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ACT NO. 12 OF 2022

Lesotho Revenue Authority (Amendment) Act, 2022

An Act to amend the Lesotho Revenue Authority Act, 2001¹, to make provision for the powers of the Minister, the Board and the Commissioner General to facilitate a more effective and efficient administration of the Authority; and for related matters.

ENACTED by Parliament of Lesotho.

Short title and commencement

1. This Act may be cited as the Lesotho Revenue Authority (Amendment) Act, 2022, and shall come into operation on the date of publication in the Gazette.

Interpretation

2. The Lesotho Revenue Authority Act, 2001 (in this Act referred to as the "Principal Act") is amended -

- (a) by deleting the words "Lesotho Revenue Authority" and "Authority" wherever they appear and substituting the words "Revenue Services Lesotho" and "Service" respectively; and
- (b) in section (2) by -
 - (i) inserting after the definition of "Board" the following definition:

"Board Secretary" means the Secretary of the Board appointed under section 16A;
 - (ii) deleting "of" in the definition of "Minister" and substituting "responsible for"; and
 - (iii) inserting after the definition of "Minister" the following definition:

“Ministry” means the Ministry responsible for finance.

Amendment of section 3

3. The Principal Act is amended by deleting section 3 and substituting the following:

“Powers of the Minister

3. The Minister -

- (a) shall determine the fiscal policies of the Government and ensure their effective application and coordination for the collection of revenue and preservation of revenue accounts;
- (b) shall appoint members of the Board;
- (c) shall set revenue performance targets for the Service;
- (d) may determine the criteria or factors and procedures to follow for the exemption, mitigation, deferment or remission of any revenue;
- (e) may exempt, mitigate, defer or remit any revenue in accordance with the determined criteria and publish the decision to exempt, mitigate, defer or remit in the Gazette;
- (f) shall publish the determined criteria or factors in paragraph (d) and procedures in the Gazette;
- (g) shall publish in the Gazette, a report submitted by the Board under section 16(3), within 30 days of submission; and
- (h) shall table the report, submitted by the Board before Parliament within 60 days of the date of publication in the Gazette.”.

Amendment of section 5

4. The Principal Act is amended in section 5(2) by inserting the following new paragraphs after paragraph (d) and renumbering the rest of the paragraphs accordingly:

- “(e) to investigate any alleged or suspected -
 - (i) contravention of this Act;
 - (ii) contravention of the laws set out in the Schedule;
or
 - (iii) offences related to tax fraud or fiscal evasion.”

- “(f) without prejudice to the generality of paragraph (e) to deal with allegations of corruption against an officer or employee of the Authority, and in doing so shall have powers to -
 - (i) make enquiries or investigations where necessary;
 - (ii) call for any record, document or any information;
 - (iii) retain a record or document for their examination for a reasonable period;
 - (iv) make a copy of any such record or document; or
 - (v) require any person to come before the Authority to give information on the alleged corruption against an officer or employee.”

- “(g) to institute criminal proceedings with the written consent of the Director of Public Prosecutions with regard to -
 - (i) contravention of the laws set out in the Schedule;
or

- (ii) offences related to tax fraud or fiscal evasion; or
- (iii) offences related to corruption allegedly committed by an officer or employee of the Service.”.

Amendment of section 8

5. The Principal Act is amended in section 8 by -

- (a) inserting the words “having any of the qualities mentioned in subsection (2)(d) and regard where possible, to gender diversity as well as a balance of skills and expertise” after the word “persons” in subsection (2);
- (b) deleting the word “of” in subsection (2) (a) (i) and substituting “responsible for”;
- (c) deleting in subsection (2)(a) (ii) “Ministry of Industry, Trade and Marketing” and substituting “Ministry responsible for trade”;
- (d) deleting “who shall be the Secretary” in subsection (2)(c) and substituting “who is an *ex officio* member”; and
- (e) inserting the following provision after subsection (2)(c) -
 - “(d) representatives under paragraph (a) shall be appointed on the basis of their professional knowledge and experience in accounting, business administration, commerce, economics, finance, human resource, information communication technology, law and taxation.”.

Amendment of section 9

6. (1) The Principal Act is amended in section 9 -

- (a) 9(1)(d) by inserting the following words after the word “insolvent” “in terms of the laws of Lesotho or in terms

of the laws of another country;” and

- (b) 9(1) by inserting the following paragraphs after paragraph (i):
 - “(j) if he or she becomes an office holder in a political party, a councillor in a local authority or a member of the National Assembly; and
 - (k) if he or she is found guilty of unprofessional conduct by a competent tribunal, board or body constituted for the purpose of adjudicating on matters of discipline or conduct.”

Amendment of section 10

7. The Principal Act is amended in section 10 by -

- (a) deleting the words “once every month” in subsection (1) and substituting “once every three months”; and
- (b) inserting the following subsections after subsection (9):
 - “(10) A decision that can be voted on at a meeting of the Board may be adopted by written consent of a majority of the directors, given in person or by electronic communication, where each director has received notice of the matter to be decided.
 - (11) A decision made in the manner contemplated in subsection (10) is of the same effect as if it had been approved by voting at a meeting.”

Amendment of section 11

8. The Principal Act is amended in section 11 by -

- (a) deleting subsection (1) and substituting the following -
 - “(1) A member of the Board who has a per-

sonal, direct or indirect financial, interest, in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his interest to the Board.

(2) A disclosure of interest under subsection (1) shall be recorded in the minutes of the meeting of the Board, and the member making the disclosure shall not, unless the Board otherwise determines in respect of that matter -

(a) be present during any deliberation on the matter by the Board, and

(b) take part in the decision of the Board.

(3) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberations on a matter in which he has disclosed a personal interest, the other members present shall postpone the consideration of the matter until a quorum is realised."

(b) the Principal Act is amended in section 11 by consequentially renumbering subsection (2).

Amendment of section 14

9. The Principal Act is amended in section 14 by deleting subsection (1) and substituting the following:

"(1) A member shall be paid out of the funds of the Service, such allowances as the Board may, subject to the approval of the Minister, determine."

Amendment of section 15

10. The Principal Act is amended -

- (a) by deleting section 15(1)(b) to (f) and substituting the following:

“(b) on the recommendation of the Commissioner General approve -

- (i) any organisational structure for the discharge of the functions of the Service; and
- (ii) policies regarding the general administration of the Service and the management of its assets, personnel, finances and the general discharge of its functions.”.

Insertion of new section 15A

11. The Principal Act is amended by inserting the following section after section 15 -

“Standards of directors conduct

15A: (1) A director shall exercise the powers and perform the functions of director -

- (a) in good faith and for a proper purpose;
- (b) in the best interests of the Service; and
- (c) with the degree of care, skill and diligence that may be reasonably expected of a person -
 - (i) carrying out the same functions as those carried out by that director; and
 - (ii) having the general knowledge, skill and experience of the director.

- (2) Reference to standards on conduct of directors shall mean ref-

erence to these standards as they would have evolved from time to time.

Insertion of new section 16A

12. The Principal Act is amended by inserting the following new section after section 16:

“Board Secretary

16A. (1) There shall be a Board Secretary who is the secretary to the Board appointed on merit by the Board after consultations with Commissioner General, on terms and conditions to be determined by the Board.

(2) The Board Secretary is responsible for the administration of the affairs of the Board under the general supervision of the Commissioner General.

(3) The Board Secretary, acting in consultation with the Chairman of the Board or respective Board Committees for convening meetings of the Board or Board Committees, is responsible for maintaining records of the Board and ensuring governance and compliance by the Board with the Act and all other relevant legislation and Governance Codes of good practice.

(4) The Commissioner shall appoint an officer of the Service to act in the position of the Board Secretary in the absence of the incumbent from office.”.

Amendment of section 19

13. The Principal Act is amended in section 19 -

(a) by deleting subsection (2) and substituting the following:

“(2) The Commissioner General may, subject to this Act or any general or specific directions of the Board -

(a) delegate any of his functions in relation to any legislation on revenue or administration of the Authority, to a revenue

commissioner, commissioners, or their equivalent or an officer of the Service:

- (b) appoint, in writing, any competent officer of the Service to act in a higher position for a renewable period of up to 6 months.”;

- (b) by deleting subsection (4) and substituting the following:

“(4) The Commissioner General shall, quarterly, submit reports to the Board, on the total amount of revenue remitted or foregone in respect of each criteria specified under section 16(3).”.

Amendment of section 20

14. The Principal Act is amended in section 20 (1) by -

- (a) deleting the word “or other” between revenue commissioners and commissioners; and
- (b) inserting -
 - (i) a comma after revenue commissioners; and
 - (ii) the words “and their equivalent” after commissioners.

Amendment of section 22

15. The Principal Act is amended in section 22 by -

- (a) adding subsection “(1)” after “22” and by inserting “, subject to subsections (2) and (3)” after “shall”; and
- (b) inserting the following new subsection:

“(2) The Service may maintain, at a commercial

bank; such reasonable float as shall be agreed to from time to time with the Ministry for purposes of paying tax refunds.”.

Amendment of section 23

16. The Principal Act is amended in section 23 -

- (a) subsection (2)(a) by deleting the words “monthly” and “month” and substituting “quarterly” and “quarter of a financial year”, respectively;
- (b) by deleting subsection (2) (b) and substituting the following:

“(b) specified in subsection (1) (b) is payable to the Service as part of the first quarter instalment for the second financial year following the year to which the funds in question relate.”.
- (c) subsection (5)(c) by inserting the words “rental in respect of properties owned by Service,” after the word “collect”.

Amendment of section 24

17. The Principal Act is amended in section 24 by -

- (a) inserting the words “and revenue collection accounts” after “its accounts” in subsection (1);
- (b) deleting subsection (2) and substituting the following:

“(2) The Auditor-General or any other person commissioned by the Auditor-General, shall annually examine and audit the accounts contemplated in subsection (1).”; and
- (c) deleting subsection (3).

Amendment of section 25

18. The Principal Act is amended in section 25(2) (c) by deleting "16(2)" and substituting "3(e)".

Amendment of section 27

19. Section 27 of the Principal Act is amended by -

- (a) inserting the following new subsection after subsection (2) -

"(3) A member of the Board shall, upon assuming duty, subscribe and sign a confidentiality and adherence to rules of conduct agreement in a form prescribed by the Board." and

Insertion of new section 27A

20. The Principal Act is amended by inserting the following new section after section 27:

"Offences

27A. (1) A person who -

- (a) interferes with or obstruct investigations made pursuant to section 5(2) (e) and (f); or
- (b) refuses to give information orally or in writing, or gives false or misleading information, to an officer entitled to such information under section 5(2)(f)(v), commits an offence, and is liable, on conviction, to a fine not exceeding M20,000.00 or imprisonment for a term not exceeding 5 years or both.

(2) Any self-incriminating evidence given on the threat of prosecution in terms of subsection (1) shall not be admissible in any criminal proceedings against the subject of investigations."

Insertion of new sections 28A, 28B, 28C

21. The Principal Act is amended by inserting the following new sections after section 28:

“Exemption from income tax

28A. Despite the provisions of the Income Tax Act, 1993², the funds of the Service set out in section 23(1) (a) and (b) are not subject to tax.

Restriction on employees' actions

28B. (1) Notwithstanding the provision of section 232(1) of the Labour Code Order No.24 of 1992 as amended, services rendered by the Lesotho Revenue Authority shall be deemed to be an essential service.

(2) The provisions of section 232(2) to (5) of the Labour Code Order shall be applicable regarding the resolution of a trade dispute which threatens the continuance of Lesotho Revenue Authority's essential service.

(3) Employees of the Lesotho Revenue Authority shall not engage in a strike action.

(4) Participation by an employee in a strike action shall be a dismissible breach of the disciplinary code of conduct.

Execution or attachment to be levied

28C. (1) Execution or attachment or process in the nature thereof shall not be issued against the Authority in any action or proceedings against the Authority on a refund determined payable against an assessment, decision, ruling, determination, and direction of the Commissioner General. Notwithstanding this provision, the Authority is not to unreasonably withhold payment of refunds due, owing and payable by the Authority to taxpayers.

(2) A writ of execution may only be issued with leave of court if more than one (1) year has lapsed from the date of the judgment the refund is not paid or the Authority has failed to agree to a payment plan with the taxpayer.”.

Amendment of section 29

22. The Principal Act is amended in section 29 by deleting the figure “(1)” after 29 and by deleting the whole of subsection (2).

Amendment of section 31

23. The Principal Act is amended in section 31-

- (a) by deleting in subparagraph (b) the words “be” between “reference” and “the Authority” and substituting the words “to”;
- (b) by deleting the words “to the Authority” in paragraph (c) and substituting the words “to the officer of the Service”.

NOTE

- 1. Act No. 14 of 2001
- 2. Act No. 9 of 1993

GOVERNMENT NOTICE NO. 43 OF 2022

The Parliament of Lesotho**Statement of Objects and Reasons of the Lesotho Revenue Authority
(Amendment) Act, 2022**

**(Circulated by the Authority of the Minister responsible for finance,
Hon. Thabo Sophonea)**

The object of the Act is mainly to make improvements on governance issues of the Lesotho Revenue Authority by among others, clarifying the roles of the Minister of Finance, the Lesotho Revenue Authority Board of Directors, the Commissioner General and other stakeholders in the administration of the Lesotho Revenue Authority Act, 2001.

The specific areas that are covered by the Act are -

- (a) clarification of the role of the Minister of Finance to determine criteria and procedures for the granting of any exemption, mitigation, deferment or remission of any revenue. These tax exemptions are the remit of the Minister, including setting the procedures to be followed in granting them, while revenue collection is the role of the Lesotho Revenue Authority;
- (b) the clarification of the role of the Board as a supervisory body charged with responsibility of charting the broad strategy policy direction of the Lesotho Revenue Authority to accomplish its mandate;
- (c) making the Commissioner General an ex officio member of the Board and appointing a separate Secretary of the Board;
- (d) regularising the auditing of the Lesotho Revenue Authority's accounts in line with the Constitution of Lesotho, which prescribes that accounts of statutory bodies funded out of public funds must be audited by or under the auspices of the Auditor General;
- (e) permitting the Lesotho Revenue Authority to retain a float from revenue collections for purposes of paying tax refunds. The

quantum and mechanics of the float are to be agreed with the minister responsible for finance;

- (f) amending the Lesotho Revenue Authority's funding formula to permit different percentages in respect of stipulated streams of revenue, in anticipation of proposed expansion of the Authority's mandate to collect other non-tax revenues;
- (g) the express exemption of the Lesotho Revenue Authority's Government-provided funding from income taxation law;
- (h) granting Lesotho Revenue Authority investigation powers to combat tax fraud committed by taxpayers, and corruption committed by the officers of the Authority; and
- (i) recognizing the importance of the Government service provided by the Lesotho Revenue Authority of revenue collection by imposing restrictions on the conduct of employees of the Authority e.g. prohibiting employees from engaging in a strike as is the case with civil servants.