

The background of the slide is a low-angle photograph of several modern skyscrapers with glass facades, reaching towards a clear blue sky. The buildings are slightly out of focus, creating a sense of depth and scale.

The Roles & Responsibilities of Chairmen, Accounting Officers (or Equivalent) and the Procurement & Disposal Advisory Committee in a Public Body.

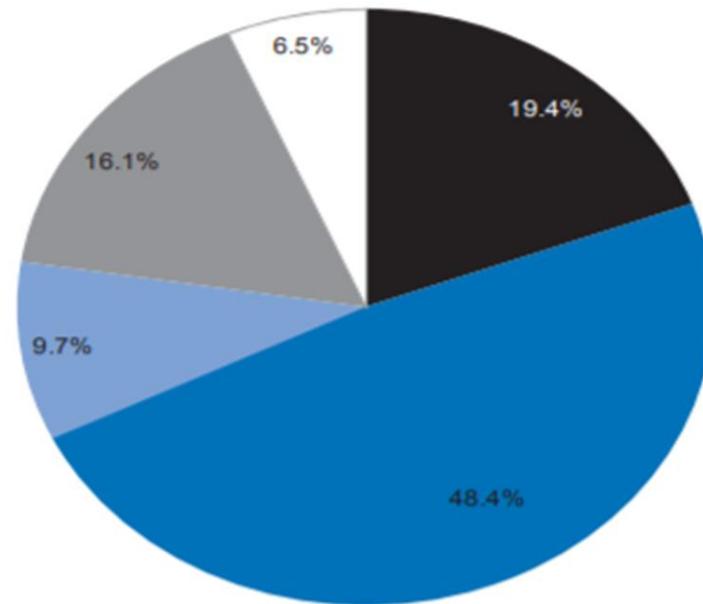
MITIGATING WASTE AND CORRUPTION IN PUBLIC PROCUREMENT

The European Commission estimates that EUR 120 billion are lost each year to corruption in the EU member countries. Studies suggest that up to 20-25% of the public contracts' value may be lost to corruption. However capacity and skills are insufficient to mitigate risks of waste and corruption.

The prominent weakness of procurement systems identified across respondent countries is the **lack of adequate capability and management of the procurement function.**

Reference: OECD (2013), Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008, OECD Public Governance Reviews, OECD Publishing

The management of the procurement function: An area for improvement



- Enhancing transparency in procurement
- Improving the management of the public procurement function
- Strengthening accountability and control mechanisms
- Developing guidance on the use of public procurement as an instrument for innovation
- Other

Roles and Responsibilities of Board of Directors



Section 99 of the Companies Act states:

(1) Every director and officer of a company shall in exercising his powers and discharging his duties—

(a) act **honestly** and in **good faith** with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Roles and Responsibilities of Board of Directors

According to the Ministry of Finance State Enterprise Performance Monitoring Manual Section 2.2.6:

- a) The Board of Directors, under the Companies Act 1995, **directs the management of the business and affairs of the Company.**
- b) The Board **must not usurp the responsibilities of executive management by involving itself in day to day management issues.** It is an organ of review, appraisal and appeal.
- c) The Board of Directors of the Company performs a specific set of functions which is directed to meet the mission of the Company. Its main responsibility lies in planning, monitoring and controlling the activities of the Company to ensure the optimal utilization of its resources and the achievement of its corporate objectives.

Roles and Responsibilities of Board of Directors

- d) The Board ensures that policies and business decisions taken at the Board level are implemented. It should ensure that the policies and objectives of the Company reflect the policy of GORTT and are well defined so as to rule out ambiguity.
- e) The Board is thoroughly familiar with the Company and its various publics, in order to serve them effectively.
- f) The Board **further ensures that the Company is staffed by competent senior management personnel, sets standards and reviews managerial performance** of such staff in the context of the Company's objectives.

Roles and Responsibilities of Board of Directors – Ministry of Finance Directives

- Letter dated 12th September 2017 from Ministry of Finance which stated, “the *responsibility for procurement and disposal lies with the Chief Executive Officer (CEO) or other designated official of the Organisation. It is to be noted that there will be no involvement of the Board of Directors in approving contracts, except for approving the overarching policy on procurement. As such, the CEO is answerable to the Office of Procurement Regulation in respect of matters relating to procurement and disposal of property of State Enterprises.*”
- Letter dated 8th January 2019 rescinded the letter above and stated the following: “the Office of Procurement Regulation will issue and review guidelines, prepare, update and issue model handbooks, incorporating standardised bidding documents, procedural forms and approve special guidelines and handbooks in relation to public procurement and the retention and disposal of public property.”

Requirements of the Public Procurement and Disposal of Public Property Act, 2015, as amended (“the Act”)

Sections 13 (c), (d), (e); 30; 54

The Office of Procurement Regulation

Issues

- General Guidelines
- Model guidelines for special guidelines

Prepares, updates and issues

- Model handbooks incorporating:
 - Standardised bidding documents
 - Procedural forms (incl. contracts)
 - Relevant documents

Approves

- Special guidelines and handbooks

Public Bodies

Prepares

- Exceptions / amendments to the general guidelines (Special Guidelines)
- Handbooks

Submits

- Special Guidelines & Handbooks to the OPR for approval

WHO IS RESPONSIBLE FOR PROCUREMENT?



S. 61(1) Any person who contravenes a section referred to in the First Column of Schedule 1 commits an offence and is liable on conviction to the penalty specified in the Third Column of that Schedule.

S. 61(2) For the purpose of this Act, a public body **shall have a procurement officer who shall be responsible for public procurement and the disposal of public property for that body** and shall notify the Office, in writing, of the name and designation of its procurement officer.

S. 61(3) A reference in this Act to the commission of an offence by a public body shall be construed as a reference to the commission of the offence by the **procurement officer referred to in subsection (2) or an officer who purports to act in such capacity**, if it is proved that—

(a) the offence was committed with his direct consent or connivance; or

(b) he, with knowledge, did not exercise reasonable diligence to prevent the commission of the offence.



Roles and Responsibilities of Accounting Officer/CEO or Equivalent

The [Financial Regulations of the Exchequer and Audit Act](#) set out the accountabilities of Accounting Officers as follows:

Section (4). An accounting officer shall be responsible for ensuring— (a) that the financial business of the State for which he is responsible is properly conducted; and (b) that public funds entrusted to his care are properly safeguarded and are applied only to the purposes intended by Parliament.

Section (5). All accounting officers are personally and pecuniarily responsible for— (a) the due performance of the financial duties of their departments; (b) the proper collection and custody of all public moneys receivable by them; and (c) for any accounts rendered by them or under their authority.

Roles and Responsibilities of Accounting Officer/CEO or Equivalent

Section (6). An accounting officer is not absolved from his responsibility for complying or securing compliance with the Act, these Regulations and any instructions given to him, or by him within the scope of his authority, by reason of the responsibility of the Auditor General to check and report any shortcomings in connection with the public accounts or finances.

Section (7). No accounting officer shall be relieved from responsibility for an act which he is required by the Act, these Regulations or any instructions to perform, the performance of which he has delegated to an officer subordinate to him.

Section (11). The accounting officer shall be answerable to the Public Accounts Committee for the formal regularity and propriety of accounts of all the expenditure out of the votes for which he is responsible.

Roles and Responsibilities of Accounting Officer/CEO or Equivalent

[Section 27\(1\) of the Act states:](#) A procuring entity shall—

- (a) no later than six (6) weeks after the approval of the National Budget, publish on its website or in any other electronic format, information regarding all planned procurement activities for the following twelve months;
 - (b) update the information referred to in paragraph (a) as necessary; and
 - (c) provide a printed copy of the information referred to in paragraph (a) upon request and payment of the prescribed fee.
- (2) Where the information referred to in subsection (1) is unavailable or not forthcoming, a complaint may be made to the Office which shall conduct an investigation in accordance with section 41, and if justified, grant an extension of time or issue such direction as it thinks fit.

PROCUREMENT AND DISPOSAL ADVISORY COMMITTEE (PDAC)

The Procurement and Disposal Advisory Committee reviews the procurement records including the report and recommendations for contract award and determines whether the following three criteria have been met:

- a) the approved processes as set out in the Handbook and Guidelines were followed;
- b) the approved procurement strategy outlined in the Annual Procurement Plan was followed: and
- c) value for money was achieved; and advises the Accounting Officer accordingly.

The PDAC may consult with the 'named' procurement officer and/or the evaluation committee during its review of the procurement proceedings.

PROCUREMENT AND DISPOSAL ADVISORY COMMITTEE (PDAC)

Evaluation Committee
• Comprises of (3-6 persons)

Named Procurement Officer

PDAC
Includes:
• Head of Legal
• Head of Finance
• Subject Matter Expert
• Secretary to Committee (Admin. Support, no voting rights)

Accounting Officer/CEO or Equivalent

Disposal

Accept/Reject Recommendation

Reject

Accept

Consult with Line Minister to determine way forward

Execute in accordance with recommendation

Board of Directors for No objection

Procurement

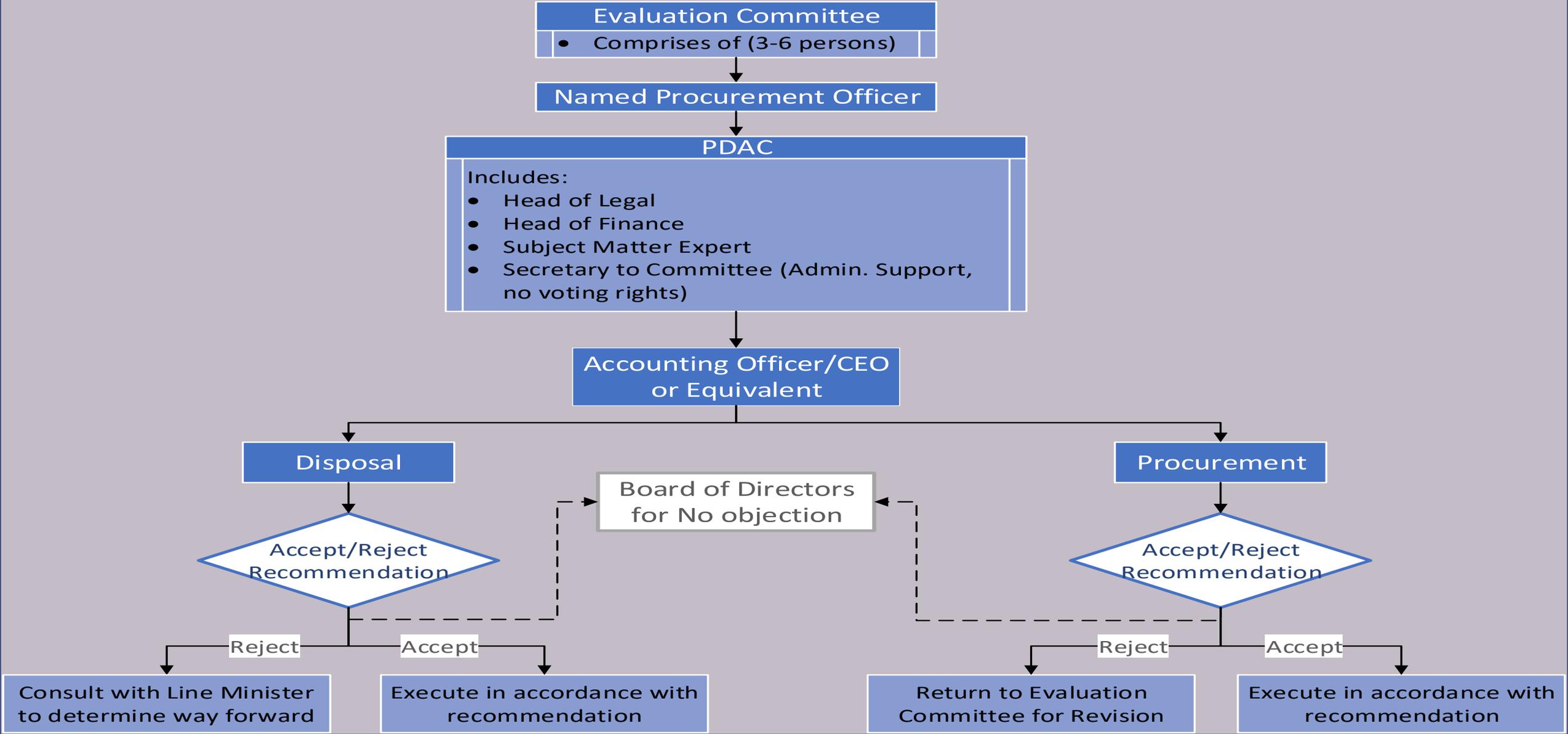
Accept/Reject Recommendation

Reject

Accept

Return to Evaluation Committee for Revision

Execute in accordance with recommendation



Public Procurement and Disposal of Public Property Act (2015)

Offences & Penalties (cont'd)

Section	Offence	Specified Penalty
14 (2)	Failure to comply with a direction by the OPR issued under the Act to ensure compliance with the Act (public body or person)	Summary Conviction - \$100,000
17 (2)	Failure of a member of the Board (OPR) or a Committee constituted by the Board (knowingly or willfully) to disclose an interest	Summary Conviction - \$500,000 and One Year
41 (4)	False report to the Office	Conviction - \$500,000 and One Year
59 (10)	Conduct influencing public officer (bribery, conflicts of interest, corrupt, fraudulent, collusive, coercive or obstructive practices)	Conviction - \$1.0M and Five Years
60 (1)	Bid-rigging , influencing procurement proceedings	Conviction - \$5.0M and Ten Years
60 (2)	Altering a procurement document to influence the outcome of the procurement proceedings	\$2.0M and Seven Years
63 (2)	Contravention of a regulation made by the Minister on the recommendation of the OPR (challenge proceedings, ineligibility list)	≤ \$1.0M and Five Years

Public Procurement and Disposal of Public Property Act (2015)
Schedule 1 (Section 61): Offences & Penalties

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Section	Offence	Specified Penalty
31	Splitting of Procurement	Summary Conviction - \$500,000 and One Year
39	Breach of confidentiality	Summary Conviction - \$500,000 and One Year
40	Victimisation	Summary Conviction - \$500,000 and One Year
41	Failure to report collusion	Summary Conviction - \$500,000 and One Year
46	Concealing/ destroying information required for an investigation	Conviction on Indictment - \$5.0M and Ten Years
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	Summary Conviction - \$500,000 and One Year