

Framework Agreement Ferguson Marine Group Companies and the Scottish Government, 2024

September 2024

Introduction

1. This Framework Agreement has been drawn up by the Strategic Commercial Assets Division of Directorate General Economy in Scottish Government (SCAD) in consultation with Ferguson Marine (Port Glasgow) Holdings Limited (Company No. SC638534) (FMPGHL), Ferguson Marine (Port Glasgow) (801 – 802) Ltd (Company No. SC638508), Ferguson Marine (Port Glasgow) (Commercial) Ltd (Company No. SC638592) and Ferguson Marine (Port Glasgow) Ltd (Company No. SC638457), each such company being a “Group Company”. Unless otherwise specified, a reference to FMPG in this Framework Agreement, is a reference to each member of the group (described at Annex B) collectively. This Framework Agreement sets out the broad framework within which the relationship will function and defines key roles and responsibilities of and between FMPG and SCAD.
2. While this Framework Agreement does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework. This Framework Agreement should be reviewed and updated as necessary, at least every 2 years, with Ministerial approval of agreed revision.
3. Any proposals to amend the Framework Agreement either by SCAD or FMPG will be discussed and agreed between the parties, taking account of Scottish Ministers’ priorities and policy aims. This Framework Agreement should be interpreted in the light of FMPG’s individual group members’ Articles, applicable company law, and Scots Law and is without prejudice to the statutory and other rights and obligations of the Scottish Ministers as Shareholder, or FMPG.
4. Copies of the Framework Agreement shall be placed in the Scottish Parliament Reference Centre and published on FMPG’s website.

Purpose & Objectives

5. FMPG is a commercial shipbuilding group, based on the lower River Clyde in Glasgow. The primary objectives for FMPG are that they operate in a safe, cost effective and efficient manner to complete current work orders, notably vessels 801 (MV Glen Sannox) and 802 (MV Glen Rosa) which will serve on lifeline ferry routes, to support a highly skilled workforce, and secure a sustainable future for the FMPG yard and its workforce.
6. In addition to Glen Sannox and Glen Rosa, focus is the design and construction of commercial vessels with an overall length between 40m and 110m. FMPG will also engage closely with SCAD where necessary to help enable the securing of a pipeline of future work.
7. The sustainability of FMPG will contribute to the achievement of the Scottish Ministers’ strategic objectives and priorities by aligning its aims and objectives with the [National Performance Framework](#), [Scotland’s National Strategy for Economic Transformation](#) and [Programme for Government](#) which aim to:
 - create a more successful country
 - give opportunities to all people living in Scotland
 - increase the wellbeing of people living in Scotland
 - create sustainable and inclusive growth

- reduce inequalities and give equal importance to economic, environmental and social progress.

8. Particular strategic aims and objectives, as agreed by Scottish Ministers, are to:

- Complete the two vessels MV Glen Sannox and MV Glen Rosa currently under construction within the designated timeframes;
- Ensure that appropriate staff numbers with the necessary skills and expertise are employed from time to time consistent with anticipated yard order book;
- Improve yard productivity including by means of development of business cases to facilitate yard and equipment upgrades to meet the requirements of future customers and thus develop a pipeline of new business to ensure the future commercial viability of FMPG; and
- Engage in the activity of the business in a way which enables continuous improvement, promotes innovation and complies with relevant legislation and public policy requirements.

Relationship between SCAD and FMPG

9. In December 2019, Ferguson Marine Port Glasgow Holdings Limited (FMPGHL) (a company whose shareholding is wholly owned by the Scottish Ministers), acquired the business and certain assets from Ferguson Marine Engineering Limited. The business and assets of Ferguson Marine were subsequently restructured into the group of companies described at Annex B. FMPGHL first Board of Directors were appointed in June 2020

10. Section 70 of the Transport (Scotland) Act 2001 allows Scottish Ministers to make grants and loans to any person for purposes relating to transport (e.g. vessels MV Glen Sannox (801) and MV Glen Rosa (802)). In addition, section 7 of the Industrial Development Act 1982, grants a general power to the Scottish Ministers to provide financial assistance where the financial assistance is likely to provide, maintain or safeguard employment and the undertaking for which the assistance provided, is located in assisted areas.

11. Effective strategic engagement between SCAD and FMPG is essential to ensure that they work together as effectively as possible to secure a sustainable future for the business by delivering agreed outcomes, including the delivery of vessels MV Glen Sannox and MV Glen Rosa. Both SCAD and FMPG Boards will be mindful that their relationship should be developed and supported within the ethos of jointly agreed principles as set out in the statement on [‘Strategic Engagement between the Scottish Government and Scotland’s NDPBs’](#).

12. These principles are that:

- sufficient senior level time is invested throughout the system, to develop and maintain positive relationships characterised by openness, trust, respect and mutual support.
- the complementary roles and responsibilities of Ministers, Chairs, Boards, Chief Executives and Senior Sponsors and Sponsor Teams (as defined in the framework document) are respected, and are actively built upon to support positive, practical working relationships.
- joint strategic business planning is the norm, including the joint identification of risks and joint planning for delivery.

- within this, specific consideration is given to workforce issues, including how best use can be made of the skills and knowledge of the whole workforce across the Scottish Government and its Executive.

13. This Framework Agreement describes certain parameters within which:

- FMPG is expected to operate and comply;
- certain responsibilities of Scottish Ministers as the Shareholder of FMPG; and
- the expected interaction between FMPG and SCAD on behalf of Scottish Ministers as the Shareholder of FMPG, all of which articulate FMPG's operational and administrative independence.

14. This Framework Agreement also includes the FMPG Operational and Administrative Independence Undertaking in **Annex C**, which is not intended to be a substitute for the Articles of Association of the group companies, nor of any shareholder agreement.

Ferguson Marine Companies Structure/Procurement rules

15. To provide a clear separation between the activities relating to the construction of vessels MV Glen Sannox (801) /MV Glen Rosa (802) and private contracts, the work on these vessels is carried out by FMPGHL subsidiary company Ferguson Marine (801 – 802) Ltd (Company No. SC638508) a body with public classification which is a 'body governed by public law' (under the Public Contracts (Scotland) Regulations 2015) and on that basis is subject to Public Procurement rules.

16. The activities taking place out-with public sector contracts will be delivered by FMPGHL subsidiary company, Ferguson Marine (Commercial) Limited (Company No. SC638592), which is not subject to public procurement rules.

17. The supporting activities of the yard are delivered by FMPGHL subsidiary company Ferguson Marine (Port Glasgow) Limited (Company No. SC638457).

18. The group company structure is set out in **Annex B**. The underlying rationale for the company structure is to separate the market facing and non-market facing aspects of the business. It was designed to enable the build-out of vessels MV Glen Sannox (801) and MV Glen Rosa (802) in a way that meets public procurement requirements and supports subsidy control compliance.

Governance and Accountability

Ministerial responsibilities

19. As the sole shareholder of Ferguson Marine Port Glasgow (Holdings) Ltd, The Scottish Ministers are ultimately accountable to the Scottish Parliament for the activities of FMPG and its use of publicly funded resources. In addition, the Scottish Ministers, have a reserved power in the Articles of Association of FMPGHL to direct Directors by special resolution to take or refrain from taking specified actions. They are not, however, responsible for day-to-day operational matters of FMPG group companies. The Scottish Ministerial responsibilities include:

- keeping the Scottish Parliament informed about FMPG's operational performance on an annual basis;
- approving FMPG's corporate and annual business plans, and providing comment on any longer-term business plan provided by FMPG group;
- approving the budget including loans and grant in aid for investment into FMPG group companies and securing the necessary Parliamentary approval;
- carrying out responsibilities specified in the Articles of Association.

Portfolio Accountable Officer responsibilities

20. The Principal Accountable Officer for the Scottish Administration has designated the Director-General for the Economy as the Accountable Officer for the Scottish Government's portfolio budget for FMPG as a NDPB. The responsibilities of a Portfolio Accountable Officer are set out in detail in the [Memorandum to Accountable Officers for Parts of the Scottish Administration](#). The Portfolio Accountable Officer is personally answerable to the Scottish Parliament for ensuring that:

- the financial and other management controls applied by FMPG group companies are appropriate and sufficient to safeguard public funds and, more generally that those being applied by the company conform to the requirements both of propriety and of good financial management.
- the key roles and responsibilities which underpin the relationship between the SCAD and FMPG are set out in this framework document, which is regularly reviewed, at least every two years.
- effective relationships are in place at senior civil servant level between SCAD and the Directorate for Economic Development of Scottish Government and FMPG in accordance with the strategic engagement principles.
- there is effective continuous assessment and appraisal of the performance of the Chair of the Board.

21. In particular, the Portfolio Accountable Officer shall ensure that:

- FMPG group's strategic aims and objectives support Scottish Ministers' strategic aims;
- FMPG group is compliant with relevant guidance issued by Scottish Ministers, in particular the Scottish Public Finance Manual.

Scottish Government Director

22. The Director for Economic Development is responsible for overseeing and ensuring effective relationships, including up to date reporting between SCAD and FMPG group which support the alignment of FMPG's business to the Scottish Government's Purpose and National Outcomes. The Director is supported by the SCAD Governance and Oversight Unit and will work closely with the Chief Executive in post and be answerable to the Portfolio Accountable Officer for maintaining and developing positive relationships with FMPG, characterised by openness, trust, respect and mutual support. The Director shall be responsible for arranging the assessment of the performance of the chair of the Board of Directors at least annually.

Governance and Assurance

23. SCAD is the primary point of contact for FMPG Group.

24. SCAD, in consultation as necessary with the company's Accountable Officer, is the primary source of advice to Scottish Ministers on discharging their responsibilities in respect of FMPG.

25. SCAD shall take appropriate shipbuilding advice, and be responsible for and advise Scottish Ministers on:

- an appropriate framework of objectives and targets for FMPG group in line with Scottish Ministers' strategic objectives, whilst respecting the requirement for the shipyard to operate on a commercial basis;
- the corporate and annual business plans provided by FMPG group for approval by Scottish Ministers;
- in consultation with FMPG Accountable Officer, an appropriate budget for the organisation in line with Scottish Ministers' overall public expenditure priorities;
- whether the organisation is achieving its strategic objectives and whether it is delivering value for money on a commercial basis by:
 - meeting the objectives in FMPG Group's own business plans,
 - meeting key delivery dates for the vessels MV Glen Sannox and MV Glen Rosa
 - improving productivity and performance targets and:
 - staying within allocated and approved budgets
- appointments to the FMPG Boards and ensure that appointments are made appropriately and timeously.

26. In support of the Portfolio Accountable Officer SCAD shall:

on performance and risk management -

- monitor FMPG group's activities on a continuing basis through an adequate and timely flow of information from the organisation on performance, budgeting, control and risk management, including early sight of the organisation's Governance Statement which should comply with the [Certificates of](#)

Assurance process;

- address in a timely manner any significant issues arising in the organisation including financial and operational and when appropriate intervening, whilst recognising the aim to ensure that the organisation is operated on an arm's length commercial basis;
- ensure that the activities of FMPG Group Companies and the risks associated with them are properly and appropriately taken into account in the Scottish Government's risk assessment and management systems.

on communication with FMPG Group -

- inform FMPG of relevant Scottish Government policy in a timely manner, and advise on the interpretation of that policy;
- issue specific guidance to FMPG as necessary;
- bring any concerns about the activities of FMPG to the attention of the FMPGHL and/or FMPG individual constituent board/s, as necessary, to ensure that the Board/s and/ or Scottish Ministers take appropriate action.

FMPG Boards' Responsibilities

27. Subject to the Articles, FMPG company Boards, including the Chairs consists of no less than 5 non-executive members appointed by the Scottish Ministers and no less than 1 or 2 Executive members appointed by the Board. The Boards will appoint such individuals to the Boards as the Scottish Ministers may nominate from time to time. The Boards will keep their membership under review to ensure an appropriate number of members and mix of skills to allow them to deliver on the Board's objectives. The role of the Boards is to provide leadership, direction, healthy challenge, support and guidance to ensure that FMPG delivers and is committed to delivering its functions effectively and efficiently and in accordance with the aims, policies and priorities of the Scottish Ministers, whilst observing their individual legal obligations as directors of the relevant company/ies. They have corporate responsibility, under the leadership of the Chair, for the following:

Business Strategy & Policies

- assessing shareholder and stakeholder interests from the perspective of the long-term sustainable success of the company in question;
- providing robust debate and a healthy challenge function, support, diversity of thought and teamwork, openness and accountability;
- setting the framework of values within which the desired corporate culture can evolve and thrive. Ownership of the values will be stronger if a collaborative approach is taken, and both the leadership and the workforce are involved in a two-way process to define the company's values.

Human Resources

- ensuring that workforce policies and practices are in line with that company's purpose and values, and support the desired culture;
- ensure that the "employees' voice" is heard in the Boardroom, with a structured approach, including a workforce representative or Trade Union Representative being present and contributing to relevant items at Board meetings;

- determining the steps needed to deal with changes which are likely to impact on the strategic aims and objectives of the company or on the attainability of its operational targets;
- promoting the efficient, economic and effective use of staff and other resources by the organisation and where appropriate in line with the principles of Best Value .

Governance and assurance

- ensuring that effective arrangements are in place to provide assurance on risk management (including in respect of personnel, physical and cyber risks/threats/hazards), governance and internal control;
- establishing an audit and risk committee chaired by a Non-Executive member to provide independent advice and assurance on the effectiveness of the internal control and risk management system;
- ensuring that the audit and risk committee, at the earliest opportunity, notify the Director General Economy via SCAD if it considers that it has identified a significant problem which may have wider implications;
- demonstrating high standards of corporate governance at all times, including openness and transparency in its decision making;
- (in reaching decisions) taking into account relevant guidance issued by the Scottish Ministers.

Annual Accounts & Financial Reports

- approving the annual accounts for FMPGHL prior to FMPG Accountable Officer signing, and ensuring Scottish Ministers are provided with the annual report and accounts. The Accountable Officer of the public body is responsible for signing the accounts and ultimately responsible to the Scottish Parliament for their actions. The detailed responsibilities on the Accountable Officer role are set out in [Annex 2: memorandum to accountable officers for other public bodies - Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](#)
- ensuring that the Board receives and reviews regular financial information concerning the management and performance of each of the Group Companies and is being informed in a timely manner about any concerns regarding the activities of the company.
- Whereas SG is FMPG 's sole shareholder, and essentially acts as its funder since it has no ability to obtain external funding, it is acknowledged that to enable FMPG to publish annual accounts, on a "going concern basis" it will be necessary for SG to issue a letter of support to FMPG and its Directors, covering the period of 12 months, post the signing of such annual accounts.

CEO appointment & Pay Policy

- Where the board consider necessary, appointing with Scottish Ministers' approval, a Chief Executive to FMPGHL and its subsidiaries and, in consultation with the sponsor Directorate, set performance objectives for the Chief Executive which give due weight both to the proper management and, in conjunction with the Accountable Officer, use of public monies within the stewardship of FMPG and to the delivery of outcomes in line with Scottish Ministers' priorities;
- FMPG will also seek appropriate approval under the **SG [Pay Policy for Senior](#)**

Appointments for the Chief Executive's remuneration package prior to appointment, annually or when a new appointment or change to the remuneration package is being proposed. It is recognised that as a commercial shipbuilder, remuneration rates are likely to differ from usual public sector appointments. New contracts for chief executives should include a notice period of no more than 3 months. Where a business case can be made, the notice period may be set at a maximum of 6 months.

28. Although not a statutory board, FMPG is a public body and Board members will be expected to follow the guidance for statutory Boards. Further guidance on how the Board should discharge its duties is provided in appointment letters and in On Board – A Guide for Members of Statutory Boards.

Board expenses.

29. Remuneration (daily fees), allowances and expenses paid to Board members must comply with the SG Pay Policy for Senior Appointments and any specific guidance on such matters issued by the Scottish Ministers.

The Chair's Responsibilities

30. The Chair and Board members are appointed and accountable to the Scottish Ministers and, in common with any individual with responsibility for devolved functions, may also be held to account by the Scottish Parliament. Communications between the Board and Scottish Ministers should normally be through the Chair. This does not circumvent the ongoing dialogue which will be required between SCAD and the Accountable Officer on matters related to use of public funds.

31. The Chair shall ensure that other Board members are informed of any relevant communications from Scottish Ministers. He or she is responsible for ensuring that the company's policies and actions support Scottish Ministers' strategic policies and that its affairs are conducted with probity.

32. The Chair is pivotal in creating the conditions for overall Board and individual Director effectiveness, setting clear expectations concerning the style and tone of Board discussions, ensuring the Board has effective decision-making processes and applies sufficient challenge to major proposals. It is up to the Chair to make certain that all Directors are aware of their responsibilities and, where appropriate, to hold meetings with the non-executive directors without the executives present in order to facilitate a full and frank airing of views. In leading the Board, the Chair has leadership responsibility for:

- formulating the Board's strategy;
- ensuring that the Board, in reaching decisions, takes proper account of Scottish Ministers' objectives for FMPGHL, as sole shareholder;
- promoting the efficient and effective use of staff and other resources;
- encouraging high standards of propriety and regularity;
- representing the views of the Board to the general public;
- a timely flow of accurate, high quality and clear information, between the Board and management;
- ensuring the Board determines the nature and extent of the significant risks the

- company is willing to embrace in the implementation of its strategy;
- ensuring that all Directors are aware of and able to discharge their statutory duties; and
- ensuring that the Board listens to the views of Scottish Ministers, as sole shareholder of FMPGHL, the workforce, customers and other key stakeholders.

33. The Chair shall also:

- ensure that the work of the Board is subject to regular self-assessment and that the Board is working effectively, including an annual Board Effectiveness Survey;
- ensure the Board, in accordance with recognised good practice in corporate governance, is diverse both in terms of relevant skills, experience and knowledge appropriate to directing the company business, and in terms of protected characteristics under the Equality Act 2010 and the [Gender Representation on Public Boards Act and Guidance](#), where these apply;
- ensure that Board members are fully briefed on terms of appointment, duties, rights and responsibilities;
- together with the other Board members, receive and record appropriate induction training, including financial management and reporting requirements, severance policy and, as appropriate, on any differences that may exist between private and public sector practice;
- ensure that the structure of the company is explained and understood by Board members;
- ensure succession planning takes place to ensure that the Board is diverse and effective, and the Scottish Ministers are advised of the company needs when Board vacancies arise; and
- ensure that the [model code of conduct](#) for board members of public bodies is adhered to.

34. The Chair assesses the performance of individual Board members on a continuous basis and undertakes a formal appraisal annually. The Chair, in consultation with the Board as a whole, is also responsible for undertaking an annual appraisal of the performance of a Chief Executive.

Individual Board Members' Responsibilities

35. Board members will be expected to comply with the obligations/duties imposed by law on all directors (non-executive and executive directors) as well as fulfilling the specific functions and duties that are set out below. In the event that Board members feel there is any conflict between these duties, we would expect Board members to make the Scottish Ministers aware of such conflict. Where any such conflicts are irreconcilable, it would ordinarily be expected that obligations arising by law take precedence. **Appendix 1** of this Agreement provides some generic guidance on Directors' duties under the Companies Acts. Board members are responsible for ensuring that there is a comprehensive policy in place in relation to the making of a qualifying disclosure (Whistleblowing) by staff of FMPG and members of the board; and for ensuring that staff and board members have confidence in the fairness and impartiality of procedures for making and dealing with qualifying disclosures.

36. Individual board members should act in accordance with the responsibilities of the Board as a whole. It is important that Non-Executive Directors do not operate exclusively within the confines of the Boardroom but have a good understanding of the business and its relationships with significant stakeholders. Accordingly, it is advisable to take opportunities to meet shareholders, key customers and members of the workforce from all levels of the company and:

- at all times comply with the model code of conduct and with the rules relating to the use of public funds and to conflicts of interest. (In this context “public funds” means not only any funds provided to the company by the Scottish Ministers but also any other funds falling within the stewardship of the company, including trading and investment income, gifts, bequests and donations.)
- In reaching decisions, the Boards should take into account the wishes of Scottish Ministers, as sole shareholders;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- act in good faith and in the best interests of FMPG.
- Ensure that there is a commitment to [Fair Work](#) practices in line with Ministers’ aim to be a world-leading Fair Work nation by 2025.
- Ensure that the aims and objectives of Scottish Ministers, as sole shareholder, are delivered (primarily, by providing strategic oversight of the completion of MVs Glen Sannox and Glen Rosa, including monitoring of progress against agreed milestones, exploring the reasons for any delay in progress and offering advice and options to rectify the reasons for any delays).
- Ensure that Ministers are appropriately informed about any delays in progress and the reasons why.
- Support diversity of thought and teamwork, openness and accountability.
- Provide support and advice to help develop a pipeline of new business to ensure the future commercial viability of the business.
- general guidance on Board members’ responsibilities is summarised in their appointment letters and is also provided in [On Board](#).

37. Board members are expected to uphold the requirements of the [Companies Act 2006](#) and the principles set out in the Scottish Government’s [Ethical standards in Public Life \(Scotland\) Act 2000](#).

Executive Board Directors

38. Executive Directors have the same duties as other members of the Board. These duties extend to the whole of the business, and not just that part of it covered by their individual Executive roles. Executive Directors should not see themselves only as members of a Chief Executive’s team when engaged in Board business. Taking the wider view can help achieve the advantage of a unitary system, meaning greater knowledge, involvement and commitment at the point of decision.

39. Executive Directors should welcome constructive challenge from Non-Executive Directors as an essential aspect of good governance and encourage their Non-Executive colleagues to test proposals in the light of their wider experience outside the company.

Board Support and the role of the Company Secretary

40. The Company Secretary is responsible for ensuring that Board procedures are complied with, advising the board on all governance matters, supporting the Chair and helping the Board and its committees to function efficiently. The Company Secretary should report to the Chair on all Board governance matters. This does not preclude the Company Secretary also reporting to a Chief Executive, or other Executive Director, in relation to their other executive management responsibilities.
41. Under the direction of the Chair, the Company Secretary's responsibilities include ensuring appropriate information channels within the Board and its Committees and between senior management and Non-Executive Directors, as well as facilitating induction and arranging Board training.
42. The Chair and the Company Secretary should periodically review whether the Board and the company's governance processes – for example, Board and Committee evaluation – are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company.
43. The Company Secretary should also fulfil those responsibilities set out in the Part 12 of the Companies Act 2006.

Chief Executive and Accountable Officer responsibilities

44. A Chief Executive of FMPG is employed and appointed by the Board following the approval of Scottish Ministers. He/she is the Board's principal adviser on the discharge of its functions and is accountable to the Boards. He/she may also be appointed as Accountable Officer – although this role may be delegated to an alternative Officer of the body.
45. A Chief Executive and Accountable Officer jointly are responsible for safeguarding the public funds (i.e., all funds falling within the stewardship of FMPG Group) for which they have charge; for ensuring propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of FMPG and its subsidiaries. They should act within the terms of relevant guidance in the SPFM where applicable to non-commercial activity and other instructions and guidance issued by the Scottish Ministers. This paragraph is subject to Paragraph 75.
46. A Chief Executive and Accountable Officer jointly have a duty to secure "Best Value" as set out in the [Scottish Public Finance Manual \(SPFM\)](#), which includes the concepts of good corporate governance, performance management and continuous improvement. Guidance to Chief Executives/Accountable Officers on what their organisations should be able to demonstrate in fulfilment of the duties which make up a Best Value regime is included in the [Best Value](#) section of the SPFM.
47. A Chief Executive's role is to provide operational leadership to the company and ensure that the Boards' aims and objectives are met, and the companies' functions are delivered, and targets met through effective and properly controlled executive action.

48. General guidance on the role and responsibilities of a Chief Executive is contained in [On Board](#), and specifically shall:

on planning, performance management and monitoring -

- implement the organisation's corporate and annual Business Plans in the light of the Scottish Ministers' strategic aims for the company;
- inform the sponsor Directorate of the FMPG Group's progress in helping to achieve the Scottish Minister's policy objectives (i.e., timely delivery of MVs Glen Sannox and Glen Rosa) and in demonstrating how resources are being used to achieve those objectives;
- ensure that timely forecasts and monitoring information on performance and finance are provided to the sponsor Directorate; that the sponsor Directorate is notified promptly if projections are unlikely to be achieved or if performance targets are at serious risk and that corrective action is taken; and that any material issues and problems, whether financial or otherwise, which could impact on Scottish Government's reputation as shareholder, and whether detected by internal audit or by other means, are notified to the sponsor Directorate urgently;

on advising the Board -

- A Chief Executive's relationship with the Chair is a key influence on Board effectiveness and they should advise the Board on the discharge of their responsibilities as set out in this document and in any other relevant instructions and guidance issued by the Scottish Ministers/sponsor Directorate;
- advise the Boards on the organisation's performance compared with its aims and objectives;
- ensure that financial considerations and where necessary, the advice of the Accountable Officer, are taken fully into account by the Boards at all stages in reaching and executing their decisions, and that standard financial appraisal techniques as set out in the [Green Book](#) are followed as far as this is appropriate and practical;
- A Chief Executive or Accountable Officer should take action if any Board, or its Chair, are contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration or efficiency or effectiveness;
- A Chief Executive is also responsible for ensuring that management fulfils its obligation to provide Board Directors with:
 - accurate, timely and clear information in a form and of a quality and comprehensiveness that will enable it to discharge its duties;
 - appropriate knowledge of the company, including access to company operations and members of the workforce.

On managing risk and resources -

- ensure that the company conducts its business in an efficient, safe and secure manner and its compliance with the requirements of the applicable regulatory bodies and regulations;
- ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of generally recognised best practice in

corporate governance, and develop an approach to risk management consistent with the [Risk Management](#) section of the SPFM. Monthly reporting arrangements should ensure that the sponsor unit is made aware of relevant risks and how they are being managed.

- ensure that a system of risk management is embedded in the organisation to inform decisions on financial and operational planning and to assist in achieving objectives and targets;
- Ensure that the FMPG adheres, where appropriate, to the SG's [Programme and project management principles](#)
- maintain a comprehensive system of internal delegated authorities which are notified to all staff, together with a system for regularly reviewing compliance with these delegations;
- ensure that effective human resource management policies and procedures are maintained, and that strategic human resource planning is related to the organisation's objectives.

on communications –

- agree the companies' high-level strategy with the sponsor Directorate together with appropriate protocols for media handling and the coordination of key announcements; and
- agree a detailed protocol in line with the Company's Emergency Orders for the response to and handling of any major incident that may occur.

49. A Chief Executive may delegate the day-to-day administration of his/her responsibilities to other employees in the company. However, he/she shall not assign absolutely to any other person any of the responsibilities set out in this document.

The Accountable Officer role, on accounting for the Group's activities shall -

- sign the accounts and be responsible for ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Scottish Ministers;
- sign a Governance Statement regarding the organisation's system of internal control, for inclusion in the annual report and accounts;
- ensure that an effective complaints procedure is in place and made widely known;
- give evidence when summoned before the Scottish Parliament on the use and stewardship of public funds by the company. It is incumbent on a Chief Executive to support the Accountable Officer's responsibilities to the Scottish Parliament with their wider operational responsibilities to the board.
- ensure that the funds falling within the stewardship of the company are used for the purpose intended, and that such monies, together with the organisation's assets, equipment and staff, are used economically, efficiently and effectively;
- ensure that adequate internal management and financial controls are maintained by the company, including effective measures against fraud and theft;
- take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract or to give grant, as well as

the appropriateness of such a commitment by FMPG given its status as a public body, and Ministerial objectives as to its operating parameters.

PLANNING, BUDGETING AND CONTROL

The Business Plan

50. FMPG's executive teams will develop and update a corporate and annual business plan for the Group Companies (the "Business Plan") and shall consult with the Shareholder in respect of it and shall take account of the Shareholder's views. The Business Plans will cover the current financial year for approval and at least three future financial years for noting by Ministers and will include the Group companies' financial and budget requirements. The Business Plans shall be reviewed and approved by the FMPG Boards on an annual basis and otherwise as necessary to take account of any additional or amended obligations or responsibilities assumed by the Group Companies which are material in nature.
51. The Business plans should be submitted to SCAD in advance of the annual budget planning cycle which ends in December, with submission dates to be agreed in advance with the sponsor directorate but in general by the beginning of October each year.
52. FMPG shall agree the key performance targets with SCAD. The Business Plans should also provide a long-term plan (i.e., beyond three future financial years) for the sustainable development of FMPG and the timetable for delivery. The Business plan should be aligned with the Scottish Government's strategic objectives and be updated, annually, between public spending reviews and when considered necessary.
53. The Business Plans shall set out:
- key objectives, expenditure plans (including capital plans) and associated key performance targets for the following 3-5 years, and its strategy for achieving those objectives;
 - a review of FMPG's performance in the preceding financial year accepting that a more detailed review and comparison financial data is contained with the Annual Report and Accounts;
 - alternative scenarios to take account of factors which may significantly affect the execution of the plan, but which cannot be accurately forecast;
 - other matters as agreed between the sponsor Directorate and the organisation;
 - The main elements of the plan - including the key performance targets - shall be agreed between the sponsor Directorate General and FMPG with consideration of the sponsor Directorate's decisions on policy and resources taken in the context of the Scottish Ministers' wider public expenditure plans and decisions; and
 - The Business Plans shall be submitted, via SCAD, for approval by Scottish Ministers. The timetable for such submission will be agreed with SCAD as required.

Publication of plans and Board meeting minutes

54. Subject to any commercial considerations a summary of the Business Plans, shall be made available on the FMPG Group website.

55. FMPG shall proactively publish on its web site minutes of all Board meetings. Minutes may be redacted only so as to ensure compliance with any relevant legislation (e.g. the Data Protection Act 1998) or to protect FMPG Group's interests in relation to its commercial activities.

Performance monitoring and reporting

56. FMPG executive shall operate management information and accounting systems which enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in the Business Plans. It is essential that performance against set targets is reported and reviewed regularly.

57. FMPG executive shall take the initiative in informing the sponsor Directorate of material changes or material risks in external conditions which make the achievement of objectives more or less difficult, or which may require a change to the budget, or objectives set out in the Business Plans.

- If any changes involve an increase in annual net funding required, then approval by Scottish Ministers via the sponsor Directorate is required.
- The organisation's performance in helping to deliver Ministers' objectives, including the achievement of agreed key objectives, shall be regularly reviewed by the sponsor Directorate.
- Additionally, a Chief Executive and Accountable Officer shall meet with the sponsor Directorate at least monthly to discuss progress against agreed objectives.
- Monthly operational progress and finance review reports will be submitted to the sponsor Division.
- The appropriate Cabinet Secretary / Scottish Minister shall meet the Board formally each year to discuss the company's performance, its current and future activities and any policy developments relevant to those activities.
- FMPG's performance against key targets shall be reported in the annual report and accounts. Other forms of reporting performance to the public should also be considered.

The objectives of FMPG shall be reviewed at least annually in accordance with the business needs of the Scottish Government and FMPG.

Budgeting procedures

58. Each year, in the light of decisions by the Scottish Ministers on the allocation of budgets for the forthcoming financial year, the SG will send to FMPG Group a formal statement of its budgetary provision, and a note of any related matters and details of the budget monitoring information required by the SG. The terms of that letter, referred to as the "Budget Allocation and Monitoring" letter, should be viewed as complementing the content of this document. The monthly monitoring is the primary means of in-year budgetary control across the SG.

59. Bodies must comply with the format and timing of the monitoring together with any requests for further information. The statement of budgetary provision will set out the budget within the classifications of Resource Departmental Expenditure Limits

(RDEL), Capital Departmental Expenditure Limits (CDEL) and Ring-fenced (non-cash) Departmental Expenditure Limits (RfDEL). FMPG will inform the sponsor unit at the earliest opportunity if a requirement for Annually Managed Expenditure (AME) budget is identified.

60. The SG should also be advised in the event that estimated net expenditure is forecast to be lower than budget provision. Transfers of budgetary provision between the different classifications require the prior approval of the SG Finance Directorate. Any proposals for such transfers should therefore be submitted to SCAD. Transfers of provision within the classifications may be undertaken without reference to the SG, subject to any constraints on specific areas of expenditure such as Chief Executive remuneration.
61. If the trading and other resource income (including profit or loss on disposal of non-current assets) – scored as negative RDEL, or the net book value of disposals of non-current assets – scored as negative CDEL is less than included in the agreed budget the NDPB shall, unless otherwise agreed with the SG, ensure a corresponding reduction in its gross expenditure (the extent to which the NDPB exceeds agreed budgets shall normally be met by a corresponding reduction in the budgets for the following financial year).
62. If income is more than included in the agreed budgets the NDPB must consult and obtain the prior approval of the SG before using any excess to fund additional expenditure or to meet existing pressures.
63. Failure to obtain prior approval for the use of excess income to fund additional expenditure may result in corresponding reductions in budgets for the following financial year. The only exception is where the income is from gifts, bequests and donations but this must be spent within the same financial year as the receipt, otherwise additional budget allocation will be required. In any event, income from all sources and all planned expenditure should be reflected in the monthly budget monitoring statement.

Audit and Risk Committee and Internal Audit

64. The Boards of FMPG shall set up an Audit and Risk Committee in accordance with the guidance on [Audit Committees](#) in the SPFM. The Audit and Risk committee will act on behalf of and cover the requirements of the Group Companies. The FMPG Board shall ensure that there is an appropriate internal audit for FMPG Group Companies. The internal audit function can be outsourced and will report to the Audit and Risk Committee and will consider issues relating to FMPG Group Companies and FMPG's delivery of the objectives set out in this Framework Agreement, in particular, matters relating to the strategy, performance and risk management.
65. In addition, FMPG shall forward to the sponsor team an annual report on fraud (including theft) suffered by FMPG Group; notify any unusual or major incidents as soon as possible; and notify any changes to its audit committee's terms of reference or its Fraud Policy and Fraud Response Plan.
66. The SG's Internal Audit Directorate has a right of access to all documents held by the FMPG's internal auditor, including where the service is contracted out. The SG

has a right of access to all FMPG Group records and personnel for any purpose relating to matters covered in this Framework Agreement.

External accountability

The Annual Report and Accounts

67. FMPG shall publish its annual report of its activities and audited annual accounts in accordance with the Companies Act and should therefore publish these reports within 9 months of the financial year end (31 March). The report shall also cover the activities of Group Companies in accordance with International Financial Reporting Standards as adapted and interpreted for the public sector context. While the Companies Act takes precedence, the accounts will, in so far as is appropriate, comply with any other relevant guidance issued by the Scottish Ministers.
68. The annual report and accounts shall be submitted in draft to SCAD for comment by 1 August in any given year and the final version shall be laid before the Parliament later that year by the Scottish Ministers in keeping with the filing deadline of 31 December. The annual report and accounts must not be published before they have been laid. FMPG shall be responsible for the publication of the annual report and accounts, including any requirement to lodge same at Companies House.
69. The accounts should comply with the Government [Financial Reporting Manual](#) (FreM) and other relevant guidance issued by the Scottish Ministers and outline FMPG's main activities and performance against agreed objectives and targets for the previous financial year. Any financial objectives or targets set by the Scottish Ministers should be reported on in the accounts and will therefore be within the scope of the audit.

External audit

70. For the financial year-ending 31 March 2023 and the subsequent financial year the Auditor General Scotland (AGS) will undertake FMPG Holding's audit. The AGS shall submit the audited accounts to the Scottish Ministers, who shall lay them, together with the annual report, before Parliament.
71. FMPG Holdings shall instruct its auditors to send copies of all management letters (and correspondence relating to those letters) and responses to the sponsor Directorate.
72. FMPG Holdings agree that the Auditor General Scotland (AGS) may carry out examinations into the economy, efficiency and effectiveness with which the Company has used its resources in discharging its functions.

73. In addition, FMPG Group shall provide for the AGS such access to documents held by grant recipients as may be required for these examinations; and shall use its best endeavors to secure access for the AGS to any other documents required by the AGS which are held by other bodies.

Staff Management

74. Within the conditions approved by Scottish Ministers within this framework document, the FMPG Group shall have responsibility for the recruitment, retention, development and wellbeing of its staff, and termination of staff. To this end FMPG Group shall ensure that:

- the recruitment of its staff is based on fair and open competition and equal opportunities;
- the level and structure of its staffing, including grading and numbers of staff, is appropriate to its functions and the requirements of efficiency, effectiveness and economy;
- the performance of its staff at all levels is managed effectively and efficiently; they are satisfactorily appraised; and FMPG Group's performance appraisal and promotion systems are reviewed regularly;
- its staff are encouraged to acquire the appropriate professional, technical, management and other expertise necessary to achieve FMPG Group's objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place;
- whistle blowing procedures are in place consistent with the Public Interest Disclosure Act 1998
- a code of conduct for staff is in place based on the document [Model Code of conduct for Staff of Devolved Public Bodies](#).

Pay, Pensions, redundancy and compensation.

75. Scottish Ministers, on the basis of evidence presented by officials and in line with the view of the Scottish Government Remuneration Group, have decided that FMPG should not be obligated to comply with public sector pay and conditions.

It is recognised that as a commercial ship builder, rates of pay are likely to differ from usual public sector appointments, in view of the specific market sector pressures, scarcity of sector skills and the need to attract talent from different sources with different remuneration levels and practices. This exemption from compliance with public sector pay and conditions is on the condition that FMPG maintain regular dialogue with SG Sponsor Directorate and with an expectation that they will align with the following guiding principles of the Public Sector Pay Strategy:

- affordability within the overall agreed budget provisions;
- financial sustainability, fair rates of pay, productivity improvement and gender pay gap improvements;
- recruitment and retention concerns;
- reduce overall income inequality;
- maintain the suspension of non- consolidated performance related pay (bonuses)

- no provision of salary sacrifice schemes
- payment of salaries should also comply with the [Tax Planning and Tax Avoidance](#) section of the SPFM.

76. FMPG will notify via the Sponsoring Directorate the SG Remuneration Group of the proposed pay deal for staff in sufficient time/once the public sector pay metrics are announced to permit the appropriate views to be sought, including if required from Ministers, to permit FMPG to commence formal staff engagement and negotiations recognising the FMPG proposed annual timescale of the pay deal implementation of 1 April. The public sector pay metrics shall be considered in conjunction with the sector benchmarking to inform the rationale for any pay offer. FMPG shall progress its proposals and agree them having due regard to the response of SG Remuneration Group and Ministers.
77. FMPG shall constitute a remuneration committee of the FMPG Board chaired by a non-executive director and the remit of such committee, contained in its applicable terms of reference, shall relate to FMPG/Group Companies.
78. Without prejudice to the position on the annual pay deal detailed above, in relation only to posts directly reporting to the CEO, any pay and conditions package approved by the Remuneration Committee of the FMPG Board, shall be notified to the SG Remuneration Group via the Sponsor Department (accompanied by a note of external benchmarking and internal comparisons) for written comment, which will be progressed for a response within 10 working days unless the SG Remuneration Group committee cycle dictates a longer period of time for such response. FMPG shall have due regard to any feedback from the SG Remuneration Group via the Sponsor Department.
79. FMPG is responsible for determining the number of staff required and the most appropriate organisational structure to deliver its remit economically, efficiently and effectively within the resources available to it. However, any changes in staff numbers exceeding 20 people in a 90 day timeframe must be approved in advance by the Board and SCAD: SCAD shall endeavor to approve or reject the proposal within a target of 5 working days if the SG does not find the case to be contentious or unusual. Or within 15 working days if there may be elements which are contentious or unusual, or if the case is being referred to Scottish Ministers.

Settlement, severance, early retirement and redundancy

80. FMPG shall seek to deliver, and demonstrate, robust governance processes, best practice and value for money when developing and implementing a severance scheme or when developing a settlement agreement, in compliance with current policy, observing all policy limits as set out in the [Settlement Agreements, Severance, Early Retirement and Redundancy Terms](#) section of the SPFM. FMPG will present the details of the request for approval of any settlement agreement, on anonymized basis with a range of costs, where the member of staff is graded at below Senior Leadership Team. To clarify the matter in relation to redundancy, whilst SPFM refers to adherence to Pay Policy, because FMPG are exempt from this, the requirement to only utilize voluntary redundancy does not apply.

81. FMPG shall comply with the EU Directive on contract workers, Fixed Term Employees Regulations (Prevention of Less Favourable Treatment) or equivalent UK provisions.

Organisational security and resilience

82. As part of risk management arrangements, FMPG shall ensure that it has a clear understanding at Board level of the key risks, threats and hazards it may face in the personnel, physical and cyber domains, and take action to ensure appropriate resilience to those risks/threats/hazards. It should have particular regard to the following key sources of information to help guide its approach:

- Having and Promoting Business Resilience; and
- [The Scottish Public Sector Action Plan on Cyber Resilience](#) and associated guidance, in particular the [Cyber Resilience Framework](#).

83. Cyber-attacks, information security breaches and any other breaches of General Data Protection Regulation incidents, which would require reporting to the Information Commissioner under their guidance shall be notified to the sponsor directorate as soon as appropriate.

Business Continuity numbering!

84. A Business Continuity Plan shall be implemented and updated annually and submitted to SCAD for approval.

Performance management

85. FMPG Group shall operate management information and accounting systems that enable it to review, in a timely and effective manner, its financial and non-financial performance against the strategic aims, objectives, targets and milestones set out in the Business Plans. The results of such reviews should be reported on a regular basis to the FMPG board and copied to the SG. The SG shall assess FMPG Group's performance, proportionately, on a continuous basis. The responsible Cabinet Secretary / Scottish Minister shall meet the FMPG Chair on a one-to-one basis at least once a year.

Delivery of vessels 801 and 802

86. FMPG Group will provide the Sponsor Directorate with reports, or any other information requested, relating to the completion of vessels 801 and 802 as set out within the shipbuilding contracts between the Scottish Government and FMPG 801-802 Ltd.

Cash management.

87. Any [grant in aid](#) (i.e. the cash provided to FMPG by the SG to support the allocated budget) for the year in question must be authorised by the Scottish Parliament in the annual Budget Act. Grant in aid will normally be paid in monthly instalments on the basis of updated profiles and information on unrestricted cash reserves. Payment will not be made in advance of need, as determined by the level of

unrestricted cash reserves and planned expenditure. Unrestricted cash reserves held during the course of the year should be kept to the agreed minimum level consistent with the efficient operation of FMPG Group, and the level of funds required to meet any relevant liabilities at the year-end. Grant in aid not drawn down by the end of the financial year shall lapse. Grant in aid shall not be paid into any restricted reserve held by the FMPG.

Banking numbering

88. A Chief Executive and Accountable Officer are jointly responsible for ensuring that FMPG Group's banking arrangements safeguard public funds and are carried out efficiently, economically and effectively. The banking arrangements adopted by the FMPG Group must comply with the [Banking](#) section of the SPFM.

Asset and property management

89. FMPG shall maintain an accurate and up-to-date record of its current and non-current assets consistent with the [Property: Acquisition, Disposal & Management](#) section of the SPFM. 'Non-current' assets should be disposed of in accordance with the SPFM.

90. The Sponsor directorate and Scottish Governments' Property Division should be consulted about relevant proposed disposals of property that is held by FMPG for operational purposes (rather than investment) at the earliest opportunity so where appropriate, it may be advertised internally.

91. Any proposal to acquire land, buildings or other rights in property for accommodation / operational purposes should comply with the agreed business plan and be approved by the Board. FMPG is also subject to the SG Asset Management Policy, if the preferred option involves either the acquisition of additional accommodation, including the acquisition of a new lease, continuing an existing lease or electing not to exercise a break clause in a lease or purchase of property for accommodation / operational purposes, has to be approved in advance by the Sponsor Directorate.

Impairment, provisions and write-offs

92. Assets should be recorded on the balance sheet at the appropriate valuation basis in accordance with the FReM. Where an asset - and that includes investments - suffers impairment it is important that the prospective impairment and background is communicated to the SG at the earliest possible point in the financial year to determine the implications for the FMPG's budget. Similarly, any significant movement in existing provisions, or the creation of new provisions should be discussed in advance with the SG. Write-off of bad debt and/or losses scores against the FMPG's resource DEL budget classification and is subject to a specific delegated limit.

Authority to spend - Delegated authorities.

93. SCAD shall not interfere in day-to-day operational or commercial matters or decision-making by the FMPG Group companies which are undertaken within Delegated Authority limits (where applicable) and shall respect the commercial and legal confidentiality of its operations FMPG's specific delegated financial authorities

- as agreed in consultation between FMPG and SG - are set out in the attached Annex A.

94. Prior Scottish Government approval must always be obtained before incurring expenditure for any purpose:

- that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications;
- or which has or could have significant future tax liability implications;
- which makes any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the sponsor Directorate; and / or
- which makes any change of policy or practice which has wider financial implications (e.g. because it might prove repercussive among other public sector bodies) or which might significantly affect the future level of resources required.

Income generation

95. FMPG Group shall seek to optimise income from all sources, and ensure, that the SG is kept informed. Grant in aid does not qualify as income. Novel or contentious proposals for new sources of income or methods of fundraising must be approved by the SG.

Fees or charges for services

96. Fees or charges for any services supplied by FMPG shall be determined in accordance with the [Fees & Charges](#) section of the SPFM.

97. Fees or charges for services or goods supplied by FMPG should be determined on a fully commercial basis.

98. and otherwise in accordance with the Scottish Public Finance Manual, whilst having due regard to its duty as a public body and to the public purse.

Subsidy Control

99. The Subsidy Control Act 2022 came into force on 4th January 2023. A full assessment is therefore required prior to disbursing any funding and would be subject to the [Subsidy Control Act 2022 guidance](#) and guidance in the [subsidy control section](#) of the SPFM.

Gifts, bequests or donations

100. Gifts, bequests or donations received by FMPG are regarded as income and should be provided for in the agreed resource DEL and capital DEL budgets, updated as necessary in consultation with the Scottish Government. Prior approval shall be obtained from SCAD to make gifts or special payments or write-off of losses. FMPG must be able to demonstrate that expenditure funded by gifts etc. is additional to expenditure normally supported by grant in aid (i.e. SG core funding) or by trading and other income. If gifts are approved by SG FMPG shall consider if there are any associated costs in doing so or any conflicts of interests arising.

FMPG shall keep a written record of any such gifts etc. and what happened to them.

Financial investments

101. FMPG Group shall not make any financial investments without the prior approval of the sponsor Directorate, nor shall it aim to build up cash balances or net assets in excess of what is required for operational purposes. Equity shares in ventures, which further the objectives of the Group shall equally be subject to sponsor Directorate approval unless covered by a specific delegation. FMPG shall not make any financial investments of a speculative nature without Sponsor Directorate approval.

Borrowing

102. Borrowing cannot be used to increase FMPG's spending power. All borrowing by FMPG excluding agreed overdrafts - shall be from the Scottish Ministers in accordance with guidance in the [Borrowing, Lending & Investment](#) section of the SPFM.

Lease arrangements.

103. Unless covered by a specific delegated authority, FMPG shall not enter into any finance, property or accommodation related lease arrangement – including the extension of an existing lease or the non-exercise of a tenant's lease break option without the Sponsor Directorate's prior approval.

Tax arrangements.

104. Non-standard tax management arrangements should always be regarded as novel and/or contentious and must therefore be approved in advance by the Sponsor Directorate. Where any such arrangement could be perceived as seeking to minimize the tax liability of either employees or FMPG is being considered, any such arrangement must have agreement of the Scottish Ministers. Relevant guidance is provided in the [Tax Planning and Tax Avoidance](#) section of the SPFM. FMPG must comply with all relevant rules on taxation, including VAT. It is the responsibility of FMPG to observe VAT legislation and recover input tax where it is entitled to do so. The implications of VAT in relation to procurement and shared services should be considered at an early stage to ensure that financial efficiency is achieved. FMPG must also ensure that it accounts properly for any output tax on sales or disposals.

Lending and guarantees.

105. Any lending by FMPG must adhere to the guidance in the [Borrowing, Lending & Investment](#) section of the SPFM on undertaking due diligence and seeking to establish a security. Unless covered by a specific delegated limit FMPG shall not, without the Scottish Governments' prior approval, lend money, charge any asset, give any guarantee or indemnity or letter of comfort, or incur any other contingent liability (as defined in the [Contingent Liabilities](#) section of the SPFM), whether or not in a legally binding form. Guarantees, indemnities and letters of comfort of a standard type given in the normal course of business are excluded from this requirement.

106. SCAD acknowledges the need for FMPG to be in a position to offer Builders Refund Guarantees (BRG) and Parent Company Guarantees (PCG) in relation to contracts to be entered into by FMPG Group, including any contracts to be awarded to FMPG Commercial Ltd by the private sector. SCAD shall take all reasonable steps to ensure that (1) FMPG Commercial Ltd can bid for work requiring such BRG's and PCG's and (2) any necessary approvals of Scottish Ministers and/or the Scottish Parliament in such regard are received by FMPG Group timeously, such that its bidding for such work and that the future of the yard is not thereby prejudiced.

Third party grants

107. Unless covered by a specific delegated authority FMPG shall not, without the Scottish Governments' prior agreement, provide grant funding to a third party. Such funding would be subject to the guidance in the [Subsidy Control](#) section of the SPFM. Guidance on a framework for the control of third party grants is provided as an annex to the [Grant & Grant in Aid](#) section of the SPFM.

Insurance

108. FMPG Group is not subject to the general SG policy of self-insurance. Insurance must be taken out where there is a legal requirement to do so and may also be taken out in the circumstances described in the [Insurance](#) section of the SPFM - where required. In the event of uninsured losses being incurred the SG shall consider, on a case-by-case basis, whether or not it should make any additional resources available to FMPG.

Procurement, Payment and Value for money

109. Contracts shall be placed on a competitive basis and tenders accepted from suppliers who provide best value for money overall. Proposals to let a single-tender or restricted contracts above the relevant delegated limit in the attached **Annex A** must be submitted to the sponsor Directorate for approval.

110. Subject as after mentioned FMPG Group's procurement policies shall reflect, so far as possible, relevant guidance in the [Procurement](#) section of the SPFM and relevant guidance issued by the Scottish Governments' Procurement and Commercial Directorate. Procurement should be undertaken by appropriately trained and authorised staff and treated as a key component of achieving FMPG Group's objectives consistent with the principles of Value for Money, the highest professional standards and any legal requirements. All external consultancy contracts over the value of £100,000 or any proposal to award a contract without competition (non-competitive action) over the value of £200,000 must be endorsed in advance by a Chief Executive and Accountable Officer and referred to SCAD for approval. FMPG shall also ensure that it complies with any relevant EU or other international procurement rules.

111. Procurement by FMPG Group of works, equipment, goods and services shall be based on value for money, i.e. quality (in terms of fitness for purpose) and delivery

against price. Where appropriate, a full options appraisal shall be carried out before procurement decisions are taken.

Investment

112. Any major investment programmes or projects undertaken by FMPG Group shall be subject to the guidance in the [Major Investment Projects](#) section of the SPFM [and is also subject to specific delegated authorities set out in attached **Annex A**]. The sponsor unit must be kept informed of progress on such programmes and projects and Ministers must be alerted to any developments that could undermine their viability. ICT investment plans must be reported to the Scottish Governments' Office of the Chief Information Officer.

Payment

113. FMPG shall pay all matured and properly authorised invoices relating to transactions with suppliers in accordance with the [Expenditure and Payments](#) section of the SPFM and in doing so shall seek wherever possible and appropriate to meet the Scottish Governments' target for the payment of invoices within 20 working days of their receipt.

Capital expenditure.

114. Subject to being above the Scottish Government's capitalisation threshold as set out in the published Scottish Government consolidated accounts all expenditure on the acquisition or creation of fixed assets shall be capitalised on an accrual's basis. Expenditure to be capitalised shall include the (a) acquisition, reclamation or laying out of land; (b) acquisition, construction, preparation or replacement of buildings and other structures or their associated fixtures and fittings; and (c) acquisition, installation or replacement of movable or fixed plant, machinery, vehicles and vessels.

115. Proposals for large-scale individual capital projects or acquisitions will normally be considered within FMPG's corporate planning process and within the context of its long-term estate strategy. Any such project shall be subject to the guidance in the Major Investment section of the SPFM and, where appropriate, the Construction Procurement Manual published by the Scottish Government's Construction Advice and Policy Team.

Subsidiary companies and joint ventures

116. FMPG Group shall not establish subsidiary companies or joint ventures without the express approval of SCAD. In judging such proposals SCAD will have regard to the Scottish Ministers' wider strategic aims and objectives. Any subsidiary company or joint venture controlled or owned by FMPG shall be consolidated with it in accordance with [International Financial Reporting Standards](#).

Directors Duties

1. Introduction

All directors, whether of parent or subsidiary companies, and whether executive or non-executive directors, have obligations and duties imposed on them by statute and general law. This note summarises some of the main duties of directors of a company arising by law in the context of the Ferguson Marine group of companies. It should not be regarded as an exhaustive list of all duties and obligations that apply to directors of a company.

2. General duties

A company is a legal entity which is distinct from its members (i.e. shareholders). While the company's members have rights in the company, responsibilities to the company are generally owed by those entrusted with its management, namely the directors.

The Companies Act 2006 ("**CA 2006**") codified the key directors' duties with a view to reflecting in statute the position under the common law and equitable principles, but with some significant changes. The statutory duties replaced the former unwritten duties, but common law rules and equitable principles continue to be used in interpreting and applying the statutory duties.

It is important to recognise that the codified duties do not cover all of the duties a director may owe to a company.

Directors generally owe these duties solely to the company, and only the company is able to enforce them. However, the members may in certain circumstances be able to bring what is called "a derivative action", albeit essentially on the company's behalf.

Under CA 2006, directors owe the following duties to the company:

2.1 Act within powers

Directors must act in accordance with the company's constitution (articles of association) and only exercise their powers for proper purposes.

2.2 Promote the success of the company

Directors must act in the way they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole.

"Success" for a commercial company would usually mean "long-term increase in value". However, it will be open to a company to adopt a different definition of "success". (In the context of the Ferguson Marine group of

companies, the Scottish Government has set out separately what “success” should look like for the group.)

Directors must have regard to the following matters (amongst others) when discharging this duty:

- the likely consequences of any decision in the long term,
- the interests of the company's employees,
- the need to foster the company's business relationships with suppliers, customers and others,
- the impact of the company's operations on the community and the environment,
- the desirability of the company maintaining a reputation for high standards of business conduct, and
- the need to act fairly as between members of the company.

A director is only obliged to have regard to the factors listed above and is not required actively to promote the interests of the environment, the community and so forth. However, directors should ensure that they are able, if necessary, to demonstrate that they had regard to the above matters (together with any other relevant matters) when making decisions affecting the company, whether at board or committee meetings, or acting alone as an executive director making decisions on behalf of the company.

2.3 Exercise independent judgement

Directors must exercise independent judgement. This duty does not preclude the taking of professional advice, nor will it prevent a director from acting in line with the company's constitution or in accordance with the terms of any agreement entered into by the company.

2.4 Exercise reasonable care, skill and diligence

Directors must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both (i) the general knowledge, skill and experience that may be reasonably expected of a person carrying out the functions carried out by the director in relation to the company (the objective test), and (ii) the general knowledge, skill and experience that the director actually has (the subjective test).

The practical consequences of the objective and subjective limbs of this duty include the following:

- a member of the audit committee would be expected to exercise greater diligence in relation to the audited accounts;

- the CEO and finance director of a company are likely to be held to a higher standard than a non-executive director; and
- a director who is a qualified accountant would be expected, where this superior knowledge and skill is applicable, to show a higher standard of skill, care and diligence than a director without such qualifications.

2.5 Avoid unauthorised conflicts of interest.

Directors must avoid situations in which they have, or may have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company. This duty applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity), but does not apply to conflicts of interest arising in relation to transactions or arrangements with the company. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, nor if the matter has been authorised by the board of directors (although in the case of a public company, the constitution will need to allow the directors to do so).

2.6 Do not accept benefits from third parties.

Directors must not accept any benefit from a third party conferred by reason of their being a director or their doing, or not doing, anything as director. This duty is not infringed if the acceptance of the benefit could not reasonably be regarded as likely to give rise to a conflict of interest. Directors will be liable to pay to the company any benefit which they receive in breach of this duty. The value of the benefit is immaterial in assessing whether this duty has been breached, and the board of directors may not authorise the acceptance of any benefit in breach of this duty.

2.7 Declare interests in proposed transactions or arrangements.

If a director has any direct or indirect interest in any proposed transaction or arrangement with the company, they must declare both the nature and the extent of that interest to the other directors. The relevant director must do so before the company enters into the transaction or arrangement.

To the extent that an interest is not so disclosed in advance of a transaction, directors have a separate duty to declare (as soon as is reasonably practicable) any direct or indirect interest in a transaction or arrangement that has already been entered into by the company.

Directors need not, however, declare any interests which cannot reasonably be regarded as likely to give rise to a conflict of interest.

3. Additional fair dealing provisions in CA 2006

3.1 Transactions with directors

Companies are not, in most circumstances, permitted to enter into arrangements under which a director (of the company or any holding company)

or a connected person is to acquire from, or to dispose to, the company or any of its subsidiaries, a non-cash asset worth in excess of £100,000 or 10 per cent of the company's net assets (subject to, in the latter case, a de minimis £5,000 limit) unless the arrangement is first approved at a general meeting or if the arrangement is made conditional upon obtaining such approval. If it is not, the contract can be set aside and the director who was party to the arrangement and any director who authorised it are liable to account for any gain made as a result of the arrangement and to indemnify the company against any resulting loss.

Companies may only grant loans or provide security or other financial accommodation to directors (of the company or any holding company) and their connected persons so long as approval has been obtained from members at a general meeting.

3.2 Prohibition on payments to directors for loss of office

A company must obtain the approval of members at a general meeting before making a payment in cash or non-cash benefits to a director or past director (of the company or any holding company) or connected person as compensation for loss of any office (including as a director) or employment with the company or any of its subsidiary undertakings, and before making any payment in connection with his retirement. However, approval is not required for a payment made in good faith in discharge of an existing legal obligation, such as under an employment contract which has no connection with the event giving rise to the payment for loss of office¹.

4. Liability for annual reports

Under section 463 of CA 2006, directors are liable to compensate the company for any loss suffered as a result of false or misleading statements or omissions of required information from the annual directors' report, directors' remuneration report and any summary financial statement so far as it is derived from such reports. However, liability only arises if the relevant director (i) knows or is reckless as to whether the statement is untrue or misleading, or (ii) knows that the omission is a dishonest concealment of a material fact. A director will not be liable to any person other than the company who may rely upon information in such reports². However, the company may be liable to such persons.

5. Insolvency

¹ See sections 215, 217 and 220 of CA 2006.

² At least not under UK law. It cannot be guaranteed that courts in other jurisdictions would apply section 463(4) of CA 2006.

A director may in certain circumstances become liable to contribute to any deficiency suffered by the creditors of the company if the company becomes insolvent.

5.1 Fraudulent purpose

A director may be held liable to contribute to the company's assets on its winding up if it is shown that he has knowingly carried on the company's business with the intention of defrauding creditors of the company or of any other person, or for any fraudulent purpose. Such conduct also constitutes a criminal offence.

5.2 Wrongful trading

A director of the company may be personally liable to contribute to its assets if at any time before the company went into insolvent liquidation.

(i) the director knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and (ii) he then failed to take "every step" to minimise the potential loss to the creditors of the company. The standard required as to what the director ought to know, the conclusions he ought to reach and steps he ought to take is that which would be known, reached or taken by a reasonable diligent person with the general knowledge, skill and expertise that may reasonably be expected of a person carrying out the same functions as those of the directors in relation to the company and with the general knowledge, skill and experience that the director has. Thus, there is an objective and subjective test.

(iii) Transactions at an undervalue and preferences

A liquidator (or administrator) can obtain a court order setting aside certain transactions made when the company was insolvent, or which caused the insolvency, and which were made at an undervalue. A transaction is at an undervalue if the company receives no consideration for it, or significantly less consideration than it provides itself. The liquidator (or administrator) may also set aside transactions which "prefer" any creditor of the company.

6. Disqualification

Apart from personal liability, where a director engages in fraudulent or wrongful trading or has been found guilty of other misconduct in connection with a company and is held to be unfit by the court, he may under the Company Directors Disqualification Act 1986 be disqualified by court order for up to fifteen years from acting as a director or from having any involvement in the promotion, formation or management of a company.

7. Competition laws

Under the Enterprise Act 2002 criminal penalties may be imposed upon individuals who dishonestly engage in what are considered to be the most serious types of cartels such as horizontal price fixing, limiting supply or production, market shares or bid-rigging. Prosecution by the OFT and the

Serious Fraud Office could lead to five years' imprisonment and an unlimited fine on conviction.

8. Health and safety

The general obligations on a director which are discussed above (in particular the duty under CA 2006 to promote the success of the company) extend to health, safety and environmental ("**HSE**") matters.

HSE matters have, however, been singled out for special attention in the context of directors' duties and potential liabilities. This is principally because most HSE statutes include provisions for personal liability of directors where an HSE incident is due to their consent, connivance or neglect. The provisions result in a number of prosecutions of individual directors each year.

In addition to criminal penalties, a director may also be disqualified if found criminally liable under HSE legislation (see paragraph 5 above).

A director therefore cannot safely assume that HSE matters are the responsibility of a nominated head of HSE within the company, even if that person is a senior employee. Each director should satisfy itself that a proper HSE management system is in place which reports to the board and that sufficient resources are provided for HSE matters to be dealt with in accordance with legal obligations and company HSE policy.

9. Corporate manslaughter

The Corporate Manslaughter and Corporate Homicide Act 2007 created an offence of corporate manslaughter which replaced the previous common law offence for companies. A company commits corporate manslaughter if a person's death is caused by the way in which the company manages or organises its activities, amounting to a gross breach of a relevant duty of care owed to the deceased. The way in which senior management, including the directors, managed or organised the company's activities must comprise a substantial element of the breach.

The Act does not create individual liability for directors, who remain subject to the manslaughter laws outside of the Act.

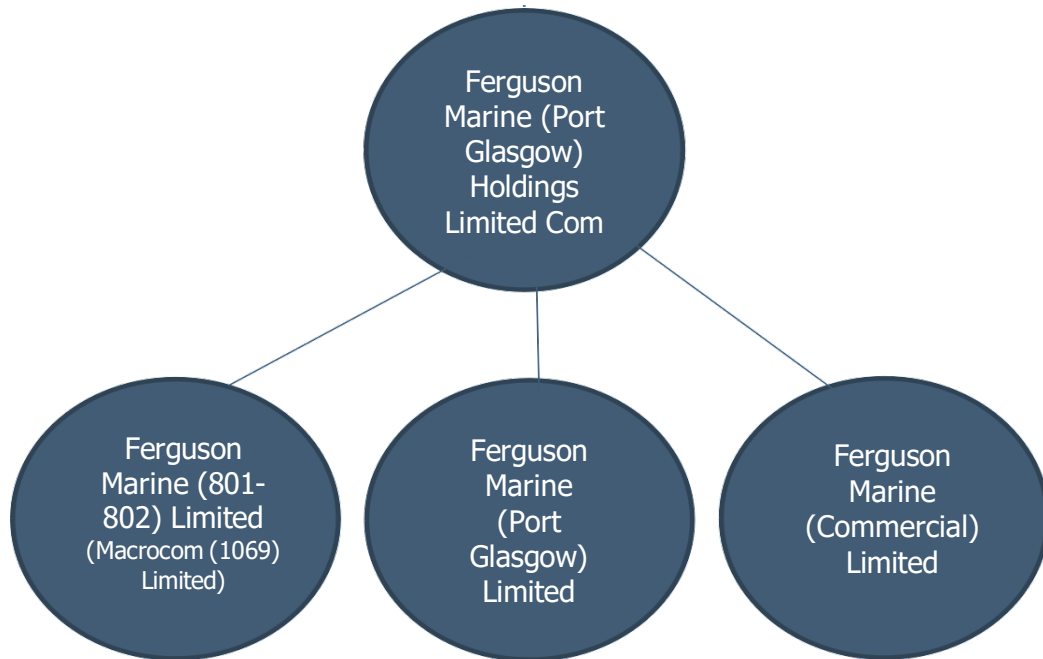
10. Annex A

Specific Delegated Financial Authorities per transaction

Delegation	Limits
External business and management consultancies including legal	£150,000
Non-competitive action	£200,000
Operating leases – other than property/ accommodation related leases	£200,000
Gifts	£1,000
Special payments	£1000
Claims waived or abandoned	£10,000
Write-off of bad debt and/or losses	£10,000
Guarantees out-with normal course of business	nil
Charges on assets/Acquisition	nil
Loans	nil
Grants	nil
Financial investments and equity shares	nil
Major investment programmes/ projects not incorporated in approved plans/capital investment	£50,000

11. Annex B

Ferguson Marine (Port Glasgow) Ltd and related group companies Structure



Alt text: Diagram of the company structure.

Ferguson Marine (Port Glasgow) Holdings Limited Company has three subsidiary companies: Ferguson Marine (801-802) Limited (Macrocom (1069) Limited), Ferguson Marine (Port Glasgow) Limited, and Ferguson Marine (Commercial) Limited.

Annex C

Shareholder Relationship Framework Document Scottish Government and FMPG

FMPG Operational and Administrative Independence Undertaking

1. Unless otherwise defined below, capitalised terms used in this Annex shall have the meaning given to such terms in the Framework Document drawn up by FMPG and its Shareholder.

Undertakings

2. In its capacity as the sole shareholder of FMPGHL, the Shareholder is committed to giving FMPG Boards freedom to operate FMPG / Group in seeking to achieve its purposes as stated in the Framework Agreement and FMPG Objects. FMPG and its Group shall have operational and administrative independence to bid for work based on its own assessment of how to achieve the Business Plan and, secure the future of the yard.

The Shareholder:

A. shall not interfere in day-to-day operational or commercial matters or decision making by FMPG or its Group which are undertaken within Delegated Authority limits (where applicable) and respect the commercial and legal confidentiality of its operations;

B. subject to the terms of this Framework Document, shall not give any instruction to FMPG or its Group to implement, or prevent FMPG or its Group from bidding for work or running the yard as FMPG management and the Board see fit;

C. shall not exercise its rights as shareholder in a manner which is inconsistent with this paragraph; and

D. shall allow FMPG and its Group freedom to allocate resources and budgets within its control, (together, (A), (B), (C) and (D) being the “Company Operational and Administrative Independence Principles”).

3. The Shareholder shall not give any instruction to the directors of FMPG or its Group, which would be contrary to any Subsidy Control Requirements applicable to FMPG or its Group.

Right to raise reservations

4. Subject to paragraph 3, if the Shareholder gives any instruction to FMPG to undertake an action or an instruction to procure that FMPG or any member of its Group undertakes an action that the CEO, the directors of FMPG or the directors of any member of its Group required to undertake any such action (an “Affected Company”) reasonably believe (in the case of an Affected Company, by providing written notice to FMPG) would or may require FMPG or any relevant Affected Company (as applicable) to undertake an action that would:

- A. infringe the requirements of propriety or regularity or obligations of legal and/or commercial confidentiality;
- B. not represent good value for money for the Scottish Government as a whole.
- C. be of questionable feasibility or is unethical;
- D. be contrary to FMPG Objects or would result in the Affected Company being in breach of its objects;
- E. be contrary to the agreed purposes of FMPG running the yard;
- F. result in the directors of the Company or any relevant Affected Company being in breach of their legal duties to the relevant company or otherwise in their legal or regulatory obligations; and/or
- G. not be in the best interests of FMPG or any relevant Affected Company for any other material and demonstrable reason, then FMPG Board, acting through the CEO, may make their reservations in respect of such matter clear to the Shareholder in writing (a "Reservation Notice").

5. If the Shareholder, after receiving a Reservation Notice, nevertheless instructs FMPG to proceed, or to procure that any Affected Company shall proceed, with the matter the subject of the Reservation Notice (an "Instructed Matter"), then the CEO shall:

A. seek a written instruction to undertake such Instructed Matter from the Shareholder, (a "Written Direction") with any oral instruction from the Shareholder (an "Oral Direction") being confirmed promptly in writing;

B. upon receipt of a Written Direction or an Oral Direction:

C. inform FMPG Board who shall undertake the Instructed Matter or procure that the Instructed Matter shall be undertaken by any relevant Affected Company;

D. copy the Written Direction or any Oral Direction confirmed in writing to the Auditor General for Scotland and the Scottish Parliament, under publication arrangements agreed by the Shareholder;

E. if asked, explain the Shareholder's course of action; and

F. arrange for the existence of the Written Direction or any Oral Direction confirmed in writing to be published (unless the Shareholder has directed in writing to FMPG that the matter must be kept confidential or unless FMPG considers that the matter is confidential).

Exceptions

6. FMPG's Operational and Administrative Independence Principles shall only apply if and to the extent that the activities of FMPG or any Affected Company are:

A. consistent with FMPG Articles;

B. compliant with Subsidy Control Requirements and the other specific requirements imposed upon the FMPG and its Group pursuant to the Framework Document; and

C. notwithstanding the Company Operational and Administrative Independence Principles, in addition to any matters which are expressly stated to be subject to the prior approval of the Shareholder in the Framework Document or the FMPG Articles, any conduct which is inconsistent with the FMPG Articles (including with respect to the achievement of the FMPG's purposes as stated in the FMPG Objects), the Framework Agreement, or the Subsidy Control Requirements shall require the prior written approval of the Shareholder.



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