



# LESOTHO Government Gazette

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## LEGAL NOTICE NO. 128 OF 2021

**Financial Institutions (Processing and Licensing Fees) Regulations, 2021**

Pursuant to sections 7, 14 and 71(1) of the Financial Institutions Act, 2012<sup>1</sup>, I,

**RETŠELISITSOE MATLANYANE**

Governor of the Central Bank being the Commissioner of Financial Institutions make the following regulations -

## PART I - PRELIMINARY

**Citation and commencement**

1. These Regulations may be cited as the Financial Institutions (Processing and Licensing Fees) Regulations, 2021 and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. In these regulations, unless the context otherwise requires -
- (a) words used has the same meaning assigned to them under the Act; and
  - (b) “the Act” means the Financial Institutions Act, 2012.

**Objectives**

3. These Regulations are meant to stipulate fees payable by the banks for processing and licensing purposes.

**Application**

4. These Regulations shall apply to all banks licensed to operate in Lesotho.

## PART II - PROCESSING AND LICENSING FEES

### **Processing fees**

5. (1) An application to be licensed as a Bank shall be accompanied by the following processing fees -

- (a) investigation fee which shall be non-refundable; and
- (b) registration fee which shall be refundable to unsuccessful applicants.

(2) A completed application shall be submitted in writing to the Commissioner.

### **Licensing fees**

6. (1) Upon approval of the application to be licensed as a bank, the applicant shall pay a license fee as prescribed in the Schedule.

(2) A bank shall, so long as its licence is not revoked, pay the license fees to the Commissioner on or before 1st day of January of each year as prescribed in the Schedule.

### **Payment of fees**

7. Any fee(s) payable in accordance with these regulations shall be paid to the Commissioner and proof of such payment(s) shall be submitted to the Commissioner.

## PART III - SUPERVISORY ACTIONS AND PENALTIES

### **Remedial or punitive measures**

8. Where a bank fails to comply with these regulations, the Commissioner may impose any remedial or punitive measures as prescribed in the Act.

PART IV - MISCELLANEOUS

**Amendment or repeal of Schedule**

9. The Commissioner may from time to time amend or repeal the Schedule.

**DATED:**

**DR. RETŠELISITSOE MATLANYANE  
GOVERNOR OF THE CENTRAL BANK OF LESOTHO  
SIGNING FOR AND ON BEHALF OF THE CENTRAL BANK OF  
LESOTHO**

**NOTE**

1. Act No. 3 of 2012

**SCHEDULE**  
**PROCESSING AND LICENSE FEES**  
**(Regulations 5 and 6)**

<b>Investigation Fee</b>	<b>Registration Fee</b>	<b>Branch Fee</b>	<b>ATM Fee</b>	<b>Agency Fee</b>	<b>Agent Fee</b>	<b>Head Office Fee</b>
M5000.00	M5000.00	M7500.00	M5000.00	M5000.00	M2500.00	M10000.00

## LEGAL NOTICE NO. 129 OF 2021

**Lesotho (Petroleum Fund) Regulations, 2021**

Pursuant to section 21(3) of the Public Financial Management and Accountability, Act<sup>1</sup>, 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 Lesotho (Petroleum Fund) Regulations, 2021 and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. In these regulations -

“Accountant-General” means an officer appointed or acting as the head of the Treasury Department in the Ministry responsible for finance;

“appointed member” means a member of the Board appointed by the Minister under regulation 7;

“Board” means the Board of Directors constituted under regulation 7;

“Chief Executive Officer” means the Chief Executive Officer of the Fund appointed under regulation 13;

“Financial Year” means a period of twelve months starting on the 1st of April, and ending on the 31st March each year;

“Fund” means the Petroleum Fund established by Lesotho (Establishment of Petroleum Fund) Notice 1997<sup>2</sup>;

“levy” means any tax or fee imposed on the petrol products by the Petroleum Fund;

“Minister” means the Minister responsible for finance;

“Ministry” means the Ministry of finance;

“non-operating Fund account” means monies kept at the Central Bank of Lesotho under the custody of the Fund;

“petroleum products” means petrol, diesel, paraffin, liquified petroleum gas (LPG), lubricating oil, and any other product derived from crude oil;

“slate balance” means monies in excess or short of the actual price of petroleum products in the international market;

“storage facility” means a facility in which any petroleum product is stored;

“Secretariat” means the Secretariat of the Fund established under regulation 14;

“secretary” means the Board secretary referred to under regulation 7(2)(c); and

“threshold” means the limit of the slate balance outside which either the oil companies or the Fund will be expected to settle.

## PART II - FUND

### **Establishment of the Petroleum Fund**

3. (1) The Petroleum Fund is a body corporate with perpetual succession and a common seal and shall -
- (a) have power to enter into contracts;
  - (b) sue or be sued in its corporate name;
  - (c) acquire, hold and dispose of movable and immovable



property;

- (d) perform acts necessary to achieve the purpose of the Fund; and
- (e) perform any other duty imposed on it and exercises powers conferred on it under the law.

### **Purpose of the Fund**

- 4. (1) The Fund shall be used for the following purposes -
  - (a) assessment, collection and receipt of specified petroleum levy under the general supervision of the Minister;
  - (b) financing the -
    - (i) stabilization of petroleum product prices;
    - (ii) purchasing of petroleum products in times of crisis;
    - (iii) provision of national storage facilities for petroleum products;
    - (iv) research and studies pertaining to the petroleum sector;
    - (v) improving of the distribution and accessibility of petroleum products throughout the country; and
    - (vi) improving the safety equipment at storage facilities.
  - (c) supporting petroleum- related projects through equity, debt, grants, other commercial arrangements and or any other coordinated commercial conduct on such terms and conditions as the Board may prescribe.

**The Receipts into the Fund**

5. (1) There shall be paid into the Fund -
- (a) levies imposed on every litre of petroleum product sold in Lesotho;
  - (b) accumulated slate balance consisting monies recovered in excess of the agreed threshold amount;
  - (c) levies imposed on sellers, suppliers, or importers of petroleum products and other energy forms;
  - (d) grants, contributions or endowments from other lawful sources;
  - (e) repayments by other petroleum projects;
  - (f) return on investment made by the Fund;
  - (g) any sums appropriated to the Fund;
  - (h) return on equity and assets; and
  - (i) any monies that may accrue or be collected by the Fund.
- (2) The Fund shall take necessary steps to ensure that funds payable are collected and deposited into the Fund account timeously.

**Disbursement from the Fund**

6. (1) Monies shall be paid from the Fund for -
- (a) purchasing petroleum products for Lesotho in times of crisis;
  - (b) maintaining and expanding national storage facilities of petroleum product when necessary;
  - (c) improving the distribution and accessibility of petroleum

- 
- products throughout Lesotho;
- (d) maintaining and improving safety facilities for petroleum products;
  - (e) stabilising petroleum products prices when necessary;
  - (f) funding research and studies pertinent to the petroleum sector; and
  - (g) funding other projects pursuant to regulation 4.

### PART III - ADMINISTRATION AND MANAGEMENT OF THE FUND

#### **Establishment and composition of the Board**

7. (1) There is established the Board which shall be the governing body of the Fund through the Secretariat established under regulation 14 and shall report to the Minister.

- (2) The Board shall consist of the following persons -
- (a) Chairperson;
  - (b) Chief Executive Officer;
  - (c) Board Secretary;
  - (d) 3 ex-officio members from the following ministries -
    - (i) energy;
    - (ii) finance; and
    - (iii) transport.
  - (e) Non-Governmental Organization member representing the Lesotho Chamber of Commerce and Industry; and
  - (f) 3 other independent members.

(3) The members shall be appointed by the Minister, by notice published in the Gazette.

(4) The qualifications and criteria for appointment shall be as follows -

(a) The Chairperson shall be appointed from any sector, but not the public sector based on -

- (i) professional qualifications;
- (ii) Masters Degree or above;
- (iii) knowledge, experience in leadership; and
- (iv) corporate governance;

(b) Chief Executive Officer shall hold -

- (i) professional qualifications;
- (ii) Masters Degree or above;
- (iii) training and experience in leadership; and or
- (iv) corporate governance.

(c) The Board Secretary shall -

- (i) be a Senior Legal Officer of the Fund; and
- (ii) not a member of the Board.

(5) The 3 ex-officio members representing the Ministries shall at least, be at senior management level at their respective ministries.

(6) For a person to be appointed a member of the Board, under regulation 7(2)(e) and (f) shall, at least have 3 years experience at a strategic level and be in possession of any qualification in any of the following disciplines -

- (a) petroleum or energy;
- (b) finance and auditing;
- (c) law;
- (d) commerce or business;
- (e) corporate governance;
- (f) risk and compliance management;
- (g) economics;
- (h) environment;
- (i) transport industry; or
- (j) human resources.

### **Tenure of office**

8. (1) A member of the Board, except the Chief Executive Officer shall hold office for a period of three years, unless he resigns or vacates office; and is eligible for re-appointment, subject to good performance.

(2) A member shall vacate his office -

- (a) at the termination of his contract;
- (b) if he resigns by writing a letter to the Minister;
- (c) if he has been absent from three ordinary consecutive meetings of the Board without a valid reason;
- (d) if he is unfit to discharge the functions of the Board;
- (e) has been convicted of an offence; or
- (f) is incapacitated by reason of physical or mental illness.

(3) Where a member vacates office, the Minister shall, by notice in the Gazette fill that vacancy with a new appointee, who shall hold office for a new term.

(4) The Minister may terminate the appointment of a member, if it is necessary in the interest of the effective performance of the functions of the Fund under these regulations or if the public interested so requires.

### **Functions of the Board**

9. (1) The functions of the Board are to -
- (a) approve policies and procedures for the proper management and administration of the Fund;
  - (b) co-ordinate and ensure total and timely accountability of all resources of the Fund;
  - (c) improve arrangements for collecting levies to minimise avoidance and evasion;
  - (d) approve the budget of the Secretariat;
  - (e) allocate annually, the resources of the Fund to the Secretariat according to the approved budget of the Fund and in accordance with the approved annual programme;
  - (f) recommend to the Minister any increase in the level of the Fund sources of revenue as set out under regulation 5;
  - (g) review and approve the allocation of funds pursuant to regulation 6;
  - (h) establish policies and procedures for disbursing funds;
  - (i) ensure transparency and accountability in the disbursement of the funds by preparing and publishing an annual report;

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- (j) recommend the approved annual programme to the Minister;
  - (k) prepare and publish the annual report; and
  - (l) establish and regulate its own procedure.

### **Meeting of the Board**

10. (1) The Board shall meet, at least, once every three months for an ordinary Board meeting.

(2) The Chairperson shall, at the request of the Chief Executive Officer, convene a special meeting of the Board to discharge any extraordinary function on a date specified in the request.

(3) The Chairperson shall preside at every meeting of the Board, and where the Chairperson is absent, the members present shall appoint an ad hoc Chairperson to preside.

(4) Five members of the Board shall form a quorum.

(5) The decisions of the Board shall be taken by the majority vote, and where the votes are equal, the Chairperson has a casting vote, with the dissenting members having the right to have their views recorded in the minutes.

(6) The Board Secretary shall record the minutes of the meetings and the Chairperson shall sign them.

(7) The Board may co-opt any person to advise in its deliberation, but will not have the voting rights.

(8) The Board shall appoint such study groups or sub-committees as may be necessary for the proper discharge of the functions of the Board, consisting of some members and such other persons with prescribed qualifications and the Board shall define the objectives of such groups or sub-committees.

### **Disclosure of interest**

11. (1) If a Board member directly or indirectly acquires any pecuniary

or personal interest, in any matter which is subject for consideration by the Board, he shall disclose such interest and recuse himself.

(2) A Board member shall not utilise information acquired by his virtue of his seat on the Board for direct or indirect personal gain.

### **Remuneration and reimbursement of expenses**

12. (1) A Board member and non-voting person co-opted or appointed to a study a group or sub-committee shall be paid such remuneration or honorarium as may be determined by the Board and approved by the Minister.

(2) A Board member and non-voting persons co-opted or appointed to study groups or sub-committees shall be reimbursed for all expenses incurred in the process of carrying out their duties upon proof of the expenses incurred.

### **The Chief Executive Officer**

13. (1) The Minister shall, on the advice of the Board, appoint the Chief Executive Officer (CEO) on a contract basis and his appointment shall be published by notice in the Gazette.

(2) The CEO shall be the Chief Accounting Officer of the Fund and shall hold office for a period of five years and his tenure may be renewable for further period of five years only, subject to good performance.

### **The Secretariat**

14. (1) There is established the Secretariat of the Fund consisting of -

- (a) the CEO, who shall head the Secretariat; and
- (b) qualified staff members whose appointments shall be made in accordance with the approved policies and procedures of the Board but only to positions created by a decision of the Board and on such terms and conditions as shall be set out by the Board.

(2) An appointment of a head of department shall be made by the CEO in consultation with the Board and in accordance with the Fund's policies



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and procedures approved the Board.

(3) All other appointments of staff of the Secretariat shall be made by the CEO on advice of the Management but only to positions created by a decision of the Board and on such terms and conditions as shall be set out by the Board.

(4) The Fund may establish and maintain such departments and divisions, within the Fund, as it may consider necessary for the proper and efficient conduct of its business.

(5) The Board may -

- (a) grant the staff of the Secretariat, such pensions, gratuities or retiring benefits or such allowances and benefits as the Board may determine; and
- (b) require the staff of the Secretariat to contribute to any pension, provident fund or superannuation scheme or any other similar scheme approved by the Board.

### **Functions of the Secretariat**

15. (1) The functions of the Secretariat shall be -

- (a) execution of the policies and measures approved by the Board;
- (b) responsible for the day-to-day management and administration of the Fund in accordance with the decisions of the Board;
- (c) to keep proper accounts and records of a Fund;
- (d) to maintain bank accounts and record all receipts into the Fund and all disbursements from the Fund;
- (e) to prepare and submit for audit, for each financial year, financial statements in accordance with the Laws of Lesotho and International Financial Reporting Standards

- best accounting practices;
- (f) prepare and publish the annual report in such form and with such content as the Board may prescribe;
  - (g) lead and recommend to the Board an appropriate strategic plan and formulate annual corporate plans;
  - (h) arrange business meetings of the Board;
  - (i) develop, for Board approval, and supplement all policies and procedures, for the proper running of the Fund;
  - (j) provide the Board with such information as may be required by the Board; and
  - (k) carry out such other functions as the Board may from time to time assign.

### **Bank accounts**

16. (1) The Fund shall, with the approval of the Board, open and maintain an account or accounts with an approved bank or banks licenced or registered under the Financial Institutions Act, 2012<sup>3</sup> and shall maintain at all time at least one such account.

(2) All moneys received by the Fund shall be paid into the bank account and shall be credited to such Fund's account as may be appropriate.

### **Investment of monies**

17. (1) The Fund may invest all or any of its money not required for the performance of its functions in the purchase of any security -

- (a) issued by the Government of Lesotho or by any government of a country approved by the Minister, acting in consultation with the Board;
- (b) in which the Fund may invest under the provisions of any law in force in Lesotho;

- (c) approved either generally or specifically by Board, in writing; and
- (d) investment assets in accordance with the Laws of Lesotho.

#### PART IV - MISCELLANEOUS

##### **Business plan and budget of the Fund**

18. The Board shall prepare and submit to the Minister, the annual business plan and the budget of the Fund.

##### **Implementing Agencies**

19. (1) Implementing agencies obtaining funds from the Fund for the purpose of these regulations shall -

- (a) submit performance progress reports at the frequency to be determined by the Fund; and
- (b) enter into agreements that shall form the basis of their performance evaluation in relation to programmes funds by the Fund.

##### **Audit of accounts**

20. (1) The accounts of the Fund shall be prepared for auditing within three months after the end of the financial year.

(2) The Financial Statements of the Fund shall be audited by the Auditor- General under the Audit Act, 2016<sup>4</sup>.

##### **Reporting of audited accounts**

21. (1) After the close of each financial year, but not later than six months thereafter, the Board shall submit the following documents to the Minister -

- (a) annual report on the activities of the Fund during the

preceding year, including the assessment relating to the achievement of the objectives of the Fund for the preceding year;

- (b) compliance with policies, procedures and criteria established by the Board;
- (c) effectiveness of the administration of the Fund; and
- (d) audited financial statements for the preceding financial year.

### **Taxation**

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

### **Repeal**

23. The Lesotho (Petroleum Fund) Regulations, 2009<sup>5</sup> are repealed.

**DATED: 28TH OCTOBER, 2021**

**THABO SOPHONEA  
MINISTER OF FINANCE**

### **NOTE**

- 1. Act No. 12 of 2011
- 2. L.N. No. 96 of 1997
- 3. Act No. 3 of 2012
- 4. Act No. 6 of 2016
- 5. L.N. No. 118 of 2009