

PRIVATISATION ACT 1995
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ACT NO. 9 OF 1995

PRIVATISATION ACT 1995

An Act to provide for the privatisation of parastatals, the establishment of the Privatisation Unit and for matters connected therewith or incidental thereto.

Enacted by the Parliament of Lesotho.

Part I - Preliminary

Short title and commencement

1. This Act may be cited as the Privatisation Act 1995 and shall come into operation on the day to be appointed by the Minister by notice in the Gazette.

Application

2. This Act applies to all parastatals.

Interpretation

3. In this Act, unless the context otherwise requires:

“Line Ministry” means the Ministry responsible for the parastatal or to which the parastatal reports;

“list of parastatals” means a list of parastatals published pursuant to section 16;

“Minister” means the Minister responsible for finance;

“parastatal” means a corporation, board, company, or body in which the Government has direct or indirect ownership, equity or interest and includes a partnership, joint venture, units of Government Ministries which operate revenue generating and self accounting business activities or any other form of business arrangement or organisation in which Government has direct or indirect interest;

“privatisation” means the transfer to the private sector of part or the whole of the equity or other interest held by the Government, directly or indirectly, in a parastatal wholly or partly owned by the Government and “privatised” shall be construed accordingly;

“Privatisation Scheme” means a Privatisation Scheme referred to in this Act;

“purchaser” means an individual, a lessee, an investor or a contractor who acquires an interest in a parastatal or in any asset which is owned by a parastatal or in which a parastatal has an interest;

“transformed company” means a company into which a parastatal or part thereof is transformed pursuant to this Act.

Part II - The Privatisation Unit

Establishment of the Privatisation Unit

4. (1) There is established a body to be called the Privatisation Unit.

(2) The Privatisation Unit .

(a) is a body corporate with succession;

(b) shall have powers to enter into contracts;

(c) may acquire, hold and dispose of any movable or immovable property;

(d) may sue and be sued in its corporate name.

Composition of the Privatisation Unit

5. (1) The Privatisation Unit shall consist of a director and three other members, all of whom shall be appointed by the Minister.

(2) A director shall .

(a) be a person who has distinguished himself and has had experience in serving the public in the field of development and community work;

(b) have leadership qualities

(c) have negotiating skills

(3) A member (other than the director) shall be a person specially qualified for appointment by reason of experience in financial matters or by reason of other experience in commerce, economics or law.

Tenure of office

6. (1) A member of the Privatisation Unit shall hold office for a period not exceeding two years from the date of appointment and shall be eligible for reappointment upon the expiration of his term.

(2) A member of the Privatisation Unit may resign his office upon giving one month notice in writing to the Minister.

(3) The office of a member of the Privatisation Unit shall become vacant .

(a) if he becomes insolvent;

- (b) upon his death.
- (c) if he has been convicted of an offence involving dishonesty;
- (d) if he resigns;
- (e) if he has been convicted of an offence under section 24.

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(4) A member of the Privatisation Unit may be removed from office by the Minister for inability to discharge the functions of his office, whether arising from infirmity of body or mind or for misconduct.

(5) If the office of the director of the Privatisation Unit is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office, as the case may be, those functions shall be performed by such one of the other members of the Privatisation Unit as the Minister may designate.

Procedure

7. The Privatisation Unit may, in the performance of its functions and duties under this Act, regulate its own procedure.

Functions of the Privatisation Unit

8. (1) The Privatisation Unit shall, subject to the direction of the Minister, plan, manage, implement and control the privatisation process in Lesotho.

(2) Without prejudice to the generality of subsection (1), the functions of the Privatisation Unit are -

- (a) to decide in consultation with the Line Ministry and managers of the parastatal concerned on the most appropriate method of privatisation;
- (b) in consultation with the Line Ministry to oversee any restructuring necessary prior to privatisation;
- (c) to set tender rules, tender procedures and approval criteria for public and restricted tenders;
- (d) to negotiate bids, contracts of sale and lease agreements;
- (e) to approve any prospectus prepared in relation to a public offering of

shares;

- (f) to liquidate or dissolve without liquidation parastatals;
- (g) to form new private or public companies, act as nominee, shareholder thereof (holding such shares on trust for the Government pending the transfer of such shares to the purchaser or purchasers pursuant to the Privatisation Scheme) and approve and sign all relevant documents;
- (h) to authorise the conclusion of transactions (which may include a preference such as a discount, rebate, free shares, or concessional financing) it thinks fit and to sign related agreements or documents on behalf of the Government concerning any parastatal or property thereof;
- (i) to receive the proceeds from privatisation on behalf of the Government;
- (j) to complete sale or lease agreements and monitor performance of the purchaser's obligations under such agreements;
- (k) to recommend to the Minister the writing off of debts which are bad or otherwise irrecoverable;
- (l) to ensure that all administrative matters in relation to privatisation are attended to; and
- (m) to do any other act or to execute any document necessary to implement a Privatisation Scheme.

Privatisation method

9. (1) The Privatisation Unit may privatise a parastatal by any of the following methods:

- (a) the sale of shares:
 - (i) by public offering;
 - (ii) to an identified purchaser;
 - (iii) by private placement;
 - (iv) by public tender; or
 - (v) by restricted tender.

(b) the sale of a business as a going concern:

- (i) by public offering;
- (ii) to an identified purchaser;
- (iii) by private placement;
- (iv) by public tender; or
- (v) by restricted tender.

(c) the sale of specific assets:

- (i) by public offering;
- (ii) to an identified purchaser;
- (iii) by private placement;
- (iv) by public tender; or
- (v) by restricted tender.

(d) the leasing of business or specific assets with or without an option to purchase;

(e) management or employee buy-out;

(f) management contract;

(g) the contracting out of service;

(h) the transfer of shares or assets to an investment trust or unit trust approved by the Minister;

(i) franchising;

(j) liquidation;

(k) the transfer of assets to certain defined categories of beneficiary; or

- (1) by any other method that the Privatisation Unit may, with the approval of the Minister, publish in the Gazette.
- (2) Any two or more of the methods specified in subsection (1) may be used in combination.
- (3) Any of the methods specified in subsection (1) may include the transformation of a parastatal or part thereof into a private company or another form of a parastatal.
- (4) The Privatisation Unit shall ensure that a parastatal is sold for its market value.

Private Sector Advisory Committee

- 10. (1) There shall be the Private Sector Advisory Committee hereinafter referred to as the "Committee".
- (2) The Committee shall consist of -
 - (a) the Principal Secretary for the Ministry of Finance, who shall be the Chairman;
 - (b) the Principal Secretary for the Ministry of Economic Planning, who shall be the Deputy Chairman;
 - (c) the Principal Secretary for the Ministry of Trade and Industry;
 - (d) the Principal Secretary for the Ministry of Home Affairs;
 - (e) the Principal Secretary for the Ministry of Agriculture, Cooperatives and Youth Affairs;
 - (f) a representative of the Attorney-General;
 - (g) the Principal Secretary for the Ministry of Local Government;
 - (h) the Principal Secretary for the Ministry of Employment;
 - (i) the director of the Privatisation Unit
 - (j) a representative of Lesotho Bank;
 - (k) a representative of the business women;
 - (l) a representative of commercial banks (other than Lesotho Bank);
 - (m) a representative of the Law Society of Lesotho;

- (n) a representative of women lawyers;
- (o) a representative of the Employees' Trade Unions;
- (p) a representative of the Association of Lesotho Employers;
- (q) a representative of the Lesotho Chamber of Commerce;
- (r) a representative of Lesotho Manufacturers Association.
- (s) two members of the District Development Council (one of whom shall represent the Southern region, the other shall represent the Northern region) nominated by the relevant District Development Councils.

(3) The members referred to in subsection (2)(k), (l), (p), (q), (r) and (s) shall be appointed by the Minister.

(4) The appointed member of the Committee shall, subject to this Act, hold office for a period of 2 years from the date of his appointment. If still qualified, the appointed member is eligible for re-appointment.

(5) Where the office of the appointed member becomes vacant before the expiration of his term of office, the Minister may appoint a person to hold the office for the unexpired part of that term.

(6) The Committee shall co-opt a person who represents the special interest group in the field of activity of the parastatal which is under consideration for privatisation. A co-opted person shall not vote at the meetings of the Committee.

(7) A person co-opted under subsection (6) shall be paid such expenses and allowance as the Minister may determine.

(8) In this section-

(a) "Northern region" means the districts of Maseru, Berea, Leribe, Butha-Buthe, Mokhotlong and Thaba-Tseka; and

(b) **"Southern region" means the districts of Qacha's Nek, Quthing, Mophale's Hoek and Mafeteng.**

Resignation

11. An appointed member of the Committee may resign his office by writing under his hand

addressed to the Minister.

Termination of appointment

12. The Minister shall terminate the appointment of an appointed member if the appointed member -

- (a) becomes insolvent;
- (b) is convicted of an offence involving dishonesty;
- (c) is absent, except on leave granted by the Chairman from 2 consecutive meetings of the Committee;
- (d) in the case of a member of the kind referred to in paragraphs 10(2) (k), (l), (m), (n), (o), (p), (q), (r) and (s) the Minister has reasonable grounds for believing that the member has ceased to be a person of that kind;
- (e) has been convicted of an offence under section 24.

Function of the Committee

13. (1) The function of the Committee is to advise the Privatisation Unit with respect to matters relating to the functions of the Privatisation Unit.

- (2) Advice given by the Committee shall be in writing.

Meetings

14. (1) The Committee shall meet at least 3 times a year and whenever the Privatisation Unit requests the Committee to convene a meeting.

(2) A meeting of the Committee shall be convened by the Chairman by notice in writing to other members of the Committee, and shall be held at the time and place specified in the notice.

(3) At the meeting, 12 members constitute a quorum.

(4) The Chairman shall preside at all meetings of the Committee at which he is present but if the Chairman is absent from a meeting, the Deputy Chairman shall preside.

(5) If the Chairman and the Deputy Chairman are absent from a meeting, the members present shall elect 1 of their number (who must be a public officer) to preside.

(6) A question arising at a meeting shall be determined by a majority of the members present and voting.

(7) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Committee shall keep a record of its proceedings.

(9) The Secretary of the Committee shall be a public officer appointed by the Minister.

Expenses and allowances

15. An appointed member of the Committee shall be paid such expenses and allowances as the Minister may determine.

List of Parastatals

16. (1) As soon as practicable after the commencement of this Act, the Privatisation Unit shall, after consultation with the Line Ministry and a parastatal concerned and with the approval of the Minister, publish in the Gazette and a newspaper circulating in Lesotho -

- (a) a list of parastatals to be privatised;
- (b) a brief description of each parastatal to be privatised;
- (c) an address to which expressions of interest may be submitted; and
- (d) any information which the Privatisation Unit may consider necessary.

(2) The list of parastatals may be published as one list or in instalments.

(3) Interested parties may within 60 days from the date of publication in the

Gazette, of matters referred to in subsection (1), submit comments to the Privatisation Unit regarding those matters.

(4) The Privatisation Unit shall consider any comments submitted under subsection (3).

(5) The Privatisation Unit may, from time to time, amend or supplement any notice published under subsection (1).

Part III - Privatisation Scheme

Preparation of a Privatisation Scheme

17. (1) The Privatisation Unit shall, after consultation with each parastatal concerned, prepare a Privatisation Scheme for each parastatal named in the list of parastatals.

(2) A Privatisation Scheme prepared under subsection (1) may relate to -

- (a) the whole or part of a parastatal or to two or more parastatals or their parts;
- (b) all or part of the assets of one or more parastatals; or
- (c) a combination of (a) and (b).

(3) A Privatisation Scheme shall contain the following information:

- (a) a description of the parastatal or parastatals available in whole or part for privatisation pursuant to the Privatisation Scheme;
- (b) the name of the Line Ministry;
- (c) the most recent audited accounts of the parastatal or a valuation of the property to be privatised;
- (d) a statement setting out the assets (including intellectual property rights) and liabilities (including contingent liabilities) of the parastatal and stating Which, if any, of those assets and liabilities are not to be transferred to or assumed by the purchaser;
- (e) the proposed method of privatisation;
- (f) if the parastatal or part thereof is to be transformed into a company:
 - (i) the proposed name of the company;
 - (ii) whether that company will be a private or public

- company;
 - (iii) the proposed share capital;
 - (iii) the number, nominal value and classes of shares to be issued and the rights to be attached to such shares; and
 - (iv) the proposed memorandum and articles of association of the company;
- (g) if the parastatal is already in the form of a company, its authorised share capital, the number, nominal value and classes of shares issued or to be issued;
- (h) if applicable, details of any person other than the Government who owns part or leases part or the whole of the parastatal and details of his interest in the parastatal;
- (i) details of any preference including a discount, rebate, free shares or concessional financing which may be given on privatisation;
- (j) the number and skills of the employees;
- (k) a list of the steps that will need to be taken in order to implement the Privatisation Scheme; and
- (l) any other information which the Privatisation Unit may consider appropriate generally or specifically in relation to a Privatisation Scheme.

(4) A Privatisation Scheme may make provision for the Government to retain an interest in a parastatal or part thereof or in any transformed company.

Approval of a Privatisation Scheme

18. (1) The Privatisation Unit shall, through the Minister, submit a Privatisation Scheme prepared under section 17 to the Cabinet for approval.

(2) The Cabinet may approve a Privatisation Scheme unconditionally or subject to any specific condition or conditions which must be satisfied within a specified time. If any condition is not satisfied within the specified time, then unless specified otherwise in the approval, the approval shall lapse and cease to have effect.

(3) If the approval of a Privatisation Scheme lapses and ceases to have effect pursuant to subsection (2), the Privatisation Unit may, subject to the approval of the Minister, prepare a new Privatisation Scheme or delete the parastatal or part thereof that was the subject of the lapsed Privatisation Scheme from the list of parastatals.

(4) The Privatisation Unit shall publish in the Gazette and a newspaper circulating in Lesotho any decision made under subsection (3).

Publication

19. Upon approval of the Privatisation Scheme by the Cabinet, the Privatisation Unit shall cause to be published, that approved Privatisation Scheme in the Gazette and in a newspaper circulating in Lesotho.

Approval of a potential purchaser

20. (1) After the approval of the Privatisation Scheme under section 18, the Privatisation Unit must identify a potential purchaser of a parastatal included in the approved Privatisation Scheme.

(2) After the Privatisation Unit has identified a potential purchaser under subsection (1), the Privatisation Unit shall, through the Minister, report that fact to the Cabinet for Cabinet's approval to the sale of a parastatal included in the approved Privatisation Scheme to the identified purchaser.

Obligations of parastatals

21. 1) A parastatal scheduled for privatisation shall
- (a) carry out any recommendations made by the Privatisation Unit for preparing the parastatal for privatisation;
 - (b) keep up to date all business records and books of accounts of the parastatal;
 - (c) not perform any action or actions that would result in the assets of the parastatal being dissipated.

(2) Any person or officer of a parastatal who contravenes the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding M20,000 or to a term of imprisonment not exceeding 6 years, or to both.

Transformed company

22. (1) Where a Privatisation Scheme provides for the transformation of a parastatal or part of a parastatal into a company, all assets and liabilities of the parastatal to which the

Privatisation Scheme relates, including rights and obligations under a contract with any person entered into by the parastatal shall be transferred to the transformed company without any requirement for consent by that person.

(2) Notwithstanding the provisions of subsection (1), where the property of the parastatal subject to the Privatisation Scheme includes a lease of immovable property, the transfer of such lease shall be conditional on the consent of the Minister responsible for land matters.

Information

23. (1) The management and employees of each parastatal named in the list of parastatals and the management and employees of the appropriate Line Ministry shall provide all relevant information and give every assistance to the Privatisation Unit in the preparation of a Privatisation Scheme.

(2) A person who refuses to provide relevant information and assistance to the Privatisation Unit when requested to do so commits an offence and is on conviction liable to a fine not exceeding M1 0,000 or a term of imprisonment not exceeding 3 years or both.

Part IV - Miscellaneous

Disclosure of interest

24. (1) A member of the Privatisation Unit or Committee, who has any direct or indirect interest in any parastatal which is the subject of a Privatisation Scheme whether as a potential purchaser or otherwise shall, as soon as he becomes aware of that interest, disclose to the Privatisation Unit or Committee, as the case may be, the fact of that interest and such disclosure shall be recorded in the minutes of the Privatisation Unit or Committee, as the case may be, and such member shall not sit or take part in any deliberation of the Privatisation Unit or Committee as the case may be, in relation to any matter relating thereto.

(2) A member of the Privatisation Unit or Committee who fails to comply with the requirements of subsection (1) commits an offence and is liable on conviction to a fine not exceeding M20,000 or to a term of imprisonment not exceeding 6 years, or to both.

(3) The Minister shall terminate the appointment of a member of the Privatisation Unit or Committee who is convicted under this section.

Execution of documents

25. Any deed or document requiring signature on behalf of the Privatisation Unit shall be signed by the director and one member.

Agents and consultants

26. (1) The Privatisation Unit may, with the approval of the Minister, engage agents or consultants for the performance of any of its functions under this Act.

(2) The terms and conditions of the engagement of a person as an agent or a consultant shall be determined by the Privatisation Unit with the approval of the Minister.

Staff

27. (1) The Privatisation Unit may, subject to the approval of the Minister, appoint such staff as it thinks appropriate.

(2) The terms and conditions of service of the staff employed under this section shall be determined by the Privatisation Unit after consultation with the Minister.

Immunity

28. No act or omission whatsoever of any member of the Privatisation Unit shall render that member personally liable in respect of any loss or damage sustained by any person in consequence of any such act or omission unless such act or omission was done in bad faith or was due to negligence.

Opening of Accounts

29. (1) The Principal Secretary for the Ministry of Finance shall -

- (a) open and maintain a Special Treasury Privatisation Account at the Central Bank of Lesotho into which all proceeds from privatisation of a parastatal directly owned by the Government shall be paid;
- (b) open and maintain a Special Privatisation Fund Account at the Central Bank of Lesotho into which all proceeds from a parastatal indirectly owned by the Government shall be paid.

(2) The Privatisation Unit may, with the approval of both the Principal Secretary for the Ministry of Finance and the Minister, draw on funds of the Special Treasury Privatisation Account to promote private sector development.

(3) A parent parastatal of a parastatal indirectly owned by the Government may, with the approval of the Cabinet, draw on funds of the Special Privatisation Fund Account for use by that parent parastatal to promote private sector development.

Accounts

30. (1) The Privatisation Unit shall prepare in respect of each financial year or part thereof, a statement of accounts and such other information in respect of the financial year as the Cabinet may require.

(2) The accounts of the Privatisation Unit shall be audited by the Auditor-General or by an auditor authorised by him under the Audit Act 1973¹.

Report

31. (1) The Privatisation Unit shall, as soon as practicable after the 31st day of March of each year, prepare a report on matters that have been dealt with by the Privatisation Unit during the preceding year, and also from time to time, prepare such special reports as may seem desirable to the Privatisation Unit.

(2) Every report prepared by the Privatisation Unit pursuant to subsection (1) shall be submitted to the Minister who shall lay it before each House of Parliament.

Regulations

32. The Minister may make regulations for the better carrying into effect the provisions of this Act.

NOTE

1. Act No. 5 of 1973