PFMA Definition of Public Entity

- National Public Entity – PFMA Definition
  - A board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is
    - Established in terms of legislation
    - Fully or substantially funded either from the NRF, or by way of a tax, levy or other money imposed in terms of national legislation and
    - Accountable to Parliament
    - Section 47 (2) of PFMA - The Accounting Authority for a public entity that is not listed in either Sch. 2 or 3 must, without delay, notify the NT, in writing, that the public entity is not listed.
Section 38(1)(m) of the PFMA

• **Purpose**
  – To submit proposals to the National Treasury to consider granting written consent to an accounting officer who intends to establish or take the initiative to establish a new entity.

• **Responsibility**
  – Interim process approved by Cabinet
  – Evaluation panel consisting officials from NT and DPSA
Institutional Options

Structure of the Public Sector (Excluding Local Government)

General Government
- Public Service
  - National Departments
  - Provincial Departments
  - Departmental Agencies
- Public Entities
  - Stewardship Entities
  - Regulatory Entities
  - Research Entities
  - Statutory Advisory Entities
  - Service Delivery Entities

Government Enterprises
- Statutory Corporation
  - Financial Intermediaries
  - State Owned Companies
- Subsidiary Companies of Public Entities
  - State Interest Companies

Public Sphere Institutions
- Tertiary Education Institutions
- Public Sphere Institutions
Accounting Authorities

- Board or CEO
- Accountable for purposes of PFMA
- Exceptional circumstances – another functionary
Fiduciary Duties of the Accounting Authority

• Exercise duty of utmost care – ensure protection of assets/records of entity.
• Act with fidelity, honesty and integrity – managing finances of the entity.
• Not act in a way – inconsistent with the Act.
• Use position of privilege – personal gain.
General Responsibilities of Accounting Authorities

- Effective, efficient, transparent systems of financial and risk management and internal control.
- System of internal audit under the control of an audit committee.
- System of procurement that is fair, equitable, transparent and cost effective.
- Management of “REAL”.
- Disciplinary steps against officials contravening the PFMA.
Delegation of Powers and Duties

- Delegate – in writing – powers entrusted to the Accounting Authority
- Instruct officials to perform duties assigned to the Accounting Authority
- Delegations – subject to limitations and conditions of the Accounting Authority
- Does not divest the Accounting Authority of the responsibility of the delegated power
- Delegations may be revoked
Information to be Submitted by Accounting Authorities

- Reports, returns and information required by AG or National Treasury.
- Certain transactions – prior approval by executive authority e.g. acquisition or disposal of significant assets, participation in a partnership, etc.
Annual Report and Financial Statements

- Keep full and proper records of the public entity
- Prepare financial statements – GRAP
- Disclose emoluments of all Senior Managers, CFO and CEO in aggregate and individually.
- Quality of non-financial performance
- Quality (program performance)
- Irregular expenditure
- Include information on material losses through criminal conduct
- Criminal or disciplinary steps taken resulting from such conduct
- Submit financial statements to auditors – two months after financial year (May)
- Submit annual report and financial statements to treasury – five months (Aug)
- Executive Authority – table in Parliament within six months (Sept)
- Annual Report – fairly represent state of affairs
- Financial performance and performance against predetermined objectives
Internal Control

• Audit Committee
  – Sub-committee of the accounting authority
  – Chairperson - independent – knowledgeable about position
  – Operate - written terms of reference (Charter)
  – Meet annually with AG – unresolved issues of concern.

• Internal Audit
  – Internal audit function Contacted externally - tendering procedures
  – Purpose, authority and responsibility – Internal audit charter
  – Reports directly to accounting authority
  – Develop rolling 3 year strategic IA plan based on risk assessment
Section 51(1)(g) of the PFMA

• **Purpose**
  – To submit proposals to the National Treasury to consider submitting a decision for the formal establishment of a new entity which a public entity intends to establish or in the establishment of which the public entity takes the initiative.

• **Responsibility**
  – Interim process approved by Cabinet.
  – Evaluation panel consisting officials from NT and DPSA.
Annual Budgets

- Submit budget to executive authority – 6 months before start of financial year.
- Submit budget through Accounting Officer of parent department.
- May not budget for a deficit or accumulate surpluses.
- Ensure expenditure in accordance with approved budget.
Cash Banking and Investment Management

• **Cash Management**
  – Collecting and banking revenue timeously
  – Making payments no earlier than necessary
  – Avoiding pre-payments for goods and services

• **Banking**
  – Open bank account - NT approves bank
  – Submit list of banking accounts - 31 May each year to Treasury
  – Only accounting authority or appropriately delegated person may open bank account

• **Investment**
  – Investment policy
  – Invest surplus funds in CPD- unless exempted by Treasury
  – If exempted – invest in institution with investment grade rating – in line with investment policy
Financial Misconduct

• **Investigation**
  – Institute investigation within 30 days from discovery
  – If confirmed - disciplinary proceedings
  – Employees - accounting authority
  – Accounting authority - executive authority

• **Criminal Proceedings**
  – Accounting authority – advise EA, A-G and NT of any criminal charges
  – EA or NT - direct public entity – lay charges

• **Reporting**
  – Annually report to EA, AG and NT outcomes of disciplinary hearings/ criminal charges
  – Names and ranks of employees involved
  – Sanctions and further actions taken
Section 53(3) of the PFMA

• **Purpose**
  – To give written approval to a public entity listed in Schedule 3, which is not a government business enterprise, to budget for a deficit or accumulate surpluses.

• **Responsibility**
  – Implementation is problematic
  – Approval at budget submission stage
  – Approval before auditing of financial statements is finalised
  – Provincial Entities Ref: Section 22 (1b) and (2)
Section 54(2) of the PFMA

• **Purpose**
  • Before a public entity concludes any of the following transactions
    – Establish or participation in the establishment of a company;
    – Participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;
    – Acquisition or disposal of a significant shareholding in a company
    – Acquisition or disposal of a significant asset;
    – Commencement or cessation of a significant business activity; and
    – Significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement

• The accounting authority must promptly and in writing inform the relevant treasury of the transaction

• **Responsibility**
  – Implementation of this section is problematic
  – Public Finance can direct/instruct otherwise or express a view
Why Adopt Codes of Good Governance

• The separation between ownership and control in large corporations leads to the need for corporate governance.

• Codes of good governance can be considered as set of best practices governing the relationship between the board of directors and other stakeholders.

• Such codes have been designed to address deficiencies in the corporate governance system, by recommending a set of norms aimed at improving transparency and accountability among top managers and directors.
Good governance applies to all organisations

- Government
- Municipalities
- Schools
- Companies / Corporations (Public and Private)
- Sporting bodies / Community Organisations (etc.)

- The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, sustainable and financially sound enterprises.

❖ ALL INVOLVED ALL THE TIME !
Good Governance Makes Good Business Sense

• Surveys show:
  – Governance at the heart of investment decisions.
  – Put on a par with financial indicators when evaluating an investment decision.
  – An overwhelming majority of investors are prepared to pay a premium for companies exercising high governance standards.
  – Companies with good governance produce more sustainable and better long term results than those that don’t.
A Good Leader: The 3 C’s

• Character

• Competence

• Commitment
1.1 The Board’s role is to:

(a) provide entrepreneurial leadership, set strategic aims, and ensure that the necessary financial and human resources are in place for the company to meet its objectives;

(b) establish a framework of prudent and effective controls which enables risk to be assessed and managed;

(c) review management performance; and

(d) set the company’s values and standards, and ensure that obligations to shareholders and others are understood and met.
Roles of the Board and Management

- Vision
- Mission
- Core Values
- Strategies
- Goals and Action Plans
- Budget
- Operations

Board of directors

Management

Oversight and monitoring

Managing
Leadership at the Top: Board versus CEO Decisions

Questions:

• In your organisation, does your board and CEO have a clear understanding as to the matters that require the board’s approval?

• Are many matters left to the CEO judgement as to whether Board’s approval is required?

• Should the Board always make a decision when asked by the CEO?
Five Suggestions for Improvement by Boards

• Implement comprehensive code of conduct emphasising ethics from the top
• Implement whistleblower arrangements
• Clarify the board’s and CEO’s roles (develop board charters/board delegation guidelines)
• Implement proper framework for internal control and risk management systems
• Pay more attention to succession planning
QUESTIONS ?

THANK YOU
Contact Details

National Treasury

Goolam H Manack
Head: Public Entities Governance Unit
Goolam.Manack@treasury.gov.za
☎ 012 315 5653
☎ 012 315 5330 / 086 670 9692 (Fax)