

**GOVERNMENT OF LESOTHO**  
**TERMS OF REFERENCE FOR THE ENGAGEMENT OF A CONSULTING FIRM IN**  
**SUPPORT OF THE MINISTRY OF FINANCE SOE UNIT: TECHNICAL**  
**ASSISTANCE ON STATE OWNED ENTERPRISES**

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## 1. Country Context

Lesotho is a lower middle-income country with per capita Gross Income of US \$1, 280 in 2015, with a high level of poverty and inequality. The country is mountainous and rural, with a population of about 2 million people, and is surrounded by the Republic of South Africa. The revenues of the government depend largely on revenues received from South African Customs Union (SACU), which are highly volatile.

The current macroeconomic situation calls for urgent control over the fiscal management in a fragile regional economic environment. Public spending has been increasing over the last few years and reached 54 percent of gross domestic product (GDP) in FY2013/14. In FY2014/15, 78 percent of the national budget was absorbed by government consumption. Public wages constitute an important share of fiscal spending and it reached 18.3 percent of GDP in 2015. These figures are among the highest in the world and represent a significant challenge to fiscal consolidation efforts. The sharp decline in growth in South Africa poses a severe challenge to the regional economy and its indirect effect on revenue collections; Lesotho is the worst affected country in the SACU zone. The revenues declined to 21.2 percent of GDP in 2015/16 and 13.6 percent of GDP in 2016/17. After falling by 4 percentage points of GDP in 2015/16, they are projected to be at 17 percent of GDP in the medium term and this significant decline calls for a major fiscal adjustment to ensure macroeconomic stability.

## 2. Sector Context

**Limited state oversight of the SOEs limits the ability of the SOE unit at the MoF to estimate the overall fiscal implications of the SOE sector.<sup>1</sup>** The Unit needs to be strengthened to effectively monitor and analyze SOE sector performance, its impact on public finances, including, the net budgetary burden of the sector. A strengthened SOE Unit, tasked with overseeing SOEs, would put the Government in a stronger position to manage its relationship with SOEs.

Although the PFMA empowers the MoF to receive audited financial statements from the SOEs on a timely basis, the SOE Unit in MoF is not receiving these statements regularly.

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<sup>1</sup> A study done in collaboration with the World Bank (WB) has identified six wholly owned SOEs, twelve partial Government shareholdings in private companies and eleven companies in which the Lesotho National Development Corporation (LNDC), an SOE itself under the Ministry of Trade, holds mostly minority shares. Table XXX in the appendix provides a list of the SOE's in Lesotho. However, the set of companies might not be exhaustive. The consultant needs to review a set of entities that could be viewed as SOEs with commercial activities.

**The state's relationship with SOEs seems to be based on a relatively sound legislative framework at first glance, however a more detailed review is needed.** Most of Lesotho's SOEs are incorporated under the Companies Act, the only three exceptions being LNDC, BEDCO and the Lesotho Tourism Development Corporation (LTDC) which have their own founding Acts. Other Laws affecting the governance of the SOE sector include the Public Finance Management and Accountability (PFMA) Act of 2011, and individual sector legislation for the financial and mining sectors. Ownership of the SOE sector in Lesotho is fully decentralized with line ministries exercising the ownership and oversight role.

**State oversight could be strengthened by the way Government exercises its ownership function on SOE boards.** There are weaknesses in the nominating processes and compositions of SOE boards of directors, particularly with respect to Government representation on the boards. The Founding Acts and Articles of Association of the wholly owned SOEs in general do not spell out the expertise needed on the boards.

**Although some SOEs are loss-making overall the impact of the SOE sector seems to be positive.** The revenues, profits, and net worth of SOEs grew over time as well as taxes and dividend receipts. Most outflows to the SOEs from the budget seem to occur in the form of capital grants, subsidies, and the guaranteed loans to the utilities, LNDC, and BEDCO.

### 3. Objectives of the Technical Assistance

The Government of Lesotho (GOL) is implementing reforms to improve the efficiency and effectiveness of public spending through improving strategic planning and fiscal management under the first component of the Public Sector Modernisation Project (PSMP). Following the study done by the World Bank on SOEs in June 2016, the importance of strengthening the SOE unit became clear to better monitor, analyse and manage the fiscal impact and risks of the SOE sector as part of an improvement effort in fiscal management. The following are the objectives of the technical assistance that will be provided:

1. Improve SOE oversight and transparency through regular monitoring of financial and operational SOE performance and fiscal implications from transfers, taxes, dividends, royalties, subsidies, loans and guarantees.
2. Strengthen the capacity of the SOE unit to prepare regular reports on SOE performance and their fiscal impact, including all financial transactions/relations between the State and the SOEs and to prepare them for their interactions and dialogue with companies under their portfolio.
3. Develop a national SOE Policy and Program, outlining government objectives for state ownership and targets by sector or company, as well as clear institutional structures for achieving these objectives and their accountability structures and reporting lines and obligations to improve SOE corporate governance.
4. Identify measures to professionalize and improve the effectiveness of SOE senior management and boards in Lesotho.

#### 4. Scope of work – Activities to be delivered by the consulting company

1. **Legislation:** The consultant shall review the legal and institutional framework governing the SOE sector, including the SOE oversight unit, the Auditor General's office and the Public Accounts Committee (PAC) and document the review in a Report. The review shall benchmark the current legislation against the 2015 OECD guidelines on Corporate Governance of SOEs, Corporate Governance of SOE Toolkit of the World Bank, and Southern Africa, and 2014 Guidelines on the Governance of SOEs for Southern Africa, highlight the gaps and suggest improvements.
2. This includes the following (but not limited to):
  - a. Carry out a review of the founding Acts and memorandums and articles of association of the major SOEs to decide what improvements are necessary and whether or not these SOEs should be incorporated under the Companies Act and provide policy recommendations
  - b. Provide a review of the PFMA Act and the way it is enforced or not enforced, to ensure that the SOEs are being held accountable for their results and that the MoF has sufficient access to data needed to monitor the sector and provide policy recommendations
3. **Board Members:** The consultant shall review the regulations and procedures governing the role, nomination, appointment of board members. The review shall benchmark the current framework against the 2015 OECD guidelines on Corporate Governance of SOEs, Corporate Governance of SOE Toolkit of the World Bank, and Southern Africa, and 2014 Guidelines on the Governance of SOEs for Southern Africa, highlight the gaps and suggest improvements. This includes the following:
  - a. Provide a review of the qualifications required of board members to ensure that necessary expertise is required on the SOE boards, i.e. to ensure professionalization of the board composition and creation of balanced boards
  - b. Complete a review of the procedures for nomination and appointment of board directors
  - c. Complete a review and analyze the remunerations of the board members of the SOEs
  - d. Provide a review of explicit legal duties for board members
4. **Management:** The consultant shall review the regulations and procedures governing the role, nomination, appointment of senior management. The review shall benchmark the current framework against the 2015 OECD guidelines on Corporate Governance of SOEs, Corporate Governance of SOE Toolkit of the World Bank, and Southern Africa, and 2014 Guidelines on the Governance of SOEs for Southern Africa, highlight the gaps and suggest improvements.
  - a. Provide a review of performance standards for senior management and boards
  - b. Analyze the remunerations of the senior management of the SOEs
  - c. Complete a review of the procedures for nomination of senior management

5. Reporting and Accountability Relationships: The consultant shall provide guidelines for reporting and ensuring accountability amongst SOEs, regulatory agencies and oversight institutions, including the Ministry of Finance, Line Ministries, Auditor General, Parliament and provide recommendations.
6. Data collection: The consultant shall collect financial and operational performance data for all the SOE's in the last 10 years for SOE performance monitoring (complete financial reports including balance sheets, income statements and cash flow statements, and information on transfers, taxes, dividends, royalties, subsidies, loans, loan arrears and guarantees, all duty and tax exemptions, other concessions and transfers)
7. Database: The consultant shall prepare a database using the financial and operational performance data collected as mentioned above. The database should also document the public sector obligations of the SOE (if any).
8. Annual SOE report: The consultant shall, using the data collected above, prepare a complete annual SOE report in line with OECD best practice that includes analysis on the performance of the SOE sector and individual companies, including their fiscal impact and risks and
9. Performance-monitoring system: The consultant shall design a performance-monitoring system to analyze SOE performance and fiscal impact and risks of the sector. This includes the preparation of simple monitoring tools to be used by SOE unit staff to monitor the financial and operational performance of companies. This includes evaluating the operational indicators set out by the SOE against the budgetary support provided by the government.
10. Training: The consultant shall train the staff of the SOE oversight unit to be able to produce regular company performance updates and an annual report for the coming year.

## **5. Reporting Structure**

The team leader will report to the PSMP Component 1 leader for the MoF and the Task Team Leader of the Public Sector Modernisation Project of the World Bank.

## **6. Experts required**

The Consultant must have the necessary qualifications and previous experience in providing performance monitoring and fiscal risk assessment tools for SOE's. The Consultant shall also have previous expertise on legal and institutional assessments for SOE policy and governance.

The consulting firm should include the following personnel on their team:

a. Team Leader: SOE reform specialist

The SOE reform specialist should have at least 10 years of experience with corporate performance management, management consulting, or similar with a proven track record in the provision of technical assistance on such topics. (S)he should have in-depth understanding of auditing concepts and corporate risk management. The position also requires strong analytical skills and the ability to produce high quality analytical reports. The SOE reform specialist should hold a Masters in business administration, law, or finance.

b. Financial Analyst/Economist

The financial analyst/economist should be able provide a tool on performance and fiscal impact and risk assessment of the SOEs and work closely with the SOE oversight unit at the MoF. The financial analyst/economist should hold at least an internationally recognized accounting qualification or an M.A in economics, public finance, or equivalent, and have a minimum of 8 years of experience in similar assignments.

c. Legal Expert

The lawyer will be responsible in reviewing the legal and the institutional framework of the SOEs and will work closely with the SOE oversight unit and the legal department at the MoF. The lawyer should be specialized in corporate/company law and with least 8 years of experience in similar assignments.

## 7. Deliverables, Timeframe and Reporting Arrangements

The overall time frame is 12 months starting with the signing of the contract. The team of experts is expected to make at least three visits to Lesotho.

The following is an outline of deliverables and approximate timeframes, to be confirmed.

Table 1: Activities and Outputs to be delivered over the Suggested Timeframe

Activity/Output	Timeframe
Workplan for the assignment with activities, outputs and timeline	2 weeks after contract signature
Inception Mission to Lesotho (An aide-memoire should be sent at the end of mission to the MoF and WB to report on	Within 2-3 weeks of contract signature

the findings of the mission)	
A Draft Legal and Institutional Review Report (to be shared with Ministry of Finance and the World Bank)	Within 6 weeks of contract signature
Legal and Institutional Review Report	Within 9 weeks of contract signature
Outline of the training/capacity building plan including detailed training modules (to be shared with MoF and the WB)	Within 2-3 weeks of contract signature
Complete Dataset with balance sheet and income statement data on all SOE (in excel – latest 10 year data) and all transfers between companies and the state	Within 4 months of contract signature
Mid-term Mission to Lesotho	Within 5 months of contract signature
A draft report on SOE performance and fiscal impact (to be shared with MoF and WB)	Within 6 months of contract signature
A draft and a final tool for company performance monitoring (to be shared with the MoF and WB)	Within 5 months of contract signature
Delivery of 3 x 1 week capacity building/training sessions	At 4, 7, 11 months after contract signature
End of assignment mission to Lesotho	11 months after contract signature

Annex:

Table 2: SOEs by different ownership categories.

<b>Ownership Category</b>	<b>SOE</b>	<b>Sector</b>	<b>Percent Government/LNDC Ownership</b>	<b>Legal Form</b>
<i>1. SOEs with 100 percent Government ownership</i>	Lesotho Electrical Company (LEC)	Power transmission and distribution	100	Company

<b>Ownership Category</b>	<b>SOE</b>	<b>Sector</b>	<b>Percent Government/LNDC Ownership</b>	<b>Legal Form</b>
	Water and Sewage Company (WASCO)	Water and sewage	100	Company
	Lesotho National Development Corporation (LNDC)	Multi sector	100	Statutory Corporation
	Basotho Enterprise Development Corporation (BEDCO)	Small business development	100	Statutory Corporation
	Lesotho Post Bank (LPB)	Banking	100	Company
	Lesotho Tourism Development Corporation (LTDC)	Tourism development	100	Statutory Corporation
<i>2. Enterprises partially owned directly by Government</i>	Letseng Diamonds	Mining	30	Company
	Kao Mining	Mining	25	Company
	Liqhobong Mine	Mining	25	Company
	Econet Telecom Lesotho	Telecoms	30	Company
	National General Insurance	Insurance	20	Company
	National Life Insurance	Insurance	12	Company
	AON	Insurance	5	Company
	Maluti Mountain Brewery	Brewery	4.75	Company
	Lesotho Flour Mills	Milling	49	Company
	Sun International	Hotel and Casino	36.4	Company

<b>Ownership Category</b>	<b>SOE</b>	<b>Sector</b>	<b>Percent Government/LNDC Ownership</b>	<b>Legal Form</b>
	(Avani) Lesotho			
	Lesotho Standard Bank	Banking	9.6	Company
	Loti Brick	Brick making	22.8	Company
<i>3. Enterprises wholly or partially owned as subsidiaries/associates of LNDC</i>	Maluti Mountain Brewery	Brewery	51	Company
	Basotho Fruit and Vegetable Canners	Cannery	100	Company
	Loti Brick	Brick making	73.6	Company
	Cashbuild Lesotho	Wholesale	20	Company
	Lesotho Food Industries	Investment company	40	Company
	OK Bazaars	Retailer	50	Company
	Sun International (Avani)	Hotel and Casino	16.7	Company
	Lesotho Housing and Land Development Corporation	Property Development	13	Company
	Lesotho Milling	Milling	10	Company
	Mountain Kingdom Foods	Cannery	30	Company