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## LEGAL NOTICE NO. 50 OF 2004

**Privatisation Act (Approved Privatisation Scheme for Lesotho Electricity Corporation) Notice 2004**

Pursuant to section 19 of the Privatisation Act 1995<sup>1</sup>, I,

**MOTHUSI MASHOLOGU**

Director of Privatisation make the following notice:

The Public Service Concession Scheme for the Lesotho Electricity Corporation specified in the Schedule has been approved by Cabinet.

**Schedule****Public Service Concession Scheme for Lesotho Electricity Corporation****A. Corporation Profile**

1. LEC is a corporate body established pursuant to the Electricity Act No. 7 of 1969 ('Electricity Act'). LEC is 100% owned by the Government of Lesotho ('GoL'). The Ministry of Natural Resources ('MoNR') is the Line Ministry that exercises oversight of the affairs of LEC. LEC carries out business throughout Lesotho and has its head office at 53 Moshoeshoe Road, Maseru West.
2. The Electricity Act grants LEC the powers and rights to carry out functions relating to the supply of electricity to customers in Lesotho. This Act, as amended, still provides the legal basis for the supply of electricity in Lesotho. LEC has the sole responsibility for the supply of electricity, and has the right to undertake all tasks related to the generation, transmission, distribution and supply of electricity.
3. The total electricity demand in Lesotho is met through purchases from 'Muela Hydropower Station (owned by the Lesotho Highlands Development Authority ('LHDA')) (72 MW), with the remaining demand in peak periods (approximately 18 MW) being met by

purchases from Eskom in South Africa. Lesotho is an operating member of the Southern Africa Power Pool ('SAPP'). Electricity is being supplied to end-users by LEC through a system of transmission and distribution lines operating at various voltages of 132 kV or lower. In the mountainous eastern areas of the country, electricity is supplied either by one of four mini-hydro plants with diesel-powered back ups also operated by LEC, or by separate 22kV interconnectors to the South African grid. These power system assets account for more than 90% of the total LEC immovable assets, with buildings and land being the main component of the remainder. LEC had 41,843 customers as at the end-January 2004.

4. L.E.C. is controlled through a Board of Directors constituted in accordance with provisions of the Electricity Act. A consulting company was appointed by GoL in February 2001 to act as a management contractor at LEC. LEC has 459 members of staff including both professional and support staff, with 21 unfilled vacancies. The recent financial performance of LEC is summarised in the following statements:

**Summary Profit and Loss Statement (year ended 31<sup>st</sup> March)**

<b>Million Maloti</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Gross Revenue	74.2	118.4	165.8
Cost of Sales	66.7	61.9	74.0
Net other costs	44.7	88.3	116.6
Profit (loss) before tax	(37.2)	(31.8)	(24.8)

**Summary Balance Sheet (year ended 31<sup>st</sup> March)**

<b>Million Maloti</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Fixed Assets	337.3	474.5	506.9
Current Assets	48.8	72.3	57.3
Current Liabilities	51.5	60.0	70.4
Total Capital Employed	334.6	486.8	493.8

Source: LEC Financial Statements

## B. RESTRUCTION STRATEGY

1. Despite a 48% increase in connections in the last three years, electricity is still available to less than 10% of the households in Lesotho. GoL has therefore made improving access to electricity its highest priority for the sector. LEC will play a major role in achieving this. The ultimate objective of the restructuring of LEC is to bring about improvements in access, efficiency and customer service. There is an urgent need to improve performance to allow LEC to become the driving force for achieving the GoL's connection targets. GoL also is in the process of establishing the Lesotho Electricity Authority ('LEA') to regulate the sector.
2. The preferred method of restructuring LEC is the Public Service Concession ('PSC') approach, which has been approved by GoL. This approach ensures that GoL retains long term control over electricity assets while achieving the benefits of private sector investment and expertise in LEC. The main features of the PSC approach are: A permanent concession to provide electricity services within a defined Service Territory; a majority stake would be sold to a strategic partner through a competitive tender for a fixed period; and the shares would be retendered periodically going to the highest bidder.
3. The PSC approach will entail the restructuring of LEC into a new successor company, Lesotho Electricity Company (Pty) Ltd ('LEC (pty)'), which will be incorporated under the Lesotho Companies Act No. 25 of 1967 ('Companies Act'). LEC's business, including its assets, liabilities, rights, obligations and employees, will be transferred to LEC (pty) via an Establishment and Vesting Act. The transmission assets currently owned by LHDA will continue to be operated by the new company. LEC (pty) will be given clear title to its land and buildings and clear rights of way to operate and maintain its transmission and distribution infrastructure. LEC (pty) will be granted a PSC by the PU which will set out its exclusive Service Territory, specify electrification connections and provide for quality of supply and service targets. The LEA will grant LEC (pty) separate licences for transmission/despatch and distribution/supply. It is anticipated that it will not be necessary to separately licence the generating assets to be owned by LEC (pty) because they will fall

below the minimum output for licensing purposes. The National Control Centre ('NCC') will be operated by LEC (pty) to enable it to carry out scheduling, dispatch, import, export and planning activities.

4. The key components of the PSC transaction are summarised as follows:
  - 70% of LEC (pty) shares offered to investors at a fixed price;
  - 30% of LEC (pty) shares retained by GoL for possible future divestiture to local investors and employees;
  - investors bid a 10 year rollout plan for new connections, in line with the GoL's priority objective, GoL and investor to agree rollout plan for the subsequent 10 years;
  - the initial PSC will be for 20 years, subsequent concessions will last for at least 15 years;
  - financial restructuring of LEC's balance sheet, which will involve the conversion to equity of some of its liabilities to GoL;
  - bidders will have the option of obtaining a Partial Risk Guarantee from the World bank/IDA, which would cover them against political and regulatory risk; and
  - the implementation of the approved Transitional Tariff Plan ('Tariff Plan') (see below).
  
5. The PSC approach will have a number of safeguards built into it to ensure that LEC (pty) cannot dispose of a material part of its assets without the agreement of the GoL. The Share Transfer Agreement will include a provision giving the GoL a right of veto over asset disposals above a specified percentage, and the Articles of Association of the company will reinforce this provision.
  
6. Up until the end of 2003, electricity tariffs in Lesotho remained unchanged for 10 years. Inflation has therefore significantly eroded their real value. GoL has therefore accepted that tariff reform is fundamental to the success of the electricity reforms. Target tariff levels that aim to encourage LEC (pty) to improve efficiency have been determined based on a study for the GoL by consultants. A three-year transition path to the target levels has been adopted. This balances the competing objectives of minimising the financial impact on domestic consumers and minimising the (implicit) subsidy

required for as long as tariffs are below the target levels. Key features of the Tariff Plan are as follows:

- initial increase of 18% for all domestic and general purpose consumers (effected on 1 January 2004);
- subsequent increases to take place on 1<sup>st</sup> January 2005 and 2006;
- rebalancing of energy and demand components for commercial and industrial customers.

After the Transition Period retail tariffs will be regulated by the LEA in line with the PSC.

7. LEC's Service Territory will be defined on a geographical basis (a buffer zone either side of its existing distribution network) and will include urban centres, towns and villages that are interconnected to existing transmission bulk supply points. It will be reviewed every five years by the LEA, according to clear, predetermined principles. Within the Service Territory LEC (pty) will have a permanent exclusive right to construct, expand, modify, maintain and operate the transmission and distribution network, connect customers and retail electricity to them. As the Service Territory expands and meets other suppliers who have set up under the rural electrification program (see below), the rights of the existing suppliers will be maintained. Within the Service Territory LEC (pty) will have an obligation to provide a connection to anyone who requests it and who can pay the fee, in accordance with its connection fee policy as approved by the LEA. Outside the Service Territory LEC (pty) will be allowed to apply for any subsidy available from the National Rural Electrification Fund ('NREF') under the rural electrification program (see below).
8. Rural Electrification (RE) is a key component of the GoL's strategy for increasing access to electricity. Certain aspects of the policy will affect the privatisation of LEC. In this regard, it has been agreed that MoNR will continue to be responsible for policy formulation and implementation of RE projects, and LEA for regulating the sector. The NREF will be established as a universal access development

fund, with funding (e.g. from GoL and donor sources) allocated to those projects that provide the lowest cost connections.

### **C. MEASURES TO BE TAKEN TO IMPLEMENT THE RESTRUCTURING STRATEGY**

1. Implementation of the proposed PSC strategy will include the following key steps:

(i) **Preparation of legal and institutional framework for restructuring:**

- (a) Publication of Privatisation Scheme Notice in the Government Gazette and at least one local newspaper;
- (b) Incorporation of LEC (pty) under the Companies Act;
- (c) Preparation of LEC (pty) Establishment and Vesting Act;
- (d) Promulgation and passing of LEC (pty) Establishment and Vesting Act;
- (e) Preparation of LEA (Amendment) Act;
- (f) Promulgation and passing of LEA (Amendment) Act;
- (g) Granting of PSC to LEC (pty) by Privatisation Unit;
- (h) Commencement of remaining sections of LEA Act 2002;
- (i) Establishment of LEA (by appointment of Board and Chief Executive Officer);
- (j) Drafting of LEA Regulations;
- (k) Promulgation of LEA Regulations;
- (l) Preparation of licences to LEC (pty) and other suppliers;
- (m) Issue of licences to LEC (pty) and other suppliers;

- (n) Repeal of Electricity Act and subsidiary regulations.

**(ii) Preparation of LEC for restructuring**

- (a) Implementation of Tariff Plan;
- (b) Finalisation of arrangements for operation of LHDA transmission assets;
- (c) Finalisation of arrangements for operation of NCC assets;
- (d) Issue of leases for all land assets to LEC (pty);
- (e) Clarification of Wayleaves & Easements;
- (f) Resolution of LEC tax issues;
- (g) Reconciliation of all debtors and creditors balanced;
- (h) Financial restructuring of LEC entailing the conversion of balance sheet items to equity (as above);
- (i) Finalisation of Muela power purchase Agreement with LHDA;
- (j) Finalisation of power purchase agreement with Eskom.

**(iii) Implementation of the restructuring transaction**

- (a) Provisional application for Partial Risk guarantee/MIGA Guarantee;
- (b) Preparation of information memorandum, bidding package and marketing materials;
- (c) Advertisements placed in local and international newspapers seeking expressions of interest to participate in the privatisation process;
- (d) Processing of all enquiries and requests for information;
- (e) Shortlist of pre-qualified parties;
- (f) Issue letter of invitation and bidding package to the short-listed parties;
- (g) Permit due diligence of LEC (pty) by potential bidders (to the extent necessary);
- (h) Receive and evaluate bids;
- (i) Select preferred bidder;
- (j) Negotiate and finalise transaction documentation;
- (k) Approval by Cabinet of potential purchaser;
- (l) Fulfilment of conditions precedent;



- (m) Implementation of transaction documents (receipt of purchase price, transfer of ownership).
2. It is expected that the legislative framework necessary to establish LEC (pty) will be completed by end-July 2004, and that the transaction will be completed towards the end of 2004.

#### **D. APPLICATION AND SHORT LISTING**

PU invites interested parties to prequalify to bid for LEC. The shortlist of bidders will be selected based on expressions of interested in response to this notice and/or a subsequent advertisement through an evaluation process based on the following information provided by interested firms:

- (i) experience in rural development of infrastructure;
- (ii) experience in managing an electricity utility
- (iii) experience in managing a supply utility (water, gas, electricity)
- (iv) experience in managing an infrastructure business (wires or pipes)
- (v) experience of working in the African region
- (vi) audited financial statements of the last three years
- (vii) full details of consortium members, if applicable, including statements from each that the lead member is authorised to act on their behalf
- (viii) a statement that there are no conflicts of interest

Expressions of interest, including full contact details of the firm's project manager, must be submitted by no later than 12.00hrs. Lesotho time on Monday 3<sup>rd</sup> May 2004 at the following address:

The Director  
Privatisation Unit  
2<sup>nd</sup> Floor  
Lesotho Bank Mortgage Building  
Private Bag A 249 Maseru -100

Fax: (+266) 22317551

E mail: [director@privatisation.gov.ls](mailto:director@privatisation.gov.ls)

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(Submissions up to 0.5MB will be accepted by e-mail; firms should request an acknowledgement of receipt)

**DATED:** [            ]

**MOTHUSI T. MASHOLOGU  
DIRECTOR OF THE PRIVATISATION UNIT**

**NOTE**

1. Act No. 9 of 1995

