Case study in Corporate Governance: Industry Focus - Electricity

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OVERVIEW OF THE LEGAL AND REGULATORY FRAMEWORK

MALAWI
INTRODUCTION

SOEs created under different legal instruments

- Act of Parliament
- Trustees Deed

The legal framework exists but not coherent and consistent

PFMF, PPA, PAA
OWNERSHIP VERSUS REGULATION

• The ownership function not clearly defined
• Ownership function spread across Ministries ie
  – Ministry of Finance for financial matters
  – Department Statutory Corporations for administrative and financial matters
  – Technical Ministries for sectoral policies
LEGAL AND OPERATIONAL FRAMEWORK

• Legal and operational framework clear and simple
• The legal and operational regime not a constraint to creditors for debt recovery through whichever methods (insolvency)
• Creditors have confidence in SOEs in that they are owned by Government – hence reluctant to press for insolvency
SPECIAL OBLIGATIONS AND RESPONSIBILITIES

• These are clearly mandated
• However Government does not always honor its commitments to finance the special obligations
• Examples of such arrangement
  – ADMARC (Pricing – buying and selling; presence of markets in non commercial areas; stocking and distribution of farm inputs)
APPLICATION OF GENERAL LAWS AND REGULATIONS

- No selective application of laws and regulations that favour SOEs
- Previously parastatals were protected but with market liberation went the protectionalism
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<th>CAPITAL RESTRUCTURING OF SOE’s</th>
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<td>• Capital restructuring of parastatals largely ad hoc</td>
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<td>• More reactionary to societal and donor pressure</td>
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<td>• No particular policy guiding capital restructuring</td>
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Government guarantees loans for SOEs at times.
Government arranges certain loans to SOEs particularly from the state-owned banks with special interest rates.
SOEs cannot access finance through loans without the express consent of the Minister of Finance.
CONCLUSION

• The Government is in the process of promulgating the legal framework for the proper management of parastatals

ZIKOMO KWAMBIRI !!!!