

Key Shareholder Requirements for Subsidiary Constitutions

1.0 Introduction

Shareholding Ministers consider requests from Government owned Corporations (GOCs), under Section 140 of the *Government Owned Corporations Act 1993* (the GOC Act) to:

- approve the establishment of new subsidiaries with a Constitution; and
- alter the Constitution of existing subsidiaries.

Each request is assessed and responded to on a case-by-case basis. However, there are a number of generic provisions that Constitutions of GOC subsidiaries should contain, reflecting the interest of shareholding Ministers.

The follow information is intended as a guide, not a direction, on provisions GOC subsidiary Constitutions should contain. Adherence to the guide will facilitate shareholding Minister approvals relating to GOC subsidiaries.

2.0 Recommended GOC Subsidiary Constitution Provisions and Corporate Governance Arrangements

- The purpose for which a subsidiary is being created should be specified in the Constitution.
- The Constitution should provide for the Auditor-General to be auditor of the company.
- Directors appointed to the subsidiary board should be a subset of the GOC parent board or a senior executive of the GOC. They should also vacate their office immediately upon ceasing to a Director of the parent board or employed with the business. This should be dealt with in the Constitution.
- The company should complete all probity and due diligence checks, including material conflict checks before appointing a director to the subsidiary board.
- Remuneration for GOC appointed directors should be 'nil' or limited to amounts payable under arrangements approved by Cabinet. A specific provision to give effect to this should be set out in the Constitution. Executive directors are not to receive any remuneration for their role on subsidiary boards.
- Appointment of Directors and remuneration arrangements must be approved by shareholding Ministers, along with any future changes to both. GOCs should indicate how they will give effect to this.
- Shareholding Ministers must be kept informed about senior executive appointment and remuneration arrangements. The GOC should specify how it will give effect to this.
- The Constitution should provide for the specific provisions of the GOC Act, Chapter 3, to apply.
- Provisions for dividend and profits should be made in accordance with the GOC Act. Subsidiaries should not be able to retain profits and make them unavailable to the parent GOC.
- Dividend plans are not appropriate. The Constitution should be worded to ensure the GOC Act arrangements for dividend payments is followed.
- No provision should be made in the Constitution for Executive Director or Managing Director.
- The Constitution should also provide that the Secretary of the subsidiary should be the Secretary of the parent GOC.
- Shareholding Ministers should be notified in the event that proxies are used for subsidiary directors.
- The Constitution must have a provision stating it may be varied by shareholding Ministers' direction in accordance with the GOC Act.
- Any change to the Constitution must be approved by shareholding Ministers before taking effect.
- Section 130 of the GOC Act, which states the State does not underwrite liability other than by guarantees specifically approved by shareholding Ministers, should be acknowledged. No liability of the subsidiary should pass to the parent GOC or the State, unless expressly authorised by shareholding Ministers.