

THE PUBLIC ENTERPRISES (CONTROL AND MONITORING) ACT, 1989

Date of Commencement: 3 August 1989.

An Act to provide for the control and monitoring of public enterprises and partly owned enterprises.

Short title and commencement.

1. This Act may be cited as the Public Enterprises (Control and Monitoring) Act, 1989 and shall come into force on a date to be appointed by the Minister by notice in the Gazette.

Interpretation.

2. In this Act unless the context otherwise requires —

“Minister” means the Minister responsible for Finance;

“Minister responsible” means the Minister responsible for the affairs of a particular public enterprise;

“public enterprise” means —

- (a) in relation to category A of the Schedule to this Act, a public enterprise or body which is either wholly owned by Government or in which Government has a majority interest or which is dependant upon Government subvention for its financial support (hereafter referred to in this Act as “category A public enterprise”);
- (b) in relation to category B of the Schedule to this Act, a public enterprise or body in which Government has a minority interest or which monitors other financial institutions or which is a local Government authority (hereafter referred to in this Act as “Category B public enterprise”);

“Standing Committee” means the Cabinet Standing Committee on Public Enterprise;

“Public Enterprises Unit” means the Unit established under section 3 of this Act.

Establishment of Public Enterprises Unit.

3. There is hereby established in the Ministry of Finance a Public Enterprises Unit.

Functions of Public Enterprises Unit.

4. (1) The Public Enterprises Unit shall advise and assist the Minister, the Standing Committee and the Minister responsible in the discharge of the functions conferred on them by this Act.

(2) Without prejudice to subsection (1) the Public Enterprises Unit shall, in consultation with the Standing Committee and the governing body —

- (a) monitor and review the financial affairs and budgets of each category A public enterprise on a regular basis with a view to bringing to the attention of

the Standing Committee the impending problems of such category A public enterprise;

- (b) establish for each category A public enterprise, taking account of its objects and nature of operations, a performance target based on periodic reviews of its operational performance and financial reports and shall include statements of objectives, operations (with particular reference to the provisions of non-commercial services), financial assistance from Government, tax and dividend payments management procedures and incentives as well as a detailed medium term corporate plan;
- (c) identify problems of any category A public enterprise in producing its accounts and budgets and where necessary to assist in providing or arranging for technical assistance to such category A public enterprise and co-ordinate such technical assistance;
- (d) advise the Standing Committee on matters specified in section 10(1) in relation to the financial policy concerning each category A public enterprise and the public enterprise sector generally;
- (e) submit from time to time to the Standing Committee a report on the past performance and future plans of each category A public enterprise.

Composition of the governing bodies of public enterprises.

5. Except where the Standing Committee in consultation with the Minister responsible and the category A public enterprise concerned has otherwise agreed:

- (a) the Chief Executive Officer of each category A public enterprise shall be a full member of the governing body of that enterprise;
- (b) the governing body of each category A public enterprise shall consist of not less than five and not more than nine persons including the Chief Executive Officer of that enterprise;
- (c) the Principle Secretary in the Ministry of Finance or his representative shall, be a full member of the governing body of each category A public enterprise.

Appointment of members of governing bodies of public enterprises.

6. Except in the case of the University of Swaziland, the members of the governing body of each category A public enterprise, other than the Chief Executive Officer, shall be appointed by the Minister responsible in consultation with the Standing Committee and in making the appointments he shall ensure that an overall balance of technical, professional, commercial and financial skills is maintained on the governing body, and shall endeavour to ensure that, in the interest of continuity, not all the members of the governing body shall be retired at the same time.

Public enterprises to provide information.

7. (1) Each public enterprise shall within four months after the end of its financial year prepare a report on its operations which together with a copy of its annual audited accounts as well as any report by the auditors on its management and accounting practices, shall be submitted to:

- (a) the Standing Committee;
- (b) the Minister;
- (c) the Minister responsible; and
- (d) the Public Enterprises Unit.

(2) The Minister responsible shall cause to be laid before Parliament the annual audited accounts of each category A public enterprise within six months after its financial year ends.

(3) The Minister shall cause to be laid before Parliament a consolidated report on all the category A public enterprise based on the reports submitted under section 4(2)(e).

(4) Each category A public enterprise shall within one month after the end of every three months submit to the Public Enterprises Unit in such form as the Unit may determine a statement of its financial and operational performance during that period.

(5) The Public Enterprises Unit shall, on the basis of the statement referred to in subsection (4), submit to the Standing Committee a report on the past performance and future plans of the particular category A public enterprise.

(6) Each category A public enterprise shall submit to the Minister and the Public Enterprises Unit at such time during its financial year as the Public Enterprises Unit may determine estimates of its profit and loss, capital expenditure and cash flow and balance sheet projections in respect of its next financial year.

(7) Where it becomes necessary that a category A public enterprise should revise such estimates the revised estimates shall be submitted to the Minister and the Public Enterprises Unit at least one month before the beginning of next financial year of the public enterprise concerned.

Appointment of Chief Executive Officer and Chief Financial Officer.

8. (1) Except in the case of the University of Swaziland, the governing body of each category A public enterprise shall nominate the Chief Executive Officer who shall be appointed, or who may be dismissed, by the Minister responsible acting in consultation with the Standing Committee.

(2) The Chief Financial Officer of each category A public enterprise shall be appointed, and may be dismissed, by the governing body in consultation with the Minister responsible, the Public Enterprises Unit and the Standing Committee.

Appointment of auditors.

9. (1) The governing body of each category A public enterprise shall nominate the auditors of the public enterprise who shall be appointed, or who may be dismissed, by the Minister responsible acting in consultation with the Standing Committee.

(2) Without prejudice to subsection (1) the Minister responsible may, in consultation with the Standing Committee, direct the Auditor-General under section 20 of the Finance and Audit Act, 1967 to examine and report on the accounts or any aspect of the operations of any category a public enterprise.

Approval of policy decisions.

10. (1) No category A public enterprise shall do any of the following without the approval in writing of the Minister responsible acting in consultation with the Standing Committee:

- (a) make any major adjustment to the level or structure, of tariffs prices, rates or other fees or charges;
- (b) undertake any major investment;
- (c) undertake any major expansion of its operations;
- (d) close, sell, liquidate or divest any major part of its business;
- (e) make any major adjustment to the level or structure of staff salaries and wages or other terms and conditions of service of its staff.

(2) For purposes of subsection (1) the Standing Committee shall, in consultation with the Public Enterprises Unit, determine what is major in relation to each category A public enterprise.

(3) The Minister responsible may, in consultation with the Public Enterprises Unit, waive his approval for any given period of time in respect of any policy decision concerning any matter referred to in subsection (1) which affects any particular category A public enterprise.

(4) The Minister shall, upon the waiver of his approval under subsection (3), give appropriate directives in writing to the category A public enterprise concerned.

(5) Where a policy that is being pursued by a category A public enterprise is not adequate or conducive to the achievement of its objectives as specified in the statement of objectives, corporate plans, performance targets or other policy directives approved under this Act in relation to that category A public enterprise, the Minister responsible may, in consultation with the Public Enterprises Unit, and with the approval of the Standing Committee, determine the appropriate policy to be adopted by such category A public enterprise and the category A public enterprise shall give effect to such policy.

Disciplinary Tribunal.

11. (1) There shall be established a Disciplinary Tribunal consisting of—

- (a) a Chairman who shall be a Senator or a Member of the House of Assembly, but who shall not be a Cabinet Minister;
- (b) two persons who shall be members of the Senate or the House of Assembly, but who shall not be Cabinet Minister;
- (c) two other persons;

all of whom shall be appointed by the Minister in consultation with the Standing Committee.

(2) The functions of the Disciplinary Tribunal shall be to enquire into any contravention of this Act by any public enterprise which the Minister may refer to it and to recommend to the Minister and the Standing Committee such disciplinary action, including dismissal or removal from office of any member of the governing body or the Chief Executive Officer or the Chief Financial Officer, or any other officer of the public enterprise concerned:

Provided that if the Tribunal is of the opinion that the alleged contravention to the Director of Public Prosecutions for appropriate action.

(3) At any hearing of the Disciplinary Tribunal the Auditor-General and such officer of the Ministry of Finance as may be appointed by the Minister shall attend in an *ex officio* capacity.

Amendment of Schedule.

12. The Minister may by notice published in the Gazette amend the Schedule to this Act.

Regulations.

13. The Minister may by notice published in the Gazette make Regulations for giving effect generally to the purposes and provisions of this Act.

Effect of Act on existing laws.

14. (1) The provisions of this Act shall apply to the public enterprises specified in the Schedule to this Act notwithstanding the provisions of any law to the contrary in force before or after the commencement of this Act.

(2) Any law in force before or after the commencement of this Act shall to the extent that it is inconsistent with any of the provisions of this Act be deemed to have been amended.

SCHEDULE
(Amended L.N.14/2004.)

PUBLIC ENTERPRISES

Category A

1. (Repealed L.N.66/1998.)
2. Central Transport Administration
3. Commercial Board
4. Motor Vehicle Accident Fund (Added L.N.66/1998.)
5. National Agricultural Marketing Board
- 5A. National Emergency Response Council on HIV/AIDS (NERCHA)
6. National Housing Board
7. National Industrial Development Corporation of Swaziland
8. National Maize Corporation
9. Pigg's Peak Hotel
10. Posts and Telecommunications Corporation
11. Royal Swazi National Airways Corporation
12. Sebenta National Institute
13. Small and Medium Scale Business Development Fund (The Enterprise Fund) (Added L.N.55/1996.)
14. Small Enterprises Development Company
15. Swaziland Cotton Board
16. Swaziland Dairy Board
17. Swaziland Development and Savings Bank
18. Swaziland Electricity Board
19. Swaziland Investment Promotion Authority (Added L.N.66/1998.)

20. Swaziland National Provident Fund
21. Swaziland National Trust Commission
22. Swaziland Railway
23. Swaziland Television Authority
24. Swaziland Tourism Authority (Added L.N.116/2001.)
25. Swaziland Tourism Development Company
26. Swaziland Trade Fair Company
27. Water and Sewerage Board
28. University of Swaziland

Category B

1. Barclays Bank of Swaziland
2. Central Bank of Swaziland
3. International Bank for Swaziland
4. Royal Swaziland Sugar Corporation
5. Swaziland Industrial Development Company
6. Swaziland Royal Insurance Corporation (Amended L.N.55/1996.)
7. Standard Chartered Bank of Swaziland
8. Town Council of Manzini
9. Town Council of Mbabane
10. Union Bank of Swaziland