



KINGDOM OF SWAZILAND

PRIVATISATION POLICY FOR SWAZILAND

Ministry of Finance

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I. INTRODUCTION

1. Public Enterprises (“PEs”) represent the single largest economic sector in the world economy. PEs, collectively, employ more people, command a greater asset base and represent a greater proportion of global GDP than any single area of private sector activity. They still dominate many national economies and remain central in the provision of essential services from telecommunications to drinking water in a majority of countries.
2. The way in which governments have sought, over the past twenty years, to reform this sector, to seek alternative means of maintaining and expanding these services within the context of increasing pressure on public sector budgets and resources, is at the heart of the reform process which has become known as privatisation.
3. The restructuring, contracting out services previously supplied by the state and in some cases, transfer to private ownership of assets has transformed economic global orthodoxy in the past 20 years.
4. With gathering momentum the privatisation revolution has enabled cash strapped public sectors across the globe to access new capital to invest in essential infrastructure, improve service provision in sectors as diverse as manufacturing and healthcare, promote economic democracy through wider share ownership and create employment opportunities through liberalising and expanding market opportunities in previously moribund state monopolies.
5. Under the privatisation banner over US\$1trillion dollars worth of assets and services have been transferred to the private sector in over one hundred countries worldwide. This revenue has assisted governments in refinancing often crippling debt burdens and allowed capital to be reinvested in other areas of the state sector.
6. Many of the Public Enterprises (“PEs”) in Swaziland have been operating under the objective of being commercialised. To monitor the commercial activities and other service provisions, the Public Enterprises Unit (“PEU”) was established under the Public Enterprises (Control and Monitoring) Act 1989 (“the Act”). The Act provides for the PEU to monitor the performance of the designated Category “A” Public Enterprises and for the PEU to provide technical advice on their operations and policy management.
7. The Act establishes a sound operational framework for corporate governance in the Public Enterprise sector in Swaziland. The Government of Swaziland (“the Government” or “GoS”) subsequently embarked on a reform policy in 1998 when the Government’s Economic and Social Reform Agenda (“ESRA”) called for a major statement on the reform of the Public Enterprise sector. A draft of the statement on the reform of the Public Enterprise sector, which ESRA called for, was tabled in cabinet in 1998, but its approval was postponed pending its updating. The updated statement calls for the privatisation of some of the services currently being provided by PEs. The Government through the Ministry of Finance (“MoF”) decided to establish a privatisation policy (“the Privatisation Policy”) that will complement the statement.

8. There has been some reform of Public Enterprises in Swaziland which in some cases has led to privatisation, but that has been happening on an *ad hoc* basis without any policy guidelines. This includes the partial privatisation of the Royal Swazi National Airways and the commercial arm of the Swaziland Dairy Board.
9. This Privatisation Policy, therefore, forms an integral part of the macro economic policies of the Government in Swaziland. It has not been developed in isolation as a cure for all the economic problems in itself, but forms part of the broader monetary, fiscal and social policies captured in ESRA (now referred to as MAP). This is consistent with privatisation policies successfully followed in many countries throughout the world.
10. *This Privatisation Policy provides for different forms of private sector participation which can apply to Public Enterprise reform as appropriate. It also recognises that it may not be appropriate to privatise some of the functions for a number of reasons as such functions will be considered as a core Government function, of national strategic importance or there may not be private sector interest in assuming the function*
11. The Privatisation Policy also recognises that privatisation is to be seen as a process and not an event; a process in which commercial, legal, technical and communication factors are intertwined, to produce commercially viable, service-oriented enterprises.
12. Governments and commercial and financial markets each play an integral role in a country's economic development. They are to be seen as complementary institutions and not as substitutes for one another. Markets are not always perfect or competitive and sometimes fail in performing their functions in the allocation and use of economic resources. Government's structured intervention is needed to offset market limitations and failures. However, such intervention must be done through a transparent and well structured regulatory framework, as experience has shown that governments employing centrally planned economies have not successfully replaced markets.
13. *Government considers it important to avoid inappropriate Government intervention and circumvention in the privatisation process and in privatised entities, as this tends to undermine the process, discouraging much-needed private sector and foreign investors' participation.*
14. The challenge, therefore, is to provide a balance between the public and private sectors so as to achieve sustainable economic growth and balance the strengths and limitations of markets and governments.
15. By the late 1970s, improving the performance of public enterprises had become an important objective in economic reform programmes. Since the early 1980s, the increasing interest of many governments in privatising public enterprises has rendered privatisation itself an important policy instrument. This instrument has been used to reduce financial and administrative burdens on governments, improve the production and distribution of goods and services, streamline government structures, stimulate the economy and reinvigorate industries owned and/or controlled by the state.

16. In Sub-Saharan Africa (“SSA”), whereas ten years ago the key question for most governments was whether they should privatise, now they are primarily concerned with how privatisation programmes can be designed and implemented most efficiently and effectively for the benefit of their countries.
17. In many sectors, Swaziland’s private sector still needs to develop to a point where it is capable of providing services in competition with or in place of Government where appropriate. However, Government recognises that in some respects the development of the PEs has stagnated largely due to lack of capital and management skills, and that it is not suitably positioned to address these problems effectively on its own. *Therefore, serious consideration will be given to where the private sector should take over functions that can be performed more efficiently through the market mechanism.* Government will then be left with the considerable task of managing those activities which cannot be done by the private sector and regulating the utilities where necessary.
18. The success of privatisation is often contingent upon a number of factors including:
 - strong political commitment to policy implementation;
 - an appropriate legal framework;
 - identifying suitable public enterprises for privatisation and applying the most appropriate privatisation methodologies in privatising such entities;
 - ensuring that private sector participants are able and willing to participate in the privatisation processes sponsored by the Government. This would include, ensuring that the prospective private sector participants will be able to provide the necessary services and capital required by Government;
 - effective regulatory authority(ies) where necessary, especially when private sector monopolies are expected to exist;
 - appropriate management and information systems, including the introduction of generally accepted accounting practices in the private sector;
 - the appreciation of the rationale behind reform by employees and clients of public enterprises and support for the implementation of such reform;
 - explanation of the potential benefits (and costs) of such reforms to the general public, including labour;
 - full transparency and accountability in all privatisation processes; and
 - avoidance of inappropriate Government interference in privatised entities.
19. As the economy changes, so too must the role of Government. Government thus recognises that the adoption of a Privatisation Policy will lead to changes in the role of Government in the economy. Effecting such change will not be an easy task. The interaction between Government and the private sector will be transformed into a partnership characterised by co-operation that emphasises 'win-win' situations. The drive towards diversified growth must be led by the private sector, which is expected to display the qualities of good corporate citizenship including the promotion of citizen empowerment.
20. The role of the public sector in the provision of marketable goods and services will progressively diminish. The new role of the public sector will increasingly tend toward facilitation of an enabling business environment and where necessary,

regulation of the operations of regulated businesses. *Where privatised entities have social obligations, the public sector will also monitor universal service obligation delivery by the private sector. Where needed Government will supplement the services of the PE.*

II. BACKGROUND

21. When Swaziland achieved its independence in 1968, Government had to establish industrial and commercial activities, as the private sector did not provide these activities satisfactorily. Government initiated industrial and commercial activities through a number of methods:
- setting up parastatals by Acts of Parliament;
 - setting up private companies in terms of The Swaziland Companies Act No 7 of 1912, as amended (“the Companies Act”);
 - an Order-in-Council;
 - setting up or engaging non-governmental organisations as agents such as Sebenta National Institute for Adult Literacy and Community Development (“SEBENTA”), an institute whose main objectives is to provide a system of adult education and to promote adult literacy programmes;
 - indirectly through Government's investment arm, the National Industrial Development Corporation of Swaziland (NIDCS), which was established in 1971; and
 - by creating departments, such as the Central Transport Administration (CTA), which perform tasks that in most developed economies would be performed predominantly by the private sector.
22. Since 1968, Government has made investments in a wide variety of activities which include hotels, tourism, repair and maintenance operations, transport, financial institutions and agriculture. Government also created development banks, public utilities, transport enterprises and agricultural marketing boards. In addition, some training/education institutions are classified as Public Enterprises. Thus, Government played a significant role in the economy and became the country's primary employer.
23. Swaziland’s private sector is characterised by large mature manufacturing industries. The Small Medium & Micro Enterprises (SMMEs) play an important role in the economy, the Government recognises the importance of growing this sector. The Small Enterprise Development Company (“SEDCO”) and the Enterprise Trust Fund are some of the enterprises created to stimulate the SMMEs sector. Also the establishment of the Swaziland Industrial Development Company (“SIDC”) was meant to stimulate the private sector economy.
24. The World Bank classifies Swaziland as a less – indebted lower-middle-income developing country. In the context of the SSA region, the country is relatively well off despite its high poverty and unemployment rates. Although the country’s GDP per capita is US\$1 250, which is well above SSA regional average of US\$500, the per capita consumption of the poorest 40% of its population is equivalent to US\$230.
25. The structure of Swaziland’s economy is typical of the SSA region, where the agricultural sector makes a relatively large contribution to output, but the Swazi manufacturing sector is larger, contributing 42%, with the agricultural sector contributing 11%.

26. Presently, Swaziland has 45 Public Enterprises of which 29 are designated category “A” public enterprise, 4 of which are dormant. The remaining 16 are designated category “B” Public Enterprises. Category “A” Public Enterprises are those enterprises which Government owns wholly or has a majority interest or which are depended on Government subventions. Category “B” Public Enterprises are those enterprises in which Government has a minority interest, which monitor other financial institutions or which are a local Government authorities.
27. Category A enterprises provide most of the national infrastructure and services which include water supplies, electricity, telecommunications, rail and tertiary education institutions.
28. Category A PEs account for 7% of formal sector employment and 22% of public sector employment. These PEs contribution to GDP is approximately 8%. They enjoyed an average profit margin of 7.2% and an aggregate return on capital of 3% in 2000. Although the financial performances of PEs have been deteriorating over the last few years, some individual PEs have recorded good performances in terms of operating profits and return on capital employed. Total debt across all Public Enterprises amount to E311.8 million, which represents 11.5% of total external debt in Swaziland.
29. 89% of the total debt owed by all PEs is accounted for by two PEs and the other 10% is accounted for by three PEs. A significant portion of the 89% of the loans is denominated in foreign currency a portion of which is guaranteed by the Government.
30. Based on the financial and non-financial analysis of the PEs contribution to the economy above, it is clear that the role of PEs in the economy seems to have been significant and relatively constant in recent years. Despite public policies adopted to create an enabling environment and to encourage faster private sector development, the need for increased private sector participation in the economy has not been eliminated.
31. Although many PEs are required to operate on sound commercial principles, precise financial targets are not set, except for those enterprises who have entered into performance contracts with Government. Most enterprises are heavily depended on Government subventions. The capital structures of PEs do not normally involve the issue of shares, although Government is regarded as the *de facto* shareholder.
32. Funding is largely sourced from Government subventions and from local and international financial institutions. Until June 2001, Public Enterprises were not subject to company income tax. With the changes in the Income Tax Order they are now subject to normal income tax on companies of 30%. Dividend payments are foreign to most PEs.

Restructuring Process to date

33. Although a privatisation policy has never been adopted, a number of commercialisations and privatisations have occurred during the past few years.

- Material privatisations are discussed below.
34. The Swaziland Dairy Board's dairy plant was partially privatised in 2000. In this process the Board's regulatory functions were segregated from its commercial operations and assumed by the Swaziland Dairy Development Board. The privatisation of the commercial arm was finalised in the fourth quarter of 2001 resulting in the shareholding structure in the privatised entity "Pharmalat Swaziland":- Pharmalat, a dairy company 60%, Tibiyo 26% and Government 14% which is held on behalf of Swazi farmers.
 35. The partial privatisation of the Royal Swazi National Airways ("RSNA") resulted in a joint venture between Airlink South African and Government of Swaziland resulting in the creation of Airlink Swaziland.
 36. Cabinet approved a phased-out approach to the restructuring of the Central Transport Administration ("CTA") in June 1999.
 37. The proposed restructuring of the Swaziland Posts and Telecommunications ("SPTC") involves the separation of postal and telecommunications operations.
 38. The Board of Swaziland Television Authority ("STVA") and the Ministry of Public Service and Information approved the proposed strategic plan for the restructuring of the enterprise in the last quarter of 2000.
 39. Parliament approved the release of the E120 million budgeted for the restructuring, which is essentially a recapitalisation measure, of the Swaziland Development and Saving Bank ("SDSB") following the approval of the bank's strategic plan by Cabinet in the first quarter of 2001.
 40. The services of a consultancy firm, were retained to make recommendations on the restructuring of the Swaziland National Trust Commission ("SNTC"). The report was expected to be submitted to SCOPE in the first quarter of 2002.
 41. The Swaziland Water Services Corporation ("SWSC") entered into a Performance Contract with the Government in April 1997 and has been operating without subvention from Government from April 2000 as agreed in the Performance Contract.
 42. The Swaziland Electricity Board ("SEB")'s Performance Contract with Government is awaiting approval by Government. A Cabinet decision was taken to commercialise and corporatise the SEB. The process is still in progress and is envisaged to result in a new corporate structure. A revision of the Electricity Act continues.
 43. Performance contracts between Public Enterprises and Government are aimed at measuring the performance of Public Enterprises, amongst other things. In addition to the normal indicators such as return on capital employed, sales and net profit indicators, they must include broader indicators such as labour productivity, capital productivity, total factor productivity and the ability to service debt and finance investment from internally generated funds. Educational institutions performance targets will be based on indicators that are appropriate to their

operations. Performance evaluation must be a critical component of PE reform to improve operational efficiency and financial performance. Without proper performance measurement, it is almost impossible to have accountability and to incentivise good performance.

44. *Performance Contracts will be entered into between Government and Public Enterprises, especially those that are receiving substantive Government subventions.* These include the University of Swaziland (“UNISWA”), the Swaziland National Trust Commission (“SNTC”), Small Enterprise Development Company (“SEDCO”), Motor Vehicle Authority (“MVA”), Swaziland Investment Promotion Authority (“SIPA”) and Sebenta National Institute (“SEBENTA”). The main objective is to encourage PEs to be run on commercial principles and to reduce or eliminate dependency on Government subventions.

III. POLICY GUIDELINES FOR PRIVATISATION

Key Role Players in the Privatisation Process

45. The privatisation process involves many players, namely the parastatals, line ministries, Public Enterprise Agency (“PEA”)/PEU, Sub-SCOPE and Cabinet. Outlined below are the roles and responsibilities of each stakeholder:

Role of Parastatals

46. The parastatals are a key component of the whole process and are responsible for:
- Assisting the PEA and line ministry in generating privatisation proposals for submission to Sub-SCOPE;
 - Assisting in the drafting of the proposals by submitting information about the enterprise; and
 - Assisting in the implementation by the PEA of Cabinet decisions.

Public Enterprises Agency

47. Swaziland does not currently have a Public Enterprise Agency. There is a PEU, which has an advisory capacity only and whose primary role is to monitor the performance of existing PEs. The role of the PEU will be expanded to allow it to develop into a PEA. This would require statutory amendment and, capacity building.

48. PEA's major functions will be:
- Identifying and recommending parastatals to be privatised in conjunction with line ministries;
 - Assisting the line ministries with the privatisation of those Public Enterprises identified for such, recommending changes to legislation where existing legislation can inhibit the privatisation process, and assisting in the preparation of the necessary changes to the legislation;
 - In consultation with the line ministries, assisting in the financial restructuring of enterprises in those cases where it is essential, in preparation of privatisation in order to ensure the optimum probability of successful implementation;
 - Preparation of a detailed work plan and timetable for the privatisation of each enterprise and seeking the necessary approvals from Cabinet through Sub-SCOPE;
 - Recruiting and managing both local and external consultants needed to assist in all the technical aspects of privatisation. This will include privatisation specialists, corporate lawyers, accountants, valuation experts, marketing specialists and corporate management experts; and
 - Preparing and implementing a public information campaign to promote benefits of privatisation and to educate and encourage the indigenous population to buy shares in privatised enterprises. It will also be responsible for marketing the Public Enterprises identified for privatisation.

- Assisting the line ministries and their parastatals in preparation of a detailed information memorandum;
- Leading all the negotiations concerning privatisation with the donor community and soliciting any assistance, be it technical or financial; and
- Implementing, with the assistance of the line ministries and their parastatals, Cabinet decisions on privatisation.

In carrying out its functions, the PEA will consult regularly with the Minister of Finance.

Role of Steering Committee

49. Upon Cabinet's approval for the privatisation of any PE, a Steering Committee will be formed to provide strategic direction for the privatisation process. The Steering Committee will vary from entity to entity, but will typically comprise, a representative of each of the MoF, the affected line ministry, the PEA, representatives from other affected ministries such as labour, trade & industry, unions and the private sector.
50. The role of the Steering Committee is to:
 - Receive reports and advice from the PEA and advisors; and
 - To give direction on policy and strategy issues.

Role of Line Ministries

51. The line ministries play a major role in the whole privatisation process and their major roles are the following:
 - Assisting Public Enterprises in conjunction with the PEA in the drafting of privatisation proposals;
 - Making presentations of the proposals to the Sub-SCOPE;
 - Addressing all outstanding issues raised by Sub-SCOPE and Cabinet;
 - Assisting the PEA with implementation of Cabinet decisions; and
 - Identifying an Officer(s) to liaise with PEA.

Sub-Cabinet Standing Committee on Public Enterprises (Sub-SCOPE)

52. Sub-SCOPE chaired by the Minister of Finance, will have two functions in the privatisation process.
 - The first is to approve restructuring policy proposals for concerned entities to be privatised which will typically include broad private sector participation objectives, in the concerned sectors. The concerned line ministries, in consultation with the PEA, will generally submit these proposals and recommendations.
 - Sub-SCOPE's second function will be to approve salient terms and conditions of transactions introducing private sector participation into PEs including the preferred bidder or bidders and the proposed bid price. These proposals will

be submitted to Sub-SCOPE by the Steering Committee, through the Minister of Finance.

Role of the Cabinet

53. Cabinet, chaired by the Prime Minister:

- Approves an overall policy framework and guidelines on privatisation of Public Enterprises;
- Approves which public sector enterprise to be privatised; and
- Approves or refers back proposals to Sub-SCOPE.

54. The responsibility of implementing Cabinet decisions on privatisation lies with the PEA and any progress reports on implementation are brought to Cabinet through the Chairman of Sub-SCOPE.

Summarised Responsibilities of Role Players:

- **Parastatals:-** provide technical assistance to PEA and line ministries on privatisation proposals.
- **PEA:** - identify PEs to be privatised, provide assistance to prepare PE for privatisation with respect to enabling regulation and financial restructuring, managing and co-ordinating the privatisation process & implementing cabinet decisions on privatisation.
- **Steering Committee:-** give direction on policy and strategy issues based on input received from the PEA and advisors.
- **Line Ministries:-** Provide assistance in drafting privatisation proposals and presenting them to Sub-SCOPE; assist with the implementation of Cabinet decisions and outstanding issues.
- **Sub-SCOPE:-** Approve restructuring policy proposals and salient terms and conditions of privatisation transactions.
- **Cabinet:-** Approves overall policy framework and guidelines and public sector enterprises to be privatised.

Characteristics of Privatisation

55. Essentially, privatisation encompasses a broad range of initiatives, measures and policies involving the transfer of varying degrees of ownership, financing of investments and operations and significant risk, from the public sector to the private sector. This is done through the following methods: an outright sale of all or some of the shares or assets of the public enterprise, concession contracts, lease contracts, management contracts and service contracts. Privatisation does not, however, absolve Government from its responsibilities of providing safety and welfare for its citizens.

56. Experts agree that privatisation is both a political process as well as a commercial and economic process. Privatisation fundamentally diminishes the Governments control of the economy and thus distributing power within a society. Hence, public support is an important consideration in any privatisation programme and

this should be reflected in the choices made in designing and implementing transactions.

Methods of Privatisation

57. Depending on Government's privatisation policy objectives and the nature and operational status of public enterprises to be privatised, there are various strategies that can be adopted. In practice, however, the choice of strategy is determined by the objectives and the economic and financial environment under which privatisation takes place. However it is important to note that each strategy or technique depends on the needs of *the particular enterprise* in terms of new capital and technology, its debt situation, its size, strategic importance, the competition within the sector in which it is operating as well as management know-how and corporate governance. No single privatisation strategy is suitable for all the parastatals and in some cases, it is necessary to use more than one strategy.
58. The choice of privatisation modalities depends primarily upon the objectives to be achieved. The more objectives there are, the more complex the entire privatisation process is likely to be. Thus, flexibility must be built into the system, especially at the implementation stage when multiple objectives exist. This calls for transparent procedures and accountability of decision-makers.
59. There are many alternative forms or methods of privatisation. These range from service contracts, management contracts, franchises, leases, concessions, and stock market floatation to outright sales. The forms are described in further detail in Appendix A hereto. As a prelude to privatisation, corporatisation and commercialisation often occur.

- *Government will consider the full range of privatisation methods and employ the most appropriate method for the privatisation of individual PEs.*
- *The choice of a privatisation strategy or method will be determined by Government's objectives, the economic and financial environment under which privatisation takes place and the needs of the particular enterprise.*

Policy Objectives

60. While the reasons for privatisation differs from one country to another, the objectives of privatisation have often been very similar. These objectives will vary from government to government and from enterprise to enterprise and include:
 - To reduce the financial burden on government:- As economies develop and the public expectations of service supply increases, the demand on the public purse to expand service networks and investment in infrastructure becomes increasingly unsustainable;
 - To improve public finances:- The raising of revenue through sale receipts and more importantly the cash generated from post privatisation taxes of now economically productive assets, can be used to service public sector debt

- which is a drain on the public resources;
- To introduce competition and market discipline:- Public entities often enjoy legal and monopolistic service provision status in the absence of competition and/or effective regulation. In such cases there has been no incentive to provide quality and value for money service;
 - To fund growth:- In both developed and developing countries, upgrading and expanding important infrastructure has greatly benefited from the privatisation process. Innovative mechanisms have been used to encourage private sector investors to provide universal services in under resourced regions and integrate national grid systems;
 - To encourage wider share ownership:- As opposed to concentrating economic wealth in the hands of a few private sector investors, privatisation has led to a fundamental reassessment of the public's role in ownership of national industries. This serves as a platform to intensify citizen empowerment through direct participation in the ownership of national assets and widening share ownership base;
 - To fuel economic growth:- Liberalising the economy, when done properly, creates an investor friendly environment and leads to rapid development as it stimulates entrepreneurship and investments;
 - To stimulate the development of local financial and capital markets:- Floating privatised entities has the effect of boosting liquidity, widening shareholder base and deepening the capital markets;
 - To improve delivery of essential services:- One of the greatest benefits of democratic government is that the Government is responsive to public demand and concerns;
 - To make the country's utilities and industries more efficient and competitive; and
61. Government objectives behind a privatisation programme will determine what forms of privatisation are selected for any given industry or programme.
62. But these objectives are not always compatible. For example, maximising proceeds will not be consistent with ensuring wider share ownership because of pricing issues. Encouraging competition by splitting up an industry before a sale may be in the nation's long term interests but again it will not maximise proceeds, investors pay premiums for control factors. Attempts to accomplish numerous objectives simultaneously without properly prioritising such objectives can result in a failure to achieve any of them.
63. Government will balance these objectives while implementing privatisations, promoting some above others, depending on Government's view of the strategic importance of the various objectives. With respect to each privatisation, Government will decide what the objectives for that enterprise and sector are.

- *Government objectives include: improving economic efficiency, reducing public sector spending, raising investment capital, reducing the financial burden on government, improving public finances, introducing competition and market discipline, funding growth, encouraging wider share ownership, promoting sustainable economic growth, stimulate the financial and capital markets, improving service delivery of essential services, improving efficiency and competitiveness of the Swaziland's utilities and industries and conduct the privatisation process for the benefit of all. These objectives will vary in degrees from enterprise to enterprise.*
- *When privatisation goals conflict, they will be prioritised based on policy objectives.*

Social Obligations

64. Privatised companies will want and expect to behave like any other business in the private sector, i.e. maximise returns. However, Government may require many of them to bring the social responsibilities they held as parastatals into their new forms. The community will still want a telephone network to provide an emergency service, a transport operator to cover distant routes, or broadcasting agency to reach remote areas.
65. In such cases Government will act as a special kind of customer, making additional payments or subsidies to support socially important services. Most privatised public transport, for example, works on this basis, receiving subsidies from Government.
66. Alternatively, where appropriate government may build in a requirement to support these services or provide these uneconomic services as part of the privatisation agreement and impose, either through the law, courts or more usually, through establishing an independent regulator, these obligations on the operator.
67. In making these decisions Government is trading off economic benefits in terms of revenue for social benefits. While some forms of social obligation have been imposed on and indeed are expected by privatised utilities, too onerous burdens will depress the incentives to efficiency and competitiveness. Either way, this mechanism creates transparency in the relationship between what the public demand by way of subsidised services and the true cost thereof.

- *Public enterprises, both prior to and following privatisation, are to operate commercially, including earning an adequate return on investment.*
- *Government may, in some instances, direct privatised enterprises to provide products or services pursuant to social obligations on uneconomic basis. In such cases, government will:*
 - *Compensate such parastatals accordingly, through subsidies or otherwise,*
 - *Or government will impose Universal Service Obligations through a privatisation agreement.*

Privatisation Process

68. Privatisation process will be consistent with the following principles:
- The process will be transparent and equitable. Competitive bidding should be an integral part of the process where practically possible to ensure transparency and speed;
 - Broad ranging consultation will be promoted in all privatisation exercises;
 - Where possible consideration will be given to affording preferential opportunities to Swazi citizens in the privatisation of small-scale sales or lease of assets and contracting out. This will also be conducted in a way that will present opportunities for the development of citizen-owned businesses and hence citizen empowerment;
 - A thorough analysis will be undertaken in carrying out any privatisation as described in paragraph 71 below;
 - An appropriate regulatory and supervisory authority will in most instances be created where privatisation is expected to result in privately owned monopolies;
 - When privatisation occurs, measures will be taken to safeguard employee interests as far as possible;
 - Government, through the PEA, will drive the privatisation process. However, for detailed implementation, it may hire in the experts including privatisation advisors, with acceptable levels of experience and expertise;
 - When privatisation takes place, environment safety should be taken into consideration; and
 - An effort will be made to minimize possible negative impact on society due to privatisation.
 - The privatisation process will be conducted for the benefit of all, not for the privileged few.
69. To ensure that the privatisation effort is appropriately tailored, an action plan for each privatisation will be formulated. The plan will take into account the following factors; the Government policy objectives, the desirability and the feasibility of privatising the public entity or activity.
70. The desirability criteria will be based on clear understanding of the relative advantages (and disadvantages) the private sector may have over Government in providing the particular good or service considered. The feasibility criteria will be determined by the ease of privatisation (within the guidelines outlined under the policy) and the attractiveness of the activity to the private sector.

71. A comprehensive privatisation process will include the following steps:

- a market and sector analysis;
- a due diligence review of the candidate enterprise;
- a valuation of the candidate enterprise;
- an analytical and comprehensive evaluation of privatisation options and careful assessment of the benefits and detriments of each option;
- an initial investor search and assessment of investor interest;
- development of a privatisation strategy;
- review of the appropriateness of the legal and regulatory framework to implement the privatisation strategy;
- development of a marketing plan;
- pre-qualification of interest bidders;
- drafting of an Information Memorandum;
- tender process;
- bid evaluation;
- shortlisting;
- negotiations; and
- financial close.

- *The privatisation process will be transparent, consultative and take careful cognisance of the needs of labour as well as environmental issues.*
- *Privatisations will be undertaken pursuant to thorough analysis and expertise will be retained to assist as required.*

Empowerment of Swazi Nationals

72. Concrete strategies are required to ensure citizen empowerment, and to maximise the participation of Swazi citizens and Swazi owned companies in the economy. Special attention will be given to measures in the privatisation process that will assist the economic empowerment of Swazis. Amongst other things:

- the promotion of shareholding by citizens in share offerings of public enterprises;
- use of pension and other funds such as unit trusts, to buy shares for the benefit of members;
- special access to shares by management and employees of privatised entities, where appropriate;
- special advice and assistance in organising employee and management buy-outs; and
- share ownership schemes which may include instalment sales and discounts.

73. Economic empowerment should not be limited to facilitating access to financial resources and ownership of assets. Swazis also need to be educated on how to empower themselves. Training and development of managerial skills are essential and Non Government Organisations (“NGO’s”) and enterprises can play an important role in this regard.

74. The search for excellence and entrepreneurial initiatives will be promoted and

encouraged. While it is a Government objective to promote empowerment, it cannot impose empowerment from above. Thus, while every attempt will be made to afford equal opportunities to all citizens, equal outcomes cannot be guaranteed.

75. To encourage participation in appropriately large privatised entities through widespread ownership and to promote shareholding among a larger number of citizens, the issue price and lot sizes of share purchases required to participate in initial public offers will be structured to attract as many citizen buyers as feasible. This will enable the public to become shareholders with relatively small amounts of money.
76. Government may establish or set up an "Investment Trust Fund" to purchase a certain percentage of shares of privatised enterprises on behalf of citizens. These shares will later be sold to citizens in small tranches over a given period at the current trading price in the stock market, when the market conditions are right. The sale of the shares will be restricted to Swazi individuals and financial institutions.
77. Accessing capital is challenging and is a problem, particularly for small local investors. Government will, where appropriate extend a Small, Medium and Micro Enterprises (SMME) "credit scheme" to investors, in order to facilitate citizen ownership of privatised enterprises.
78. Management/employee buy-outs are an important means of transferring ownership to management and employees of Public Enterprises. These privatisation methods constitute a strong incentive to productivity, and in appropriate situations, will be given preference over other forms of privatisation.
79. Where practicable and prudent, Government will encourage Swazi investors to acquire majority control of privatised entities. Concessions such as Build-Operate-Transfer ("BOT") or Build-Own-Operate-Transfer ("BOOT") will also be considered in cases where international expertise and technology are needed but restriction on foreign ownership apply.
80. There is little experience on the part of most managers and employees in the public sector regarding the procedures and processes involved in management/employee buy-outs. Therefore, in the process of readying enterprises for privatisation, Government will ensure that appropriate technical and commercial assistance and training arrangements are set up to prepare interested managers and employees for implementing buy-out transactions, and for negotiating contracting out arrangements where possible and appropriate.
81. Some services such as cleaning, catering, gardening, maintenance, currently provided in the public sector may be outsourced, where appropriate, to provide opportunities to start small business ventures, perhaps by the same people who are currently state employees. Where possible, Government may offer such former employees guaranteed contracts on the basis of which they could raise capital and acquire the necessary skills to operate as a business. After the period for which the contracts are guaranteed, the business would compete for Government contracts with other service providers in the market.

82. While Government will endeavour to assist citizens in acquiring shares through citizen economic empowerment schemes as outlined herein and through other existing schemes, citizen participation in the ownership of shares in any privatised entity should also involve the use of owners' finances. Private sector companies would be encouraged to play a role in empowering Swazis, especially through training and through contracting out some of their services. Citizen empowerment should, therefore, not be confined to Government institutions only.

- *Privatisation will be used as a vehicle to empower Swazis as far as possible.*
- *Government will establish or promote the establishment of the institutional capacity to accomplish this objective.*

Foreign Participation

83. Foreign participation may be necessary in the privatisation of certain state owned enterprises, as they are likely to have the financial resources, management and technical expertise necessary for the successful privatisation of such enterprises. Experience elsewhere shows that the co-operation and participation of foreign partners and investors has been sought to secure technological expertise, management, market access and to enhance the flow of foreign investment into the country.

84. There are additional specific advantages to including foreign investors in the process over and above the innate general advantages of privatisation itself which international experience supports. These advantages include:

- Proceeds from any sale or contracting out are likely to be higher due to the upward pressure of fully competitive bidding, which involves all interested parties foreign and domestic;
- International capital markets and/or strategic investors may also be able to absorb greater investment than the domestic market can support; and
- Subsequent tax revenues from the privatised PEs are likely to be higher due to the greater economic efficiency engendered by technology, knowledge and managerial skills transfer offered by international investor(s).

85. Privatisation involves a number of interest groups including Government (and by inference the tax payer), consumers, the general public and the employees of the PEs. Each of these interest groups can also benefit specifically from foreign participation in the privatisation process, as opposed to a privatisation process which limits buyers to the domestic arena.

86. The Government and taxpayer benefit whether the nature of the foreign investment comes in the form of equity or strategic participation. Technology and knowledge transferred to local staff are also more likely to occur when foreign investors are involved.

87. Foreign participants provide access to international product ranges. These are often accompanied by competitive pricing due to the economies of scale inherent

in trans-national businesses. Innovation is also quicker to impact local markets, where international links exist.

88. The general public benefits, both as consumer and taxpayer, because international investor interest increases the likelihood of transparency in the privatisation process and often leads to a more equitable distribution of benefits to all stakeholders than would occur when the process is confined to selected, pre-determined bidders. While the international investor is not entirely immune from this abuse, but the more open the bidding process the more open the result.
89. Often, Management and staff often benefit. The involvement of direct foreign investment often brings with it pressure to move towards international standards on pay and conditions. The impact of this trend is to improve both the day-to-day terms and conditions of employees in privatised companies as well as to open up opportunities for access to new training and career development models not always accessible in the domestic market. For the highest performers, opportunities in the regional and global business environment may also develop.
90. Where a controlling share has been sold providing for legal safeguard mechanisms by Government such as ownership of a "Golden Share" or "special share" that confers limited but specific powers in privatised companies will allay perceived risk of foreign control of privatised companies.
91. The Golden Share allows Government to retain some control over recently privatised entities which control is disproportionate to its equity ownership rights. A Golden Share would entitle Government to a veto power in certain circumstances such as those relating to natural emergency or war. These include national security, take-over protection and voluntary winding up.
92. The Golden Share is to be used in exceptional instances only and not as a mechanism to control the behaviour, tariffs or service provision of any privatised enterprise. The latter functions are the responsibility of Regulators.
93. Out-right exclusion of foreign investors or across-the-board fixed restriction on foreign participation in privatised enterprises will be avoided and any restrictions will be considered on a case-by-case basis. Allowing foreign participation in privatisation activities is in line with Government's policy of promoting Swaziland as an investor-friendly location for international companies.
94. Limiting foreign participation to very low levels would deter foreign investors. Appropriate rules for foreign participation in privatisation will be developed taking into consideration the benefits and costs of such participation.

- *While sensitivity relating to foreign participation in national enterprises are noted, foreign participation will generally be encouraged and limits on foreign shareholdings will be assessed on a case by case basis.*
- *In instances where a “Golden Share” is issued to Government, it will not be used to restrict the commercial operations of the privatised entity.*

Safeguards and Safety Nets

95. Privatisation is often opposed by employees and trade union leaders because of fears that it might result in reduced benefits and contribute to greater unemployment in the country. Yet, any transitory loss of employment should be attributed to the wrong practices of the past and, therefore, should not be justification for not introducing reform measures. Making an enterprise more efficient by reducing its work force means that the enterprise has been over-staffed prior to such reform. Excess labour cannot be a result of privatisation, rather privatisation corrects it.
96. Apart from short-term effects, privatisation can improve the situation of employees in the long run as it contributes to the improvement of the economy's growth prospects, generating additional job opportunities in the same or other related sectors. In addition, employees will benefit from the creation of a more sustainable entity into the future, where employees are both more secure and may also gain from the opportunities created outside the privatised entity through outsourced non-core services.
97. In order to allay the concerns of public sector employees and labour unions, Government will take into consideration, inter alia, the following:
 - Natural attrition will be followed as a preference over retrenchments as far as possible;
 - In the case of privatisation of a Government department, if redeployment elsewhere in the public service is not possible, and a new employment package in the privatised entity is not available, Government will endeavour to offer such employees retrenchment packages;
 - In the event of the occurrence of retrenchment, affected employees will be awarded negotiated redundancy packages within the framework of established laws and policies;
 - A programme of training and skills re-orientation will be launched to facilitate the absorption of employees in other trades;
 - Employees rendered surplus will be given priority in schemes designed to promote self-employment;
 - When additional/new job opportunities arise, previously retrenched employees may be given priority over other potential employees where appropriate; and
 - A negotiated proportion of shares of privatised entities will be earmarked for offering to the employees where feasible and appropriate. Shares purchased by employees will be sold to them on appropriate payment terms.

- *Negative impact on labour will be avoided and where downsizing is necessary, natural attrition will be favoured.*
- *When retrenchments are inevitable, affected employees will be awarded a fair redundancy package and/or skilled for re-employment or self-employment.*

Corporate Governance

98. Essentially, corporate governance is the means of ensuring due and adequate control over the strategy and direction of an organisation and the stewardship, use and disposition of its assets, both financial and non-financial, in achieving its key objective.
99. The need for proper corporate governance is heightened by shareholders and other stakeholders expectation of sustainable value creation. There is hence the need for business leaders to have the capability to align the relationship between growth, risk and return and to appropriately respond to changes given the accelerating rate at which business dynamics change.
100. Good corporate governance is underpinned by primary principles which every Enterprise, particularly at senior management level, should be aware of and committed to. These include: corporate discipline, transparency, independence, accountability, responsibility, fairness and social responsibility.
101. Merit and professional ability will be considered in making appointments to Public Enterprises' Boards. This will apply to all board members, whether they are recruited from the public or the private sector, in order to ensure that they have the necessary background as to the proper role of Public Enterprise Boards that would enable them to contribute fully to the direction of the affairs of the enterprise.
102. Board members including those who might be civil servants will be expected to make decisions solely on the basis of what they judge to be in the best interest of the enterprise.
103. The role of the board is to set, provide or ensure the following:
 - company's purpose and values
 - strategy
 - leadership
 - protection of assets and reputation
 - policies
 - identification of and communication with stakeholdersand to set, provide or ensure:
 - compliance with statutes
 - competitive technology and systems
 - risk management
 - performance assessment
 - succession planning
 - record basis for going concern decisions

104. The structure of the Board should encompass the following principles:

- unitary board is more favourable
- balance of executive and non executive directors
- preferable majority of non-executive directors
- sufficient independent non-executive directors
- appropriate gender and ethnic mix

105. Prior to privatisation, the PEA must screen nominations for Board membership of PEs before being forwarded to the Minister for appointment. The Board, not the Minister, will elect the Chairman of the Board. The Chairman should have relevant commercial experience.

106. Board members should be remunerated appropriately for the services they provide to the Enterprise.

Prior to and after privatisation where, Government retains a shareholding, corporate governance best practices will apply in all instances in PEs.

Advisers

107. Privatising public enterprises is a long and complicated process. Therefore governments are best served employing people on their side who understand what it all means and takes. Due to the constraints, both in terms of resources and relevant experience, it is now accepted that successful privatisations' require the assistance of experienced advisers. Advisers often bring a track record of success in similar transactions elsewhere, an understanding of industry best practice, an understanding of the requirements of the private sector and innovation in terms of industry structures, regulation and sales techniques.

108. Specialist privatisation, financial and transaction advisers, strategy consultants, investment banks, lawyers, accountants and other niche consultancies all provide these services and while the best are rarely inexpensive, the expertise they bring to bear can, when properly applied, save taxpayers money and governments time in developing successful programmes within manageable timeframes. To that end, Government will choose advisers who have a successful track record in implementing similar privatisations in similar environments.

Government will retain services of appropriately experienced advisers who have a successful track record in implementing privatisations in similar environments.

Communication Strategy

109. The privatisation of a country's national companies is inevitably a very high profile development and generates considerable interest in the nation and the media. It is, therefore, important to manage expectations and maintain positive media coverage. The reform and privatisation process will proceed smoothly if there is buy in of relevant stakeholders and a broad consensus of public opinion in

support. In order to create the most favourable conditions for this consensus, it is of utmost importance to communicate the benefits of privatisation and address any concerns.

110. Consultations with relevant stakeholders by the PEU demonstrated the need for more public education on the purposes and methodologies of privatisation and commercialisation, particularly concerning the potential benefits to consumers.
111. It is essential that a public awareness programme is established which achieves consistency in its communication with all target audiences and be fully co-ordinated across all the bodies and stakeholder groups involved. To achieve the desired level of credibility and transparency, there needs to be consistent and co-ordinated messages that address the concerns of target groups. Potential messages could include:
 - Privatisation is essential to ensure a better quality of service to the entire public as it will extend the service to new consumers and improve service to existing consumers;
 - Reform and privatisation will address the interest of the country and the economy as a whole;
 - Commercial customers will benefit from having a more responsive supplier;
 - The process is being conducted to the highest international standards and is completely fair in its implementation; and
 - The workforce as a whole may experience better working conditions and increased investment.
112. When engaging in privatisation activity, Government will be dealing with several groups of stakeholders. Among these are:
 - Ministers, Principal Secretaries and politicians;
 - the members of the general public who are customers of those corporations and also the taxpayers;
 - the workers who are employed in these organisations;
 - the chief executives and the managers of parastatals and other statutory public agencies;
 - potential investors who might buy shares in those companies;
 - the financial and the business community which takes interest in their activities and performance; and
 - the media and commentators who observe this process and comment on the results and declare it to be a success or a failure.
113. The privatisation programme will attempt to maximise the support of each of those different groups mentioned in paragraph 112 above.
114. Privatisation will only be successful if Government has the overall support of the public at large and respects and informs the public. The public needs to be regularly informed about each activity and how it will affect them and what are the social costs and benefits of Government action. Therefore, a solid communications programme will be developed not only to enhance the transparency of the privatisation process but also to dispel many of the

misconceptions that the public may have about it. It will also attempt to increase the public interest in investment opportunities and promote a culture that recognises private investment financed out of savings as a measure of responsible citizenship.

115. To support privatisation efforts, several different means of communication will be used to publicise privatisation. These should include:

- Workshops and seminars on privatisation;
- Brochures and articles in newspapers and magazines;
- Television and radio panel discussions;
- Television and radio commercials and/or infomercials;
- Public speeches; and
- Special activities for rural areas.

A comprehensive communication programme will be established to:

- *achieve consistency in communicating with all stakeholders; and*
- *maximise the support of each of the different concerned stakeholder groups involved.*

IV. PREPARING FOR PRIVATISATION

Financial Restructuring of Parastatals

116. In preparation for privatisation, the structure of Public Enterprises and the method of their management will need to change in the following ways, where appropriate:
- Public enterprises will be corporatised and their financial structure capitalised and made subject to the provisions of the Companies Act and Generally Accepted Accounting Principles (“GAAP”);
 - The ownership structure will be streamlined with the requirement of the Companies Act, with shares being issued to Government. The rights and duties of the company and its directors will be embodied in the articles of association of the said ‘companies’. Voting rights at all general meetings will be exercised by the concerned Ministers or their authorised representatives;
 - Corporate governance guidelines contained in this policy document must be adhered to in all aspects pertaining to the running of PEs, this will be monitored by the PEU in terms of the Public Enterprises Control and Monitoring Act of 1989;
 - The Board of the PEs will nominate and recommend the Chairman of the Board and Chief Executive Officer (“CEO”) to the concerned Minister, who will confirm the appointment. The CEO and senior management will be employed on a contract basis and will be accountable only to the Board and the Board, in turn, will be accountable to the concerned Minister. The terms of the CEO and senior management’s performance contract will be agreed upon with the Board and will give them full autonomy. Should the Board choose to include CEO’s, such CEO’s will be an *ex-officio* member of the board with no voting powers;
 - Performance targets will be set for all Category “A” PEs, either in terms of a Performance Contract or other mechanisms, the targets will be monitored by the PEU;
 - Management will have complete autonomy to set wage and salary structures with incentive packages for their staff, that are appropriate with their specific industry’s norm, subject to Board approval; and
 - Where corporatisation results in a natural monopoly, a regulatory authority will regulate the operations of the enterprise as far as licensing, tariffs, prices and other relevant issues are concerned.
117. Such financial restructuring will often involve a reorganisation of the assets and liabilities on the enterprise's balance sheet in a manner that will be consistent with credible cash flow projections. Cash flow projections will need to demonstrate a return on new capital invested and commensurate with what the investor perceives to be their risk. The higher the perceived risk, the higher the projected rate of return will need to be to induce the new investment. If the projected rate of return is not high enough, it will be difficult to find an investor who will come forward to purchase the enterprise and the privatisation may not succeed.

118. Financial restructuring may also include other features such as the injection of new capital, the sale of some assets, the revaluation of some assets and the writing-down or writing-off of others, and the consolidation or conversion of short-term debt into medium or long-term debt or conversion of debt into quasi-equity or near-equity.
119. Where appropriate, a reduction of debt will help an enterprise avoid the prospect of insolvency, which occurs when the total debt of a company exceeds the total value of its assets. It will also ease an enterprise's cash flow position and improve the prospect of making profits through a lessening of the interest payments that need to be made. Thus, capital restructuring may often involve exchanging at least some of the company's debt for equity.
120. Financial restructuring is normally used to improve an entities prospects for success. This may be necessary for preparing some parastatals for privatisation in order to make them more attractive to prospective buyers. The alternative to financial restructuring is to adjust the sales price to the level necessary to attract private investors. It is sometimes preferable for Governments to sell at a discount and leave it to the new shareholders to restructure the entity.
121. In every case, the objective is the same - to strengthen an enterprise's balance sheet and to improve its prospective profitability. But in nearly every case, it is also true that a financial restructuring by itself will not be enough. Policy reform and a strengthening of management are also likely to be needed.
122. Before privatisation of any PE takes place, Government will consider whether or not financial restructuring is necessary and when it should be done, if it is considered appropriate. The need for financial restructuring and other reforms will, therefore, be decided upon a case-by-case basis.

- *In preparation for privatisation, the structure of public enterprises will be reviewed.*
- *Financial restructuring will be used to improve entities prospects for success, where considered appropriate. In enterprises where it is considered inappropriate, Government will sell the enterprise at appropriate terms and conditions to attract private sector investors.*

Legal and Regulatory Changes

123. Any form of privatisation is unlikely to succeed if the legislative, regulatory and policy environments obstruct the application of commercial principles. Privatisation and corporatisation require complementary measures to remove bureaucratic restrictions that prevent all firms, both private and public, from operating efficiently and profitably.

The Legislative Framework

124. Where appropriate laws and regulations will be enacted and may require amendment through Parliament in order to enable the privatisation process. While legal changes and restructuring measures represent a part of preparing enterprises for privatisation, they may also be needed in the case of enterprises that remain in the public sector in order to encourage current best practise and commercialisation. The legal issues that may arise will depend on the structure of corporatisation and privatisation programme.
125. The current legal framework as well as commercial and business laws will be reviewed with a view to identifying any weaknesses in their enabling and regulatory functions so that the appropriate remedial action can be taken in order to promote the privatisation and public enterprise reform process. For example, it may be appropriate to repeal the legislation which established the parastatals historically and register the parastatals under the Companies Act.
126. The legal steps required to prepare an enterprise for privatisation will depend upon the current legal form of the enterprise in question. If a public enterprise is being run as a department of Government or other integral unit of the Government, it will be "corporatised". If the public enterprise is a statutory corporation it may need to be registered under the Companies Act. If the enterprise is already corporatised, legislative or other authorisation will be needed to enable the partial or total transfer of its ownership to the private sector.
127. Government believes that an over-arching privatisation law is not required. A review of the founding statutes of parastatals will be done on a case-by-case basis to determine whether such statutes need to be amended to enable further commercialisation and/or readying parastatals for privatisation.
128. There is a difference between "ownership" and "control". Government may, for instance, maintain a shareholding in a PE as a measure of ownership but this stake should not enable them to control in the sense of a regulatory body. Government may sell its entire shareholding to the private sector thereby giving up all its ownership rights in an enterprise but still be have indirect control over the service provision and tariff levels, amongst other things, of that enterprise through proper regulation by a regulatory body which has been instituted by Government.
129. Essentially regulation is a transitional mechanism until full competition can be introduced. However, in the case of "natural monopolies" or in the more complex industries this period could be many years or even decades.

In order to create a favourable environment for privatisation, the current legal framework as well as the commercial and business laws will be reviewed to ensure an attractive investment environment.

Regulation

130. An independent regulator will be established in industries that have “natural monopolies” or otherwise require regulation. The role of the regulator will be to protect consumers rights and enforcing regulation through:
- licensing the activities of participants in sector;
 - determining initial pricing and price amendment procedures;
 - setting of technical standards, safety standards and customer service standards; and
 - maintaining sustainability.
131. Key to a good regulatory regime is a strong and independent regulator, free from political pressures and governed by rules that will ensure accountability. A decision which must be taken early is where, within the institutional framework, the Regulator is to be situated and the breadth of the Regulator’s mandate. In order to ensure that the Regulator functions optimally, the Regulator must be independent, autonomous and accountable.
132. An initial issue to be decided is the proposed positioning of the Regulator. With respect to the institutional location of the Regulator, international experience indicates that there are a number of options available. The Regulator can be positioned within Government or outside of Government. Swaziland will follow best international practice and encourage the establishment of Independent Regulators which fall outside the jurisdiction of any particular Ministry or Government department.
133. The next issue to decide would be the breadth of the Regulators. The Regulator could either serve as:
- An industry regulator, who regulates a specific industry exclusively, for example, oil or gas or electricity;
 - A sector wide regulator, who regulates related industries, for example, energy (which regulates oil, gas and electricity); or
 - A multi-sector regulator, who regulates a number of related sectors, for example, the infrastructure sectors such as energy and communications.

Given Swaziland’s relatively small population and, therefore resource pool, the specialist nature of regulatory skills and the aspiration to encourage the regulatory authority to contain significant representation of Swazi Nationals, multi-sectoral regulatory authorities will be encouraged to the extent possible. However, this will be re-examined on a sector by sector basis as privatisation initiatives are undertaken.

Independence

134. Where regulation has not been introduced, significant litigation and significant confusion has often arisen. The independence of the Regulator is crucial as he is charged with safeguarding both public and investor interest. Choosing the right candidate(s) and even the method of choice can present significant challenges in themselves.

135. The independence of a Regulator is central to maintaining its credibility. The Regulator should operate independently from political pressures as well as from the regulated enterprises, private or public. The following factors which are aimed at promoting the independence of the Regulator, will be adopted/implemented:

- establishing the regulatory authority by legislation rather than executive decree;
- appointing on the basis of professional qualification rather than political affiliation;
- providing formal protection to the Regulators from arbitrary removal from office during term; and
- involving both executive and legislative branches of Government in the appointment process in order to maintain a system of checks and balances.

Autonomy

136. It is important for a regulatory authority to maintain its autonomy both in terms of its financial and staffing requirements. In terms of financial autonomy, it is best if funding is not subject to a budget process but rather is sourced from levies imposed upon the regulated entities. With respect to staffing autonomy, the regulatory authority should be enabled to recruit and staff its ranks, taking into account the need for scarce specialised skills. This may require the regulatory authority to be exempted from civil service salary and recruitment rules.

Accountability

137. It is also important not to give the regulator too much power. Legitimate oversight regarding monopoly abuse and anti-competitive actions is appropriate. If the regulator is allowed to influence investment and business priorities then that is counter productive because it merely transfers the inefficiencies of the state sector policy making machine from state-owned PEs to state-controlled (through regulation) PEs. Getting the balance right is key to success.

138. Ensuring accountability requires the regulatory authority to maintain transparency in decision making processes. Furthermore, the authority should have in place simple procedural rules on issues such as deadlines for decisions, justifications for decisions, opportunity for stakeholder comments and removal of Regulators for misconduct. Another practice that promotes accountability is having a regulatory body that is composed of, for example, 3 to 5 members, rather than a single regulator. As a matter of policy, Swaziland will have regulatory boards with a number of board members rather than single person regulators.

Competition

139. Competition is fundamental to promote efficient markets. Therefore, the promotion of competition will be given a high priority on the policy agenda since competition provides incentives for wealth creation and greater opportunities for efficiency gains.

140. Public policy issues involving anti-competitive practices must be considered in relation to the privatisation process. This is because once a public enterprise has been privatised, its subsequent behaviour as well as the behaviour of other private sector business units in relation to mergers and acquisitions needs to be within the regulatory framework addressing critical issues in this area. Measures and institutions to regulate anti-competitive behaviour of firms will be put in place. The development of an effective system of regulation for the post-privatisation environment is one of the more complex tasks associated with privatisation and corporatisation. This is especially important in situations where a public utility monopoly is transferred to the private sector as a private monopoly.

- *Government will establish independent regulatory authorities which will be characterised by their independence, autonomy and accountability.*
- *Swaziland will favour multi-sectoral regulation and will establish multi-sector regulatory authorities as appropriate.*
- *Regulatory authorities will be responsible for economic regulation as well as regulation of competition.*

V. INSTITUTIONAL ARRANGEMENTS AND IMPLEMENTATION

141. To manage the privatisation process efficiently, Government must develop the necessary procedures to carry out the reform process in an effective manner. This will entail redefinition of Government's role in economic activities.
142. Government will continue to have responsibility through the establishment of an independent regulatory regime, that will enforce regulations, protect social welfare and ensure that competition promotes the advantages of market discipline, without restricting market forces with unnecessary controls.

Enhancing Institutional Capacity

143. Reforming public enterprises requires constant and effective performance monitoring. Privatisation also involves a lot of contractual arrangements and monitoring mechanisms that require strong institutional capacity. Government will, therefore, continue to strengthen the judicial system, in particular, to enable the courts to speed up the settlement of commercial and industrial disputes. It will also continue to strengthen its own capacity in relation to responsibilities towards parastatals and other public entities.

Implementation Strategy

144. Managing privatisation is a complex task. The implementation of a Privatisation Policy requires reporting structures which ensure speed, transparency and consistency. This managerial set-up or machinery will assist implementing institutions and participant organisations in developing the capacities to carry out changes effectively. This will augment and strengthen capacity within Government in relation to its oversight of parastatals and other public entities.
145. In formulating a privatisation strategy, a number of issues will typically need to be considered. These will include:
 - whether the entity is an appropriate candidate for privatisation;
 - whether ownership should be transferred to the private sector;
 - if partial ownership is transferred to the private sector the amount of shares or specific assets to transfer must be identified;
 - if over-staffing, pension transfers or other related issues are an issue, the best method of addressing these must be identified and implemented; and
 - if the enterprise is debt laden, the best method of dealing with this must be considered.
146. The PEU will be reformed and developed into the PEA with the mandate to spearhead, advise and manage the privatisation programme in a transparent manner. The PEA will be a single semi-autonomous institution that would be responsible for managing and implementing the privatisation of Category A Public Enterprises, as well as other enterprises in which Government has a significant interest or shareholding.

147. The PEA will report directly on a regular basis to the Minister of Finance on the progress of the privatisation and commercialisation activities as well as on the performance of parastatals and privatised entities. The PEA will be expected to produce an Annual Report, on the state of privatisation in Swaziland, that will be tabled in Parliament by the Minister.
148. In addition the PEA will continue to carry out the functions currently assumed by the PEU. These include, amongst others, monitoring the financial and operational performance of Category A Public Enterprises and submitting quarterly reports on such performance.
149. A detailed privatisation and commercialisation programme will need to be developed. This would entail ensuring an effective implementation capacity in the PEA as well as drawing on professional advice and analyses. Detailed studies of Public Enterprises and Government departments may be needed so that the opportunities for appropriate reform actions are carefully identified and evaluated. Some of these studies may have already been initiated or even completed by the relevant line ministry or parastatal. However, a certain level of co-ordination is necessary to avoid duplication of efforts and wastage of scarce resources. Therefore, in performing its functions, the PEA will have to work closely with Ministries, Government departments and parastatals.

Financing Privatisation

150. Several internal and external factors affect the method of privatisation and its financing requirement:
- the overall quality and size of the business;
 - the company's financial gearing;
 - the availability and organisation of capital markets and the banking system;
 - Governments willingness to permit foreign private capital shareholders; and
 - the availability of private domestic capital and the risk taking behaviour of local entrepreneurs.
151. While the problem of how to finance the purchase of enterprises or assets of enterprises previously owned by the state is primarily a problem for the purchasers themselves, Government will review prospective bidders financing plans as a step in assessing bidders for the state enterprises negotiations.
152. Government may, where appropriate, reserve a certain proportion of shares of the enterprise to be privatised for allocation to existing employees, on deferred payment terms. In some cases it may put as a proviso for the sale of shares to private investors, that an employee share scheme be put in place. This will ensure citizen ownership, and will provide those who remain in the employment of the newly privatised enterprise, an additional incentive to work towards its success.
153. Existing staff and/or management may be given the opportunity to buy out smaller companies or units within a PE or government department where appropriate.

Monitoring, Evaluation and Follow-up

154. An essential task that is associated with privatisation and/or corporatisation is the development of an effective system of regulation and continuous evaluation of the post-reform and privatisation environment. This is especially important where a public monopoly is transferred to the private sector as a private monopoly.
155. While regulation implies intervention to influence the social and economic decisions of an enterprise and evaluation focuses on drawing conclusions and making judgements on the outcomes or impact of the reform programme, monitoring is concerned with systematically appraising progress through various stages of reform and thereafter at the post-privatisation or commercialisation stage.
156. Monitoring privatisation is required to check that:
- the objectives of privatisation are being achieved;
 - transparency is achieved in implementing privatisation transactions; and
 - other reform policies are compatible with the objectives of Privatisation Policy.
157. Constant and effective monitoring by the PEA of privatisation and commercialisation activities, will be essential. A comprehensive analysis of the costs and benefits of privatisation will require the use of output measures of performance to measure the quality as well as the quantity of services provided. Policy adjustments will be made depending on what transpires through continuous evaluation of the reform process.

- *Government will undertake all necessary institutional capacity building and reform initiatives required to enable the successful implementation of the privatisation process.*
- *The PEU will be reformed into the PEA, developing its current role of monitoring*

Selecting Candidates for Privatisation

158. The following criteria will be taken into account, , when considering future candidates for privatisation:
- potential for improvements in efficiency and productivity in the enterprise;
 - advantage of acquiring foreign participation to produce new technology and management and international link-up;
 - the opportunity it could afford for domestic private sector growth and for citizen empowerment;
 - contribution to stock market development;
 - introducing competition into an otherwise monopolistic market;
 - extent of private sector interest in purchase and capacity for quicker investment;
 - appropriateness of private sector participation;
 - existing competitive market;

- impact on government revenues;
- financial viability;
- investor requirement;
- technical, regulatory and legal requirements;
- economic efficiency;
- economic significance of PE;
- strategic nature of PE;
- complexity and cost of expertise and technology;
- past operational and financial performance;
- opportunities for expanding shareholder base; and
- balancing competing objectives.

159. Where steps have already been taken in line with existing Government policy for exploring the advantages of entering into strategic partnerships with major outside companies (for instance, by Royal Swazi Airline, Swazi Railway and Piggs Peak Hotel), such explorations should progress expeditiously and be reported to the Minister of Finance. However, care should be taken to ensure that the end result of such privatisations conform to the Government's privatisation policy.

Government will consider a wide array of factors in deciding which PEs to privatise. Where privatisation initiatives are in progress, Government will ensure that such initiatives comply with this policy.

The Way Forward

160. The current comparatively low-key programme of hiving-off specific activities of Government departments, such as the Dairy Board, will continue in the meanwhile. The programme, however, will have to comply with the guidelines of the Privatisation Policy, once Cabinet approves the Policy.
161. Following approval of this policy, the first step in its implementation will be to transform the PEU into the PEA. The first task for the PEA will be to develop a detailed plan of commercialisation and privatisation in consultation with all stakeholders and present it to Government for approval.
162. The privatisation and commercialisation action plan will provide the basis for laws and regulations that may need to be enacted or may require amendments through Parliament before decisions on privatisation or corporatisation are made. While legal changes and restructuring measures represent a part of preparing enterprises for privatisation, they may also be needed in the case of enterprises that remain in the public sector.
163. Meanwhile, Competition Law will need to be enacted providing for the establishment of a multi-sectoral regulatory authority and specifying its functions. All necessary regulations will have to be in place prior to the implementation of the plan.
164. The privatisation action plan will determine the kinds of safety nets and other

support programmes that will need to be developed on a case-by-case basis to ensure success of the commercialisation and privatisation process.

165. The PEU will be transformed into the PEA and will commence its work on the detailed plan within the financial year 2003/2004.
166. Investigation of each and all of the PEs to determine the precise and preferred privatisation methodology where appropriate to be applied.

APPENDICES

Appendix A	Methods of Privatisation
Appendix B	Stages of the Privatisation of Public Enterprises
Appendix C	List of Acronyms
Appendix D	List of Public Enterprises
Appendix E	Bid Process

Methods of Privatisation

The following is a list of the most commonly used forms of privatisation:

Commercialisation

Government departments, councils and other public bodies provide many goods and services, which are very similar to goods and services provided by the private sector. *Since the financing of those government agencies is part of the general budget, there is no direct relationship between the value of the good or service provided and the cost of providing it.* In fact, most of such services are provided to the user free of charge or at highly subsidised fees. Under these circumstances, on the one hand, it is extremely difficult to evaluate performance of service providers and, on the other hand, users are not motivated to economise on using these services. The result is generally wasteful use of resources, poor quality and inefficient delivery of the good or service.

Commercialisation means bringing these activities to the market place and managing them like any other business enterprise. The main requirements of commercialisation are:

- The establishment of clear and non-conflicting objectives.
- The appointment of board members, management and staff based on merit.
- Managerial responsibility, authority and autonomy of those objectives in the pursuit
- Effective performance monitoring and evaluation by the owner-government.
- The remuneration and terms of service must reflect market conditions for employees to be motivated to perform well.
- Effective rewards and sanctions related to performance.
- Establishment of a competitive neutral trading environment and opening up the public sector to competition where possible.
- Making the corporatised entity liable for all taxes like any private counterpart.
- Adopting commercial accounting practices, particularly to asset valuation.
- Requiring corporatised organisations to pay dividends on government equity.
- Eliminating subsidies and easy access to credit.
- The adoption of a consumer oriented approach that focuses on providing goods and services that meet the needs of the different segments of the market.

World experience suggests that commercialised entities perform better than non-commercialised ones. Competition in the market place, combined with payment available from satisfied clients (rather than from the general budget), introduces the critical counter-play between the incentives for success and the risk of failure. Where there are no direct measures of success, there are usually few performance incentives.

Corporatisation

Corporatisation involves the transformation of a public enterprise organised under statutory law into a company organised under private business law (the Companies Act).

Corporatisation, however, should not be seen simply as a legal step. It goes beyond a change in legal status, and it usually requires a broad range of companion restructuring measures including financial and labour restructuring. By defining clear boundaries for the business, corporatisation also assists in providing a basis for valuation of the entity when privatisation is considered at a later stage.

Thus, corporatisation is usually necessary in order to make commercialisation and privatisation successful. Traditionally, the systems, structures and culture of public service departments are focused on control over resource application, rule compliance and not making mistakes. When commercialisation mechanisms are introduced into public service, for instance, through managerial autonomy, they are usually quickly overgrown by traditional bureaucracy. Thus, the only viable alternative is to take the function concerned out of the constraints of the public service into the more flexible corporatised situation where lasting mechanisms can be introduced.

Contracting-out

This is a widely practised form of privatisation. Under this method, the Government maintains control of the activity but contracts out to the private sector, the production of the goods or services. Goods and services are obtained at competitive market prices through the open invitation of tenders from private firms. In contracting out, Government must set the standards and determine specifications with regard to the quality, timing and quantity of services to be provided.

A wide range of municipal services can be put out to contract. These functions are the provision of solid waste refuse collection, street cleaning, maintenance of parks, gardens and public lands, road construction and maintenance, ambulance services, fire prevention services, engineering services, town planning, consulting services, legal services and housing construction.

Management Contracts

Under a management contract arrangement, the Government will retain ownership of the business and its assets but will hire an operator to manage them for a fee. While the contractor might be given extensive management powers and operational control, the PE continues to bear the full commercial risk and is responsible for all working capital and debt financing. Management contracts are common in hotels, airlines, and agriculture.

Franchises

This privatisation method involves the Government granting a private firm an exclusive franchise to supply a particular service in a given locality. The government may maintain control over the price of the goods or services to be sold by the private firm. Franchise arrangements are often used by governments to regulate the private provision of public utilities such as gas and electric power, telephone services and water distribution. Competition is introduced through competitive tenders or bids for the franchise. Franchises are granted for a defined time period and may be revised and re-negotiated at regular intervals.

Leases

Under a lease arrangement, the Government will retain the ownership of the property and other assets and will simply lease them to an operator who will run the business for his own account. The private operator assumes commercial risk of operation and maintenance, and thus has incentives (and obligations) to reduce costs and maintain long-term value of assets. Fees are usually linked to performance and revenues.

Thus, leasing permits Government not to give up ownership by outright sale or liquidation of a PE, while leaving it free to pursue other options in the future, including divestiture, which might become attractive once a PE has been turned around.

Concessions

For some types of property or activity (for example a forest or wildlife management or a mining prospect), a concession arrangement may be more appropriate than a lease. The concession is likely to define the precise use that can be made of the property and the nature of the charges that will be levied. Unlike a lessee, the holder of the concession has the responsibility for capital expenditures and investments.

The Build, Operate, Transfer (“BOT”) is a concession contract by which a private operator agrees to build, operate and maintain a facility or system (such as a water treatment plant or toll-road) for a specified period of time and then transfer the said facility or system to the contracting authority, typically the Government. During the period of operation, the ownership of the facility or system may be with the public authority or with the private operator. In the latter case, the contract is referred to as a Build, Own, Operate and Transfer (“BOOT”).

A BOOT contract in the infrastructure sector is in essence a public works *concession* contract. The concession period is often for 15 to 25 years. This delivery mechanism involves the transfer of substantial project risk to the private operator including design, operation, ownership, financing and revenue risk. At the end of the concession period, the facility or system can revert to the contracting authority often at no cost.

Liquidation

In a liquidation, it is not the entity that is being privatised, but the activity. This is the most passive form of privatisation. The Government simply ceases to supply the product or service which it had previously provided (say a municipal bus service) and allows private sector operators to move in and provide it instead. The government-owned entity is simply dissolved or liquidated with no attempt to sell it as a going concern.

Selling Assets to A Single Buyer

When privatisation occurs in this way, the new owner buys all the assets of the PE – plant, machinery and stock – but does not buy the enterprise itself. The new owner is therefore unencumbered by any of the PEs liabilities or obligations, such as its contractual obligations to its staff, its suppliers, its customers, etc.

Fragmentation and Un-bundling

If the PE has been allowed to become engaged in different businesses, the sum of the values of the different parts may be greater than could be realised by selling off the business as a whole - or all assets to a single buyer. This also may be true of an enterprise that is geographically dispersed. It may make commercial sense to fragment or un-bundle the PE with some parts of it sold or floated as separate companies and other parts made the object of asset sales.

Trade Sale

A trade sale involves first converting the PE into a company registered under the Companies Act and then selling all the shares in that company to a single buyer. In the course of the sale, all of the assets and liabilities of the former PE, including its contractual obligations would pass over with the company to its new owners.

Joint Ventures with Strategic Partners

In some industries, it may be advantageous to look for strategic partnerships with international companies to acquire new technology or technical expertise. Under such arrangements the domestic business may (or may not) retain its local identity and some of its operational independence, but in other respects it will become more like a subsidiary or a franchisee or an associated company of the major international company.

One possible advantage of such strategic partnerships is that the foreign partner will not necessarily insist upon a majority shareholding in the joint venture, but almost certainly would resist entering into a joint venture where Government will hold a majority or even a major part of the voting shares. This opens the way for employees and local interests to be offered a part of the equity, with a portion to be offered on the domestic stock exchange and the rest to be 'warehoused'.

Management and/or Employee Buy-Outs

In this kind of privatisation, management or all the employees would be assisted to become the new owners of the enterprise. Released from the inhibitions of government control, and given the necessary incentives, the expectation is that the new owners should be able to increase the company's profits sufficiently to service any loans they have taken out to buy the shares.

Stock Market Flotation

Stock market flotation is the offering of stocks for sale to the public or to a private group on the stock market. Public flotation is when government shares are offered to the public for subscription through the stock market. These are immensely complicated operations, and the flotations themselves can be orchestrated in a variety of ways. The PE may be split up into a number of different companies that are floated simultaneously or in sequence. The shares in a particular PE may all be sold at once, or may be released in phases. Preference may be given to small shareholders if a wide dispersion of the shares is held to be desirable.

The Government may retain a 'golden share' which carries with it the power to veto certain decisions. In general, share offerings of privatised enterprises enhance capital market development.

Market Liberalisation

The more general form of privatisation involves the liberalisation of entry into activities previously restricted to public sector entrepreneurs and removal of constraints imposed upon competition against public enterprises by deregulation, to allow private sector firms to compete against previously state-run monopolies.

Stages in the Privatisation of Public Enterprises

It is very important that all stakeholders understand and appreciate the privatisation process and the various stages involved. It is essential that, in the interests of transparency, all the stages be followed so as to ensure successful privatisation transactions. The stages in a privatisation can be summarised as follows:

Stage I

Initial Review and Planning Stage

Inclusion of Public Enterprises (PE) in the programme, followed by initial review and timetabling

- PE is accepted as part of the privatisation list.
- Informal investigation (enterprise and line ministry visits) in order to determine the initial likely timeframe and possible strategies. Review of the information available.
- Allocation of the tasks and sub-contracting policy.

Stage II

Detailed Assessment Stage

Privatisation strategy and key issues assessment

- Initial financial and commercial assessment, and possible identification of employment/environmental issues-and 'options paper' if necessary. Indicative valuation also if necessary-financial due diligence'.
- Initial enterprise legal assessment-legal status, ownership, existence of shareholder agreement-'legal due diligence'.
- Establishment of need for, and strategy towards, regulatory/monopoly issues and sector structure-'regulatory due diligence'.
- Presentation of privatisation strategy to Sub-SCOPE, including methods of sale, percentages to whom, employment issues, indigenisation issues, etc.

Stage III

Approval by Inter-Ministerial Committee and Cabinet Stage

Discussion of issues and stakeholder interests leading to approval

- Formal submission of strategy to Sub-SCOPE.
- Responses to questions and further research and assessment where needed.
- Discussion and presentation to Cabinet, and formal issue of Cabinet decision.
- Refinement of privatisation strategy by the PEA and line ministry.

Stage IV

Pre-Privatisation Preparation Stage

- Production of information memorandum, brochure and briefings etc. (Prospectus, if share issue or placement), and establishment of pre-qualification process and pre-qualification criteria if necessary.
- Preparation of formal documents and guidelines for enterprise sale (tender documents, listing papers) including conditions of sale and bid acceptance criteria. Review of procedures.
- Presentation of marketing and Public Relations strategy, and initial 'pre-marketing' activity (e.g. including initial discussions with 'sales channels', embassies, brokers, etc.).
- Compliance check, *pre-launch meeting* of all relevant parties and 'sign-off' of transactions by Cabinet.

Stage V

Privatisation Transaction Stage

- Advertising and Public Relations for launch, and invitations to bid or participate, contracting with brokers etc. Investor search.
- Supply of Information Memorandum/Prospectus and other documents to interested parties, final creation/opening of document room and pre-qualification if necessary. Receipt of bids/offers/holding of auctions.
- Bid evaluation and negotiation and finalisation of contracts, agreements and memoranda of understanding. Legal review of Bids. Contract signature and approval for formal *completion*. (*Sale and purchase agreement* if necessary).
- Formal closure. Auditors certify accounts. Formal supply of immediate warranties and undertakings as agreed. Formal incorporation and formulation of Memorandum and Articles. Settlement of liabilities if agreed. Listing compliance.
- Receipt of payment and establishment of security for deferred payment. Physical hand-over of assets, subject to contractual conditions. Share allotment.

Stage VI

Post Completion Stage

- Report on undertakings by other parties and other parts of Government, including confirmation of institutional responsibilities for enforcing sale conditions.
- Implementation of debt, warranties, liability agreements, indemnities, audit of stock, and subsequent actions.
- Redundancy and labour agreements implemented under legal supervision.
- Implementation of agreements on regulatory changes and licensing.

List of Acronyms

Below is a list of acronym abbreviations that have been used in the text of the document.

ABBREVIATION	ACRONYM
CEO	Chief Executive Officer
CTA	Central Transport Authority
ESRA	Economic and Social Reform Agenda
GDP	Gross Domestic Product
HR	Human Resources
MoF	Ministry of Finance
MVA	Motor Vehicle Authority
NIDCS	National Industrial Development Corporation of Swaziland
PE	Public Enterprise
PEA	Public Enterprise Agency
PE Act	Public Enterprises (Control and Monitoring) Act 1989
PEU	Public Enterprise Unit
ROCE	Return on Capital Employed
RSNA	Royal Swazi National Airways
SCOPE	Cabinet Standing Committee on Public Enterprises
SDSB	Swaziland Development and Savings Bank
SEB	Swaziland Electricity Board
SEBENTA	Sebenta National Institute
SEDCO	Small Enterprise Development Company
SIPA	Swaziland Investment Promotion Authority
SMME	Small Medium Micro Enterprises
SNTC	Swaziland National Trust Commission
SoE	State owned Enterprise
SPTC	Swaziland Post and Telecommunications Corporation
SSA	Sub-Saharan Africa
STVA	Swaziland Television Authority
Sub-SCOPE	SCOPE Subcommittee
SWSC	Swaziland Water Services Corporation
the Companies Act	The Swaziland Companies Act No 7 of 1912, as amended
UK	United Kingdom
UNISWA	University of Swaziland

List of Public Enterprises Categorised In Sectors And Categories

List of Category A Public Enterprises

Sector & Enterprise	Abbreviation	Ministry
Agriculture		
Swaziland Dairy Board	SDB	Agriculture & Co-operatives
National Maize Corporation	NMC	Agriculture & Co-operatives
Swaziland Cotton Board	SCB	Agriculture & Co-operatives
National Agricultural Marketing Board	NAMBOARD	Agriculture & Co-operatives
Transport		
Royal Swazi National Airways Corp.	RSNAC	Public Works & Transport
Swaziland Railway	SR	Public Works & Transport
Central Transport Administration	CTA	Public Works & Transport
Finance		
Swaziland National Provident Fund	SNPF	Finance
Swaziland Development & Savings Bank	SDSB	Finance
Utilities		
Swaziland Electricity Board	SEB	Natural Resources & Energy
Swaziland Post & Telecommunications Corporation	SPTC	Tourism Environment & Communications
Swaziland Water Services Corporation	SWSC	Housing & Urban Development
Business Promotion		
National Industrial Development Corporation of Swaziland	NIDCS	Enterprise & Employment
Small Enterprises Development Company	SEDCO	Enterprise & Employment
Commercial Board	CB	Enterprise & Employment
Swaziland International Trade fair Enterprise Trust Fund	SITF Fund	Enterprise & Employment Finance
Other		
Piggs Peak Hotel	PPH	Tourism & Communications
Swaziland Television Authority	STVA	Public Service & Information
Swaziland National Housing Board	SNHB	Housing & Urban Development
Swaziland National Trust Commission	SNTC	Tourism & Communications
Tourism Development Company	TDC	Tourism & Communications
Swaziland Investment Promotion Authority	SIPA	Enterprise & Employment
Motor Vehicle Accident Fund	MVA	Finance
Swaziland Komati Project Enterprise Commission for Arbitration Mediation and Conciliation	SKPE CMAC	Natural Resources & Energy Enterprise & Employment

Education		
University of Swaziland	UNISWA	Education
SEBENTA National Institute	SEBENTA	Education
Tourism		
Swaziland Tourism Authority	STA	Tourism & Communications

List of Category B Public Enterprises

Enterprise	Abbreviation	Ministry
Central Bank of Swaziland	CBS	Finance
Royal Swazi Sugar Company	RSSC	Agriculture and Co-operatives
Swaziland Industrial Development Company	SIDC	Enterprise
Barclays Bank Swaziland	BBS	Finance
First National Bank	FNB	
Standard Bank Swaziland	STB	Finance
Nedbank	NB	Finance
Manzini City Council	MCC	Housing
Mbabane City Council	MCC	Housing
Swaziland Royal Insurance Corporation	SRIC	Finance
Public Service Pensions Fund	PSPF	Finance

Others	Abbreviation	Ministry
Raleigh Fitkin Memorial Hospital	RFM	Health
Havelock Mine	HVL	Geology
Swaziland Fruit Cannery	SWAZI-CAN	Finance
Swaziland Building Society	SBS	Finance
Lulote - BMEP	BMEP	Enterprise

Bid Process

Application for participation

- (a) Any person may participate in tenders relating to the privatisation of any Public Enterprise by submitting a compliant application to the PEA.
- (b) The PEA shall determine and publish the deadline for the submission of applications.

Application by incorporated companies

- (a) An application by an incorporated company shall be in the form prescribed by the PEA.
- (b) An application by an incorporated company shall be submitted with certified copies of the Board of Directors' resolution authorising the application:
 - (i) a certificate of incorporation;
 - (ii) the company's memorandum and articles of association;
 - (iii) audited financial statements for the company's three most recent financial years; and
 - (iv) a brief statement stating relevant experience.

Application by partnerships

- (a) An application by a partnership shall be in the form prescribed by the PEA.
- (b) An application for a partnership shall be submitted with certified copies of:
 - (i) a certificate of registration;
 - (ii) the last financial statement; and
 - (iii) a brief statement stating relevant experience.

Applications by individuals

- (a) An application by an individual shall be in the form prescribed by the PEA.

Confidentiality agreements

- (a) An applicant for participation shall enter into a confidentiality agreement with the PEA.
- (b) The PEA shall set out the terms and conditions of the confidentiality agreement.
- (c) The confidentiality agreement shall be executed on or before submitting the application for participation.

References

- (a) A person applying for participation shall submit to the PEA reference from his bankers or financiers or any other referee of good standing.

Processing applications

- (a) The PEA shall ensure that all applications contain the required information before considering the application for qualification.
- (b) The PEA may make consultations relevant to an application.
- (c) The decision of the PEA shall be final and binding on the parties and shall be communicated to the applicant within thirty days from the date on which it was received.

Entitlement on qualification

- (a) A person who successfully bids for qualification shall:
 - (i) be registered as having qualified to bid for that Public Enterprise,
 - (ii) be entitled to bid for the Public Enterprise to which such bidder pre-qualified; and
 - (iii) on payment of a non-refundable fee specified in each instance by the PEA, be entitled to receive a tender package relating to the Public Enterprise to which such bidder qualified.
- (b) A tender package referred to in paragraph (iii) above shall contain the following information, to the extent available:
 - (i) history and past performance of the Public Enterprise;
 - (ii) marketing strategy, past and present, and prospects for the success of the Public Enterprise;
 - (iii) major contracts and other obligations of the Public Enterprise;
 - (iv) liens, encumbrances or long term liabilities;
 - (v) rights and interests of directors;
 - (vi) classes, categories and values of the present shareholder of the Public Enterprise;
 - (vii) the audited financial statement of the Public Enterprise for its three most recent financial years;
 - (viii) national legislation materially impacting on the Public Enterprise;
 - (ix) list of assets of the Public Enterprise and technical specifications (where applicable) and plans of plant and equipment of the Public Enterprise;
 - (x) asset valuation report, where applicable; and
 - (xi) proposed share allocation for the Public Enterprise.

Submission of bids

- (a) A person who qualifies shall submit a bid for that Public Enterprise to the PEA.
- (b) The bid shall be submitted to the PEA in a sealed envelope within a period determined by the PEA.

Contents of bid documents

- (a) The bid document shall contain information regarding at a minimum:
 - (i) the price;
 - (ii) the currency of payment;
 - (iii) the manner of payment;
 - (iv) the proposed business plan;
 - (v) the proposed investment plan;
 - (vi) the relevant experience in a similar business;
 - (vii) share ownership plans;
 - (viii) employee expansion or retention plans; and
 - (ix) any other information which, in the opinion of the bidder, is relevant to the bid.

- (b) The bid document shall contain the following information relating to the bidder:
 - (i) (technical and managerial ability to manage the para which is the subject of the bid;
 - (ii) the financial standing;
 - (iii) nationality;
 - (iv) the names and nationalities of the shareholders, together with the number of shares held by each; and
 - (v) any other information the PEA may request.

Evaluation and selection of bids

- (a) A bidder shall submit a bid document to the PEA for evaluation.
- (b) The PEA shall satisfy itself that the bid document contains the required information.
- (c) Where the bid document does not contain the required information, the PEA shall request the bidder, within such period as the PEA may determine, to supply the required information unless there is insufficient time for the submission of further information.
- (d) The PEA shall, upon consultation with the Minister of Finance, appoint an evaluation committee consisting of at least three and not more than five members.
- (e) The evaluation committee shall be responsible for:
 - (i) evaluating the bids;
 - (ii) recommending the successful bidder; and
 - (iii) advising the PEA.
- (f) The evaluation committee appointed under subsection (d) may seek counsel from any other person to advise on specific areas of expertise, and that person shall not vote in the meetings of the committee.
- (g) The evaluation and selection of bids shall be at the discretion of the evaluation committee.
- (h) The decision of the PEA shall be communicated to the bidder not later than 60 days after the bid is submitted.

Negotiations

- (a) The PEA shall, upon consultation with the Minister of Finance, appoint a negotiation committee.
- (b) The negotiation committee appointed under subsection (a) may seek counsel from any other person to advise on specific areas of expertise, and that person shall not vote in the meetings of the committee.
- (c) The negotiation committee shall negotiate the terms and conditions of relevant contractual agreements relating to the Public Enterprise.

Approval of Potential Purchaser

- (a) After the PEA has identified a potential purchaser from the bidders, it shall submit, through Sub-SCOPE the name of that potential purchaser to Cabinet for its approval.

Approval of sale or disposal of property

- (a) A Public Enterprise scheduled for privatisation shall not sell or otherwise dispose of property unless the Public Enterprise has, in writing, applied and obtained an approval from the PEA.
- (b) The application for approval under subsection (1) shall be accompanied by
 - (i) a resolution of the Board authorising the sale or
 - (ii) disposal of the property;
 - (iii) a schedule containing a description of the property intended for sale or disposal;
 - (iv) a statement indicating the manner in which the property will be sold or otherwise disposed of; and
 - (v) a statement indicating the reason for the proposed sale.
- (c) The PEA shall not, in considering applications under subsection (a) and making its decision, withhold its approval unreasonably.
- (d) The PEA shall give reasons for its decision.
- (e) The PEA may, in granting the approval, stipulate any terms and conditions as it deems appropriate.
- (f) The Decision of PEA shall be made within 30 days of receipt of an application.

Information

The Public Enterprise shall immediately after completion of sale or disposal of property, provide the PEA with the following information:

- (a) date of completion of sale;
- (b) proceeds of sale or an application to reinvest funds into the company;
- (c) date of removal of the property from the Public Enterprise's asset register; and
- (d) any other information that the PEA may request.