



LESOTHO

Government Gazette

EXTRAORDINARY

LESOTHO REVENUE AUTHORITY ACT NO. 14 OF 2001

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LESOTHO REVENUE AUTHORITY ACT 2001

An Act to provide for the establishment of the Lesotho Revenue Authority as the main body responsible for the assessment and collection, on behalf of the Government, of specified revenue; for the administration and enforcement of laws relating to such revenue and for related matters.

ENACTED by the Parliament of Lesotho

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Lesotho Revenue Authority Act, 2001 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires –

“Authority” means the Lesotho Revenue Authority established under section 4;

“Board” means the Board of the Authority established under section 8;

“Chairman” means the Chairman of the Board designated as such under section 8 (3);

“Commissioner-General” means the Commissioner-General of the Authority appointed under section 17 (1);

“existing revenue departments” means the Departments of-

- (a) Customs and Excise;
- (b) Income Tax; and
- (c) Sales Tax,
within the Ministry of Finance;

“member” means a member of the Board;

“Minister” means the Minister of Finance;

“revenue” means the taxes, duties, fees, fines or other monies imposed and collected under the written laws, or the specified provisions of the written laws, set out in the Schedule.

Duties of the Minister

3. Notwithstanding Part II, it shall be the duty of the Minister-
 - (a) to determine and ensure the effective application of the fiscal policies of the Government of Lesotho;
 - (b) to ensure the effective coordination of the policies for the collection and preservation of revenue accounts.

PART II –THE LESOTHO REVENUE AUTHORITY

Establishment of the Authority

4. (1) There is established a body to be known as the Lesotho Revenue Authority which shall be –
 - (a) a body corporate with perpetual succession and a common seal;
 - (b) in its corporate name, capable of suing and being sued;
 - (c) capable of holding, purchasing and otherwise acquiring and disposing of any property, moveable and immovable, for purposes of, or in the course of carrying out its functions; and
 - (d) doing or performing all such acts and things as bodies corporate may by law do or perform.

(2) The Authority shall, upon the commencement of this Act, replace the existing revenue departments.

Functions of the Authority

5. (1) The Authority shall be an agency of the Government responsible for the assessment, collection and receipt of specified revenue and shall operate under the general supervision of the Minister.

(2) Without prejudice to the generality of subsection (1), the functions of the Authority shall be-

- (a) to administer and enforce the laws set out in the Schedule;
- (b) to promote voluntary compliance with tax laws;
- (c) to take such measures as may be required to improve the standards of service given to taxpayers with a view to improving efficiency and effectiveness and maximising revenue collection;
- (d) to take such measures as may be required or necessary to counteract tax fraud and other forms of fiscal evasion;
- (e) to advise the Minister on matters of revenue policy and matters relating to the administration and collection of revenue under the laws listed in the Schedule; and
- (f) to perform such other functions, in relation to revenue, as the Minister may direct.

(3) The Minister may, by notice published in the Gazette, amend the Schedule.

Powers of the Authority

6. The Authority shall, in the discharge of its functions, have power-

- (a) to study revenue laws and propose any suitable changes to the Minister, which may be made to any law for the purpose of improving the administration of, and compliance with, revenue laws;
- (b) to calculate the administrative costs, compliance costs and the operational impact of intended legislative changes, and to advise the Minister accordingly;

- (c) to collect and process statistics needed to provide forecasts of revenue receipts and the effect on yield of any proposals for changes in revenue laws, and to advise the Minister accordingly; and
- (d) to take such other measures as it deems necessary or desirable for the achievement of the purposes or provisions of this Act.

Tax payer identification and exchange of information

7. (1) The Authority shall, with the approval of the Minister, by notice in the Gazette, provide for the establishment, maintenance, and application of systems for the convenient and effectual identification of taxpayers for the purpose of co-ordinated administration of the revenue laws of Lesotho.

(2) Without prejudice to subsection (1), it shall be lawful for officers in the revenue departments of the Authority to exchange or furnish each other with information or documents concerning any taxpayer and for the purposes of the discharge of functions under this Act.

PART III - THE BOARD OF THE AUTHORITY

Establishment and composition of the Board

8. (1) There is established a board of the Authority which shall be the governing body of the Authority.

(2) The Board shall consist of the following persons:

(a) one senior representative of the following Ministries or bodies as the case may be, who shall be appointed by the Minister in consultation with the Ministries or bodies-

- (i) Ministry of Finance;
- (ii) Ministry of Industry, Trade and Marketing;
- (iii) Central Bank of Lesotho;
- (iv) Lesotho Institute of Accountants;
- (v) Lesotho Chamber of Commerce & Industry;
- (vi) Lesotho Association of Employers;

(b) one member appointed by the Minister from the private sector, who shall be appointed on the basis of his professional knowledge and experience in finance, commerce, legal or economic affairs; and

(c) the Commissioner-General, who shall be Secretary.

(3) A member of the Board shall be a person of high integrity and shall have no proven record of tax evasion.

(4) The Minister shall designate the Chairman of the Board from amongst the members and the members shall elect a Vice-Chairman from amongst their number:

Provided that if the Chairman is designated from the public sector, then the Vice-Chairman shall be elected from the private sector, and vice versa.

(5) Every member shall, personally, attend meetings of the Board, and where a member is unable to attend any meeting of the Board he may request that his apologies for failure to attend be recorded. In such circumstances, a member may, in his absence, and with the approval of the Ministry or body which he represents, nominate a senior and experienced person to represent him.

(6) A member shall not, by virtue only of his appointment to the Board, be deemed to be an officer in the public service.

(7) A member shall hold office for a period of 3 years from the date of his appointment and shall be eligible for re-appointment at the expiry of that period.

(8) The Minister shall, by notice in the Gazette, publish the names of the persons appointed as members.

Vacation from office

9. (1) A member shall be deemed to have vacated his office-

- (a) upon the expiry of the period of his appointment;
- (b) upon his death;
- (c) if he ceases employment with, or membership of, the Ministry or body, as the case may be, which nominated him;
- (d) if he is adjudged insolvent;
- (e) if he is convicted -
 - (i) for an offence under section 11 (2);
 - (ii) for an offence which involves moral turpitude.
- (f) if he is absent, without the permission of the Board, from 3 successive meetings of the Board of which he has had notice;

- (g) upon notice in writing of his intention to resign his office;
- (h) if he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;
- (i) if any circumstances arise that, if he were not a member, would cause that member to be disqualified for appointment as a member.

(2) Whenever there is a vacancy in the office of a member, the Minister shall, in accordance with section 8 and by notice published in the Gazette, appoint another person, nominated by the Ministry or body, as the case may be authority or institution which nominated the original member, to fill the vacancy for the remainder of the period.

(3) Subject to section 10 (4), the Board may act notwithstanding any vacancy in the membership of the Board and any decisions made shall be valid.

Meetings of the Board

10. (1) The Board shall meet at such places and at such times as the Chairman may determine, and shall meet at least once every month.

(2) An ordinary meeting of the Board shall be convened after at least 7 days written notice to the members.

(3) The Chairman may, at his discretion, and shall, at the written request of 3 or more members of the Board and within 5 days of such request, cause an extraordinary meeting of the Board to be summoned at such place and time as he may appoint.

(4) The Chairman, or in his absence, the Vice-Chairman shall preside at meetings of the Board, and the quorum of any meeting of the Board shall be 4 members.

(5) In the absence of both the Chairman and Vice-Chairman the members present and forming a quorum shall elect one of the members to preside over a meeting of the Board, and the member so elected shall exercise all the powers and perform all the duties of the Chairman.

(6) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business or the proceedings and business of any of its committees and may vary, suspend or revoke any such standing orders.

(7) Minutes of each meeting of the Board or a committee of the Board shall be kept by the secretary and shall be continued at the succeeding meeting.

(8) The decision of the Board at any meeting on any matter shall be that of the majority of the members present and voting, and at all meetings the person presiding

shall have, in the event of an equality of votes, a casting vote in addition to his deliberative vote.

(9) The validity of any act, decision or proceedings of the Board shall not be affected by any vacancy among the members or by any defect subsequently discovered in the appointment of a member or by reason that some person who was not entitled to do so took part therein.

Disclosure of interest

11. (1) If a member acquires any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Board at which the matter is the subject of consideration by the Board, he shall, as soon as practicable after the commencement of the meeting, disclose all the material facts to the Board, and shall not take part in the consideration or discussion of, or vote on any question with respect to, the matter.

(2) A member who contravenes subsection (1) commits an offence and shall be liable on conviction to imprisonment for a period of not less than 1 year but not exceeding 5 years or to a fine not less than M2, 000 but not exceeding M10, 000.

Invitees

12. (1) The Board may, in its discretion, at any time and for any length of period, invite any person to attend any meeting of the Board for the purpose of assisting or advising the Board in respect of any matter under consideration by the Board.

(2) Any person invited pursuant to subsection (1) may take part in the deliberations of the Board at any meeting he attends, but shall not be entitled to vote on any matter at any meeting of the Board.

Committees of the Board

13. (1) The Board may establish such number of committees as the Board shall deem appropriate to perform such functions and such responsibilities as the Board shall determine.

(2) The Board shall appoint the chairman of each committee from amongst the members.

(3) An officer of the Authority duly appointed in writing by the Commissioner-General shall be secretary to any committee of the Board, and shall, on the instructions of the chairman of the committee convene meetings of the committee.

(4) The provisions of section 10 relating to the meetings of the Board shall, mutatis mutandis, apply to the meetings of any committee.

Remuneration and expenses of members

14. (1) Members shall be paid from the funds of the Authority such sitting allowance as the Board may, subject to the approval of the Minister, determine.

(2) The Board may, with the approval of the Minister, make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Board in connection with the business of the Board or the committee.

Powers of the Board

15. (1) In the discharge of its functions under this Act, the Board may-

- (a) direct the Commissioner-General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;
- (b) give instructions and orders to the Commissioner-General in connection with the management, performance, operational policies and implementation thereof, of the revenue departments of the Authority;
- (c) formulate and devise a system for ensuring, through internal audit systems, the correct processing of all tax cases;
- (d) on the recommendation of the Commissioner-General approve such organizational structures as the Commissioner-General may consider necessary for the discharge of the functions of the Authority;
- (e) prescribe such administrative measures as may be required to safeguard the revenue;
- (f) exercise disciplinary control over all staff of the Authority.

(2) The Board shall not intervene in the determination of any revenue assessment, revenue liability of, or tax appeal by, any taxpayer.

Exemptions

16. (1) The Board shall recommend to the Minister –

(a) criteria or factors by reference to which any exemption, mitigation, deferment or remission of any revenue may be granted; and

(b) procedures to be followed in granting any exemption, mitigation, deferment or remission of any revenue and the Minister shall by notice published in the Gazette, publish within 60 days of his decision, specify the criteria or factors and the procedures so recommended.

(2) The Minister may, by notice published in the Gazette, exempt, mitigate, defer or remit any revenue in accordance with the criteria published pursuant to subsection (1).

(3) The Commissioner-General shall submit to the Board quarterly reports on the total amount of revenue remitted or foregone in respect of each of the criteria specified under subsection (1).

(4) The Board shall, within 3 months of the end of the financial year of the Authority, submit to the Minister a report setting out the total amount remitted or foregone pursuant to subsection (2), and the Minister shall, within 30 days from the date of submission, cause it to be published in the Gazette.

(5) The Minister shall, within 60 days from the date of publication of the report in the Gazette, lay the report before Parliament.

PART IV- ADMINISTRATION OF THE AUTHORITY

Appointment of Commissioner – General

17. (1) There shall be a Chief Executive of the Authority to be called the Commissioner-General who shall be appointed on merit by the Board on such terms and conditions as the Board may determine.

(2) The appointment and terms and conditions of service of the Commissioner-General shall be subject to approval by the Minister.

(3) The Commissioner-General shall, subject to the general supervision and control of the Board, be responsible for-

(a) the day to day operations of the Authority;

- (b) the management of the funds, property and business of the Authority;
- (c) the administration, organization and control of the officers and staff of the Authority; and
- (d) the effective administration and implementation of the provisions of this Act.

(4) The Board shall conduct an annual performance appraisal with regard to the performance of the Commissioner General, and a report thereof, shall, within 30 days from the end of the financial year of the Authority, be submitted to the Minister.

Tenure of office of Commissioner - General

18. (1) The Commissioner-General shall, subject to subsection (2), hold office for a period of 3 years and shall be eligible for re-appointment at the discretion of the Minister.

(2) The Board may, subject to the approval of the Minister, terminate the appointment of the Commissioner-General for-

- (a) misconduct or misbehavior in terms of the code of conduct of the Authority;
or
- (b) inability, incapacity or incompetence to perform the duties of his office.

General functions of Commissioner - General

19. (1) The Commissioner-General shall devote his full time to the duties of his office and shall not, without the prior approval of the Board, hold any office of trust or profit, other than that of Commissioner-General or engage in any occupation for reward outside the office of Commissioner –General.

(2) The Commissioner-General may, subject to this Act and to any general or specific directions of the Board, delegate any of his functions in relation to a revenue law to a revenue commissioner or any other commissioner or officer.

(3) The Commissioner-General or, in his absence such officer of the Authority as the Commissioner-General may designate in writing shall attend meetings of the Board and any committee of the Board but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require the Commissioner-General or such other officer to withdraw from the meeting.

(4) The Commissioner-General shall, on the instructions of the Chairman, convene meetings of the Board.

Appointment of Revenue Commissioners etc.

20. (1) The Board may, on the recommendation of the Commissioner-General, and on such terms and conditions as the Board may determine, appoint on the basis of merit, such number and grades of revenue commissioners or other commissioners in relation to any revenue law as the Board may think necessary or desirable for the efficient and effective discharge of the functions of the Authority.

(2) The Commissioner-General may, on such terms and conditions as the Board may determine, appoint other officers and staff of the Authority subordinate to the Commissioner-General as may be required for the performance of the functions of the Authority.

Existing staff

21. (1) Upon the commencement of this Act, a public officer employed in the existing revenue departments may, within a period to be prescribed by the Authority apply to the Authority for employment and if he is chosen, he shall be employed by the Authority and shall be deemed to have retired from the Public Service from the date of his assumption of duties with the Authority and he shall be entitled to such terminal benefits, if any, due to him under the appropriate legislation.

(2) A public officer who does not apply for employment with the Authority or whose application has not been successful in securing employment with the Authority, may be re-deployed in the Public Service subject to availability of a suitable position as may be determined by the Minister responsible for the Public Service.

(3) Where no suitable position is available in the opinion of the Minister responsible for the Public Service, such officer as referred to in subsection (2) shall be deemed to have been retired from the Public Service pursuant to the Public Service Act 1995¹.

PART V – FINANCIAL PROVISIONS

Revenue to be paid into the Consolidated Fund

22. All revenue collected by, or due and payable to, the Authority under this Act shall be paid into the Consolidated Fund.

Funds of the Authority

23. (1) The funds of the Authority shall consist of –

- (a) 2% of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act;
- (b) such monies as the Minister may, after consultation with the Board, allocate as bonus in case of exceptional performance;
- (c) such monies as may be received by the Authority under subsection (2); and
- (d) such monies as may otherwise vest in or accrue to the Authority.

(2) The funds of the Authority-

- (a) specified in subsection (1) (a) shall, notwithstanding the Finance Order 1988², be payable to the Authority in monthly installments on or before the beginning of each month and may, subject to the approval of the Minister, be taken from revenue collections;
- (b) specified in subsection (1) (b) shall be payable to the Authority within one month after the end of the three-month period.

(3) The Minister may, on the recommendation of the Board, by notice published in the Gazette, revise the percentages of revenue in subsection (1) (a) and (b).

(4) Any funds received by the Authority in respect of a financial year which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year.

(5) The Authority may-

- (a) accept money by way of grants or donations from any source in or outside Lesotho;
- (b) subject to the Loans (Statutory Bodies) Act 1975³ and the approval of the Minister, raise by way of loans from any source in or outside Lesotho, such money as it may require for the discharge of its functions; and
- (c) charge and collect fees in respect of programmes, publications, seminars, documents, consultancy services and other services provided by the Authority.

(6) The Authority may, subject to the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Accounts and audit

24. (1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall be audited annually by independent auditors appointed by the Board and approved by the Minister.

(3) Notwithstanding subsection (2), the Auditor-General may examine the books of accounts of the Authority at the request of the Government.

Annual reports

25. (1) The Authority shall as soon as practicable, but not later than 3 months after the expiry of each financial year, submit to the Minister a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister may approve, and shall include information on the financial affairs of the Authority and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure;

(c) the total amount of revenue remitted or foregone pursuant to section 16 (2);
and

(d) such other information as the Authority may consider appropriate or as the Minister may direct.

(3) The Minister shall, during the meeting of the National Assembly next following receipt by him of the report referred to in subsection (1), lay the report before the National Assembly, and the Authority may publish the report for sale to the public.

Financial year

26. The financial year of the Authority shall be a period of 12 months commencing on, 1st April in each year, and ending on 31st March in the following year, or on such other dates the Minister may specify by Notice published in the Gazette:

Provided that the first financial year of the Authority may be such shorter or longer period than 12 months as the Minister shall determine but being not less than 6 months or more than 18 months.

PART VI – MISCELLANEOUS

Confidentiality

27. (1) Every member of the Board, the Commissioner-General, revenue commissioner or any other person employed by the Authority in the carrying out of the provisions of this Act, shall regard and deal with as secret to any unauthorized person, all documents and information relating to the income, expenditure or other financial dealings or status of any taxpayer or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties.

(2) The provisions of the Income Tax Act 1993, the Customs and Excise Act 1982 and the Sales Tax Act 1995 relating to the preservation of secrecy by officers and other persons discharging functions under the Act shall, mutatis mutandis, apply to persons discharging functions under this Act.

Exemption from personal liability

28. No member of the Board, any committee of the Board, or an employee of the Authority shall, in his personal capacity, be liable in civil or criminal proceedings in respect of any act or omission done in good faith in the performance of his duties or functions under this Act.

Regulations

29. (1) The Minister may, on the recommendation of the Board, make Regulations for the carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations –

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) prescribing the procedure for the appointment of members of the staff of the Authority;
- (c) prescribing the code of conduct for all members of staff of the Authority, a breach of which shall constitute a disciplinary offence;
- (d) prescribing the procedure for the conduct of disciplinary proceedings;
- (e) respecting the administration and management of the funds of the Authority;
and

- (f) respecting the performance targets of the Authority.

Vesting of assets, liabilities etc.

30. (1) All property, except any such property as the Minister may determine, by notice published in the Gazette, which immediately before the commencement of this Act was vested in the Government for the use of the existing revenue departments for purposes of the written laws set out in the Schedule shall, on the commencement of this Act, and without further assurance, vest in the Authority, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the existing revenue department before the commencement of this Act shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which before the commencement of this Act are pending in respect of revenue to which the written laws set out in the Schedule apply shall be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the commencement of this Act.

Reference to existing revenue departments

31. Upon the coming into operation of this Act-

- (a) all references to the Director of Customs and Excise, the Commissioner of Sales Tax or Commissioner of Income Tax in the laws specified in the Schedule or any other law shall be constructed as references to the Commissioner-General;
- (b) any reference to the existing revenue departments in the laws specified in the Schedule or in any other law shall be deemed to be a reference to the Authority.
- (c) except as provided in paragraph (a) any reference to an officer of the existing revenue departments howsoever designated in the written laws specified in the Schedule or in any other law shall be deemed to be reference to the Authority.

NOTE

1. Proclamation No. 4 of 1964
2. Act No. 13 of 1995
3. Order No. 6 of 1988
4. Act No. 9 of 1993
5. Act No. 12 of 1982
6. Act No. 14 of 1995
7. Act No. 22 of 1975

SCHEDULE

LAWS RELATING TO REVENUE

(sections 2, 5(2)(e) and 31)

1. Customs and Excise Act 1982
2. Income Tax Act 1993
3. Sales Tax Act 1995
4. Value Added Tax 2001