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Environment Fund Regulations, 2022

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LEGAL NOTICE NO. 91 OF 2022

Environment Fund Regulations, 2022

In exercise of the powers conferred on me by section 21(3) of the Public Financial Management and Accountability Act, 2011¹, I,

THABO SOPHONEA

Minister responsible for finance, make the following regulations:

PART I - PRELIMINARY**Citation and commencement**

1. These regulations may be cited as the Environment Fund Regulations, 2022 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these regulations, unless the context otherwise requires -

“Act” means the Public Financial Management and Accountability Act, 2011;

“Board” means the Board of Directors of the Environment Fund established under regulation 9;

“Environment” means the physical factors of the surroundings of human beings, including water, atmosphere, climate, sound, odour, taste, biological factors of animals and plants and the social factors of aesthetics and include both natural and built environment;

“Environmental Audit” means the systematic, documented, periodic and objective evaluation of how well environmental organization, management and equipment are performing in conserving the environment and its resources;

“environmental law” means any law which relates to environmental issues;

“Environmental Resources” means both the renewable and non-renewable resources of the air, land and water including the living resources of fauna and flora and their aesthetical qualities;

“Financial year” means the period beginning from 1st April and ending 31st March of the following year;

“Fund” means the Environment fund, established under regulation 3;

“Line Ministry” means a ministry, department, parastatal, or government agency in which any law vests the functions for the protection, conservation or management of any segment of the environment or whose activities may have an impact on the environment as defined in these Regulations;

“Implementing Agencies” means a line ministry or any other organization that may be authorized by Minister responsible for environment to carry out an activity referred under regulation 4;

“Local Authority” has the same meaning assigned to it under the Local Government Act, 1997²;

“Member” means a member of the Board appointed by the Minister under regulation 9;

“Minister” means the minister responsible for finance;

“polluter-pays principle” means that the cost of cleaning up a segment of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under the Environment Act, 2008³ or any other applicable law; and

“Pollution” means any indirect or direct alteration of the physical, thermal, chemical, biological or radio-active properties of a segment of the environment by discharging, emitting or depositing substances or wastes so as to affect any beneficial users adversely, to cause condition which is hazardous or potentially hazardous to public health, safety welfare or to animals, birds, wildlife, fish or aquatic life or to plants or cause a con-

travention of any condition, limitation or restriction which is subject to a licence issued under the Environment Act, 2008.

PART II - THE FUND

Establishment of the Fund

3. There is established the Environment Fund.

Purpose of the Fund

4. (1) The purpose of the Fund is to finance the activities carried out to protect and manage the environment and environmental resources of Lesotho, including the following:

- (a) promoting awareness of the need generally to protect the environment and, in particular, promoting national campaigns the objectives of which are to foster such awareness;
- (b) preventing and controlling pollution to the environment;
- (c) cleaning up and restoring the environment;
- (d) establishing or assisting in the establishment -
 - (i) of programmes or schemes the purpose of which is to prevent or reduce waste in Lesotho; and
 - (ii) where appropriate, the operation of waste re-use and recycling activities generally, or recovery activities in respect of any specified class of waste;
- (e) conducting or assisting in conducting research with respect to any aspect of environmental protection and management including waste management;
- (f) ensuring the implementation of environmental management plans, waste management plans, hazardous waste

management plans, biodiversity management plans and any other plan or instrument developed or to be developed for purposes of managing risk to the environment;

- (g) enforcing or assisting in the enforcement of Environment Act, 2008, or any other law relating to the protection of the environment, waste management or prevention of litter;
- (h) conducting environmental audits;
- (i) where practicable, supporting -
 - (i) projects that involve local authorities and the purpose of which is to improve the quality of the environment in so far as it affects a particular local community;
 - (ii) or promoting initiatives undertaken by community groups or organizations with respect to the protection of any aspect of the environment; and
- (j) providing or supporting education and training that would facilitate the achievement of the purpose of the Fund;
- (k) carrying out any other activity that the Minister responsible for environment may, on the advice of the Board, identify as necessary for purposes of environmental management and protection in accordance with -
 - (i) the Environment Act, 2008;
 - (ii) any other law relating to the protection or management of the environment;
 - (iii) bilateral Agreements or Treaties that Lesotho has with another country or Organization with

regard to environmental management and protection; and

- (iv) international agreements, conventions, and treaties that are binding on Lesotho with regard to environmental management and protection.

(2) The Minister responsible for environment, shall, on the advice of the Board, identify and prioritise activities and programmes aimed at protecting and managing the environment.

Receipts into the Funds

5. (1) There shall be paid into the Fund -
- (a) any fees prescribed for services offered by the Department of Environment;
 - (b) any sums of money appropriated by Parliament for purposes of enforcing the Environment Act, 2008;
 - (c) any levies and other monies collected under the Environment Act, 2008 or any other environmental law;
 - (d) any penalties or fines charged under the Environment Act, 2008 or any other environmental laws;
 - (e) all monies that may, be donated, lent or granted to the Department of Environment by -
 - (i) the Government of Lesotho, another Ministry, department or agency of Government of Lesotho; or
 - (ii) the Government of another country, person or international organization or national organization; and
 - (f) any other money that may in any lawful manner become payable to or vested in the Department of Environment

in respect of any matter incidental to its purposes, powers and duties.

Disbursements from the Fund

6. (1) Moneys shall be paid from the fund for the following purpose -

- (a) the purpose of the fund specified in regulation 4(1);
- (b) administrative costs of the fund;
- (c) subject to the polluter-pays principle, financing any activity carried out to respond to an accident, emergency or other incident that poses or is likely to pose pollution or other risk to the environment or environmental resources of Lesotho; and
- (d) where possible, financing any other project or matter connected with the protection and management of the environment.

(2) The Minister may in writing, after consultation with the Minister responsible for environment require, the Board to pay, into the consolidated Fund, money not exceeding third percent of the levies available in the fund, at time of the request.

(3) The Board shall, after satisfying itself that the Minister responsible for environment has approved, pay money into the consolidated Fund.

PART III - MANAGEMENT AND ADMINISTRATION OF THE FUND

Management and Administration of the Fund

7. The Fund shall be administered and managed by the Board of Directors established under regulation 9.

Functions of the Minister responsible for environment

8. (1) The Minister responsible for environment shall, acting consul-

tation with the Minister, review and approve adjustments to all sources of revenue as set out under regulation 5.

(2) The Minister responsible for environment shall give, to the Board, policy directions pertaining to protection and management of the environment.

Establishment and composition of the Board

9. (1) There is established a Board to be known as the Environment Fund Board of Directors.

(2) The Board shall consist of -

- (a) the Principal Secretary of the Ministry responsible for environment, who shall be the Chairperson;
- (b) the Director of Environment;
- (c) representative of the Legal Office of the Ministry responsible for environment who shall be the Secretary of the Board;
- (d) representative of the Economic Planning Office of the Ministry responsible for environment;
- (e) representative of the Ministry of Finance, nominated by the Minister responsible for finance;
- (f) a representative of the Lesotho Revenue Authority nominated by Chief Executive Officer of the Lesotho Revenue Authority.
- (g) a lawyer who is nominated by Minister -
 - (i) qualified as a specialist in environment law; or
 - (ii) has, at least, four years of experience working in a regulatory authority ensuring compliance with environmental law; and

- (h) a scientist nominated by Minister, who has -
 - (i) qualified as a specialist in environment management; or
 - (ii) has at least, four years of experience working in a regulatory authority ensuring compliance with environmental management principles and standards.

(3) The Minister responsible for environment shall appoint members of the Board by notice published in the Gazette.

(4) The Board may co-opt any person who has expertise in environmental management or environmental law to advise the Board during deliberations at any of its meetings, but such person shall not vote.

(5) Notwithstanding subregulation (3), where a person co-opted to the Board is a person from the Line Ministry responsible for an environmental programme, project or activity which is financed from the Fund, such person shall have a right to vote.

Tenure and vacation of office

10. (1) A member referred to in regulation 8 (g) and (h) -
- (a) shall hold office for a period of three years from the date of appointment, unless the member resigns or vacates office under subregulation (3); and
 - (b) may be re-appointed, subject to a good performance, at the conclusion of his term of office.

(2) A member may resign by giving a one month written notice to the Minister responsible for environment.

(3) The Minister responsible for environment shall terminate the appointment of a member, if the member -

- (a) has been absent from three consecutive regular meeting

of the Board without reasonable excuse communicated to the chairperson;

- (b) is in contravention of the code of conduct referred to in regulation 21;
- (c) is unable, unfit or not competent to discharge his duties as a member of the Board;
- (d) fails to comply with these regulations;
- (e) ceases to occupy the position that qualified him for membership;
- (f) has been convicted of an offence involving fraud or dishonesty; and
- (g) has been declared insolvent or bankrupt under any law in Lesotho.

(4) Where an appointed member has resigned under subregulation (2) or has vacated his office or has been terminated from office -

- (a) the Minister responsible for environment shall fill that vacancy with a new appointment in accordance with regulation 8; and
- (b) the person so appointed shall hold office for the unexpired term of his predecessor.

Functions of the Board

11. (1) The functions of the Board are to -

- (a) approve policies and procedures for the proper management and administration of the Fund;
- (b) approve procedures to be followed in the preparation and submission of costed Environmental Programmes by the various implementing agencies;

- (c) review and approve allocation of funds for the Environmental Programmes and related activities at least six months before the national budget is approved;
 - (d) approve all allocated resources of the Fund in accordance with the approved environmental Programmes;
 - (e) recommend to the Minister responsible for environment any changes in the sources of revenue of the fund, as set out under regulation 5;
 - (f) approve policies and establish procedure for disbursing funds for the Annual Environmental Programme;
 - (g) ensure transparency and accountability in the disbursement of funds;
 - (h) submit the approved Annual Environmental Programmes to the Minister responsible for environment;
 - (i) prepare or cause the Secretariat to prepare reports and financial statements, in accordance with Section 34 of the Act; and
 - (j) publish or cause the Secretariat to publish annual reports of the Fund.
- (2) The Board -
- (a) be accountable and report to the Ministry responsible for environment.
 - (b) shall for the proper discharge of its functions, form committees consisting of some members of the Board and other persons with relevant qualifications and experience and define the objectives of each committee;
 - (c) shall establish such technical advisory committees as it deems fit on matters pertaining to the scientific and

technical aspects of environmental protection and management; and

- (d) may form study groups or appoint consultants to carry out studies and other assignments to enable it to make informed decisions.

Meetings of the Board

12. (1) The Board shall meet at least once every three months for regular Board meetings.

(2) The Chairperson shall, whenever there is a matter that requires urgent attention at the written request of not less than four members of the Board-

- (a) convene a special or an extraordinary meeting; and
- (b) notify members of the meeting.

(3) The Chairperson shall preside at a meeting of the Board.

(4) The quorum at meeting of the Board shall be four members.

(5) Decisions of the Board shall be taken by a simple majority of votes and where there is an equality of votes, the Chairperson, has casting vote with dissenting members having the right to have their views recorded in the minutes.

(6) The Secretary shall record minutes of meetings of the Board.

(7) The minutes shall be signed by members of the Board.

(8) Subject to these regulations, the Board shall formulate and regulate its own procedure.

Disclosure of interest

13. (1) If a member of the Board acquires any direct or indirect pecuniary interest in a proposed or ongoing contract or in any other matter in which his private interests' conflict with his duties as a member, he shall, as soon as he

becomes aware of the potential conflict of interest -

- (a) disclose such facts to the Board; and
- (b) recuse himself when the issue is discussed by the Board.

(2) Failure to comply with subregulation (1) and intentional non-disclosure by a member of the Board shall constitute a contravention of the code of conduct, and shall result in the termination of membership as prescribed under regulations 9(3)(b).

Remunerations and reimbursement of expenses

14. (1) A member of the Board, or committee, or study group and a person co-opted to the Board, or committee, or study group and a member of the Secretariat -

- (a) shall be -
 - (i) paid such an allowance for attendance of a meeting at such rate to be determined by the Board and approved by the Minister responsible for environment, after consultation with the Minister;
 - (ii) reimbursed for expenses incurred in carrying out their duties under these regulations; and
- (b) may be paid such an honorarium as may be determined by the Board and approved by the Minister responsible for environment, after consultation with the Minister.

Secretariat services

15. (1) A representative of the Legal Office, Head of Finance Section, senior officer from the Department of Environment and Head of Procurement Section shall provide secretariat services to the Board, committees or study group.

(2) Where an environmental programme, project or activity which is financed from the Fund is administered by a Line Ministry, a person respon-

sible for the programme, project or activity within a Line Ministry, shall form part of the Secretariat.

Functions of the Secretariat

16. (1) The Secretariat shall be responsible for the administration of the Fund in accordance with the decisions of the Board and these Regulations.

(2) Without prejudice to the generality of subregulation (1), the Secretariat shall -

- (a) arrange the agenda for meetings of the Board;
- (b) keep proper books of account and related records in respect of the Fund, through Head of Finance Section;
- (c) check and process payments, through the head of Finance Section;
- (d) maintain bank accounts in which shall be recorded all receipts into the Fund and all disbursements from the Fund, through the Head of Finance Section;
- (e) implement the funds allocation criteria for apportioning and disbursement of funds as established by the Board;
- (f) prepare and publish an annual report and financial statements in accordance with regulation 10(1)(i) and (j) and regulation 17;
- (g) implement the procurement guidelines for the Fund as approved by the Board, through the Head of Procurement Section;
- (h) review tender documents for consultants and contractors, and ensure compliance with relevant procurement guidelines of the Fund and those applicable in Lesotho, through the Head of Procurement Section;

- (i) monitor contract works of compliance with design standards, specifications and conditions of contract;
- (j) scrutinize progress reports submitted by implementing agencies for compliance with environmental planning and for the correctness of the information provided;
- (k) provide the Board with such information as may be required;
- (l) undertake environmental audits of environmental programmes; and
- (m) carry out any other function assigned to it by the Board or which are necessary for effective implementation of those Regulations.

(3) The Secretariat shall, at least three months before the expiry date of the tenure of the office of the Board members, advise the Minister responsible for environment of such expiration.

Annual reports and financial statements

17. (1) The Board shall prepare annual reports and financial statements in accordance with section 34 of the Act.

(2) Annual reports referred to in subregulation (1) shall, in addition to the requirements of section 34 include assessment relating to -

- (a) the achievement of the objectives of the Fund;
- (b) compliance, by the Department of Environment or implementing agency with the policies, procedures and criteria established by the Board for purposes of the Environment Act, 2008 and other laws relating to the protection and management of the environment and environmental resources of Lesotho;
- (c) the effectiveness of the administration of the Fund.

Internal Audit

18. The Board shall establish an internal audit function for the Fund in accordance with section 38 of the Act.

Audit of Accounts

19. (1) The Chairperson shall, within three months after the end of each year submit financial statements to the Auditor General.

(2) Financial statements and underlying accounts of the Fund shall be audited by the Auditor General or any officer authorized by him under the Audit Act, 2016⁴.

PART IV - MISCELLANEOUS**Environmental Programmes**

20. (1) The implementing agencies responsible for projects funded by the Fund shall, in consultation with the Secretariat, prepare environmental programmes, which shall be in such form and containing such details as may be prescribed by the Board.

(2) The implementing agencies obtaining funds from the Environment Fund for purposes of regulation 3(1) shall submit performance progress and financial reports at the frequency to be determined by the Board.

(3) The implementing agencies shall enter into an annual performance agreement which shall form the basis of their performance evaluation in relation to annual programmes funded by the Fund.

Code of Conduct

21. The Minister responsible for environment shall, acting in consultation with the Minister, issue a code of conduct for the Board.

Taxation

22. The Board may, subject to the laws governing taxes, apply for exemption from taxation in respect of certain transactions.

DATED: 30TH AUGUST, 2022

**THABO SOPHONEA
MINISTER OF FINANCE**

NOTE

1. Act No. 12 of 2011
2. Act No. 6 of 1997
3. Act No. 10 of 2008
4. Act No. 6 of 2016