

The Public Enterprises (Control and Monitoring) ACT, 1989

Act No. 8 of 1989

I ASSENT MSWATI III
KING OF SWAZILAND
3RD August 1989

AN ACT
Entitled

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

ENACTED by the King and the parliament of Swaziland.

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” means the Minister responsible” means the Minister 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 dependent 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 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 Enterprise Unit.

Functions of the 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 to 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 coordinate 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 Principal 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 endeavor 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 category A public enterprises based on the reports submitted under section4 (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 sheets 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 of structure, or tariffs prices, rates or other fees of 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 Enterprise 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 a Cabinet Minister;

(c) two other persons,

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

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(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 or part thereof also constitutes a criminal offence it shall report such 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 *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 purpose 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

PUBLIC ENTERPRISES

Category A

1. Central Co-operative Union
2. Central Transport Administration

3. Commercial Board
4. National Agricultural Marketing Board
5. National Housing Board
6. National Industrial Development Corporation of Swaziland
7. National Maize Corporation
8. Pigg's Peak Hotel
9. Posts and Telecommunications Corporation
10. Royal Swazi National Airways Corporation
11. Sebenta National Institute
12. Small Enterprises Development Company
13. Swaziland Cotton Board
14. Swaziland Dairy Board
15. Swaziland Development and Savings Bank
16. Swaziland Electricity Board
17. Swaziland National Provident Fund
18. Swaziland National Trust Commission
19. Swaziland Railway
20. Swaziland Television Authority
21. Swaziland Tourism Development Company
22. Swaziland Trade Fair Company
23. Water and Sewerage Board
24. University of Swaziland
25. Swaziland Environment Authority
26. Swaziland Standard Authority
27. Raleigh Fitkin Memorial Hospital
28. Good Shephard Mission Hospital and Nursing Training School
29. S W A D E
30. Motor Vehicle Authority
31. Competition Commission
32. Civil Aviation Authority
33. Swaziland Revenue Authority
34. Youth Enterprise Fund
35. Swaziland National Sports Council
36. Swaziland National Youth Council
37. Swaziland National Council of Arts & Culture

Category B

1. Barclays Bank of Swaziland
2. Central Bank of Swaziland
3. International Bank of Swaziland
4. Royal Swaziland Sugar Corporation
5. Swaziland Industrial Development Company
6. Standard Chartered Bank of Swaziland
7. Town Council of Manzini
8. Town Council of Mbabane

9. Union Bank of Swaziland
10. Swaziland Royal Insurance Corporation

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LEGAL NOTICE NO. 66 OF 1998

PUBLIC ENTERPRISES (CONTROL AND MONITORING) ACT, 1989
(Act No. 8 of 1989)

PUBLIC ENTERPRISES (AMENDMENT OF SCHEDULE) NOTICE, 1998

(Under section 12)

In exercise of the powers conferred by section 12 of the Public Enterprises (Control and Monitoring) Act, 1989, the Minister for Finance hereby issues the following Notice-

Citation.

1. This Notice may be cited as the Public Enterprises (Amendment of Schedule) Notice, 1998.

Amendment of Schedule

2. The Schedule to the Public Enterprises (Control and Monitoring) Act, 1989 is amended by -
 - (a) removing the Central Co-operative Union from category A;
 - (b) classifying the Motor Vehicle Accident Fund as a Category A enterprise; and
 - (c) classifying the Swaziland Investment Promotion Authority as a Category A enterprise.

THEMBA N MASUKU (MP)
Minister for Finance

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LEGAL NOTICE NO. 76 OF 1999

PUBLIC ENTERPRISES (CONTROL AND MONITORING) ACT, 1989
(Act No 8 of 1989)

PUBLIC ENTERPRISES (AMENDMENT OF SCHEDULE) NOTICE 1999
(Under section 12)

In exercise of the powers conferred by section 12 of the Public Enterprises (Control and Monitoring) Act 1989, the Minister for Finance hereby issues the following Notice.

Citation

1. This Notice may be cited as the Public Enterprises (Amendment of Schedule) Notice 1999.

Amendment of Schedule

2. The Schedule of the Public Enterprises (Control and Monitoring) Act, 1989 is amended by :-
 - (a) classifying the Public Service Pensions Fund as a category A enterprise.

JOHN P CARMICHAEL (SENATOR)
Minister of Finance

LEGAL NOTICE NO.77 OF 1999

THE CONTROL OF CEREALS ACT, 1959
(Act No. 28 of 1959)

CONTROL OF PRICES OF MAIZE AND MAIZE MEAL NOTICE, 1999
(Under Section 4)

In exercise of the powers conferred by section 4 of the Control of Cereals Act, 1959, the Minister for Agriculture and Co-operatives hereby issues the following Notice –

Citation

1. This Notice may be cited as the Control of Maize and Maize Meal Notice, 1999 and shall be deemed to have come into force on the 1st April, 1999.

Interpretation

1. In this Notice -

“bag of maize” means a unit of 70kg weight of maize fit for human consumption and packed in a sound container,

“burlap or jute bag” means a sack made of natural jute fibers;

“plastic bag or polypropylene bag” means a sack of synthetic fibers;

“sound container” means a bag of not less than Grade 1 second hand quality.

THE FINANCE AND AUDIT ACT, 1967

(Act No 18 of 1967)

THE ESTABLISHMENT OF THE PUBLIC ENTERPRISES LOAN
GUARANTEE FUND ORDER, 1994

(Under Section 12)

In exercise of the powers conferred by Section 12 of the Finance and Audit Act, 1967 the Minister for Finance with the approval of the House of Assembly by resolution hereby makes the following Order;

The Public Enterprises Loan Guarantee Fund is hereby established with effect from 1 June 1994.

N N MAPHALALA
Acting Principal Secretary

THE FINANCE AND AUDIT ACT, 1967
Act No. 18 of 1967

THE PUBLIC ENTERPRISES LOAN GUARANTEE FUND REGULATIONS,
19...
(Under Section 12)

In exercise of the powers conferred by section 12 of the Finance and Audit Act 19... Minister for Finance hereby makes the following Regulations.

Citation and Commencement

1. These Regulations may be cited as the Public Enterprises Loan Guarantee Fund Regu... 1994 which shall be deemed to have come into operation on June 1, 1994.

Interpretation

2. In these Regulations unless the context otherwise requires:

“Central Bank” means the Central Bank of Swaziland;
“Financial Institution” has the same meaning assigned to it under the Financial Institution (Consolidation) Order 1973;
“Loan Guarantee Fund” means the fund established by Legal Notice No. 160 of 1994;
“Minister” means the Minister responsible for Finance.

Management of the Fund

3. (a) The Ministry shall enter into a management contract with the Central Bank for administration and maintenance of the Fund.
(b) The management contract between the Ministry and the Central Bank shall be of terms and conditions, including the payment of a fee to the Bank, as may be agreed between parties.

Monies of the Fund

4. (1) The monies of the fund shall consist of the management fee payable by each Categ.....enterprise in terms of the Public Enterprises (Control and Monitoring) Act, 1989 and any gra.. loans which the Government of Swaziland may make to the Fund from time to time.

- (2) The Central Bank shall invest monies of the fund not immediately required in manner as may from time be determined by the Ministry of Finance in consultation wi.. Central Bank.

Purpose of Fund

- 5. (1) The purpose of the Fund shall be to guarantee, in such manner and on such conditions.. Central Bank may think fit the repayment of the principal of and the payment interest of.. sums which a Category A enterprise borrows from any Financial Institution.

- (2) ...sums are issued in fulfillment of a guarantee given under these Regulation Category.... To whose loan the guarantee shall make to the Fund, at such time.....
.....

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Central Bank directs in or towards repayment of the sums so issued and payments of interestsuch rate as the Central Bank so directswhat is outstanding for the time being in respect of sums so issued.

- (3) Any sums received by the Central Bank inof paragraph 2 of regulations paid into the Fund.

Other expenditures of Fund

6. (1) The Fund may with the approval of the Central Bank extend the guarantee scheme to a Financial Institution engaged in short to medium term financing of a category A public enterprise upon the application of such Institution.

(2) The provisions of Regulation shall mutatis mutandis apply to guarantees given to a Financial Institution in terms of subsection (1) hereof:

(4) The Fund may, with the approval of the Ministry and upon the application of a category A enterprise, pay ten percent (10%) of the management fee payable by such enterprise in terms the Public Enterprises (Control and Monitoring) Act 1989 to be used by the Fund for technical assistance for the group training of staff of such enterprises.

(5) The Minister may by notice in the gazette vary the percentage mentioned in paragraphs (3) and (4) of regulation 6.

Payments out of the Fund

7. Any payments made out of the Fund shall be cheque or other instrument signed jointly by the Principal Secretary of the Ministry of Finance and the Accountant General.

Reporting

8. The Central Bank shall submit quarterly and annual reports to the Principal Secretary of the Ministry of Finance on the operations of the Fund.

Audits

8. (1) The Fund Shall be audited annually by an independent auditor acceptable to the Central Bank.

9. (1) The Fund shall be audited annually by an independent auditor acceptable to the Central Bank.

(2) The Auditor General may at any time audit or inspect the records of the Fund.

N N MAPHALALA
Acting Principal Secretary

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LEGAL NOTICE NO 157 OF 2007

PUBLIC ENTERPRISES (CONTROL & MONITORING) ACT 1989
(Act No. 8 of 1989)

PUBLIC ENTERPRISES (AMENDMENT OF SCHEDULE)
NOTICE, 2007
(Under Section 12)

In exercise of the powers conferred by Section 12 of the Public Enterprises (Control and Monitoring) Act, of 1989, the Minister of Finance hereby issue the following Notice-

Citation

1. This Notice may be cited as the Public Enterprises (Amendment of Schedule) Notice, 2007.

Amendment of Schedule

2. The Schedule to the Public Enterprises (Control and Monitoring) Act 1989 is amended by classifying the following under Category A -

- (a) Conciliation Mediation and Arbitration Commission (CMAC).
- (b) Swaziland Water and Agricultural Development Enterprise (SWADE).
- (c) Swaziland Environment Authority (SEA).
- (d) Swaziland Standards Authority (SSA).

MAJOZI V SITHOLE
MINISTER FOR FINANCE

