

THE SWAZILAND ELECTRICITY COMPANY ACT, 2007

*Date of commencement: 1st March, 2007*

*Date of assent: 20th November, 2006*

*Arrangement of Sections*

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*An Act to provide for the establishment of the Swaziland Electricity Company under the Companies Act and performance by that Company of the powers and functions presently performed by the Swaziland Electricity Board relating to the generation, transmission, distribution and supply of electricity and for matters associated therewith.*

*Short title.*

1. This Act may be cited as the Swaziland Electricity Company Act, 2007.

*Interpretation.*

2. In this Act, unless the context otherwise indicates —
  - “Company” means the Company established under section 3;
  - “Companies Act” means the Companies Act, 1912 (Act No. 7 of 1912) or its successor;
  - “Minister” means the Minister responsible for Energy Affairs;
  - “Ministry” means the Ministry responsible for Energy Affairs;

“Public Enterprise Unit” means the Unit established under section 3 of the Public Enterprises (Control and Monitoring) Act, 1989 (Act No. 8 of 1989);

“Registrar” means the Registrar of Companies appointed under the Companies Act;

“Rural Access Fund” means a fund established to provide for rural energisation, both grid and off-grid;

“SCOPE” means the Standing Committee on Public Enterprises comprising Cabinet Ministers;

“SEB” means the Swaziland Electricity Board established under section 3 of the Electricity Act, 1963 (Act No. 10 of 1963).

*Incorporation and objectives of the Company.*

3. (1) The Registrar shall incorporate in terms of the Companies Act a company to be known as the Swaziland Electricity Company on the application of the Minister.

(2) The application shall be accompanied by the memorandum and the articles of association of the Company, signed by the Minister and approved by the SCOPE.

(3) The Company shall take over the assets and liabilities, rights and obligations of the Swaziland Electricity Board.

(4) The objects of the Company as contained in the memorandum of association shall include —

- (a) the generation, transmission, distribution and supply of electricity;
- (b) the import and export of electricity into and from the Kingdom of Swaziland;
- (c) to meet the objectives of the Government in the generation, transmission, distribution and supply of electricity.

(5) The Government shall, notwithstanding the provisions of the Companies Act on incorporation, be the sole shareholder of the shares in the Company and the rights attached thereto shall be exercised by the Minister.

(6) Except as may be provided in this Act, the signed memorandum and articles shall comply with the requirements of the Companies Act for the registration thereof.

(7) On the receipt of the application and the memorandum and articles of association thus signed and approved, the Registrar shall —

- (a) register the memorandum and articles as required under the Companies Act; and
- (b) issue a certificate that the Company is thus incorporated.

(8) A fee shall not be payable in respect of the incorporation of the Company.

*Share capital.*

4. (1) The initial share capital of the Company shall consist of the number of shares with the value set out in the memorandum and articles of association.

(2) The value of the shares shall be fixed based on a due diligence review and valuation of the Company by an internationally recognised registered firm of accountants to determine its networth and fix the value of the shares of the Company.

(3) The outcome of the due diligence review and valuation exercise shall be presented by the Minister to Parliament for information before the Minister submits the request for incorporation of the Company to the Registrar.

(4) Money, fee or stamp duty shall not be payable in respect of shares held by the Government on incorporation of the Company.

#### *Board of Directors.*

5. (1) The first Board of Directors on incorporation of the Company shall be the Board of the SEB.

(2) The first Board shall serve until the first annual general meeting of the Company, whereupon the provisions of the Companies Act and the memorandum and articles of association shall apply.

(3) The Board shall have a minimum of five and a maximum of nine members, including the executive director.

(4) The Minister shall, subject to the approval by the SCOPE, appoint the Board members that are to be appointed by the Government according to shares held.

(5) Board members shall serve for a term of two years, which is renewable but not more than twice.

(6) As long as the Government is sole shareholder, the Minister may at any time, subject to approval by the SCOPE, replace a Board member.

(7) The executive director is appointed by the Board.

(8) The chairman and deputy chairman shall inform the Minister of any issues of substantial importance.

#### *Assembly of Shareholders with Government as sole shareholder.*

6. (1) As long as the Government is sole shareholder, the Minister performs the functions and exercises the responsibilities assigned to the Assembly of Shareholders by the Companies Act about management of a company, payment of damages and annual accounts.

(2) The Minister shall hold the Annual Assembly of Shareholders in a joint session with the members of the Board.

#### *Transfer of SEB assets, rights, obligations and liabilities.*

7. (1) All assets, property, funds, rights, duties, obligations and liabilities which on the date of commencement of this Act were vested in, acquired, incurred or entered into by, SEB shall on that date pass by succession without further assurance to the Company which shall have all the powers to realise those assets and discharge any liabilities of SEB and shall become enforceable by or against the Company to the same extent as they were enforceable by or against SEB.

(2) All mortgages, shares, deeds, charges, agreements, servitudes, contracts, loans, stocks, bonds and other instruments, works in progress and all working arrangements subsis-

ting immediately before the date of commencement of this Act shall be of full force and effect against or in favour of, as the case may be, the Company, and enforceable as fully and effectually as if instead of SEB, the Company had been named therein and had been party thereto.

(3) Any proceedings or cause of action pending or existing immediately before the date of commencement of this Act by or against the Company be continued or enforced by or against the Company as it might have been by or against SEB if this Act had not been passed.

(4) In respect of any immovable property or any right or obligation under a mortgage, pledge, bond or charge vested in or transferred to or imposed upon the Company under this section and which by law is required to be registered, a Registrar as contemplated in the Deeds Registry Act shall, upon submission to the Registrar by the chief executive officer of the SEB —

(a) that a real right in respect of immovable property has been transferred to the Company in terms of subsection (1);

(b) of a list of properties or rights owned by SEB, or owned by the Government and exclusively used by SEB,

make such entries or endorsements as are necessary in any register or document to effect registration of such property or right in the name of the Company, and no stamp duty, office fee or other monies shall be payable in respect thereof.

(5) All documents and records of SEB are to be transferred to the Company.

(6) Claims raised on implicit assets or liabilities that might come to light during or after incorporation, and which are not registered in the Deeds Registry, shall be referred to a review committee composed of the principal secretary of the Ministry of Finance, the principal secretary of the Ministry, and the head of the Public Enterprises Unit before being settled or taken to court.

#### *Transfer of employees, etc.*

8. (1) As from the date of commencement of this Act all appointments of officers, employees and staff of SEB made prior to the said date of commencement and subsisting at that date shall be deemed to have been made in accordance with this Act and those officers, employees and staff shall be deemed to be in the service of the Company.

(2) Every officer, employee or staff member of SEB at the commencement of this Act shall be deemed to have been transferred to the employment of the Company under the existing terms and conditions of service and for the purpose of determining the rights under the employment the service shall be regarded as being continuous from the time of employment by SEB.

(3) An officer, employee or staff member of SEB shall not be entitled to receive any other compensation or benefits by reason only of being deemed to be transferred to the Swaziland Electricity Company if such compensation or benefit would not be due and/or payable had this Act not come into force.

#### *Pension funds, etc.*

9. (1) The Company shall assume all the rights and obligations of the SEB towards all pension funds, provident fund or other fund created or funded by the SEB for the retirement of employees.

(2) Any employee transferred to the Company under this Act who was a member of a fund mentioned in subsection (1), shall continue to be a member of that fund and the fund shall continue to exist.

(3) Any over or under-funding of the fund shall be assessed by the due diligence and valuation exercise and be taken into account in the assessment of the value of the share capital of the Company.

*Issuing of licences by the Energy Regulatory Authority.*

10. (1) The Energy Regulatory Authority established under the Energy Regulatory Authority Act shall provide the Company with the licenses required to fulfil its functions defined in this Act.

(2) The Company shall comply with all reporting and accounting requirements fixed by the Energy Regulatory Authority in licences or in its published by-laws.

*Selling of shares in the Company.*

11. (1) The selling of shares in the Company shall be subject to prior approval and authorization by Parliament.

(2) The approval by Parliament of the plan for the selling of shares is conditional on the presentation by the Minister to Parliament of a full or partial privatisation plan discussed and agreed with the Minister of Finance and the Director of the Public Enterprise Unit.

(3) The privatisation plan shall cover as a minimum —

- (a) the strategic objective of the partial or full privatisation and how it fits into the energy policy of the Government;
- (b) reasons for the form chosen to sell shares – open bidding or negotiated sale;
- (c) in case of negotiated deals, how the sales price is to be maximised, or how maximum expansion targets are to be reached at least on cost to Swazi society;
- (d) employment impact and redundancy plans;
- (e) use of sales revenue and its placement – whether expansion of the capital of the Company, transfer to the Rural Access Fund or transfer to the treasury;
- (f) implications for the pension fund;
- (g) the comments made by the Energy Regulatory Authority on the plan; and
- (h) when privatisation is considered fifty percent or more of the shares shall be reserved for the Swazi.

*Auditing.*

12. The Company shall be subject to auditing by a registered and internationally recognised firm of accountants appointed by the Board and approved by SCOPE.

*Payment of taxes.*

13. From the day of incorporation the Company shall be liable to payment of company taxes.

*Taking on debt.*

14. (1) As long as the Government is sole shareholder of the Company, the Minister of Finance in consultation with the Minister shall fix a limit on the maximum debt to be incurred by the Company subject to SCOPE approval.

(2) As long as the Government is sole or major shareholder of the Company, the terms and conditions of major loans taken by the Company are subject to approval by Parliament.

*General.*

15. (1) From the date that the Company assumes the rights and obligations of the SEB as provided for in this Act, any reference in any legislation to the SEB shall be deemed to be a reference to the Company.

(2) The directors of the Company shall, as soon as possible after its incorporation, and while the Government is the sole shareholder, reach an agreement with the Minister, setting out —

- (a) relationship between the Government and the Company, including the social objectives to be met by the Company;
- (b) the powers, duties and functions of the Company, and dividends (if any) to be paid to the Government;
- (c) proposed dates on which —
  - (i) the Company will start operating;
  - (ii) the transfer of assets, liabilities, rights and obligations will take place;
  - (iii) the transfer of personnel will take effect;
  - (iv) the SEB will cease all activities.

(3) The agreement contemplated in subsection (2) may be amended from time to time.

*Winding down of SEB.*

16. (1) The SEB shall cease to exist as a legal person from the date determined by the Minister in the Gazette.

(2) The Minister shall only determine a date in terms of subsection (1) when satisfied that —

- (a) the Company has taken over all the rights, liabilities and obligations of the SEB;
- (b) there are no outstanding issues that necessitate the legal standing of the SEB to be maintained.

(3) Nobody shall have or may institute any claim of any nature against the SEB from the date determined under subsection (1).