Zambia:
PROPOSAL FOR STRENGTHENING THE
GOVERNANCE AND PERFORMANCE MONITORING
OF ZAMBIA’S STATE OWNED ENTERPRISES

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I. Introduction

In August 2006, the Ministry of Finance and National Planning requested the World Bank to carry out a review of corporate governance practices in the state-owned enterprise / parastatal sector, with the goal of benchmarking the experience in Zambia against international good practice. This report was submitted to the authorities in April 2007, and a workshop was held in November to discuss the report. At this workshop the World Bank was requested to work with the Ministry to draft a strategy for improving the corporate governance of state-owned enterprises in Zambia. A series of meetings was held in Lusaka between the World Bank team and the Ministry staff, resulting in the outline of a strategy and next steps.

This document is designed to be a brief and focused summary of the rationale for reform, and a blueprint that lays out an initial strategy. The goal is for this document to form the basis of further discussions between the MOFNP and the other stakeholders. The proposals are based on the Bank’s 2007 diagnostic report, and on the discussions between members of the Zambian Ministry of Finance and the World Bank team in March 2008.

This proposal is organized into the following sections:

- A review of the arguments for reform of the ownership and governance of SOEs in Zambia
- The presentation of a strategy for reform:
  - Strengthen the ownership function and creating a strong “Ownership Unit”
  - Introduce performance monitoring regime for SOE boards and management
  - Develop a code of corporate governance for SOEs
  - Pass legislation to implement the new framework
- Basic implementation plan

The report was drafted by Mr. Ronald Hamilton1, consultant, and Mr. Alex Berg, of the World Bank’s Corporate Governance Policy Practice. This report forms one element of the corporate governance action plan developed by the Global Corporate Governance Forum, and Alison Dillon Kibirige (project manager) provided useful advice, comments and support. The report was then peer-reviewed by World Bank experts. Peer review comments were received from Mazen Bouri, Olivier Frémond, William Mako, and John Speakman. The authors wish to express their appreciation of the support, comments and contribution of the Officials from the Ministry of Finance.

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1 In addition to Mr. Hamilton’s experience with New Zealand’s and other jurisdictions’ corporatization programs (national and local), the team has drawn upon the Owner’s Expectation Manual prepared by the Crown Company Monitoring Advisory Unit (New Zealand) and papers Mr. Hamilton has written for the Commonwealth Association for Corporate Governance.
II. Why reform the ownership and governance of SOEs?

The past thirty years have seen several changes in how policymakers in Zambia have viewed the development contributions of SOEs. Throughout the 1950s and 60s SOEs were seen as key institutions: useful tools to resolve market failure, and engines of development. But beginning in the 1980s the poor performance of state enterprises led to more and more calls for private-sector-led growth, and privatization. Public enterprise reform became gradually discredited.

Today, SOE reform is again on the agenda in Zambia. This interest is driven by a variety of factors:

- A realization of the significant on-going role played by SOEs in the economy, and the importance of many of these companies for poverty reduction and overall economic growth;
- The continued poor performance of many SOEs
- The recognition that improvements can be made to SOE governance.

The important role of SOEs

Over time, the role of the State in the Zambian economy has been significantly reduced. As the result of a significant privatization program, 240 entities were privatized or liquidated since 1991. However, as in many countries, the past several years have seen changing political support for privatization in many countries. This was largely the result of several trends, including some very public privatization problems, particularly in the mining sector, and a drop in number of easy-to-privatize companies. The remaining portfolio consists of companies that are either “strategic” (i.e. considered off-limits to the privatization process), or companies that have a variety of issues or problems that make them unattractive to private investors.²

Today, SOEs³ continue to play an important role in the Zambian economy (see Annex 1 for a complete list). SOEs in Zambia operate in a range of industries and include some of the largest formal sector employers. They dominate key sectors, including energy, communications, transportation, and media. SOEs also play a major role in finance and mining. Significant SOEs include Zambia Electricity Supply Corporation (ZESCO), Zambia Telecommunications Corporation (ZAMTEL), Zambia Postal Services Corporation (ZAMPOST), Zambia Railways (ZR), Zambian National Commercial Bank (Zanaco), Development Bank of Zambia (DBZ), Zambia National Broadcasting Corporation (ZNBC), and Zambia Consolidated Copper Mines-Investment Holdings (ZCCM-IH). The government is the sole owner of 26 companies, with 25 held at the national level. The government shares ownership in 14 SOEs (with a minority stake in 7). Under current plans most of these companies will remain under state ownership for the indefinite future.

The Poor Performance of some SOEs

In the past, SOEs in Zambia were unprofitable and a significant drain on the national budget. This situation has improved but SOEs continue to perform poorly. There is little information available about the financial performance (and fiscal drain) of SOEs, but anecdotal evidence continues to raise concerns.⁴

² A review of the SOE portfolio with a view to privatization was not carried out for this study or the background assessments of SOE governance. This opinion is based on conversations with various market participants.
³ This report used the term “state-owned enterprise” to refer to all enterprises in Zambia that engage in commercial activity, and that are owned by the government. It includes companies organized under the Companies Act, and statutory companies organized under their own founding legislation. There is the possibility that the latter may be incorporated as SOEs but there is no firm government policy as yet. However, most of the proposals in this report can be applied to the statutory companies as well as the SOEs. For simplicity, this memorandum will refer only to SOEs.
⁴ This information was current as of September 2007.
Nitrogen Chemicals, for example, has been consistently loss making and requires ongoing subsidies. Indeni Refinery, jointly owned with Total, has been performing below capacity and shut down entirely for two months in 2005. ZCCM-IH has also performed below expectations.

More important than financial performance is the ability of the key SOEs to deliver essential services to the public. Many of the companies that remain in the portfolio (ZESCO, ZAMTEL, ZAMPOST, ZR) do provide crucial infrastructure services. Improved governance and company performance would also potentially increase access to electricity, telecom, and transport services. Achieving the full potential from these companies will of course require reforms to policy-setting and regulatory functions.

**Poor SOE Governance Practices**

SOE governance in Zambia follows some aspects of international good practice, as reflected in the OECD Guidelines on the Corporate Governance of State-Owned Enterprises (a full review is presented in *Corporate Governance of State Owned Enterprise in Zambia*):

Zambia is a common law country whose legislation and legal system have been strongly influenced by the United Kingdom, and whose practices have been influenced by South Africa. Zambia has taken important steps to improve corporate governance over the past few years, including the issuance of a Code of Corporate Governance. Awareness of the importance of good corporate governance is relatively high in the private sector, and many institutions important for good governance are in place (including an Institute of Directors).

SOEs have two basic legal forms. There is no overarching law or regulation specifically for SOEs or SOE governance. The “ownership policy” of the government, to the extent that there is one, depends on various laws and policies and practices at the ministerial and SOE level. Most SOEs are legally founded under the Companies Act (CA), and are required to follow the same rules and procedures as other companies. Eleven SOEs are “statutory corporations” and established by an act of parliament. The statutory corporations do not fall under the CA, and are governed by their own founding legislation.

Zambia has a variation of what is usually called the “dual model” of ownership and control, with ownership functions in most SOEs shared between the Ministry of Finance and National Planning (MFNP), and an “administrative” ministry assigned to the SOE based on sector. The Minister of Finance holds 99 percent of the states shares in SOEs ex officio; the ST the other 1 percent. Most SOEs have the Secretary of the Treasury (ST), the Permanent Secretary (PS), or other Ministry officials on their board. The MFNP also vets other board candidates, together with the administrative ministry. It gathers SOE annual reports and passes them onto parliament. The Ministry monitors SOEs in liquidation and receivership. The Ministry also provides credit to SOEs, by “on-lending” funds borrowed from international financial institutions. Under the PFA, the ST has additional powers and responsibilities regarding statutory corporations. The Investment and Debt Management Department (IDM) of the MFNP carries out or supports many of the Ministry’s governance and finance functions related to SOEs. A variety of control bodies act as watchdogs or regulators.

- These arrangements follow some aspects of international good practice.
- The government has worked to separate the ownership and regulatory functions for SOEs.
- Most SOEs are corporatized and fall under the provisions of the CA. Those that are not generally

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5 The Public Finance Act 2004 (PFA) includes a chapter on statutory corporations. It empowers the Secretary of the Treasury (ST) to receive information, set conditions for providing grants, oversee valuation of assets, ensure efficient management, protect the interest of the government during privatization, and oversee the winding up of statutory corporations. It requires statutory corporations to have audit committees.

6 These include the Auditor General, the Anti-Corruption Commission, Patents and Companies Registration Office, the Bank of Zambia (over financial institutions), the Zambian Institute of Chartered Accountants (over auditors), and the Securities and Exchange Commission (over listed SOEs).
follow similar governance procedures. Recent reform has reduced exceptions for SOEs in other laws.

- The State is not generally involved in the day-to-day management of SOEs.
- Many SOE boards include qualified, independent members, including the chairman.
- SOE boards sometimes play a meaningful role in oversight and developing strategy.

However, the government and the companies face a number of challenges:

- The participants in the current system have confusing roles and accountabilities. At the government level, there is no focus on SOE ownership and governance. Units that oversee SOEs are focused on policy and regulation, not on being an effective shareholder or ensuring the state derives the most benefit from its assets.
- Information on SOEs available to the owners is relatively limited. Company monitoring is carried out through board attendance, and little information is centrally available. While some SOEs regularly produce annual reports available to the public, much of the state-owned sector is opaque, even to its nominal owners. SOEs generally do not have explicit objectives, targets, or performance monitoring for their boards or management. Government owners cannot say that they are getting the best return for their investment. Opacity is probably concealing poor performance in some companies. More generally, the government does not know how the overall portfolio is performing, and citizens cannot make judgments about the performance of the companies or of the owners.
- In spite of recent reforms, significant political interference remains in the system. The CEO of many important companies is still effectively appointed by the President, reducing the accountability of management to the board. The presence of government officials on boards can weaken their ability to act effectively. While boards have improved in the past few years, some companies suffer from specific problems, such as the absence of a board or CEO for extended periods.

The Benefits of Reform

The drive to reform the corporate governance of SOEs should be driven by the desire of the shareholding Minister to be able to act as an effective owner of some of the most important institutions in Zambia. The interlocking goals of reform in Zambia are to:

- **Improve company performance** by setting explicit goals, injecting private sector business disciplines into the companies and empowering their owners to monitor performance and take action when necessary. Confused accountabilities and underperforming boards obfuscate such outcomes.
- **Reduce political interference** in companies by insulating companies with more professional owners.
- **Reduce risks and costs to the government budget**. Under-performing SOEs place the Government at risk – reputational, political and fiscal. Many SOEs have been expensive drains on national budgets. Governance reform should help impose hard budget constraints on companies, increase their autonomy, and eventually allow companies to borrow directly from the private sector rather than from government. SOEs which do not maximize their revenue potential (and, consequentially, dividends) or which depend on government funding to survive are an expense against government revenues. The Government’s revenues can be better applied to the delivery of basic social needs – health, education and welfare.
- **Increase trust** between management, boards, owners, Parliaments, and citizens, by increasing transparency and building a business culture in the companies and the ownership entities.
- **Reduce risks to government officials**. Another albeit lesser benefit in advancing the reform process is for officials. Being directly responsible for poor performing commercial assets may have personal remuneration advantages but can be damaging to an official’s career.
• **Do all this in a cost-effective manner.** Governance reform should be seen as a cost effective approach that is distinct from past forms of public enterprise reform that required large amounts of investments and “restructuring” of the company.

SOE governance reform is a continuation of the corporatization and other reform efforts that have already been undertaken. Zambia has already embraced the private sector model of companies led by boards of directors. In many cases, the regulatory function of the state has been separated from the ownership function. The strategy outlined in this paper will take corporatization to the next level.

An ownership strategy and regime that sets SOE targets, monitors the SOEs in their striving to achieve these targets and makes the tough decision in regard to those which fall short, will provide fiscal and social benefits to the Zambian taxpayer and consumer. Removing government involvement in operational decision-making will allow Ministers to devote more of their time to their main roles. It will also place the responsibility for running the SOEs squarely on persons appointed for their commercial competence and relevant industry skills.

Last but not least, improvements to SOE governance will have important demonstration effects for other companies in Zambia. Companies within Zambia look to the corporate governance standards set by large SOEs. If corporate governance is improved in these companies then it will be improved for the country as a whole.

In short, SOE governance reform that strengthens the powers of boards to act commercially and in the uncluttered interests of the companies, while better defining the government ownership structures, will have fiscal, political and social benefits for the Government and the Zambian consumers.
III. Strategy for Reform

Corporate governance concerns the structures and processes for the direction and control of companies, including the relationships among the management, board of directors, owners, and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the company performance and increasing access to external finance.

SOEs face significant corporate governance challenges, driven by a wide separation of ownership (by government on behalf of the citizens of a country) from control (by the directors and managers that run the company). Many government bodies can influence SOEs (one or more ministries, cabinet, an ownership entity specifically created to oversee SOEs, the Parliament), but each may potentially use the companies to achieve short-term political goals, and undermining their efficiency.

Current thinking on SOE corporate governance reform incorporates lessons on how to improve corporate governance from the private sector, and the international consensus that has developed regarding corporate governance reform. It also builds on reforms to SOE administration and management in the 1970s and 1980s, and later efforts to prepare SOEs for privatization. Better corporate governance should result in companies operating on a more commercial basis, with improved profitability, increased transparency, more accountable boards and management, improved internal controls, and sustainable employment. Overall, corporate governance provides a coherent and tested framework for addressing key weaknesses of SOEs.

The objective of this paper is to develop an ownership strategy that leads to the adoption of sound governance practices, robust performance monitoring strategies and the formation of an agency to assist the government shareholder to achieve positive outcomes from its remaining commercial ventures.

The strategy focuses on the need for:

- Strong, sound accountability structures
- Defined roles for Ministers, boards and officials.
- A robust performance monitoring regime for boards and SOEs
- Strong monitoring processes
- Focused, skilled, and relevant boards
- Robust board appointment processes
- Codes and charter to guide boards in their corporate governance.
- The formation of a dedicated, business-focused Ownership Unit.
- Capacity building in the SOEs (board and senior management) and in the Ownership Unit.
- Appropriate board fees.
- A new legal framework that enshrines the powers of the shareholders in regard to, inter alia, appointing and removing directors, setting each SOE’s strategic direction, and the information requirements for monitoring SOE performance.

Good corporate governance is much more than adopting sound boardroom practices – although these are important. It also includes sound board appointments, improved lines of accountabilities and delegations and the use of modern measures of investment performance.

For SOEs, it has additional implications for Ministers and officials. In some countries, this model places certain institutional and behavioral expectations on people who have previously been accustomed to direct involvement in the operational aspects of the business. In the absence of appropriate disciplines there is frequently confusion between an official’s/agency’s regulatory and purchase roles and their ownership roles. Line Ministers and officials are often the most significant perpetrators of this confusion.
In some jurisdictions, conflicts of interest abound. Sometimes, private sector companies may be penalized through SOEs receiving guidance and assistance not readily available to the private sector. Competitive neutrality is normally a feature of a sound SOE environment.

An appropriately structured and disciplined SOE governance environment will provide for lines of accountability that will clearly identify how non-ownership Ministers and officials step aside from perceived ownership roles but still able to contribute to the operating environment of the SOEs.

The objectives of the SOE reform strategy may be summarized as follows:

1. **Strengthen the ownership function and creating a strong “Ownership Unit”** — to work with the administrative ministries to improve SOE corporate governance. The proposed Ownership Unit will be responsible for monitoring improvements to governance, transparency, and in the end performance, in order to improve operational and financial performance. In the medium to long-term, the Ownership Unit could become an autonomous body. Capacity building will be required.

2. **Introduce performance monitoring regime for SOE boards and management.** Without performance monitoring it will be difficult to gauge the success of the governance reforms.

3. **Develop an Ownership Policy** to improve governance of SOEs and to the State’s rights, and provide guidance on key corporate governance policies and procedures. The ownership policy should ensure that the State takes a more systematic approach to exercising its ownership rights across SOEs. The ownership policy should address:
   - **Enhancing SOE disclosure and transparency, to meet the same standards for disclosure as listed companies.** This includes implementing high-quality financial reporting, internal controls, independent external audits, and the preparation of annual reports to be distributed by the new Ownership Unit to parliament and the public.
   - **Further strengthening SOE boards** to improve the quality of boards, through director nomination, comprehensive director development, training and induction programs, combined with board monitoring and evaluation by the Ownership Unit to ensure that boards are in a state of continuous improvement.

4. **Pass legislation to implement the new framework.** Consideration should be given to implementing a “State Owned Enterprises Act” to give strength to the government shareholder, codify a number of important ownership and reporting functions, and “legitimize” the Ownership Unit’s role and functions, including its access to SOE information and SOE reporting lines.

1. **Strengthening the ownership function and creating a strong “Ownership Unit”**

The proposed ownership structure is summarized in the diagram below.

**The shareholding Minister** (in Zambia the Minister of Finance) is responsible for acting as owner and exercising Government’s ownership rights. He nominates members of the board of directors, and reappoints or removes as appropriate. The shareholding Minister is responsible for monitoring the performance of the board and the company. As a member of the Cabinet, he/she is accountable to Parliament for the performance of the portfolio. It would be normal for Parliament to form a Select Committee for the post-facto monitoring of the performance of the SOE portfolio.

**The Ownership Unit** acts as the shareholding Minister’s agent in discharging his duties as monitoring the performance of the companies. Although the chair of the board formally reports to the Minister, the Ownership Unit should be empowered to seek whatever information is relevant to the Minister’s monitoring the performance of the company. The Unit has several other roles, acting for the shareholding Minister, including advising on all board appointments. The Ownership Unit need not have statutory support, although in the long term the strategy recommends that its role be formalized in law.
The board of directors is responsible for the hiring (and firing) of the chief executive, approving the strategy of the company, and monitoring its implementation. The board is accountable to the Minister for appointing the best possible CEO. Most governance experts argue that the appointment of the CEO is a board’s single biggest responsibility. External involvement in such appointments undermines the board’s responsibility in its monitoring the CEO’s (and management’s) performance.

The CEO and the management team are responsible to the board for the operations of the company.

The role of the shareholding Minister (Minister of Finance)

The shareholding Minister is, by definition, the company’s shareholder in terms of the Companies Act. The Minister may delegate some of his responsibilities to an associate Minister but retains the full responsibility for the role. He is responsible to Parliament for the performance of the functions. Informally, he is also accountable to his Cabinet colleagues.

In practice, the shareholding Minister’s responsibilities include:

(a) Exercising all shareholder rights
(b) Appointing and removing directors, including the chairs.
(c) Commenting on the content of key monitoring documents and business plans.
(d) Supporting the SOEs’ medium to long-term strategic directions.
(e) Tabling Statements of Intent (SOI) and annual reports in Parliament
(f) Developing and communicating the Government’s ownership policies.
(g) Monitoring board performance and taking the necessary remedial steps should boards fail to meet targets (see Ownership Unit below).
(h) Consulting with boards as issues arise.

For the purposes of this strategy, the second shareholder (Secretary of Treasury, who formally holds 1% of the shares) has been ignored.
(i) Passing resolutions at annual and special general meetings.
(j) Setting the level of fees that may be paid to each board.
(k) Exercising his right as a shareholder in terms of the Companies Act.
(l) Directing the board to alter specified provisions in a company’s statement of intent (see below)
(m) Seeking additional information from the SOE as may be required to meet his shareholding responsibilities.
(n) Expecting boards to be bound by the “no surprises” rule.

The Ministry will also play a separate role in its possible involvement with SOE borrowing. It will be involved in discussions and recommendations of any SOE fiscal restructuring proposals, as such may impact on government revenues and expenditures. It is preferable for SOE borrowings not to be government-guaranteed, with the investment market exercising the usual fiscal disciplines on SOE borrowing. However, SOE borrowing might be coordinated by the Ministry in regard to overall Zambian debt management.

**The Role of the Ownership Unit**

As shareholder, the Minister of Finance is responsible for monitoring the performance of the Government’s commercial investments in the SOEs. In practice, this is an impossibility. The key ownership interest is in ensuring the sound management of the enterprises in which the government has invested. Are the enterprises maintaining and enhancing their value? Value is more than an financial value – it includes its human and intellectual capital, its organizational integrity and its social responsibilities to its various stakeholders. The government may also have a political interest in the entities. It is concerned that there is no political fall-out from the activities of the government entity.

The issue is, therefore, how best to provide the necessary advice and support to the Minister? The Minister’s advisers must display a commercial perspective, and have an understanding of governance and business disciplines. It is therefore complicating for the advisers to be staff of line Ministries – not only because a business orientation does not always exist in line Ministries but also to avoid perceived or actual conflicts of interest. Line Ministries exist to provide country-wide regulatory environments or to provide and purchase services on the Government’s behalf.

International experience strongly points to forming a separate organization, resourced to provide robust advice on the performance of investments. The organization can either be a separate department of the Ministry, or a semi-autonomous agency attached to the Ministry.

**Ownership Unit - Responsibilities**

The Ownership Unit will be responsible for routinely monitoring SOE financial and non-financial performance. It will also undertake issues and crisis management, and manage the Minister’s correspondence and reporting on SOE issues. It will be the usual point of contact with SOEs and will receive and evaluate all routine and performance monitoring reports. The Unit should have defined authority to act on the Minister’s behalf.

Specific responsibilities of the Unit will include:

- Advise the Minister on all aspects of his role as shareholder
- Act as the Minister’s agent in enhancing shareholder value.
- Focus on SOE commercial opportunities AND risks.
- Establish ownership objectives and policies
- Maintain knowledge of SOE business environment.
• Advise the Minister on each SOE’s dividend policy and may make recommendation to the Minister on the appropriate levels.

• Assume responsibility for all aspects of performance monitoring (see below), including evaluating business and strategic plans, the board’s draft Statement of Intent, and the contents of the SOE reports

• Liaise with the SOEs where changes might be reasonably expected.

• Report on SOE performance – with quarterly reporting a useful timeframe for no-problem SOEs.

• Assume responsibility for advising the Minister on all board appointments and replacements and will be active in developing a pool of potential directors.

• Manage the board appointment process

• May act as an observer at board meetings

• May represent shareholder at annual meetings

• Manage crises on behalf/with the shareholding Minister

• Maintain strong relationships with key interested parties.

• Maintain consolidated website on SOE portfolio

• Process dividend payments

• Develop and deliver public awareness programs

• … but stay out of SOE operations.

The Ownership Unit will also manage the Shareholder’s minority share interests, where the State holds a minority position in previously privatized companies. These responsibilities would again include nominating directors (where possible), reviewing disclosure and reporting, establishing a new expectation that the Shareholding Minister would receive disclosure from all companies in which he holds a significant ownership position, making recommendations to Minister in the event of rights offerings, taking action in the event of problems (including having access to strong advisors, communicating with the press, calling extraordinary shareholder meetings, going to court, and requesting help from the auditor general).

**Ownership Unit -- Organization**

The Ownership Unit will require an appropriate level of level of staffing and resources to successfully carry out its mission. We estimate a staff of 20 (assuming a total of 40 SOEs, with an average of 5 SOEs covered by an analyst), plus support staff. The number of SOE teams will be determined by the numbers of companies to be monitored. Larger SOEs will be more demanding than others and this will determine the number of SOE per analyst.

Support staff will include the usual personal assistants, IT manager (full or part-time), and accounts management. There is also merit in adding a legal specialist to the team, with company law experience (appointed or seconded). This officer would also report to the Chief Executive. There will be issues when seeking advice from a Ministry of Finance lawyer or private firm will be lengthy and/or costly. The team should also be provided with sufficient infrastructure (accommodation, IT, transport).

It is essential that new staff should have the appropriate level of skills and expertise, and training should be provided for existing staff. As many staff as possible should come to the organization from outside of government, preferably with a strong private sector mentality.

There is strong appeal to convert the existing Government Investment Unit into this agency. For at least
the implementation period, its being a semi-autonomous agency, with its chief executive being appointed by the Permanent Secretary of Finance, is recommended. The chief executive, who would manage the resourcing of the Unit, would be responsible to the Permanent Secretary of Finance for the Unit’s performance and budget.

A preliminary organization chart could be as follows:

![Organization Chart]

**Ownership Unit – Outside Advisers**

The Ownership Unit should have access to outside advisors and experts. Advisers will be appointed for their experience in business, and their knowledge of financial drivers and modern performance measures. In the short term, such persons may be seconded from the private sector or from Ministries and SOEs with spare qualified resources.

One of the tools which could assist both the Unit and the Minister is the formation of an advisory group consisting of persons recognized for the business experience. The group would have no executive authority but could, inter alia, advise on the commercial impact of specific ownership and governance policies as well as being a group on which the Unit could test their own development thinking. This could be useful in the early stages when the Unit is still evolving its business expertise. It can be disbanded once the Unit is confident in its business-oriented role.

**Ownership Unit – Capacity Building**

The reforms will demand a significant level of capacity building. Owners, boards, and senior management will need a strong understanding of corporate governance, with slightly differing emphases. The Ownership Unit should provide prospective directors (and many serving directors) with governance development to better prepare them for their appointments. This can be augmented by SOE and SOE sector specific programs.

It is probable that the proposed performance monitoring regime will identify a shortage of business-monitoring resources. To be effective, the SOEs and the Unit will need people with the skills and
experience in the business sector and where these cannot be recruited or seconded, they will have to be created. This creates a demand for development programs in corporate finance and economics.

Finally, the Ownership Unit will require significant technical assistance during its start-up phase (see workplan, below).

**The role of the board**

The board is the shareholding Minister’s agent. It is appointed by the shareholding Minister. In government companies, it is usual for the Minister to separately appoint the chair of the board (and the deputy, where one is appointed). An SOE board is required to meet the same obligations laid down in the Companies Act. These will include such responsibilities as being a good employer.

The board is required to ensure that the company is at least as profitable as any company in the private sector.

The board appoints, monitors and removes the chief executive. It will determine the chief executive’s performance indicators, his/her remuneration and will delegate the powers necessary for the chief executive to undertake his/her responsibilities.

- The board determines the company’s strategy and is responsible for ensuring there are resources sufficient for the purpose.

- As the board of a government owned company, it will ensure that there are no surprises – good or bad – as far as the ownership relationship is concerned. In the long term, this will require proper risk management processes, procedures and policies.

- The chair is the conduit for communications between the Minister and the company and between the board and the chief executive. However, the chair and the board may agree lines of delegation where good management demands.

- Notwithstanding the formal relationship, the board and management will provide such information as may be necessary to the Ownership Unit, which is acting on the Minister’s behalf.

- Deliberations inside the board are confidential to the board and may not be disclosed to other than the Minister without the board’s express and collective agreement. Breach of this protocol can undermine the board’s actions and deliberations. Board dysfunctionality increases risk.

A Draft Board Charter and Code of Corporate Governance – guidelines to the board as to how it should function – appear at Annexes 1 and 2.

**The role of Management**

Management, under the leadership of the chief executive, delivers the board’s objectives. Although there are formal relationship protocols between the Minister, the board and management, for the purposes of performance monitoring, members of management will be expected to provide performance information to the Ownership Unit.

**The Role of Line Ministries**

Under the proposed strategy, the Line Ministers and Ministries will have a very limited role with regard to the ownership of SOEs. Line Ministries have roles as regulators and/or purchasers of SOE services and products. This is not to deny that, during the transition at least, line ministries will be useful sources of advice to the SOEs. However, there will be defined processes for conveying this advice that do not involve membership or direct association with an SOE’s board.

Line Ministries are frequently responsible for the regulatory environment in which an SOE operates. For example, the Ministry of Transport determines the regulatory environment in which Zambia’s transport
operates. Under the strategy, it would be deemed to be a conflict of interest if a member of the Ministry was appointed to the board a transport-oriented SOE. Non-SOE suppliers could reasonably claim to be disadvantaged.

The SOE may also provide services to a Ministry. Such a function should be defined in a formal purchase/provider relationship. It should be covered by contract – which facilitates the Ministry’s monitoring the supply against the contract – and should be specifically funded through the Ministry’s annual budget appropriation. The purchase/provider vehicle specifically provides for the SOE to “sell” social obligations to the Government. For example, if the Government requires Zambian Post to retain post offices that are otherwise not economic to keep open, the SOE receives a specific funding to maintain these social, non-economic services. Not only does this mean that SOE revenues and expenditures are maintained on a commercial basis, the cost of uneconomic services are transparent to the external observers through the Public Accounts.

This proposal will raise concerns that not appointing line ministry officials to SOE boards would be to the boards’ and the company’s disadvantage. However, the appointment of line Ministry officials confuses the board’s accountability, as well as the Ministry’s. Not appointing related Ministry officials to boards places an increased responsibility on management for providing a high level of technical advice in presentations to its board. Management may liaise with the ministries, not the board.

But it is common practice for a board to seek external advice in its consideration of issues and there may be times when a board requires management to bring expert advice from a line ministry official. The official is, of course, a guest, not a member of either management or the board. Keeping a distinction between advice and decision-making streams is vital. The board can then take decisions on the basis of the best information available.

2. Introducing performance monitoring regime for SOE boards and management

The Government is required to manage its SOE investments in the best interests of Zambia. Monitoring the performance of the SOEs is central to ensuring that the SOEs produce the best possible outcomes. The shareholding Minister’s monitoring function is similar to that undertaken by equity holders with investments in private sector companies.

Governance is all about managing risk on the owner’s behalf. A loose level of monitoring is an incentive for boards to embark on investments and activities outside the agreed core business and at the expense of the owner’s funds. It is easy for a board to forget that it is an agent, not an owner.

Sound monitoring cannot take place without timely and relevant information from the SOEs. It will be necessary for the shareholding Minister to define the information required from the SOEs; to specify these requirements, a specific SOE Act may be considered. Producing this information will also require capacity building within the SOEs.

The shareholding Minister has the responsibility for monitoring the company. As the government shareholder, the Minister will be accountable to Parliament for the performance of the company. However, the shareholding Minister will delegate the actual monitoring to the Ownership Unit.

A monitoring regime should require:

(a) A common and clearly understood framework of accountability and governance.
(b) The implementation of best-practice corporate governance policies and procedures by SOEs.
(c) Clear and focused board accountability.
(d) An Ownership Unit that is familiar with the SOEs they monitor and the sectors within which the SOEs operate.
(e) The Shareholding Minister receiving expert advice.
The SOEs understanding that the advisers are acting as the shareholding Minister’s agents.

The core components of a monitoring regime include:

- **An annual communication from the shareholder describing its expectations for the coming period.** This *Letter of Expectations* would launch an informal discussion between the government and the company.

- **Statement of Intent (SOI) developed by SOE board and sent to the Owner.** The SOI is the key agreement / contract between the owner and the company, and covers description of core business, key performance indicators, dividend policy, non-commercial goals, and reporting frequency.

- **The Ministry and the SOE agrees on the SOI** following additional negotiation or discussion.

- **Minister tables SOI with Parliament** -- (the SOI and Annual Report are all made public (all other reporting confidential).

- **The Ownership Unit maintains SOE financial database** and monitors SOE compliance with the SOI.

**The Statement of Intent (SOI)**

In simple terms, the SOI is a contract between the owner (the shareholding Minister) and the company, and as such allows the shareholding Minister and the public to gauge the performance of the SOE. The SOI provides two-way benefits in that it protects the SOE board from being asked to undertake issues not consistent with the core business. The SOE is a should be a public accountability document, and should be tabled in Parliament. An example taken from the New Zealand SOE Act 1986 appears at Annex X.

The Statement of Intent would normally contain the following:

(a) The nature and scope of the activities the company (including its subsidiaries) will undertake. This will define the core and non-core activities of the business. It is these that the board is accountable for delivering. It also serves as a discipline against the company undertaking non-relevant activities which may not be in the best interests of the owner.

(b) Financial and non-financial performance indicators. As SOEs are required to operate as a successful business and as efficient and profitable and comparable private sector businesses, the owner can rightfully expect the company to be able to measure itself and to be able to compare performance with similar businesses – in Zambia or elsewhere. Performance measures are discussed in detail in the following section; they can be expected to grow in sophistication over time.

(c) An estimate of current commercial value, and the manner in which this was derived. This provides observers with an assurance that the board and management understand the business and the drivers which develop value.

(d) A clear description of the non-commercial goals of the SOEs, and an explicit financial estimated of carrying out the non-commercial goals (such as access, coverage, affordability for low income consumers). This will allow the State to have an overall understanding of the cost of meeting social objectives.

(e) A statement describing the principles used for set the annual dividend. In practice, this will have been agreed with the shareholding Minister (and the Ownership Unit) when the SOI is at draft stage, and will be set with the business planning process. The level of dividends is driven by each SOE’s capital structure, profitability and the company’s estimate of future capital expenditure. A dividend policy enables the Minister to better control SOE expectations in that a “generous” balance sheet may encourage boards to extend beyond their core business and preferred risk profile.
**Reports and Key Performance Indicators**

SOE owners need to be confident that their businesses are progressing satisfactorily. Annual reports come too late for owners to take appropriate action if there are indications that something is wrong. It is recommended that SOEs submit reports to the shareholding Minister on a quarterly basis – and more frequently if an SOE is performing badly and the shareholding Minister has demanded changes to be made to rectify this situation. The reports are referred through the Ownership Unit, which will provide its own analysis in submitting its assessment to the Minister. In essence, given that the SOE is not listed, the SOE and the advisers are trying to replicate a market assessment of the worth of the government’s investment.

The reports should include standard financial indicators and key performance indicators relevant to the nature of the business. A routine financial analysis might include:

- Return on equity
- Return on assets
- Current ratio
- Equity ratio
- Cash flow

In addition, the SOE and OU advisers would be expected to develop non-financial performance indicators including, where possible, industry standard comparators. For example, in a forest products company, indicators on private sector forestry production, returns and international uptake could be relevant. Successful monitoring requires both generic monitoring skills and knowledge of the specific sector or industry to which the entity belongs.

Given that it may take some time for the SOEs and the Ownership Unit to develop satisfactory performance measures, the Unit may care to also adopt the practice of sending observers to attend and monitor board meetings. Observers can corrupt best governance practice if not well-managed but its adoption can augment the stream of monitoring advice. The observer must be neutral in board deliberations although they may seek clarification of issues and information arising. Generally, the Observer is the OU adviser responsible for monitoring the SOE on the Minister’s behalf.

To assist in the monitoring function, the Ownership Unit will develop a database of SOE financial and non-financial performance.

### 3. Developing an Ownership Policy

Redefining the ownership and accountability structure will not, on its own, provide the necessary vehicles for maintain and enhancing Zambia’s investment in its SOEs. Ensuring that boards are both suitably qualified to lead each SOE’s business and adopt best practice in delivering its responsibilities to the owner. Board appointments are a critical component in SOE ownership and the next sections focus on this aspect.

Experience elsewhere (notably in China, Malaysia, and Egypt) indicates that mixed ownership (e.g., a public listing of a minority block of shares on the stock exchange) can be an effective means for disciplining SOEs and improving transparency, as long as there is reasonable disclosure and private sector corporate governance. Because local corporate governance standards are reasonably strong (as detailed in the corporate governance ROSC), the ownership policy should address this issue and identify candidates (e.g., ZESCO, ZAMTEL) for a partial public share offering.

Zambia’s SOEs have already seen significant improvements in the boards in the past several years, in terms of professionalism, independence, and private-sector orientation. Going forward, the newly empowered owners of SOEs should continue to push for improvements to the boards, through changes to director nomination procedures, comprehensive director development, training and induction programs,
combined with board monitoring and evaluation by the Ownership Unit to ensure that boards are in a state of continuous improvement.

**The development of a code of corporate governance for SOEs**

One of the Unit’s first tasks should be to develop a Code of Corporate Governance for the SOEs under the Ministry’s oversight. The code should set the expectations of the shareholder for each board’s activity, and should be developed in close consultation with private-sector corporate governance experts. The Code should address board duties, responsibilities, functions, ethics, management of conflicts of interest, and disclosure policies. Because corporate governance practices in the private sector are reasonably strong, the Zambia code of corporate governance could be a good starting point.

A draft Code is presented as Annex 2.

**Board Composition**

The Ministry’s ownership policy should formally establish its policies related to board composition. Board should be composed of best people from private sector, may be supplemented by back-up non-conflicted civil servants. In general, executive directors should not be on the board (but can attend board meetings at board request). The practice of alternate directors should be eliminated or discouraged. Finally, no member of the monitoring unit should act as a director (although they can attend as observers).

One key policy issue is the appointment of civil servants to the board. This question is hotly debated in a number of jurisdictions. Such appointments have evolved as an informal means of augmenting a civil servant’s remuneration. Sometimes, experienced civil servants are appointed because of a shortage of appropriately skilled directors. However, appointing civil servants to SOE boards raises a number of risks. Risks include confusion in the board as to which hat a civil servant may be wearing and deliberations may be distorted, in consequence. A civil servant appointed from a directly relevant line Ministry leaves the board open to allegations of conflicts of interest. Finally, a civil servant faces career-limiting risks if he/she is on a board of a failing company.

If the practice is to be used, these safeguards are recommended:

- The appointment is made a board where there will be no conflict of interest;
- The appointment is made the basis of skills relevance;
- The appointment is made in the person’s own capacity; delegation of the role to other officials will not be condoned;
- The appointee is subject to the same performance evaluation as other directors and may be removed, if deemed necessary;
- The appointee understands that he/she shares the same reputational risks and liabilities as other directors;
- The appointee is equally responsible maintaining skills and governance competencies as other directors;
- The appointee is subject to the same terms of appointment as other directors;
- The appointee is not made the position of chair or deputy chair.

**Board Appointments**

As the shareholder, the shareholding Minister is responsible for nominations to the SOE boards, to be appointed at the shareholder meeting, according to the requirements of each company’s founding legislation, articles, and the Companies Act. This function will be administered by the proposed Ownership Unit, which will develop and maintain a database of prospective directors.
Director identification and appointment processes are significant tasks and it is appropriate to concentrate all appointments within the Ownership Unit. Why this Unit and not, say, a civil service agency? The reason is that the board’s contribution to an SOE’s performance is so pivotal that it is logical that the advisers who monitor the SOE have an input into the appointment process.

The specific process would need to be developed and formalized. The outline of the proposed approach:

- OU presents list of recommended director appointments to the Minister
- The Minister sends the recommended director appointments to the cabinet for ratification
- Directors would then be elected / re-elected at AGM (or EGM)

Defined terms of appointment are important. As a business evolves, the skills needed at the board table may change too. Board member changes are necessary in consequence. In addition, defined terms ensure that directors do not adopt an “appointment for life” attitude, which may lead to a diminution of contribution. Boards tire and this is another reason to limit the terms of appointment. Two terms of three years may be appropriate, with a director receiving a third term if his/her presence is crucial to the business.

In government companies, including the SOEs, it is reasonable for the shareholding Minister to appoint the chair (and deputy chair, if appointed). The chair is the Minister’s formal link to the company and he deserves to have confidence in the company’s leadership.

The Ownership Unit and the chair of each SOE will assess the skills that the industry needs on the board and the Unit will embark on a search for the relevant potential directors.

The specific skills needed for each board will vary from board to board. Each board will have common skills – corporate finance, and possibly legal and marketing skills -- but every board will also require industry-specific skills. All directors should have the basic governance competencies, or the ability to quickly acquire them. These are summarized as:

- An ability to add value;
- The capability for a wide perspective on issues;
- Integrity;
- Common sense;
- Organizational awareness;
- An appreciation of the role of the Government as a shareholder;
- An ability to distinguish governance from management;
- Financial literacy;
- Critical faculty;
- Information oriented;
- A knowledge of the responsibilities of a director.

At the same time, the Unit will consult with the Minister in regard to known vacancies, reappointments and proposed or recommended retirements. This is generally done in conjunction with the monitoring advisers.

Over time, the Unit will develop a data base of persons identified as having director potential through

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9 It is important to note that the current process for director appointment is specified by law in many statutory companies. This process would need to be continued until the law is changed and statutory companies are brought under company law. After this transition period, statutory company appointments would be made like any other company.
business affiliations, professional bodies and consultations with other Ministries. Pre-screening before recording candidates is recommended. Not only do such interviews better provide information on a candidate’s qualities, it generally gives an insight into the person qualities. Even nominations from the Minister’s colleagues should be screened, to avoid incompatible appointments. As it grows, this data base will be one of the Unit’s most valuable tools. It readily lends itself to being computerized.

There is much to commend the Unit’s providing “prospective director” development programs – probably with the Zambian Institute of Directors. These programs provide participants with the basic understanding of the role of a director and means that they contribute sooner, when appointed. Serving directors consider themselves less at risk when new appointees join the board knowing their responsibilities.

The Unit develops recommendations for new appointments/retirements for the Minister’s approval. It is usual for the Unit to ascertain a candidate’s preparedness to serve and, very importantly, that there are no unmanageable conflicts-of-interest. Finding out after an appointment is made is potentially reputationally damaging to the Minister.

Approved candidates should be encouraged to undertake due diligence with, inter alia, the chair before an appointment is formalized. Under Zambian company law, appointments are formalized at the annual general meeting. However, for the purpose of making changes, it is recommended that the shareholding Minister initiate a special meeting for formalizing appointments, when the AGM may be some months away.

Letters of appointment are important legal and accountability documents and provide for the Minister to stipulate his expectations of the board and the director, as well as outline his conflict of interest specifications. Sample letters of appointment can be provided.

**Board Fees**

Formally, boards approve the level of fees paid to directors. However, in a government company environment, it is usual – and desirable – for the shareholding Minister to determine the level of board fees.

There are a range of factors a shareholding Minister (in actuality, the Ownership Unit) can acknowledge. Size and complexity are two. The number of board committees may be a factor too. It is generally possible to group SOEs on these characteristics so that fees may be comparable between similar sized SOEs. Fees should comparable to the fees paid to boards of similar companies, although there may be a preference to apply a “public sector discount” – in recognition of the public good philosophy.

Within the owner-approved ceiling set, it is the board’s prerogative as to how the fees are disbursed. A useful guide line is for a chair to receive twice the director’s annual fee, and the deputy chair 1.25 times the ordinary fee. This reflects the amount of time the directors devote to company business. Payment of meeting fees is an anachronism and acts a disincentive for sensible meeting management.

Fees should not, ideally, be paid to civil servants appointed to boards or, if they are, should be refunded to their employing Ministry. They are, after all, performing as directors within their employment hours.

**4. Enacting legislation to implement the new framework**

Clearly, SOEs have been operating in Zambia without the need for SOE specific legislation. In a sense, this is unusual but with the decision to retain a number of SOEs within the government domain, consideration could be given to implementing a State Owned Enterprises Act to give strength to the government shareholder and codify a number of important ownership and reporting functions. The Zambian environment may deem it important to “legitimize” the Ownership Unit’s role and functions, including its access to SOE information and SOE reporting lines.

The Act would describe the responsibilities of the shareholding Minister and SOE boards, and enshrine the shareholding Minister’s powers and responsibilities in regard to the appointment of directors, the role of the boards, the performance monitoring framework; the funding of non-commercial activities; annual
reports and dividends. In addition, the Act could:

- Convert statutory companies to public limited companies under the Companies Act
- Support the creation of a more autonomous Ownership Unit
- Create an accountability regime which enshrines the expectations of the shareholder and of Parliament
- Outline the mechanisms for ownership monitoring of SOE performance
- Establish basic requirements for SOE governance policies, including board charters and codes of ethics
- Specify sanctions for non-compliance

**Basic Implementation Plan**

The proposal outlined above can be implemented in three phases, over several years. Phase I would largely consist of getting support for the program from a wide variety of stakeholders, and developing a detailed implementation plan. Phase II would be the main implementation phase, in which the key institutions (especially the ownership unit) are designed and implemented, and legislation to implement the program is drafted. Phase III represents on-going implementation.

**Phase I: 2008 - 2009**

1. Buy-in of the PS of Finance
2. Buy-in of the Minister of Finance
3. Presentation to stakeholders
4. Creation of consensus strategy
5. Funding strategy
   - Set up costs
   - On-going budget implications
6. Development of cabinet memorandum
7. Buy-in by Cabinet
8. Appoint manager of process (CEO of OU)
9. Develop detailed implementation plan

More work can also be done to build on the limited data that is currently available on past SOE performance, in order to continue to build the rationale for SOE reform.

**Phase II: Implementation (2009-2011)**

1. Creation of basic monitoring regime
2. Resourcing plan for the Ownership Unit (gap analysis)
3. Develop standard corporate governance guidelines
4. Skills profiling of existing SOE boards
5. Review and revise appropriate fee structure for boards

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10 The implementation plan could also include a phased approach, in which tranches of the SOE portfolio are gradually brought under the control of the Ownership Unit.
6. Database for financial reporting
7. Database for prospective board members
8. Develop board review / evaluation approach
9. Drafting (and eventual enactment) of SOE Act

Phase III (2012 +)
1. Further development of monitoring regime
2. Capability and capacity building in SOEs to meet monitoring requirements

The objective of this report has been to outline an ownership strategy for Zambia’s SOEs, through the adoption of strong governance and performance monitoring protocols. It needs to be recognized that these changes will not be easy or without cost. These proposals represent significant changes to the current framework.

However, the current governance and accountability frameworks are ambiguous, and have the potential for institutional conflicts of interest diverting SOE boards from the best interests of their companies. Participation in board decision-making by regulatory and purchase ministries has the potential to obfuscate board deliberations, even though Ministry interventions may have been well-intentioned. It is clear that the Minister needs to impose his imprint on the accountability of the boards managing “his” investments. As the shareholder, he is the one responsible to Parliament and the proposed reforms are intended to strengthen him in this regard. The Minister cannot, on his own, undertake the detailed responsibilities his position requires. For this reason, the proposed specialized Ownership Unit is crucial to the success of the undertaking.

Finally and notwithstanding that there have been SOEs for some years, it is timely to recommend imposing and enshrining the Government’s reforms though the enactment of supporting legislation. One strong reason for this is that there will be varying degrees of comfort within the present SOE environment and the Act will underpin demands for new attitudes and processes within the sector.

In the end, the success of the reform program can be judged by the following results:

- Improvements to financial performance of SOE portfolio
- Improved corporate governance of SOEs
- Improved relationship management between Ministry and SOEs
- Positive returns on investments
- More robust reporting
- No surprises
- More effective crisis management
## ANNEX 1: State Owned Enterprises in Zambia

### Introduction to Selected SOEs in Zambia

**Zambia Electricity Supply Corporation (ZESCO):** The dominant electricity producer and distributor, ZESCO has over 3700 employees and accounts for about 2 percent of GDP. It has been restructured and “commercialized”, which included a change in its legal form. ZESCO is 100 percent state-owned.

**Zambia Telecommunications Corporation (ZAMTEL):** The primary provider of telephone services, ZAMTEL faces limited competition from other online, payphone, and cellular providers. It has 2700 employees and accounts for about 1 percent of GDP. ZAMTEL is 100 percent state-owned.

**Zambia Consolidated Copper Mines-Investment Holdings (ZCCM-IH):** A holding company with equity in a number of mining and mining related companies. It also has special voting rights (golden shares) in many of its investments, providing the government with a voice in key decisions in a number of privatized companies. ZCCM-IH is the only listed company in Zambia with State ownership, and is listed in London as well as on the Lusaka Stock Exchange. However it has not traditionally met some on-going listing obligations, and its governance practices and financial performance are both considered lacking by many market participants. The position of CEO was only recently filled. The government retains an 87 percent stake.

**Zambia Postal Services Corporation (ZAMPOST):** The largest provider of traditional and modern postal services. Recent reforms have exposed ZAMPOST to some competition. ZAMPOST currently does not have a board. It is 100 percent state-owned.

**Zambian National Commercial Bank (Zanaco):** One of the largest banks in Zambia, with 1100 employees. The Bank has recently been privatized to a strategic investor, with Rabobank of the Netherlands receiving 49 percent of shares. 25.8 percent of shares will be floated on the Lusaka Stock Exchange, 0.2 percent will be retained by the minority shareholders; and 25 percent shareholding will be retained by Government. The residual holding allows the Government to “offload these shares to Zambians as further empowerment, or continue to hold onto the shares on behalf of the taxpayers.”

**Development Bank of Zambia (DBZ):** The only Zambian development bank to survive liquidation, DBZ has been extensively restructured and subject to a new regulatory regime. This restructuring has included corporate governance reform, with a significant change in board culture and composition. Ownership in DBZ is shared with the Export Import Bank of India.

**Zambia Railways (ZR):** The domestic railway company, ZR is currently operated under a concession by South African owned Rail Services Zambia. ZR remains 100 percent state-owned.
Ownership of State-Owned Enterprises in Zambia

<table>
<thead>
<tr>
<th>Ministry/SOE</th>
<th>Acronym</th>
<th>Type</th>
<th>State Share</th>
<th>Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Agriculture and Co-operatives</td>
<td>NCZ</td>
<td>Company</td>
<td>100%</td>
<td>Chemicals</td>
</tr>
<tr>
<td>Ministry of Communication and Transport</td>
<td>NAACL</td>
<td>Statutory</td>
<td>100%</td>
<td>Transportation</td>
</tr>
<tr>
<td>National Airports Corporation Ltd.</td>
<td>NAACL</td>
<td>Statutory</td>
<td>100%</td>
<td>Transportation</td>
</tr>
<tr>
<td>Tanzania Zambia Railways Authority</td>
<td>TAZARA</td>
<td>Statutory</td>
<td>100%</td>
<td>Transportation</td>
</tr>
<tr>
<td>National Savings and Credit Bank</td>
<td>NSCB</td>
<td>Statutory</td>
<td>100%</td>
<td>Finance</td>
</tr>
<tr>
<td>Zambia National Commercial Bank Plc</td>
<td>ZANACO</td>
<td>Company</td>
<td>99.8%</td>
<td>Finance</td>
</tr>
<tr>
<td>Zambia-China Mulungushi Textiles Ltd.</td>
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<td>Company</td>
<td>99.8%</td>
<td>Textiles</td>
</tr>
<tr>
<td>Ministry of Commerce, Trade and Industry</td>
<td>MAAMBA</td>
<td>Company</td>
<td>100%</td>
<td>Mining</td>
</tr>
<tr>
<td>Ministry of Education</td>
<td>ZAMCAPITAL</td>
<td>Company</td>
<td>100%</td>
<td>Defense</td>
</tr>
<tr>
<td>Ministry of Energy and Water Development</td>
<td>INDENI</td>
<td>Company</td>
<td>100%</td>
<td>Mining</td>
</tr>
<tr>
<td>Tazama Pipeline Ltd.</td>
<td>TAZAMA</td>
<td>Statutory</td>
<td>100%</td>
<td>Mining</td>
</tr>
<tr>
<td>Zambia Electricity Supply Corporation Ltd.</td>
<td>ZESCO</td>
<td>Company</td>
<td>100%</td>
<td>Mining</td>
</tr>
<tr>
<td>Ministry of Finance and National Planning</td>
<td>DBZ</td>
<td>Statutory</td>
<td>100%</td>
<td>Finance</td>
</tr>
<tr>
<td>Indu-Zambia Bank Ltd.</td>
<td>INDO-ZAMBA</td>
<td>Company</td>
<td>100%</td>
<td>Finance</td>
</tr>
<tr>
<td>Medical Stores Ltd.</td>
<td>ZAMCAPITAL</td>
<td>Company</td>
<td>100%</td>
<td>Finance</td>
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<tr>
<td>Ministry of Information and Broadcasting</td>
<td>TIMES</td>
<td>Company</td>
<td>100%</td>
<td>Finance</td>
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<tr>
<td>Zambia Daily Mail</td>
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</tr>
<tr>
<td>Zambia Nat'l Broadcasting Corporation Ltd.</td>
<td>ZNBC</td>
<td>Statutory</td>
<td>100%</td>
<td>Finance</td>
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<tr>
<td>Zambia State Lotteries Board</td>
<td>STATE</td>
<td>Statutory</td>
<td>100%</td>
<td>Finance</td>
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<tr>
<td>Ministry of Mines and Minerals Development</td>
<td>KAGEM</td>
<td>Company</td>
<td>100%</td>
<td>Mining</td>
</tr>
<tr>
<td>Kariba Minerals Ltd.</td>
<td>KAGEM</td>
<td>Company</td>
<td>100%</td>
<td>Mining</td>
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<tr>
<td>Zambia Cons. Copper Mines - Investment Holdings</td>
<td>ZCCM-IH</td>
<td>Company</td>
<td>100%</td>
<td>Mining</td>
</tr>
<tr>
<td>Ministry of Tourism and Natural Resources</td>
<td>ZAFFICO</td>
<td>Company</td>
<td>100%</td>
<td>Forestry</td>
</tr>
<tr>
<td>Mulungushi Village Ltd.</td>
<td>ZAFFICO</td>
<td>Company</td>
<td>100%</td>
<td>Forestry</td>
</tr>
<tr>
<td>Ministry of Works and Supplies</td>
<td>ZAFFICO</td>
<td>Company</td>
<td>100%</td>
<td>Forestry</td>
</tr>
<tr>
<td>Engineering Services Corporation Ltd.</td>
<td>ESCO</td>
<td>Company</td>
<td>100%</td>
<td>Engineering</td>
</tr>
<tr>
<td>Does not report to any Ministry</td>
<td>ESCO</td>
<td>Company</td>
<td>100%</td>
<td>Engineering</td>
</tr>
<tr>
<td>Mpongwe Development Company Ltd.</td>
<td>Nanga Farms Ltd.</td>
<td>Company</td>
<td>24.8%</td>
<td>Agriculture</td>
</tr>
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</table>
ANNEX 2: Sample Charter for the Guidance of Government-Owned Companies

Introduction
SOE Ltd is a company formed in terms of the Companies Act ??, The Board is chaired by a chair appointed by the shareholding Minister and is composed of up to eight other directors, none of whom are members of the management group.

All Business Unit Managers report direct to the Chief Executive within the delegations given to them.

The core business of SOE Ltd is outlined in the Statement of Intent.

If a Manager wants to work outside their delegation, has a matter of urgency or has recognized a new business opportunity then they discuss this with the Chief Executive. If the issue exceeds the delegated authority of the Chief Executive then he will take the issue to the Board Chairman who will, if needed, consult with the other directors or call a board meeting.

The Board normally meets every month. Financials are available monthly.

The board has agreed that the Unit may liaise directly with Management, and keeping the board informed on the discussions.

The Board commits to a Board Charter as contained hereunder.

Board’s Mission.
To create wealth for the Shareholder and to maximize the assets for the Shareholders through pro-active engagement with the Shareholders.

Board’s Functions.
- To set the mission, vision and values SOE Ltd, consistent with the Government’s SOE Ownership strategy.
- To set the Business Plan and Budget for SOE Ltd.
- To agree the strategic direction of SOE Ltd, taking account of the government’s ownership expectations, as conveyed in the shareholding Minister’s annual letter of expectations.
- To review opportunities related to investments and divestments, consulting with the shareholder, as deemed appropriate.
- To monitor, mentor and evaluate the Chief Executive’s performance.
- To ensure conformance with legislative requirements.
- To approve all expenditure over agreed delegations.
- To report to the Shareholding Minister, including the Ownership Unit, at least quarterly.
- Reports will be submitted through the Ownership Unit and may be discussed in detail as appropriate.
- To approve all financial instruments.

Board’s Values.
- To declare all conflicts of interest.
- To work in the best interests of SOE Ltd such interests to be interpreted in their widest meaning on a long term basis and which foster the wellbeing of the shareholder and staff of the company.
- To raise any matters of concern, be they related to the SOE Ltd’s operations or the board’s operations, with the Chairman.
- That it will evaluate the performance of the board as a whole and individual directors (including the chair) every year.
• That when the board as a whole loses faith in any director, then that director will resign if so called upon.

• The shareholding Minister will be advised of significant issues that may arise (No surprises).

• No director may delegate his/her responsibility to an alternate director with the express approval of the shareholding Minister. Such delegations will be on a case-by-case basis.

• Directors serve in their individual and personal capacities and do not purport to represent other agencies or communities of interest.

• All board members undertake to remain current in meeting their responsibilities.

• Communications on board deliberations are through the chairman only, without the express concurrence of the board.

To adopt policies which foster the wellbeing of all shareholders and staff of the company.

• The Board will operate an active Board Retirement and Rotation policy, as periodically determined by the shareholder.
ANNEX 3: Example of a Statement of Corporate Intent

Extract from the State Owned Enterprises Act 1986 (New Zealand)

14. Statement of corporate intent---

(1) The board of every State enterprise shall deliver to the shareholding Ministers a draft statement of corporate intent not later than 1 month after the commencement of each financial year of the State enterprise.

(2) Each statement of corporate intent shall specify for the group comprising the State enterprise and its subsidiaries (if any), and in respect of the financial year in which it is delivered and each of the immediately following 2 financial years, the following information:
   
   (a) The objectives of the group:
   
   (b) The nature and scope of the activities to be undertaken:
   
   (c) The ratio of consolidated shareholders’ funds to total assets, and definitions of those terms:
   
   (d) The accounting policies:
   
   (e) The performance targets and other measures by which the performance of the group may be judged in relation to its objectives:
   
   (f) An estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the Crown:
   
   (g) The kind of information to be provided to the shareholding Ministers by the State enterprise during the course of those financial years, including the information to be included in each half-yearly report:
   
   (h) The procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organization:
   
   (i) Any activities for which the board seeks compensation from the Crown (whether or not the Crown has agreed to provide such compensation):
   
   (j) The board’s estimate of the commercial value of the Crown’s investment in the group and the manner in which, and the times at which, this value is to be reassessed:
   
   (k) Such other matters as are agreed by the shareholding Ministers and the board.

(3) The board shall consider any comments on the draft statement of corporate intent that are made to it within 2 months of the commencement of the financial year by the shareholding Ministers, and shall deliver the completed statement of corporate intent to the shareholding Ministers within 3 months of the commencement of the financial year.

(4) A statement of corporate intent for a State enterprise may be modified at any time by written notice from the board to the shareholding Ministers, so long as the board has first given written notice to the shareholding Ministers of the proposed modification and considered any comments made thereon by the shareholding Ministers within 1 month of the date on which that notice was given.
ANNEX 4: Note on Monitoring Government Companies

By Ron Hamilton
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This paper was prepared by Ron Hamilton, former Director of Appointments and Governance in the Crown Monitoring and Advisory Unit (CCMAU), New Zealand. The paper draws on the experience of members of the Unit in developing the monitoring regimes for Crown companies and is not necessarily representative of the views of CCMAU. Given the diversity of jurisdictions and structures of enterprise owned and controlled by the State across the globe, recipients should not depend or rely upon these best practice guides as a substitute for proper professional advice or as a basis for formulating business decisions.

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Annexure 2 Represents a typical contract between the Responsible Minister and the Monitoring Agency

What is to be monitored?
The Government pursues a range of objectives through its entities and is exposed to a range of risks. Identifying and understanding these objectives and exposures is a key consideration in the design of a monitoring regime.

Monitoring purchase interests
The Government purchases services on behalf of its publics. The focus of the purchase monitoring is to ensure that the government receives good value for money – the product or service is to a satisfactory quality and entity the appropriate nature; and that the price reflects efficient production of the purchase. The purchases may be from government-owned entities or from the private sector. For example, a government-funded entity may purchase public good weather forecasts from the supplying organization. Or a government-funded entity may purchase public good radio and television programs from state or private sector broadcasters.

Monitoring ownership interests
The Government owns a number of entities. It may purchase services from these entities but, for the purposes of ownership monitoring, this is academic. The key ownership interest is in ensuring the sound management of the entity in which the government has invested. Is the entity maintaining and enhancing its value? Value is, of course, more than the entity’s
financial value – it includes its human and intellectual capital, its organizational integrity and its social responsibilities to its various stakeholders. The government may also have a political interest in the entities. It is concerned that there is no political fall-out from the activities of the government entity. Issues management may be an important component of the government’s monitoring vehicle. In general, there needs to be a separation of these concerns in the management of the entities. The structure of the corporate vehicle is pivotal. For the purposes of this discussion, it is assumed that the entities are based upon the corporate model. That is, there will be a shareholding (if a company) or responsible Minister who appoints a governing board. The board will be empowered to appoint, remove and monitor the management through the chief executive.

Who Monitors?

In the company model, it is the shareholding Ministers who have the responsibility for monitoring the company. As government shareholders, the Ministers will be accountable to Parliament for the performance of the company. Notwithstanding that the company may be directly questioned by a Parliamentary Select Committee, it remains that the shareholding Ministers are accountable. In most situations, the Ministers will have agencies to undertake the actual monitoring. These may be departments that will include ownership monitoring among its functions. Departments may also be responsible for purchase monitoring and the management of the regulatory environment in which the company operates. In principal, departments can create internal boundaries between these functions. In practice, the maintenance of these boundaries is difficult to maintain. Not only are there natural tensions between the practitioners of these roles, if there is a single Minister responsible for both purchase/regulatory issues and the ownership of the service provider, that Minister will be perceived as having conflicting interests. For example, a Minister in charge of the broadcasting regulatory environment who is also the Minister responsible for State owned broadcasters – where there is also a private sector broadcaster – will be perceived as having a conflict of interest. To some extent, this perceived conflict may be minimized if the Minister receives ownership monitoring advice from one distinct monitoring agency, not affiliated with the regulatory agency. In New Zealand, the case has been made for the separation of purchase monitoring – either departments or defined purchasing agencies; and an ownership monitoring agency. In the latter case, the roles of purchase and ownership Ministers have, sometimes been combined, creating misunderstandings over which capacity a Minister fulfils sometimes operates. The preference is for ownership Ministers to be separated from purchase and regulatory roles.

Two shareholding Ministers have proven to be a workable option. There is a responsible Minister, who manages the ownership of the entities, and the Minister of Finance. The latter has balance sheet and fiscal issues that are monitored separately by the Finance Minister’s agency. For the purposes of this discussion, this “government balance sheet interest”, which is also another form of ownership interest, is set aside. These issues demand a different monitoring philosophy and do not readily combine with ownership monitoring. Indeed, there can be tensions between the two monitoring regimes. However, these tensions can be healthy.

Conflicts may arise when the Minister of Finance “owns” the ownership monitoring vehicle where the ownership portfolio is allocated to other Ministers. In effect, the Minister of Finance could be construed as monitoring the performance of his or her Cabinet colleagues – a potential source of political tension. This concern has been resolved in the New Zealand context through the monitoring agency, which is a semi-autonomous body (SAB) attached to Treasury for “pay and rations” but is directly accountable to the Responsible Minister (one of the shareholding Ministers). The arrangement has been formalized through the Agency entering into a purchase agreement (a form of contract) with the Responsible Minister. The Minister of Finance (and the Treasury) has no involvement in the setting of the Agency’s purchase agreements. The other shareholder, the Minister of Finance, receives advice from the Treasury. The two agencies consult but have the right to differ in the nature of the advice provided. To reiterate, the Unit provides ownership investment advice to its Minister; the Treasury reports to the Minister of Finance from the perspective of any impact on the Crown’s balance sheet.
The place of governance in a monitoring agency

Appointing and monitoring the boards of directors is an integral part of ownership monitoring. Why? The role of the board is directly linked to the performance of the company. Without going into detail on the functions of the board, this body has the stewardship of the owner’s investment. It is the board which is accountable to the owner and to the stakeholders. It is the board that who ensures that the company has the resources to effect the expected outcomes. It is the board who, through the appointment of the chief executive, shapes the performance of the company. If the company is not performing to the owner’s expectations, the owner must first approach the board for accountability. In the most extreme circumstances, the owner may remove members of the board. The owner, in the case of government companies, appoints the board in his/her capacity as shareholder. It is also the owner who removes one or more members of the board. It is sensible to limit the length and number of consecutive terms a director may have. In governments, it is the owner who is accountable to Parliament. If this accountability is to be adequately addressed, the owner – who is also the Responsible Minister - must appoint directors who are capable of meeting ownership expectations.

It follows that, as the responsible Minister requires expert advice on the performance of the company, he also requires expert advice on the board’s membership and performance. By being attached to the performance monitoring function, the Minister’s governance advisers are integrated into the setting of performance goals for each company, the overview of the company’s business strategies and hence, the skills required by the board. In New Zealand, the integration of monitoring and governance has avoided the potential pitfalls of formal communications between the monitors and a separate appointments agency. The governance advisers assist the monitors as issues that might have an impact on governance arise. When appropriate, the owner receives governance advice integrated into performance advice.

More importantly, the integration better equips the governance adviser to advise on the skills and competencies that make up an effective board. In stating this, it goes without saying that the process demands an adherence to a skills-based appointment process. Anything other than this – such as patronage or representation – will diminish the skills bank of the board.

The responsible Minister, acting as shareholder, appoints the board within the terms of the Companies Act and each company’s constitution. The accountability regime precludes the Minister delegating the appointments to any other person. This does not preclude the Cabinet from over-seeing the appointments – for Cabinet is equally accountable (as the Executive) for the performance of government in meeting the community’s expectations. As a general observation, Parliaments are not convenient vehicles to assess the responsible Minister’s performance with regard to the companies;

Parliamentary Select Committees could usefully monitor Ministers’ governance decisions. The United Kingdom has gone a significant way towards assisting Parliament in assessing the Ministers’ governance decisions. There is an Office of the Commissioner for Public Appointments, who arranges for each agency responsible for providing appointment advice to follow transparent and robust appointment processes. The Commissioner can also comment on Ministers who makes appointments outside the appointments framework. This instrument could work equally well in New Zealand or in other Westminster environments.

The owner also requires administrative assistance to manage and review board fees approvals. It is sensible to allocate this role to the governance component of the monitoring agency.

Complementary monitoring advice

Governments, by their nature, are often unfamiliar with business drivers and disciplines. This can sometimes extend to the qualifications of their monitoring agency. In such cases, the formation of an advisory board consisting of experienced business people can provide informed quality assurance on the monitoring agency’s advice to the responsible Minister. The board can report directly to the Minister or can be an additional resource to the monitoring agency. A secondary value of such a board is that it can be a “sounding” board for the agency to test policy advice in a commercial environment.
Monitoring vehicles

The following table outlines some of means for monitoring the government shareholder’s ownership interests, and lists typical monitoring components, and the level of access for the various participants.

Access to Monitoring Instruments

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Public and Parliament</th>
<th>Minister</th>
<th>Monitors</th>
<th>Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shareholder’s letter of expectations</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Statement of Corporate Intent</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Strategic Plan</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Business Plan</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Quarterly reports</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Annual reports</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Issues management</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Board appointments</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Governance: Monitoring vehicles may include:
- Board, Chairman and director evaluations.
- Board skills profile
- Access to strategic plan – to identify future skills requirements
- Sound and frequent consultations between Agency and chairs
- Skills required in agency membership

However, it is not proposed to go into detail on the board, chair and director evaluations. This information can be made separately available.

Tools required
- Director, company and candidate/skills data base.
- Company performance data base
- Sect oral/industrial data base
- Access to business and economic activity data base.

Typical routine performance monitoring
A routine financial analysis might include:
- Return on equity
- Return on assets
- Current ratio
- Equity ration
- Cash flow
- EVA is an increasingly used tool.

In addition, the analyst would be expected to develop non-financial performance indications including, where possible, industry standard comparators. For example, in a forestry situation, private sector forestry production, returns and international uptake could be relevant. For a television company, the impact of the national economy has on advertising revenue, across the various communications media.

In essence, given that the company is not listed, the analyst is trying to replicate a market assessment of the worth of the government’s investment.

In summation, successful monitoring requires both generic monitoring skills and knowledge of the specific sector or industry to which the entity belongs. Centralizing the generic skills in a specialist monitoring agency is likely to encourage the improvement in the skills of performance monitoring.