

**TREASURER'S INSTRUCTION
GOVERNMENT BUSINESS ENTERPRISES ACT 1995**

GBE 13-114-06

DIVIDENDS

BACKGROUND

Under section 114(1)(e) of the *Government Business Enterprises Act 1995* (GBE Act), the Treasurer may issue instructions, in writing, in respect of guidelines, principles, practices and procedures to be observed by a Government Business Enterprise (GBE) in relation to financial obligations of GBEs. Section 115 imposes an obligation on GBE Boards to ensure that all Treasurer's Instructions are complied with.

The purpose of this Instruction is to issue Guidelines for the payment of dividends by GBEs.

Section 39 of the GBE Act requires GBEs to prepare a Corporate Plan. The Corporate Plan is to include an estimate of the dividends that are forecast over the corporate planning period.

Section 83 of the GBE Act requires the Board of each GBE, within 60 days after the end of each financial year, to advise the Treasurer and the Portfolio Minister of its recommendation for a dividend payable in respect of that financial year.

Section 86 of the GBE Act allows the Portfolio Minister and Treasurer to determine the payment of a special dividend to the Government under certain circumstances.

DEFINITIONS

Terms used in the attached Guidelines have the same meaning as those used in the GBE Act.

TREASURER'S INSTRUCTION

The Board of a GBE is to ensure that it establishes a dividend distribution policy consistent with the *Guidelines for Tasmanian Government Businesses - Dividends*, attached to this Instruction.

COMMENCEMENT DATE

This Treasurer's Instruction applies to all GBEs listed in Schedule 4 of the GBE Act, and takes effect for the determination of dividends payable in respect of the 2013-14 financial year and the financial years thereafter and replaces Treasurer's Instruction GBE 13-114-05.

ATTACHMENT

Guidelines for Tasmanian Government Businesses – Dividends.

Guidelines for Tasmanian Government Businesses

Dividends

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GPO Box 147
HOBART TAS 7001

Dividends

Introduction

The purpose of these guidelines is to outline the Shareholding Ministers expectations for the payments of dividends by Government businesses to ensure an appropriate return is made to the Government, as owner.

Application

These guidelines apply to the dividends payable by Government Business Enterprises and State-owned Companies in respect of the 2013-14 financial year and financial years thereafter.

Shareholding Ministers' Expectations

The Government owns businesses for a range of reasons, including the need to ensure the continued provision of important or essential services to the Tasmanian community, as well as to enable the funding of large scale infrastructure to support economic development or to deliver on particular policy objectives. While it is vital that these services are delivered at the lowest sustainable cost and in an efficient and effective manner, an appropriate financial return should also be provided to the Government.

The performance of government businesses relates directly to the Fiscal Principles included in the Government's Fiscal Strategy, as detailed in the 2014-15 Budget Papers, of improving services to Tasmanians by creating efficiencies and allocating public resources to gain the maximum community benefit. Accordingly, the Government expects its businesses to achieve returns that are comparable to alternative investments of similar risk, and for dividends to be at an appropriate level to reflect these returns.

Government businesses are not subject to share market and capital market scrutiny and, therefore, do not have the incentives provided by share price movements and specific credit ratings to reflect the preferences of the providers of equity and debt. Therefore, these guidelines convey the Government's dividend preferences and expectations to provide Government businesses with the framework and discipline for making dividend payments.

Dividends represent a return on the Government's equity investment. In addition to dividends, Government businesses are required to pay government guarantee fees and income tax equivalents. Unlike dividends, guarantee fees and income tax equivalents are expenses incurred by Government businesses, which are paid on the basis of competitive neutrality principles. The payment of these expenses do not represent, nor constitute a return on, the Government's equity investment - dividends are viewed in isolation of these expenses when assessing the annual performance of a Government business. The Government only considers total receipts from Government businesses for the purposes of State Budget management.

General Dividend Policy

Dividends from Government businesses are an important source of annual revenue for the Government. Therefore, the Government's preference is to maintain a reasonably stable stream of dividends and for profits to be distributed as cash rather than retained as equity.

Dividends are declared in respect to profits made in a financial year are paid in the following financial year.

The Government has established a general dividend policy that requires each Government business to pay 90 per cent of net profits after tax as a dividend each year, unless a business can justify a lower payout ratio.

A lower payout ratio may be considered in context of:

- the progression towards, or maintenance of, an appropriate capital structure;
- cash flow requirements for working capital;
- funding requirements for capital expenditure; and/or
- contingency required for financial flexibility.

Ordinarily, the dividend payout ratio should apply to after tax profit. However, it is recognised that in some cases, reported profit may not be supported by cash flows and it may be appropriate for the dividend to include the adoption of a suitable smoothing arrangement or to include an underlying profit measure rather than accounting net profit after tax.

Specific Dividend Arrangement

The specific dividend arrangement for each Government business will be the general dividend policy payout ratio of 90 per cent of after tax profits, unless the Shareholding Ministers have advised otherwise.

Should a Government business consider that an alternative payout ratio is appropriate, it should propose the alternative payout ratio as part of its Corporate Plan each year. In proposing the alternative payout ratio, the Government business should provide clear justification for the proposed alternative payout ratio.

The Shareholding Ministers will consider the proposed alternative payout ratio and will respond in writing confirming the payout ratio as part of the response to the Corporate Plan each year.

Dividend Recommendation

The annual dividend recommendation from each Government business is to be made in accordance with the specific dividend arrangement for the business.

It is recognised that there may be times when the Board's dividend recommendation may be adjusted to better reflect the operating cash flows generated by the business for the reporting period. This may be appropriate when intermittent events, such as a significant asset revaluation or a change in accounting standards, artificially increase or decrease operating profits without a supporting movement in cash flows.

The recommendation by the Board must be made in accordance with:

- section 254T of the *Corporations Act 2001*, for a SOC; or
- section 83 of the *Government Business Enterprises Act 1995*, for a GBE.

The recommendation is to be made in writing to Shareholding Ministers by 29 August for GBEs and no later than 31 October for SOCs, each year.

Dividend Determination

In the case of a GBE, the Treasurer and Portfolio Minister, within 60 days of receiving a recommendation for a dividend payable, must either:

- approve the recommendation;
- direct that no dividend be paid; or
- direct that an amount of dividend different from that recommended by the Board be paid.

The amount of any dividend to be paid by a SOC is the amount determined by special resolution of the Treasurer and Portfolio Minister after they have consulted with the Board and considered the written recommendations of the Board. Under the Constitution of each SOC, the Shareholding Ministers cannot determine an amount exceeding that recommended by the Board. The special resolution of the Treasurer and Portfolio Minister is generally provided at the Annual General Meeting of the company.

Key Dates

April - June	Specific dividend arrangement agreed in corporate planning process
By 29 August	GBE Board to provide dividend recommendation in writing to Shareholding Ministers
By 28 October	Shareholding Ministers to provide GBE with dividend determination
By 31 October	SOC Board to provide dividend recommendation in writing to Shareholding Ministers
By 30 November	SOC dividend determined by special resolution
By 31 December	Dividend Payment

Special Dividends

The Government may seek special dividends that are payable from accumulated profits and/or capital reserves. The special dividend is unrelated to current year profits and is in the nature of a return of excess reserves, capital or provisions to the Government, as owner.

The payment of special dividends by GBEs is governed by the GBE Act. Section 86(1) of the Act provides for the Treasurer and the Portfolio Minister to direct the Board to pay a special dividend. Before making a direction, both Ministers must consult with the GBE and be satisfied that the GBE has sufficient liquid assets to meet its contingent and financial needs after it pays the special dividend. Section 86(6) of the Act stipulates that a direction to pay a special dividend only takes effect when it is approved by both Houses of Parliament.

The Constitutions of SOC's provide for the payment of special dividends. The process is identical to the requirements for ordinary dividends. That is, the amount of any special dividend to be paid by a SOC to its Members is the amount determined by special resolution of the Members after they have consulted with the Directors and have considered the written recommendation of the Directors. The special dividend amount approved by the Members cannot exceed an amount recommended by Directors.

The Constitution for each SOC also provides that the Shareholding Ministers may give a lawful direction to a SOC and the directors of the company must comply with the Direction. On this basis, the Government can direct a SOC to pay a specified dividend amount, so long as the direction does not cause the company or directors to breach any legal obligations under the Corporations Act.

Interim Dividend

Section 85 of the GBE Act provides that the Government may seek an interim dividend payable from the estimated profits of a GBE for the first six months of a financial year, after provision is made for any tax equivalents payable in respect of that period.

At any time after the completion of the first six months of the financial year, the Treasurer and Portfolio Minister, jointly, may require a Board by notice provided to it, to make a recommendation for the payment of an interim dividend on account of the dividend that may become payable for that financial year. Within 30 days after receiving notice, the Board must make a recommendation for the payment of an interim dividend to the Treasurer.

Within 30 days after receiving a recommendation from the Board, the Treasurer and Portfolio Minister, jointly, must:

- approve the recommendation;
- direct that no interim dividend be paid; or
- direct that an amount of interim dividend different from that recommended by the Board be paid.

The requirements for the payment of interim dividends by SOC's are outlined in their Constitutions and are identical to the requirements for ordinary and special dividends.

Payment of Dividends

Payment of ordinary dividends in respect of a financial year shall be no later than 31 December of the following financial year.

A special dividend determined shall be paid in accordance with the timeframe advised by the Shareholding Ministers to the Government business.

An interim dividend shall be paid in accordance with the timeframe advised by the Shareholding Ministers to the Government business.

Guidelines

Dividends

Policy

- (a) The dividend policy for each Government business will be 90 per cent of after tax profits, unless advised otherwise by the Shareholding Ministers.
- (b) Should a Government business consider that an alternative payout ratio is appropriate, it should propose the alternative payout ratio as part of its Corporate Plan each year, including clear justification for the proposed alternative payout ratio.
- (c) The Shareholding Ministers will consider any proposed alternative payout ratio and will provide a written response as part of responding to the Corporate Plan each year.
- (d) Boards should have regard to the Government's preference for Government businesses profits to be distributed as cash, rather than retained as equity, and for a reasonably stable stream of dividends to be provided each year.
- (e) For Government businesses subject to large volatility in the annual operating result, the adoption of a suitable dividend smoothing arrangement or a policy based on underlying profit may be appropriate.

Recommendation

- (a) The Board must recommend a dividend in accordance with the specific dividend arrangement for the business.
- (b) The recommendation by the Board of a GBE must be made in accordance with section 83 of the GBE Act.
- (c) The recommendation by the Board of a SOC must be made in accordance with section 254T of the Corporations Act.
- (d) The dividend recommendation must be made in writing to Shareholding Ministers by 29 August for GBEs and no later than 31 October for SOCs.

Determination

- (a) For a GBE, within 60 days of receiving a recommendation for a dividend payable Shareholding Minister will determine the dividend payable.
- (b) For a SOC, the dividend payable will be determined by special resolution normally at the Annual General Meeting.

Payment

- (a) Payment of an ordinary dividend shall be no later than 31 December.
- (b) Payment of special and interim dividends shall be in accordance with the timeframe specified by the Shareholding Ministers.



Tasmania
Explore the possibilities

The Department of Treasury and Finance
Shareholder Policy and Markets Branch
21 Murray Street
HOBART TAS 7000

Telephone (03) 6233 3100
Facsimile (03) 6223 2755
Email governmentbusinesses@treasury.tas.gov.au

Further information can be obtained at
www.treasury.tas.gov.au/governmentbusinesses