THE STATE-OWNED ENTERPRISES (GOVERNANCE AND OPERATIONS) ACT, 2023

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(4) An independent member shall not serve for more than nine years on a Board, and shall not be appointed to the same Board after two consecutive terms unless a period of three years has lapsed.

13. Term of office of directors.—(l) A director, once appointed shall hold office for the period specified under the applicable law, unless he resigns in writing or is removed earlier in accordance with the provisions of this Act.

(2) An independent director once appointed by the Federal Government shall not be removed unless it is established through an inquiry conducted in the prescribed manner that-

(a) the director is found to be in non-compliance with the provisions of this Act, or the Companies Act 2017, (XIX of 2017), or any other applicable law;

(b) the director fails to fulfil his duties and responsibilities under this Act;

(c) the director is found to act in a manner detrimental to the successful management and operation of the state-owned enterprise; or

(d) the director is found guilty of misconduct.

Explanation.—For the purpose of this clause, misconduct includes—

(i) indulging in a competing professional or personal conflict of interests' situation;

(ii) using the funds, assets and resources of the state-owned enterprise without due diligence and care;

(iii) failing to treat the colleagues and the staff of the state-owned enterprise with respect, or using harassment in any fonn of physical or verbal abuse;

(iv) making public statements relating to the business of the state-owned enterprise without authorization by the Board;

(v) failing to comply with the state-owned enterprise's code of conduct or conflict of interest requirements;

(v) receiving gifts or other benefits from any sources external to the state-owned enterprise offered to him in connection with his duties on the Board; or

(vii) abusing or misusing his official position to gain undue advantage or assuming financial or other obligations in private institutions or for persons which may cause embarrassment in the performance of official duties or functions.

14. Defect or irregularity in appointment.— No act, proceeding or decision of the board shall be invalid by reason only of the existence of a vacancy in, or defect or irregularity in the constitution of the board.

15. Chairman of the board and the chief executive officer.— (1) No person can hold office as chairman and chief executive of a state-owned enterprise simultaneously, and the office of the chairman shall be separate and his responsibilities distinct, from those of the chief executive officer.

(2) The chairman of the board shall be appointed by the Federal Government and shall be responsible for leading the board and ensuring its effective functioning and continuous development and shall not be involved in day to day operations of the state-owned enterprise.

(3) The chief executive officer shall—

(a) be responsible for the management of the state-owned enterprise and for its procedures in financial and other matters under delegation from the board and subject to the oversight and directions of the Board;

(b) ensure the proper implementation of strategies and policies approved by the Board; and

(c) putting in place appropriate arrangements to ensure that funds and resources are properly safeguarded and are used economically, efficiently and effectively and in accordance with the state-owned enterprise business plan, the primary objective and all statutory obligations.

16. Fit and proper criteria.—(1) The fit and proper criteria shall be prescribed in Schedule-IV and shall apply to independent directors, the chief executive officer, the company secretary and all other senior management officers, by whatever name called, of a state-owned enterprise.

(2) The requirement to comply with the fit and proper criteria under this Act shall be without prejudice to compliance with any other requirement for the fitness and propriety of directors or senior management officers issued under any special law, rules or regulations by a sector regulator or authority governing a specified sector.

CHAPTER-6

RESPONSIBILITIES, POWERS AND FUNCTIONS OF THE BOARD

17. **Independence of the Board**.—(1) The Board shall be given autonomy and independence in the discharge of its functions under this Act or any other applicable law in accordance with the adopted business plan and no administrative or standing instructions by any Division of the Federal Government shall be applicable to any state-owned enterprises unless prior approval of the Federal Government has been obtained and any such instructions already in field at the time of coming into effect of this Act shall require Federal Government ratification within a period of six months, failing which they shall be deemed to be rescinded.

(2) State-owned enterprises shall maintain independent procurement policies with the approval of the Federal Government, which comply with the Chartered Institute of Procurement and Supply's Global Standards of Procurement and Supply and shall only be responsible for compliance of the provisions of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002) to such extent as may be directed by the Federal Government:

Provided that until the procurement policy of state-owned enterprise is prepared and approved by the Federal Government, the Public Procurement Regulatory Authority Ordinance 2002, (XXII of 2002) apply *mutatis mutandis* to it.

18. **Appointment of the chief executive officer**.—(1) The Board, in the case of a company, or the concerned authority in the case of a statutory state-owned enterprise shall appoint a chief executive officer to the state-owned enterprise under a performance based contract for a specified period, unless such period is already specified in the enactment governing a statutory state-owned enterprise:

Provided that the Board or the concerned authority shall bring their existing arrangements with the the appointment of chief executive officers in line with this provision within one year of coming into effect of this law.

(2) The Board or the governing body in the case of statutory state-owned enterprises, by whatever name called, shall be responsible for ensuring the performance of the chief executive is monitored regularly against agreed performance measures and for the chief executive's development and succession planning.

19. Responsibility to the shareholders and the state-owned enterprise:—(1) The Board shall ensure its obligations to shareholders of the state-owned enterprise are fulfilled and they are duly informed in a timely manner of all material events through shareholder meetings and other communications as necessary.

(2) The Board shall develop and implement a code of conduct for the members of the Board, as well as the employees of the state-owned enterprise for the matters set out in Schedule-V of this Act, with a view to ensure the highest professional standards and corporate values are in place:

Provided that the code of conduct developed under this sub-section shall be effectively communicated within the state-owned enterprise together with supporting policies and procedures, including adequate systems and controls for the identification and redressal of grievances arising from unethical practices.

20. **Enforcement of systems of internal control**.—The Board shall ensure the integrity of the systems of internal control and any person who is found liable for a deviation or violation from the company's code of conduct or other systems of internal control shall be subject to disciplinary proceedings in accordance with the state-owned enterprise's internal policies.

21. **Audit Committee**.—(1) The Board of a state-owned enterprise shall establish an audit committee, whose members shall be financially literate and majority of them, including its chairman, shall be independent directors:

Provided that the Chairman of the Board and the Chief Executive Officer of the state-owned enterprise shall not be members of the audit committee.

(2) The audit committee shall be responsible for—

(a) recommending to the Board the appointment of external auditors by the state-owned enterprise and shall consider any questions of resignation or removal of external auditors, audit fees and provision by external auditors of any service to the state-owned enterprise in addition to audit of its financial statements;

(b) determination of appropriate measures to safeguard the state-owned enterprise’s assets;

(c) all reports and communications with external auditors;

(d) review of half-yearly and annual financial statements of the state-owned enterprise, prior to their approval by the Board;

(e) ensuring coordination between the internal and external auditors of the state-owned enterprise; and

(f) investigating, where necessary on a confidential basis, any deviation from or violation of the company's code of conduct or other systems of internal control.

22. **Board meetings**.(1)The Board of a company shall meet—

(a) at least once in every two months; and

(b) at other times that the board considers necessary for the efficient management of the business and affairs of the state-owned enterprise.

(2) Notwithstanding anything contained in any other law for the time being in force, decisions of the Board shall be taken by majority, however the following decisions shall require a decision by three-fourth majority, which shall include the vote of the nominee director representing the Federal or Provincial Government, namely—

(a) appointment and removal of chief executive officer of the state- owned enterprise;

(b) approval of the statement of corporate intent and business plan;

(c) proposals for sale of sizeable assets;

(d) annual budget statement approval; and

(e) sale of assets of the company.

(3) The Chairman of the Board shall in case of equal number of votes, have a casting vote.

23. Indemnity.—No suit, prosecution or other legal proceedings shall lie against the directors, chief executive officer, or other employee of a state-owned enterprise if the liability arose out of an act or omission of the director, chief executive or employee and the act or omission was done in good faith and with due care.

CHAPTER-7

TRANSPARENT PERFORMANCE

24. **Financial transparency**.—(1) The Board shall ensure that the state-owned enterprise along with its subsidiaries, must keep written financial records that—

(a) correctly record and explain its transactions and financial position and performance;