

SOE Network for Southern Africa

Maputo
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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
- Companies Acts (1984)
- Trustees Deed

The legal framework exists but not coherent and consistent

PFMF, PPA, PAA

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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 protectionism

CAPITAL RESTRUCTURING OF SOE's

- Capital restructuring of parastatals largely ad hoc
- More reactionary to societal and donor pressure
- No particular policy guiding capital restructuring

SOEs ACCESS TO FINANCE

- 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 !!!!