

## **Disclaimer**

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## **ACT NO. 9 OF 2010**

## **Land Administration Authority Act, 2010**

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ACT NO. 9 OF 2010

**Land Administration Authority Act, 2010**

An Act to provide for the establishment of the Land Administration Authority as the main body responsible for land administration, land registration, cadastre, mapping and surveying and matters incidental thereto.

Enacted by the Parliament of Lesotho.

PART I – PRELIMINARY PROVISIONS

**Short title and commencement**

1. This Act may be cited as the Land Administration Authority Act 2010 and shall come into operation on such date to be appointed by the Minister by notice in the Gazette.

**Interpretation**

2. In this Act unless the context otherwise requires -

“Authority” means the Land Administration Authority established under section 4;

“Board” means the Board established under section 5;

“Chairperson” means the chairperson of the Board;

“Director General” means the Director General of the Authority appointed under section 18;

“land administration” means the administration of the systems of deeds registration, surveying and mapping;

“member” means member of the Board;

“Millennium Challenge Account- Lesotho Authority” means an Authority established by the Government of Lesotho entrusted with the implementation of the programme and projects to reduce poverty through economic growth in Lesotho as described in the Millennium Challenge Compact concluded between the Government of the United States of America acting through the Millennium Challenge Corporation and the Government of Lesotho entered into on the 23 July 2007.

“Minister” means the Minister responsible for land matters;

“Ministry” means the Ministry responsible for land matters.

**Duties of the Minister**

3. Notwithstanding Part II, it shall be the duty of the Minister -

(a) to determine the land policy of the Government of Lesotho;

(b) to ensure the effective coordination of the policies for land administration, land registration, cadastral aspects thereof and matters incidental thereto.

PART II – LAND ADMINISTRATION AUTHORITY

**Establishment of the Authority**

4. (1) There is hereby established an authority known as the Land Administration Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal.

(3) The Authority shall be capable of suing and being sued, holding, purchasing or otherwise acquiring and disposing of any moveable and immovable property for purposes of or in the course of carrying out its functions.

(4) The Authority shall be capable of doing or performing all such acts as a body corporate may by law do or perform.

**Functions of the Authority**

5. (1) The Authority shall be an agency of the Government of Lesotho responsible for land administration and shall operate under the general supervision of the Minister.

(2) Without prejudice to the generality of subsection (1) the functions of the Authority shall be -

(a) to administer the land registration system and shall include the following tasks:

(i) establishment and maintenance of accurate and complete database containing information on land holding in Lesotho;

- (ii) granting consents for land transactions whenever necessary;
- (iii) registering all land transactions requiring registration;
- (iv) issuing leases to land;
- (v) maintaining a record of all rights and interests in land;
- (vi) providing information regarding land holdings and other interests in land upon request;
- (vii) initiating research for improvement of the efficient functioning of the land administration system;
- (b) to administer the surveying and mapping functions;
- (c) to perform functions created under the Deeds Registry Act 1967 in so far as they relate to land administration;
- (d) to resolve registration and cadastre complaints and disputes, including those relating to:
  - (i) land parcel boundaries;
  - (ii) information contained in the land registry and cadastre;
  - (iii) information contained in any official document extracted from the land registry and cadastre;
- (e) to create guidelines that provide for measures to ensure the efficient and effective performance of the following:
  - (i) land registration;
- (ii) cadastral registration;
- (iii) resolution of registration and cadastre complaints and disputes;
  - (f) to collect ground rent, fees and issue notices from time to time prescribing the fees to be paid for the Authority's services;
  - (g) to advise the Minister and the Government of Lesotho on suitable changes and additions to land administration laws and policies;
  - (h) to cooperate with the Ministry and other governmental and private bodies with regard to all matters relating to land administration; and
- (i) generally, to do anything that is necessary or conducive to the attainment of the functions of the Authority.

### PART III – THE BOARD OF THE AUTHORITY

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

6. (1) There is hereby established a Board of the Authority which shall be the governing body of the Authority.
- (2) The Board shall consist of senior representatives of the following Ministries or bodies, as the case may be, who shall be appointed by the Minister after consultation with the relevant Ministries or bodies by notice published in the Gazette:
  - (a) the Ministry responsible for land matters;
  - (b) the Ministry responsible for agriculture;
  - (c) the Ministry responsible for forestry and land reclamation;
  - (d) the Ministry responsible for trade and industry;
  - (e) the Lesotho business sector whose representative shall be a person with financial management skills;
  - (f) an association of bankers in Lesotho;
  - (g) an association of surveyors in Lesotho;
  - (h) notaries and conveyancers;
  - (i) the Lesotho Housing and Land Development Corporation;
  - (j) the Director General of the Authority, who will be a non- voting member.
- (3) The Board may appoint a serving employee of the Authority with legal qualifications as Secretary to the Board.

(4) Candidates for appointment as members of the Board shall be selected on the basis of their knowledge and experience in land matters or any other relevant professional experience.

**Disqualification and vacation of office**

7. (1) A person shall not be competent to be appointed or to act as a member of the Board if the person –

- (a) is a Member of Parliament;
- (b) has, in the last seven years, been convicted of an offence involving fraud or dishonesty by a competent court of law;
- (c) is in a position of material conflict of interest between the interests of the member as a member of the Board and the business interest of that member;
- (d) has been declared insolvent or bankrupt under any law in any country and has not been discharged;
- (e) has served his full tenure of appointment;
- (f) ceases employment with or membership of the Ministry or body, as the case may be, by virtue of whose employment or membership he is a member of the Board;
- (g) knowingly fails to declare a conflict of interest relating to any matter under consideration by the Board;
- (h) is absent without the consent of the Chairperson or without valid excuse for 3 consecutive meetings of the Board of which he had notice;
- (i) becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member;
- (j) other than the Director General, accepts or continues to hold office or employment with the Authority; or
- (k) becomes disqualified in terms of this Act.

(2) If a member dies, resigns or otherwise vacates office before expiry of the term of office the Minister shall appoint another person to replace the member and the person appointed shall hold office for the unexpired period of the term of office of the predecessor.

(3) The Minister may terminate appointment of a member if it necessary for the effective performance of the functions of the Authority under this Act or if the public interest so requires.

**Chairperson**

8. The Minister shall designate the Chairperson of the Board from amongst the members and the members shall elect from amongst themselves the Vice Chairperson of the Board:

Provided that if the Chairperson is designated from the public sector, then the Vice-Chairperson shall be elected from the private sector, and vice versa.

**Term of office of Board Members**

9. (1) A member of the Board, other than one whose membership is by virtue of a particular office, may hold office for a period of 3 years.

(2) Should the Minister deem it fit to reappoint any of the Board member, it shall not be for more than 2 consecutive terms.

**Remuneration of members**

10. (1) Members shall be paid from the funds of the Authority such sitting allowance as the Minister may determine.

(2) The Board may, with the approval of the Minister, make provision for the reimbursement of any reasonable expenses incurred by a member or a member of a committee of the Board in connection with the business of the Board or the committee.

(3) All payments under subsections (1) and (2) shall be made out of the funds of the Authority.

### **Meetings of the Board**

11. (1) The Board shall meet at least once every 3 months at such places and times as the Chairperson may determine.

(2) An ordinary meeting of the Board may be convened after at least 7 days' written notice to the members.

(3) The Chairperson may cause an extraordinary meeting of the Board to be summoned at such place and time as may be reasonable:

Provided that this shall be done upon the written request of at least 3 members, in which case the extraordinary meeting must be held within 5 days of receipt of such request.

(4) The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, shall preside at meetings of the Board and in case of a tie of votes the presiding member shall have a casting vote in addition to a deliberative vote.

(5) A quorum of any meeting of the Board shall be 7 members, and decisions shall be by majority vote.

(6) In the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of the members to preside over a meeting of the Board and the member so elected shall exercise all the ordinary powers and perform all the duties of the Chairperson.

(7) A person presiding at any meeting may, for good cause, require the Director General or any other officer of the Authority to withdraw from the meeting.

(8) Subject to this Act, the Board may regulate its own procedure at its meetings.

(9) Minutes of each meeting of the Board shall be kept by the Secretary and shall be subject to approval at the succeeding meeting.

### **Validity of proceedings**

12. Subject to section 13(3) the validity of any act, decision or proceedings of the Board shall not be affected by any vacancy among the members or by any defect subsequently discovered in the appointment of a member or by reason that some person who was not entitled to do so took part therein.

### **Disclosure of interest**

13. (1) A member with any pecuniary or other interest, direct or indirect, in any matter under consideration by the Board, shall, as soon as practicable, after the commencement of the meeting, disclose all material facts to the Board and shall not take any further part in the meeting with respect to that matter.

(2) A member who contravenes subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding M10,000 or to imprisonment for a period not exceeding 5 years or to both.

(3) A decision of the Board which directly or indirectly benefits a member who failed to disclose an interest shall be null and void.

### **Invitees to Board meetings**

14. (1) The Board may, in its discretion, at any time and for any length of period, invite any person to attend any meeting of the Board for the purpose of assisting or advising the Board in respect of any matter under consideration by the Board.

(2) A person invited pursuant to subsection (1) may take part in the deliberations of the Board at any meeting attended but shall not be entitled to vote on any matter at any meeting of the Board.

### **Committees of the Board**

15. (1) The Board may establish committees to perform any such other functions and such responsibilities as the Board shall determine to be appropriate.

(2) Decisions of a committee shall be in compliance with any guidelines adopted by the Board.

(3) Committee members shall appoint from amongst themselves a chairperson of the committee.

(4) The officer appointed as the Secretary of the Board under section 6 (4) shall serve as the secretary to any committee of the Board and shall, on the instruction of the Chairperson of the Committee convene the meeting of the committee.

### **Powers of the Board**

16. The Board may:

- (a) direct the Director General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions;
- (b) give instructions and directives to the Director General in connection with the management, performance or operational policies and implementation of the functions of the Authority;
- (c) for the efficient and effective discharge of the Authority's functions and on the recommendation of the Director General, approve on such terms and conditions as it sees fit:
  - (i) an organisational structure for carrying out the functions of the Authority;
  - (ii) the appointment of employees in specified categories of the Authority;
- (d) recommend to the Minister salaries and benefits of the employees;
- (e) prescribe such administrative measures as may be required to safeguard any revenue obtained by the Authority;
- (f) prescribe measures for disciplinary control over staff of the Authority; and
- (g) prescribe guidelines for grants of exemptions under section 17.

### **Exemptions**

17. (1) The Minister shall publish in a Gazette the criteria for granting exemptions.

(2) Subject to subsection (1), the Authority may grant exemption from:

- (a) consents under section 5(2)(a)(ii) for certain categories of applications; and
  - (b) fees or ground rent.
- (3) The Director General shall submit to the Board quarterly reports on the total amount of revenue and number of exemptions made.
- (4) The Authority shall, within 3 months of the end of the financial year of the Authority, submit to the Minister a report setting out the justification for exemption and totals from the quarterly reports and the Minister shall, within 30 days from the date of submission, cause it to be published in the Gazette.
- (5) The Minister shall, within 60 days from the date of publication of the report in the Gazette, table the report before Parliament.

## **PART IV – ADMINISTRATION OF THE AUTHORITY**

### **Appointment of Director General**

18. (1) There shall be a Director General of the Authority who shall be the Chief Executive and shall be appointed by the Board on such terms and conditions as the Board may determine.

- (2) The appointment and terms and conditions of service of the Director General shall be subject to approval by the Minister.
- (3) The Director General shall work full time for the Authority and shall not without the prior approval of the Board hold any other office of trust or profit, nor engage in any other occupation for reward.
- (4) Notwithstanding subsection (1) and (2), the first Director General shall be appointed by the Millennium Challenge Account- Lesotho Authority through the competitive selection process and his appointment shall be deemed to have been made in terms of this Act.
- (5) The Director General shall be subject to the general supervision and control of the Board.

(6) The Board shall conduct an annual performance appraisal with regard to the performance of the Director General and a report shall, within 30 days from the end of the financial year of the Authority, be submitted to the Minister.

#### **Functions of the Director General**

19. The Director General shall be responsible for:

- (a) the day-to-day operations of the Authority;
- (b) the management of the funds, property and business of the Authority;
- (c) the administration, organization and control of the officers and staff of the Authority;
- (d) the effective administration and implementation of the provisions of this Act;
- (e) effective performance of such functions as may be consistent with the general objectives of the Authority;
- (f) attend meetings of the board and of any committee of the Board and in his absence shall appoint in writing such officer of the Authority to represent him;
- (g) convene meetings of the Board on the instruction of the Chairperson

#### **Tenure of office of Director General**

20. (1) The Director General shall, subject to subsection (2), hold office for a period of 3 years.

(2) The Minister may, on the advice of the Board, terminate the appointment of the Director General for the following reasons:

- (a) misconduct or misbehaviour in terms of the code of conduct of the Authority; or
- (b) inability, incapacity or incompetence to perform the duties of his office.

#### **Staff**

21. (1) The Board may on the recommendation of the Director General, and on such terms and conditions as the Board may determine appoint on merit, such number and grades of heads of departments of the authority as the Board may think necessary or desirable for the efficient and effective discharge of the functions of the Authority.

(2) The Director General may, on such terms and conditions as the Board may determine, appoint other officers and staff of the Authority subordinate to the Director General as may be required for the performance of the functions of the Authority.

(3) Upon the commencement of this Act, a public officer employed in a Government department whose functions have been taken over by the Authority, may, within a period to be prescribed by the Authority, apply to the Authority for employment, and if successful shall be employed by the Authority.

(4) A public officer who does not apply for employment with the Authority or whose application has not been successful in securing employment with the Authority, may be re-deployed in the Public Service subject to availability of a suitable position as may be determined by the Minister responsible for the Public Service.

(5) Where no suitable position is available in the opinion of the Minister responsible for the Public Service, such officer as referred to in subsection (2) shall be deemed to have been retired from the Public Service.

(6) A person employed under subsection (3) shall be deemed to have resigned from the Public Service from the date of assumption of duties with the Authority and shall be entitled to such terminal benefits as may be due under the applicable legislation.

### **PART V – FINANCIAL PROVISIONS**

#### **Funds of the Authority**

22. (1) The funds of the Authority shall consist of -

- (a) revenue obtained from fees and ground rent levied by the Authority for the provision of services;

- (b) grants or donations from the Consolidated Fund;
  - (c) grants or donations from any approved source in or outside Lesotho; and
  - (d) subject to any applicable law, loans from any source in or outside Lesotho.
- (2) Any funds received and collected by the Authority with respect to any financial year, shall be used to pay the expenses incurred for the day to day operations of the Authority and the funds which are not expended by the end of that financial year shall be placed in a reserve fund to be expended subject to the budget of the Authority for the ensuing financial year.
- (3) Subject to the approval of the Board, the Authority may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

#### **Accounts and audit**

23. (1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The accounts of the Authority shall be audited annually by the Auditor General.

#### **Annual report**

24. (1) The Authority shall, as soon as practicable but not later than 3 months after the expiry of each financial year, submit to the Board and thereafter to the Minister a report on its activities during the preceding financial year.

(2) The report referred to in subsection (1) shall be in such form as the Minister may prescribe, and shall include information on the financial affairs of the Authority.

(3) There shall be appended to the report referred to in subsection (1) the following:

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditures;
- (c) the total amount of revenue foregone pursuant to section 17 (1)(b); and
- (d) such other information as the Authority may consider appropriate or as the Minister or Board may direct.

(4) The Minister shall immediately upon receipt of the report referred to in subsection (1) present it to Parliament, or if Parliament is in recess during the meeting of the Parliament next following receipt by the Minister of the report.

#### **Financial year**

25. The financial year of the Authority shall be the period of 12 months commencing on 1st April in each calendar year, and ending on 31st March in the following calendar year.

### **PART VI – MISCELLANEOUS**

#### **Regulations**

26. The Minister may, after consultation with the Board, make regulations with regard to the following:

- (a) procedures necessary for making applications to the Authority;
- (b) the efficient operation of the land administration system;
- (c) remuneration of Board and committee members;
- (d) the amount of fees levied for different categories of applications, including any exemptions;
- (e) codes of conduct for the staff of the Authority;
- (f) terms and conditions of service, including pensions, gratuities and other retirement benefits of members of staff of the Authority;
- (g) form and style of annual reporting by the Authority to the Minister;
- (h) the manner in which the Authority may invest funds it does not immediately require for the performance of its functions; and
- (i) the inclusion within its mandate of any additional matters related to land administration that can be effectively performed by the Authority or are necessary for the effective operation of the Authority.

#### **Vesting of assets, liabilities etc.**



27. (1) All property, except any such property as the Minister may determine by notice published in the Gazette, which immediately before the commencement of this Act was vested in the Government for use in land administration shall, upon the commencement of this Act, vest in the Authority, subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(2) Except as otherwise provided in subsection (1) in relation to property, all contracts, debts, obligations and liabilities of the Government attributable to the existing land administration agencies before the commencement of this Act, shall remain vested in the Government and may be enforced by or against the Government.

(3) All legal proceedings and claims which before the commencement of this Act are pending against bodies dealing with land administration may be continued or enforced by or against the Authority in the same manner as they would have been continued or enforced before the commencement of this Act.

#### **References to existing land administration departments**

28. Upon coming into operation of this Act, all the land administration, land registration, cadastre, mapping and surveying functions carried out by the existing departments within the Ministry and matters incidental thereto shall be taken over by the Authority.

#### **NOTE**

1. Act No 12 of 1967

GOVERNMENT NOTICE NO. 46 OF 2010

#### **Statement of Objects and Reasons of the Land Administration Authority Act, 2010**

#### **(Circulated by the Authority of the Honourable Minister of Local Government and Chieftainship Affairs)**

The objective of the Bill is to establish an autonomous Land Administration Authority with the aim of improving Land Administration Services in Lesotho.

The Bill provides for the functions of the Authority which are: Land Administration, Land Registration, Cadastre, Mapping and Surveying. The Bill also makes provision for the Management and Administration of the Authority by the Director General under the supervision of the Board and the Minister of Local Government and Chieftainship Affairs.

#### **The Current Position and Rationale**

1. Research, consultations and practice have proven that the land tenure system and its administration under the 1979 Land Act are not responsive to the economic needs of the country. It is perceived to be costly, slow, inefficient, restrictive and not transparent. The end results are that registered land rights are not provided to the majority of citizens and this hampers investments and creates dysfunctional land markets. The current tenure system does not also bring much revenue to the state.

2. Parliament may also recall that the Government of Lesotho and that of the United States of America through the Millennium Challenge Corporation have signed an Agreement (Compact) on the 23rd July, 2007, whereby the Government of the United States of America undertakes to help Lesotho in alleviating poverty through stimulation of economic growth. The Compact include among others, Private Sector Development. The private sector project is designed to increase private sector activities in Lesotho by improving access to credit, reducing transaction costs, and increasing the participation of women in the economy. The activities under Private Sector project include improving land administration services so as to reduce barriers to trade and thus attract both local and foreign investment.

3. In order to address the problems associated with the current land administration in Lesotho, an agreement was reached between the Government of Lesotho and the Millennium Challenge Corporation of America under the Compact about the need to establish a unified

Land Administration Authority modelled after the Lesotho Revenue Authority. The Government of Lesotho through the Ministry of Local Government and Chieftainship Affairs believes that the establishment of Land Administration Authority will be a substantial step in improving land tenure security for all Basotho and promoting the use of land and real property as a valuable asset for the citizens and business alike. As a result, there is a need for the adoption of a legal basis for the establishment of the Land Administration Authority. The new authority should be:

- (i) professionally managed and operated;
- (ii) operated in a largely autonomous manner in accordance with its objectives;
- (iii) capable of providing cost effective and efficient services to the public and land information users (including the poor);
- (iv) able to hire and retain qualified managerial and technical staff; and
- (v) self-sustaining (financial sustainability).

### **Consultations with stakeholders**

The Land Administration Authority Bill, 2010 builds on research which was carried out overtime in an endeavour to improve the land administration services in Lesotho. It incorporates among others the findings of the late Chief Magistrate L. Mapetla's Land Policy Review Commission of 1987, the recommendation of the Justice Ramodibedi's Land Policy Review Commission of 2000 and the views gathered from the Land Forums of 2007/2008. The findings of all these studies revealed that the 1979 Land Act and the current Land Survey and Physical Planning have some shortcomings which promote unequal distribution of land inefficiency of in land services. The shortcomings also hinder utilization of land as an economic asset. As a result, Consultants were engaged in 2008 to undertake a study on the strategy of the coming Land Administration Authority. In this consultation, the Minister of Finance and Development Planning was consulted. Thereafter stakeholders' workshop which included among others; the Bankers, Chambers of Commerce, Law Administration Officials, Private Surveyors, Private Developers, Estate Agents Educators, Government Ministries and Departments, Local Authorities, Chiefs, NGO's, Donors based International Organizations was held in April, 2008. Comments from this Workshop were used to draft the Land Administration Authority Bill.