

Current Classification

- PFMA classification of “public entities” with reference to:
 - Definition of “public entities” & “national/ provincial government business enterprises”; and
 - Schedule listing.
- PFMA listing:
 - Schedule 2: Major Public Entities & “ownership control” subsidiaries; all DPE-SOE are Schedule 2 entities; ownership control subsidiaries at least 20 (overall about 40 subsidiaries)
 - Schedule 3A: National Public Entities
 - Schedule 3B: National Business Enterprises
 - Schedule 3C: Provincial Public Entities
 - Schedule 3D: Provincial Business Enterprises
- No definition of major public entity, but characteristics match definition of “national government business enterprise”
- “national government business enterprise”
 - Juristic person (company) under ownership control of national executive
 - Operational & financial authority to carry on business activity
 - Provides goods & services according to ordinary business principles
 - Financed fully or substantially from sources other than Nat. Revenue Fund, taxes or other statutory money



Current Classification

- “ownership control”
 - Appoint/remove all or majority of directors;
 - Appoint/remove CEO;
 - Cast all or majority votes at board meetings; or
 - Control all or majority votes at general meetings.
- “National public entities”: Board, commission, corporation, fund or other entity:
 - Established in terms of national legislation;
 - Fully or substantially funded from Nat. Revenue Fund, taxes or statutory money
 - Accountable to Parliament
- Distinct difference between national public entities & national government business enterprise: sources of funding
- Difference between Schedule 2 and 3B in practice: Schedule 3B entities are generally more dependent on national revenue fund, tax or statutory money

Classification

- Current classification of PFMA is potentially directly linked to current objectives of the
 - No definitions
 - Schedule 2 and Schedule 3B (no business enterprise definition)
- DPSA re-classifies between Government (departments, public entities) and Enterprises
- Government Business classified as State Owned Enterprise established by
- Classification of Enterprises requires strategic interest but does not require ownership control but requires shareholding &
- Considering disowned Enterprises & Entities
- New classification requires oversight to be



public enterprises
Department
Public Enterprises
REPUBLIC OF SOUTH AFRICA

Strategic Intent

- Performance targets of SOE are determined in absence of communication of strategic intent
- Strategic Intent = economic return to be achieved
- DPE developed strategic intent statements for all SOE
- Mechanisms being considered to instruct strategic intent in a transparent & accountable manner, eg. “ministerial charter/ strategic intent obligation” to be published in *Gazette*
- Legislative mandate required
- Enterprise performance targets to be aligned with strategic intent

Shareholder Reserved Rights

- Companies Act provides for standard reserve rights such as approval of Annual Financial Statements, dividends, appointment of directors
- In addition, reserved rights over and above rights in terms of the Companies Act and/or in relation to shareholding are secured through PFMA and possibly shareholders agreements, Memoranda & Articles
- In the case of 100% state shareholding the key issue is the decision-making parameters of the Board vis-à-vis the shareholder; PFMA currently reserves shareholder decision-making rights in relation to:
 - borrowing powers
 - significant & material transactions
 - establishment of subsidiaries
- PFMA reserved rights require further precisioning with reference to "significance & materiality" (delineation of Board & shareholder authority). procedures and criteria for exercising such rights



Shareholder Reserved Rights

- Where the state is a minority shareholder, the reserved rights relate to both the parameters of decision-making of the Board and other shareholders; examples of latter include rights to:
 - Appoint Chairperson & CEO
 - Decisions on capital investment
 - Control management contracts based on performance
 - Call options for shares if performance targets not met (eg. Investment & service delivery)
 - Pre-emptive rights to purchase shares
 - Material disposals, acquisitions & mergers
 - Ownership of intellectual property



Shareholder Reserved Rights

- Interventions to improve definition & exercise of shareholder reserved rights:
 - Significance & materiality, criteria, format & process guidelines for transactions (done)
 - Guidelines for borrowing powers (working with NT towards a guideline)
 - National Treasury Regulations already specify requirements for establishment of subsidiaries - DPE is developing guidelines for shareholders agreements as well as Memoranda & Articles to supplement the requirements
 - Dividend policy: NT developing in consultation with DPE
 - Board appointments – see next slide

Board Accountability

- Current mechanisms to communicate performance areas & targets not effective:
 - Corporate Plan: PFMA requires submission but not approval
 - Shareholder Compacts: annual (short-term) instruments requiring rationalization & harmonization
 - Quarterly Reports
 - Annual General Meetings: agenda mainly focused to ensure compliance with statutory obligations in terms of Companies Act: annual financial statements, dividends, appointment & remuneration of directors
- Direct reference to strategic intent is absent & consistent flow of integrity of reporting from Corporate Plans – Shareholder Compacts – Quarterly Reports & Annual General Meeting lacking

