.

32. Regulations -The Minister of Finance acting on the advice of Cabinet may from time to time make regulations prescribing matters:

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

SCHEDULES

Schedule 1

Public Enterprises

Part A -Public Trading Enterprises

Part B – Public Beneficial Enterprises

Schedule 2

Procedures concerning Community Service Obligation

Schedule 3

Criteria for Selection and Procedure for Appointment of Directors of Public Enterprises

Part A -Public Trading Enterprises

Part B – Public Beneficial Enterprises

Schedule 4

Declaration of Pecuniary Interests and Convictions

Schedule 5

Corporate Plan

Part A -Public Trading Enterprises

Part B -Public Beneficial Enterprises

Schedule 6

Financial Reports, Accounts and Information

Part A -Public Trading Enterprises

Part B – Public Beneficial Enterprises

Schedule 7

Delegation of Powers

PUBLIC ENTERPRISES (PERFORMANCE AND ACCOUNTABILITY)
REGULATIONS 2009

Arrangement of Provisions

- 1. Short Title
- 2. Commencement
- 3. Schedules

PURSUANT to section 32 of the Public Enterprises (Performance and Accountability) Act 2009, I, of Tuvalu, acting on the advice of Cabinet, HEREBY MAKE the following regulations:

DATED this day of2009

.....

MINISTER OF FINANCE

REGULATIONS

1. Short Title – These Regulations may be cited as the Public Enterprises (Performance and Accountability) Regulations 2009.

2. Commencement – (1) These Regulations shall come into force on the date the Public Enterprise Act 2009 come into force.

(2) Notice of commencement shall be published in Tuvaluan and English in the Gazette in Tuvalu.

3. Schedules – The Schedules of the Public Enterprises (Performance and Accountability) Act 2009 are amended by insertion of the following in correct numerical order:

“

SCHEDULE 1 (section 2(2))

PART A -Public Trading Enterprises

1. National Bank of Tuvalu (NBT)
2. Development Bank of Tuvalu (DBT)
3. Telecommunications Corporation (TTC)
4. Vaiaku Lagi Hotel (VLH)
5. Electricity Corporation (TEC)
6. Fishing Corporation (NAFICOT)
7. Philatelic Bureau. (TPB)

PART B -Public Beneficial Enterprises

1. Maritime Training Institute (TMTI)

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 Enterprise or a Minister (other than the Responsible Minister), for the performance of a Community Service Obligation (CSO)

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

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

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

- (a) the scope of the CSO; and this section shall provide a description of the function to be performed, service provided or concession allowed.
- (b) the legislative authority under which the CSO is being provided; and This section shall refer to the legislative authority in section 10 of the Act given to a Public Trading Enterprise to perform the CSO.
- (c) any other Government objective being pursued that is not covered in the Act; and This section shall provide what outcome the Government is

achieving from the delivery of this CSO. The implications for this objective of not continuing the CSO should also be examined;

(d) the past or intended results of the CSO; and This section shall provide details of the past results or intended results of the CSO activity. It shall state the:

- (i) beneficiaries and benefits from providing the CSO; and
- (ii) activity or program of the Public Trading Enterprise that would be affected in the performance of the CSO; and
- (iii) effect on the Public Trading Enterprise of providing the CSO.
- (vi) implications of not pursuing te CSO (if new) or not continuing a CSO (if exisiting).

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

(f) details of any revenue associated with the CSO; and This section shall provide the details of the revenue sources associated with providing the CSO, for instance, Government funding or other funding.

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

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

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

2.1.5 Public Enterprise Monitoring Unit, Ministry of Finance shall provide a report and advise on the independent review of the application in sub-clause 2.1.1 to the Responsible Minister no later than one month after receiving the application.

2.1.6 The Responsible Minister shall forward:

- a) the application for the CSO; and
- b) the CSO assessment report (if applicable) from the Public Trading Enterprise likely to perform the CSO; and
- c) Public Enterprise Monitoring Unit, Ministry of Finance's report and advice on its independent review of the application in sub clause 2.1.1; and
- d) Ministry of Finance's advice on the availability of Government funding (if applicable);

to Cabinet for review and approval.

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

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

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

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

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

- a) make an application in accordance with all the requirements in sub-clause 2.1.2; and
- b) forward the application to Public Enterprise Monitoring Unit, Ministry of Finance for an independent review; and

- c) comply with the performance budgetary process, if such application contains any estimated funding, and submit the application to Public Enterprise Monitoring Unit, Ministry of Finance within the time limit set for the application to be considered in the Estimates but not later than 3 months before the end of the Government financial year; and
- d) where applicable, forward the application to the Public Trading Enterprise likely to perform the CSO for an assessment report to be provided no later than 1 month after receiving the application; and
- e) forward the application for the CSO, together with the advice provided by Public Enterprise Monitoring Unit, Ministry of Finance in sub-clause 2.2.1 (b) above and a CSO assessment report from the Public Trading Enterprise likely to perform the CSO, if applicable, to Cabinet for review and approval.

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

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

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

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

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

- (a). the scope of the CSO; and This section shall provide a description of the function performed, service provided or concession allowed.
- (b). the legislative authority under which the CSO is being provided; and This section shall refer to the legislative authority in section 10 of the Public Enterprises (Performance and Accountability) Act 2001 given to a Public Trading Enterprise 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 Enterprise's audited accounts; and
- (g). that upon signing the Agreement for the provision of the CSO, the signed Agreement shall be tabled in Parliament within 14 days if the Legislative Assembly is then in session, and if not, within 7 days of the next ensuing session.

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

2.4.1 The Public Trading Enterprises 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 Enterprises to either include 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 ENTERPRISES****Part A Public Trading Enterprises****3.1 Criteria for the selection and re-appointment of Directors of Public Trading Enterprises:**

3.1.1 Directors of Public Trading Enterprises 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 Enterprise's objectives; and

(b) A person who is disqualified under the following shall not be appointed as a director;

i. under 21 years of age; or

ii. an undischarged bankrupt; or

iii. adjudged to be mentally defective under the Mental Health Ordinance 1961; or

iv. disqualified from being a Director under sections 202, 203 or 204 of the Companies Act 1991; or

v. is convicted in Tuvalu or elsewhere of an offence punishable by death or by imprisonment for a term of 2 years or more; and

(c) A person who has attended a Directors' training course before appointment and for re-appointments a refresher training; and

(d) No director shall be appointed or re-appointed as a director where that person was a director or manager of a company at the time the company has been placed in receivership or liquidation, whether such receivership or liquidation occurred in Tuvalu 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 Enterprise; and

(f) No person shall be appointed or re appointed as a director if such person is an employee, director or shareholder in another enterprise or institution whose business is similar to or potentially in conflict with that of the Public Trading Enterprise; and

(g) No 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 Public Servant or Constitutional Officer, as the case may be, has particular qualifications or business experience which the Public Trading Enterprise requires on its Board of Directors and such qualifications or business experience cannot be found elsewhere. Where a Public Servant or Constitutional Officer is appointed or reappointed under this sub-clause the person shall not receive remuneration or other benefits from the Public Trading Enterprise for services as a director; and

(g) Any other additional criteria drafted by the Committee established under sub-clause 3.2.1 in consultation with Public Enterprise Monitoring Unit, Ministry of Finance and the existing Board of the Public Trading Enterprise concerned and in accordance with international best practice, which is

necessary for scrutinizing a particular appointment or re-appointment of a director of a Public Trading Enterprise.

3.2 Procedures for the selection of Directors of Public Trading Enterprises

- 3.2.1 An Independent Selection Committee ("the Committee") of at least 3 members, shall be 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 additional to the Committee's responsibilities listed below in these procedures.
- 3.2.2 The Committee in consultation with MoFEP and the existing board of the public trading body concerned, shall draft 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 bodies boards' vacancies and required criteria as widely as possible both locally and overseas if required and can use television, radio, internet and newspaper, inviting applications from interested persons.
- 3.2.4 Those wishing to be considered for appointment to the Board must provide a statutory declaration addressing the selection criteria and provide at least 2 references. This 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 the appointment.
- 3.2.6 The Committee shall advise Cabinet of the applicants short-listed and the reasons for their decision.
- 3.2.7 Cabinet shall approve the appointment of candidates recommended by the Committee.

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

3.3.1 The position of a Director of a Public Trading Enterprise 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 Enterprise 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 Tuvalu or elsewhere of an offence punishable by death or by imprisonment for a term of 2 years or upwards; or
- (e) is convicted of an offence relating to his or her duties as a director; or
- (f) fails to comply with Schedule 4 of the Act.

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

3.4 The application of the above procedures for appointment and reappointment of Board members shall apply:

- 3.4.1 when each Board member of a Public Trading Enterprise's current term of appointment ends: and
- 3.4.2 when a Board member of a Public Trading Enterprise 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 Public Enterprise Monitoring Unit, Ministry of Finance. The replacement of all ex-officio Board members shall be made within 5 years from the coming into force of this Schedule.

Part B Public Beneficial Enterprises

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

SCHEDULE 4 (section (5))**DECLARATION OF PECUNIARY INTERESTS AND CONVICTIONS**

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

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

1. I consent to my appointment as a Director of (name of public enterprise)
2. My personal details are as follows:
 - 2.1 Full name:
 - 2.2 Residential Address:
 - 2.3 Business Address:
 - 2.4 Date of Birth
 - 2.5 Place of Birth including country
 - 2.6 Business occupation (if any)
3. Except for our family homes and personal effects, the following assets and liabilities are in respect of my spouse, sons, daughters and myself:
 - 3.1 (a) all land and other property (except one family home and kaitasi land);
[details – myself, spouse, sons, daughters]
 - (b) all vehicles (except one family vehicle);
[details – myself, spouse, sons, daughters]
 - (c) all shares in companies (public or private);
[details – myself, spouse, sons, daughters]
 - (d) all income;
[details – myself, spouse, sons, daughters]
 - (e) all financial liabilities;
[details – myself, spouse, sons, daughters]
 - (f) all directorships in companies (public or private);
[details – myself, spouse, sons, daughters]
 - (g) all directorships or other offices held in unincorporated bodies;
[details – myself, spouse, sons, daughters]
 - (h) any assets acquired or disposed of during the period covered by the statement;
[details – myself, spouse, sons, daughters]
 - (i) any liabilities acquired or discharged during the period covered by the statement.
[details – myself, spouse, sons, daughters]
- 3.2 The details in Part 3.1 include assets inside and outside Tuvalu.
4. I hereby declare that I have been convicted in a court of law of the following offences in Tuvalu or elsewhere.
[details of court convictions]
5. I hereby agree that my appointment as a Director of (name of Public Enterprise) shall become null and void when my spouse, sons, daughters, and my interest(s) so declared in Part 3 or that of my court conviction declared in Part 4 of this Declaration are judged to be bringing the (name of Public Enterprise) and the position of directorship into public disrepute.
6. I request that this Declaration be brought up and read at the next meeting of Directors of (name of public enterprise)
7. I declare that if any of the matters referred to in this Declaration change I will execute a further declaration immediately and file it with the Attorney General or the Ombudsman whichever of the two bodies regarded as the rightful depository of such declaration at the time such declaration is made..

Declared atthisday of

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

(Signature)
(Solicitor of the Supreme Court of Tuvalu)
(or other person authorised to take a statutory declaration)

SCHEDULE 5 (section 22(3))**Part A – Public Trading Enterprises**

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

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

5.2 The Board of Directors of each Public Trading Enterprise shall forward a draft of its Corporate Plan under clause 5.1 above to each Shareholding Minister, the Government Auditor and the Public Enterprise Monitoring Unit, Ministry of Finance 3 months before each financial year.

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

5.4 Approval of the draft Corporate Plan

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

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

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

5.4.4 The Board of a Public Trading Enterprise shall immediately comply with a direction issued by Cabinet under sub-clause 5.4.3.

5.4.5 Every Public Trading Enterprise'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 Enterprise has complied with Cabinet's direction.

5.4.6 Every Public Trading Enterprise 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 Enterprise shall ensure that its Corporate Plan is approved at least 14 days before the commencement of the financial year for which the Plan relates.

5.5 Statement of Corporate Objectives (SCO)

The Chairperson of the Board of a Public Trading Enterprise 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 Enterprise's Statement of Corporate Objectives.

PART B – Public Beneficial Enterprises

The above provisions shall apply to Public Beneficial Enterprises.

SCHEDULE 6 (section 23 (2))**FINANCIAL REPORTS, ACCOUNTS and INFORMATION**

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

6. Every Public Enterprise shall submit:

6.1 Quarterly reports to Public Enterprise Monitoring Unit, Ministry of Finance 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 Enterprise and other interests arising from such appointments, offices and other matters; and
- c) comparison between actuals and performance targets set out in the SCO and forecast or budget performance.

6.2 An annual report and audited accounts to Public Enterprise Monitoring Unit, Ministry of Finance no later than 4 months after the end of the Public Enterprise's financial year.

6.2.1 Annual reports shall include:

- (a) audited financial statements prepared in accordance with IFRS standards; and
- b) an auditor's report on the financial statements in sub clause 6.2.1 (a); and
- c) a statement in respect of each member of the Board of a Public Enterprise 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 Enterprise and other interests arising from such appointments, offices and other matters; and
- d) the dividend payable by the Public Enterprise to the State for the financial year to which the report relates.

6.3 Public Enterprise Monitoring Unit, Ministry of Finance may require a Public Enterprise to submit to Public Enterprise Monitoring Unit, Ministry of Finance additional information necessary to assist Public Enterprise Monitoring Unit, Ministry of Finance with its reporting responsibilities.

6.4 Every Public Enterprise shall submit to Public Enterprise Monitoring Unit, Ministry of Finance any information required by Public Enterprise Monitoring Unit, Ministry of Finance under clause 6.3.

6.5 Every Public Enterprise shall keep Public Enterprise Monitoring Unit, Ministry of Finance informed of any matters that may adversely affect the achievement of its objectives in the Corporate Plan or Statement of Corporate Objectives.

6.6 All Public Enterprises shall prepare their accounts using accounting policy guidelines issued by Public Enterprise Monitoring Unit, Ministry of Finance 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 of the Public Enterprise, the Responsible Minister for the Public Enterprise shall lay the documents before Parliament:

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

6.7.3 The Auditor General shall lay before Parliament no later than 12 days after the audited financial statement of a Public Enterprise was completed.

Public Enterprise Monitoring Unit, Ministry of Finance will develop a format to be used by Public Enterprises for quarterly and annual accounts.

SCHEDULE 7 (section 30 (1),(2))**DELEGATION BY SECRETARY FOR FINANCE**

The Secretary for Finance will delegate in writing his powers under the Act to the Public Enterprise Monitoring Unit. The Public Enterprise Monitoring Unit will perform the following functions:

- (a) To assist and advise the Minister and the Responsible Minister through the Secretary for Finance in the discharge of the functions conferred on them by law.
- (b) To monitor and review the financial affairs and budgets of each Public Enterprise with a view to bringing to the attention of the Minister and Responsible Minister through the Secretary for Finance the impending problems of such Public Enterprise; and
- (c) To establish for each Public Enterprise, taking account of its objects and nature of operations, a performance target based on periodic reviews of its:
 - (i) operational performance ; and
 - (ii) financial reports

and must include

- statements of objectives;
 - operations (with particular reference to the provision of non-commercial services – hence CSO);
 - financial assistance from Government;
 - tax and dividend payments;
 - management procedures;
 - incentives;
 - detailed medium term corporate plan.
- (d) To identify problems of any Public Enterprise in producing its accounts and budgets and where necessary to assist in providing or arranging for technical assistance to such Public Enterprise and coordinate such technical assistance.
 - (e) To advise the Minister and Responsible Minister through the Secretary for Finance on the following matters in relation to the financial policy concerning each Public Enterprise and the public sector enterprises generally:
 - (i) major adjustments to the level or structure, of tariff prices, rates or fees or charges;
 - (ii) any major investment;
 - (iii) any major expansion of operations;
 - (iv) the closing, disposal, liquidation of divestment of any major part of the Public Enterprise's business;
 - (v) major adjustments to the level or structure of staff salaries and wages or other terms and conditions of service of staff.

In all cases (i)-(v), the Public Enterprise Monitoring Unit will determine what is 'major' in relation to each Public Enterprise.

- (f) Provide financial and management oversight of any private sector participation initiative, whether it be by way of complete divestment, the letting of management contracts or the development of small businesses based around public enterprises or 'embedded business activities' within various Ministries.
- (g) Provide financial and management oversight of any joint venture or proposed Government investment in any commercial sphere of activity.