

ACT NO. 1 OF 2008

Millennium Challenge Account Lesotho Authority Act 2008

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ACT NO. 1 OF 2008

Millennium Challenge Account Lesotho Authority Act 2008

An Act to establish the Millennium Challenge Account - Lesotho Authority with the object to implement the Programme and projects to reduce poverty through economic growth in Lesotho as described in the Millennium Challenge Compact and matters incidental thereto.

Enacted by the Parliament of Lesotho.

PART I - PRELIMINARY

Short title

- 1. This Act shall be cited as the Millennium Challenge Account – Lesotho Authority Act, 2008.

Commencement

- 2. This Act shall come into operation on the date to be appointed by the Minister by notice published in the Gazette.

Interpretation

- 3. (1) In this Act, unless the context otherwise requires:

“auditor” means the independent auditor appointed by the Board as contemplated in section 45(2);

“Authority” means the Millennium Challenge Account – Lesotho Authority of Lesotho established under section 4;

“Board” means the Board of Directors of the Authority established

under section 9;

"Chief Executive Officer" means the Chief Executive Officer of the Authority appointed under section 25;

"Compact" means the Millennium Challenge Compact concluded between the Government of the United States of America acting through the MCC and the Government of the Kingdom of Lesotho entered into on 23 July 2007 as set out in the Schedule;

"Companies Act" means the Companies Act, 1967¹;

"financial year" has the meaning set out in section 48;

"Fiscal agent" means the entity engaged pursuant to section 49;

"Government" means the Government of the Kingdom of Lesotho;

"Government Affiliate" means an affiliate, ministry, local government council, department, agency, corporation or any other legal entity registered or established by the Government;

"Implementation documents" means the documents relating to the implementation of the Compact objectives as required under the Compact, including the M & E Plan;

"Inspector General" means the Inspector General of the United States Agency for International Development;

"LCN" means the Lesotho Council of Non-Governmental Organisations or any successor organisation approved by the MCC and the Government;

"Legal Officer" means the legal officer of the Management Unit of the Authority, as contemplated by section 26(2)(h);

"M & E Plan" means the systems for monitoring and evaluation developed by the Authority and the MCC pursuant to the Compact;

"Management Unit" means the persons or body appointed by the

Authority established under section 26;

"member" means a member of the Board;

"MCA - Lesotho" means the abbreviated name of the Authority as referred to in section 4(1);

"MCC" means the Millennium Challenge Corporation, a United States Government Corporation, established under the United States Millennium Challenge Act of 2003;

"MCC Disbursement Request" means a written disbursement request for the MCC Funding submitted by the Authority pursuant to the Compact and the Programme Implementation Agreement;

"MCC Funding" means the financial assistance provided by MCC to the Government under the provisions of the Compact;

"MCC Representative" means the person designated by MCC pursuant to section 10(1)(d);

"Minister" means the Minister responsible for finance and development planning;

"Procurement agent" means the entity engaged by the Authority in accordance with section 30;

"Procurement Guidelines" means the guidelines determined by the MCC for the procurement of all goods, services, and works for the Programme;

"Programme" means the projects and activities contemplated in the Compact;

"Programme Assets" means the assets and property purchased by the Authority;

"Programme Implementation Agreement" means the Programme Implementation Agreement contemplated by section 3.1 of the Compact to be concluded by the Authority, the Government and MCC;

"Stakeholders Committee" means the body of representatives established under section 28.

(2) In the event of any conflict between this Act and any other laws in force in Lesotho, other than the Constitution of Lesotho 1993, this Act shall prevail.

(3) In the event of any inconsistency between the Compact and any law in force in Lesotho (including this Act), other than the Constitution of Lesotho 1993, the Compact shall prevail.

PART II - THE AUTHORITY

Establishment of the Authority

4. (1) There is established an authority, to be known as the Millennium Challenge Account - Lesotho Authority and in abbreviated form as the MCA-Lesotho.

(2) The Authority -

- (a) is a body corporate with perpetual succession, subject to section 53;
- (b) is capable of -
 - (i) performing the Government's obligations under the Compact including, without limitation, the Government's obligations to oversee, manage and implement the Programme and the projects and activities contemplated therein;
 - (ii) suing and being sued in its own name;
 - (iii) entering into contracts as contemplated in section 7(1)(d);
 - (iv) performing all such acts as are necessary for or incidental to the attainment of the objective and purpose of the Authority.

(3) The Authority shall have the powers, purposes and functions set out in this Act, the Compact, the Programme Implementation Agreement and, to the extent not inconsistent therewith, any regulations made pursuant to section 51 and any policies adopted by the Board pursuant to section 17(3).

(4) The Authority and its properties, including all Programme Assets, shall have immunity from execution and attachment.

Common seal and custody of seal

5. (1) The Authority shall have a common seal.

(2) The affixing of the seal shall be authenticated by the signature of the Chairman of the Board or such other member authorised either generally or specially by the Board to act for that purpose and of the Secretary of the Board or some other person authorised either generally or specially by the Board to act for that person.

(3) A certificate signed by the Chairman or other member that any instrument purporting to be made or issued by or on behalf of the Board was so made or issued shall be conclusive evidence of that fact.

(4) Every document purporting to be an instrument made or issued by or on behalf of the Authority and to be sealed with the seal of the Authority and authenticated in the manner provided by this section shall be received in evidence and be deemed to be such an instrument and to be so made or issued without further proof unless the contrary is shown.

(5) The seal of the Authority shall be kept in the custody of the Secretary of the Board.

Objective and purpose of the Authority

6. (1) The objective of the Authority is to reduce poverty in Lesotho through economic growth.

(2) The Authority shall implement the Programme and discharge all of its designated rights and responsibilities established pursuant to the Compact.

Powers of the Authority

7. (1) The Authority shall have all the necessary powers and legal capacity contemplated by the Compact and this Act, including, without limitation, the powers -

- (a) to discharge all inherent and designated rights and responsibilities;
- (b) to engage implementing entities, including Government Affiliates, and third parties, and may further delegate its powers in accordance with the Compact and this Act with the concurrence of the MCC;
- (c) to purchase or acquire by any other means, and sell, exchange, lease, dispose of, turn to account or otherwise deal with its assets whether movable or immovable (subject to the Land Act 1979²) for such consideration as it thinks fit;
- (d) to enter into such contracts including international agreements as may be necessary, with private and public entities, domestic and foreign, including Government Affiliates for the performance of its functions provided that any contract in respect of land or servitudes shall be subject to the Land Act, 1979;
- (e) to insure against all normal commercial risks associated with the operations of the Authority;
- (f) to open and maintain bank accounts in its own name to the extent permitted under the Compact;
- (g) to engage the Fiscal Agent and the Procurement Agent as referred to in Part VII and any replacement of those agents subject to the approval of the MCC;
- (h) from time to time, to employ such technical or other advisers as it deems fit to advise it in respect of any matter or issue in connection with the exercise of its

functions under the Compact and this Act;

- (i) generally, to perform such duties and exercise such powers of the Accountable Entity as contemplated in the Compact and the Programme Implementation Agreement.

(2) The Authority shall not, directly or indirectly, engage in any activity prohibited under section 2.6 of the Compact.

Functions of the Authority

8. (1) The functions of the Authority shall be -

- (a) to facilitate, coordinate and ensure implementation of the goal and objectives of the Compact and the projects contemplated therein and the Programme Implementation Agreement and ancillary agreements, and in so doing ensure functional liaison, with and compliance by Government Affiliates to carry out such goal, objectives, purposes and projects;
- (b) to prepare and maintain budgets and financial records and have prepared financial accounting statements in accordance with the Compact the Programme Guidelines and best practices established and accepted internationally;
- (c) to ensure that all procurement by the Authority is performed in accordance with the Procurement Guidelines, notwithstanding any contrary provisions of any other law.

(2) The Authority shall discharge its functions in an independent, transparent and accountable manner.

PART III - THE BOARD

Establishment of the Board

9. There shall be a governing body of the Authority which shall be the Board of Directors.

Composition of the Board

10. (1) The Board shall, initially, consist of the following persons:
- (a) 6 Government members representing –
 - (i) the Ministry of Finance and Development Planning;
 - (ii) the Ministry of Foreign Affairs;
 - (iii) the Ministry of Health and Social Welfare;
 - (iv) the Ministry of Local Government;
 - (v) the Ministry of Natural Resources;
 - (vi) the Ministry of Justice, Human Rights and Rehabilitation;
 - (b) 3 members from the private sector to be selected in accordance with section 11(3);
 - (c) 2 members from the LCN, one of whom shall represent an environmental non-governmental organisation, selected in accordance with section 11(4);
 - (d) a person designated by the MCC;
 - (e) the Chief Executive Officer;
 - (f) representatives from other Ministries or other persons as the Government and the MCC may agree.

(2) The members referred to in 10(1) (d), (e) and (f) shall not be entitled to vote.

(3) The Government may, with the concurrence of the MCC, from time to time, designate other Ministries as successors to those referred in subsection (1) (a).

(4) All non-voting members shall be entitled to attend and participate in all Board meetings and be entitled to receive all Board papers, correspondence and other documentation received by or to which voting members of the Board are entitled.

(5) The Secretary of the Board shall cause the names of the voting members of the Board to be published in the Gazette.

Selection of Board Members

11. (1) The voting members of the Board shall be selected as set out in this section and shall be subject to the prior approval of the MCC.

(2) Each Government member shall be a senior official with authority to act on behalf of the Ministry he or she represents and the Government member shall serve in his or her official capacity for so long as he or she remains in office and not in a personal capacity.

(3) The members of the Board representing the private sector shall be selected by the Stakeholders Committee without Government involvement and in a transparent process established and administered by the Stakeholders Committee and approved by the MCC.

(4) The members of the Board representing the LCN shall be selected by the LCN through the Stakeholders Committee without Government involvement and in a transparent process established and administered by the LCN and approved by the MCC, provided that one of the members representing the LCN on the Board shall at all times be a representative from an environmental non-Governmental organisation.

Vacancies

12. (1) If a person serving as a representative of a Ministry resigns or

is removed from such Ministry, or a vacancy otherwise occurs with respect to that person, his or her position on the Board shall be taken by another person designated by the Ministry which the person represented on the Board, being another official of equivalent rank within such Ministry, or from another Government body relevant to the Programme activity, with the concurrence of the MCC.

(2) Should a vacancy occur with respect to one or more members of the Board representing the private sector, a successor shall be selected by the Stakeholders Committee in accordance with section 11(3).

(3) Should a vacancy occur with respect to one or both of the members of the Board representing the LCN, a replacement member shall be selected by the LCN in accordance with section 11(4), provided that one of the members representing the LCN on the Board shall at all times be a representative from an environmental non-Governmental organisation.

(4) Any person filling a vacancy shall be subject to the MCC approval and be appointed for the remainder of the term of the person he or she has replaced.

Disqualifications

13. (1) A person shall be disqualified from serving on the Board if the person would be disqualified from being a director of a company under section 144 of the Companies Act 1967 (excluding, for this purpose, the proviso to section 144(1)(b) of the Companies Act, which shall not apply to members of the Board).

(2) A member shall not continue to be a member of the Board if he or she is absent from 3 consecutive meetings without an apology acceptable to the Board.

Term

14. Subject to his or her continuing eligibility to serve as a member of the Board, the term of office for voting members of the Board shall be 5 years, which term of office may be renewed.

Chairperson

15. The member of the Board representing the Ministry of Finance and Development Planning shall be the Chairperson of the Board.

Secretary of the Board

16. There shall be a Secretary of the Board who shall be the legal officer unless otherwise determined by the Board.

Functions of the Board

17. (1) The Board shall be an independent decision-making body with ultimate authority and responsibility for the oversight, direction and decisions of the Authority, subject to any rights of approval of the MCC contained in the Compact.

(2) The Board shall give effect to the provisions of this Act, and at all times in so doing, be mindful of the provisions of the Compact, the Programme Implementation Agreement, or other ancillary agreements. Without limiting the generality of the foregoing, the responsibilities of the Board shall include:

- (a) ensuring compliance with and implementing the Programme in accordance with the provisions of the Compact;
- (b) ensuring that the MCC Funding is used for its intended purposes;
- (c) overseeing and providing direction to the Management Unit;
- (d) considering the recommendations and advice of Stakeholders Committee.

(3) The Board shall, with the concurrence of the MCC, institute and implement such internal guidelines and policies consistent with the Compact and the Programme Implementation Agreement as may be requisite for the proper functioning of the Authority and the execution of the

Programme, including a conflict of interest policy, a transparency policy and a policy regarding the treatment and handling of confidential information.

(4) Except as otherwise provided in section 10(4), members of the Board shall discharge a fiduciary duty to the Authority and in exercising their responsibilities as members of the Board shall act in accordance with the best interests of, the Authority, the Programme and the objectives of the Compact.

(5) The Board may form one or more committees, which may make recommendations to the Board. The committees may be composed of voting and non-voting members of the Board and such other persons that may have particular expertise necessary for the committee:

Provided that the Board may not delegate its powers, duties or responsibilities to any such committee and shall retain ultimate responsibility for taking decisions upon matters considered or advised upon by any committee.

Meetings of the Board

18. (1) Regular meetings of the Board shall be held at least quarterly at a time and place to be determined by the Chairperson.

(2) Additional meetings may be convened by the Chairperson and shall be convened by the Chairperson on the request of 3 or more voting members of the Board.

Notice of meetings

19. (1) Notice for any regular meeting shall be given in writing to each member of the Board by hand, mail or facsimile at least 7 days prior to the date of such meeting.

(2) Notice for any special meeting shall be given in writing to every member of the Board not less than 48 hours before the date and time of such meeting, in the manner set out for regular meetings.

(3) Notwithstanding subsections (1) and (2), a meeting may be held on shorter notice provided that at least 8 voting members of the Board and MCC Representative waive, in writing, the requirement to receive notice in respect of any such meeting.

(4) All notices shall be in writing and shall specify the date, time and venue of the meeting with an agenda of the proposed business of the meeting.

Quorum

20. At all meetings of the Board the quorum shall be 8 voting members of whom at least 4 shall be Government members, who may be represented by their alternates, provided that such alternates shall be no less senior than the immediate deputy of such members.

Voting

21. (1) Decisions of the Board shall be taken by a majority of the voting members present.

(2) Each voting member shall have one vote.

(3) In the event of an equality of votes the Chairperson presiding at the meeting shall have a casting vote.

(4) Any urgent decision may be taken by the Board without a formal meeting, subject to the MCC approval, if –

(a) a written draft resolution is circulated to all members of the Board; and

(b) at least 8 voting members of the Board consent in writing to the resolution.

Remuneration of Board Members

22. Members of the Board shall not be entitled to receive remuneration in connection with the performance of their duties as members, except for reimbursement for necessary expenditure incurred as budgeted for and approved by the Board, with the concurrence of the MCC.

Provided that the Government and the MCC may agree to remuneration terms for members other than representatives of Ministries or other government officials.

Indemnity

23. (1) A member of the Board shall not be personally liable for any debt or obligation of the Authority.

(2) The Authority shall, at the cost and expense of the Government (without utilising any, the MCC Funding for this purpose), indemnify, defend and hold harmless, each member of the Board (including the MCC Representative) from and against any and all claims, losses, actions, liabilities, costs, damages or expenses, arising or incurred by such person in connection with or arising as a result of such person's acting as a member of the Board, except to the extent attributable to such person's fraud, gross negligence or willful misconduct.

Applicability of Companies Act 1967

24. The following sections of the Companies Act 1967 shall apply to members of the Board and to officers and staff of the Authority as if such members, officers and staff were directors of a Company:

- (a) section 141 – relating to acts of a director or manager;
- (b) section 144 – regarding the disqualification of persons for being appointed as directors, provided that the proviso to section 144(1)(b) shall not be applicable to members of the Board or to officers and staff of the Authority;
- (c) section 148 – relating to the prohibition of loans to directors; and
- (d) section 157 – relating to the disclosure of interests by a director.

PART IV - MANAGEMENT UNIT

Chief Executive Officer

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

determine, with the concurrence of the MCC.

(2) The Chief Executive Officer shall –

- (a) be responsible for the execution of the policies of the Authority and the transaction of its day to day business as set out in the Compact, the Programme Implementation Agreement, and other ancillary agreements under the direction of the Board;
- (b) head the Management Unit and be supported by officers and staff who shall be appointed on terms and conditions determined by the Board, with the concurrence of the MCC;
- (c) report to the Board as required on all aspects of the management and administration of the Authority; and
- (d) hold such office for a period of 5 years unless terminated earlier.

Establishment and composition of Management Unit

26. (1) There shall be a Management Unit of the Authority under the direction and oversight of the Board, which shall execute the day to day activities of the Authority in the implementation of the Programme.

(2) The Management Unit shall include the following officers and staff, each of whom shall be appointed by the Board on such terms and conditions as the Board may determine, subject to the prior approval of the MCC:

- (a) Chief Financial Officer;
- (b) Head of Administration;
- (c) Head of Procurement;
- (d) Head of Infrastructure;
- (e) Head of Environmental and Social Assessment;

- (f) Head of Monitoring and Evaluation;
- (g) Head of Operations;
- (h) Legal Officer;
- (i) Communications and Public Outreach Specialist; and
- (j) such other officers and staff as may be determined by the Board with the concurrence of the MCC.

(3) The officers and staff of the Authority may be nationals of Lesotho or nationals of any other country but shall not be civil servants.

Functions of Management Unit

27. (1) The Management Unit shall discharge the daily management, operations, coordination, implementation, monitoring and evaluation duties in respect of the Programme and shall report to the Board through the Chief Executive Officer.

- (2) The further functions of the Management Unit include –
 - (a) development and administration of the Implementation Documents;
 - (b) coordination of the overall Programme and its projects contemplated under the Compact consistent with the Programme Implementation Agreement and other ancillary agreements related thereto;
 - (c) oversight of the implementation of the Programme including preparation of the MCC Disbursement Requests to be submitted to the MCC for approval by the Board;
 - (d) management, implementation and coordination of all components of the M & E Plan;

- (e) preparation and review of reports regarding the finances and accounting of the Authority and audit reports of the Programme;
- (f) preparation and submission of all compliance reports required by applicable local law;
- (g) maintenance of accounting records for the Programme and its projects;
- (h) provision of ongoing oversight of procurements in accordance with the Procurement Guidelines as required under the Compact; and
- (i) provision of regular management reports and management accounts to and as required by the Board.

PART V - STAKEHOLDERS COMMITTEE

Establishment

28. There shall be established a Stakeholders Committee as contemplated in the Compact.

Composition

29. The size, composition and manner of selection of the Stakeholders Committee shall be determined by the private sector and civil society representing the constituencies of the projects under, and the beneficiaries of the Programme with the concurrence of the MCC.

Functions

30. The Stakeholders Committee shall –

- (a) engage the various constituent groups on the Programme implementation;
- (b) provide advice, guidance and recommendations to the Authority in regard to the implementation of the Programme;

- (c) nominate the private sector members of the Board as contemplated in section 10(1)(b); and
- (d) be entitled to receive from the Board such documentation as it may reasonably require for it to discharge its duties.

Term

31. A member of the Stakeholders Committee shall be appointed for a term of 2 years but shall be entitled to reselection for a further term unless disqualified under section 33.

Vacancies

32. Any vacancy which occurs for whatever reason on the Stakeholders Committee shall be filled by a person selected in accordance with the selection procedures adopted by the Board and approved by the MCC pursuant to section 29, for the remainder of the term of the person so being replaced.

Disqualification

33. (1) A person serving who would be disqualified from serving as a director under section 144 of the Companies Act (excluding, for this purpose, the proviso to section 144(1)(b) of the Companies Act, which shall not apply to members of the Stakeholders Committee) shall not be permitted to serve on the Stakeholders Committee.

(2) A member of the Stakeholders Committee who fails to attend 3 consecutive meetings without apology acceptable to the Stakeholders Committee shall cease to be a member of the Stakeholders Committee.

Chairperson and Secretary

34. (1) There will be a Chairperson selected by the Stakeholders Committee from among its members, who shall serve for a term of 2 years.

(2) There shall be a Secretary selected by the Stakeholders Committee from among its members, who shall serve for a term of 2 years.

(3) A retiring Chairperson or Secretary who continues to be a member of the Stakeholders Committee may be re-elected as Chairperson or Secretary.

(4) Any vacancy in either of these positions shall be filled by the Stakeholders Committee from their members.

Meetings and decisions

35. The Stakeholders Committee shall hold at least 2 general meetings per year and any other periodic meetings that may be required to discharge its functions as set out in section 30.

Notice of meetings

36. At least 7 days written notice of any general meeting shall be given to all members of the Stakeholders Committee by hand, mail or facsimile stating the date, time and venue of such meeting with an agenda listing the issues to be considered.

Quorum of the Stakeholders Committee

37. A majority of the members of the Stakeholders Committee shall constitute a quorum at any meeting.

Remuneration

38. Members of the Stakeholders Committee shall not be entitled to receive remuneration in connection with the performance of their duties as members, except for reimbursement for necessary expenditures incurred as budgeted for and approved by the Board, with the concurrence of the MCC.

PART VI - FINANCIAL PROVISIONS

Funds, assets, resources and liabilities

39. The funds, assets, resources and liabilities of the Authority shall consist of:

- (a) any funds, assets, resources and liabilities of the

Millennium Challenge Account – Lesotho Coordination Unit under the auspices of the Ministry of Finance and Development Planning arising under any contracts entered into prior to the establishment of the Authority that are assumed and accepted by the Authority;

- (b) the Programme Assets;
- (c) all monies or property that may, from time to time, be donated, contributed or granted to the Authority from whatever source;
- (d) all property and investments acquired by or invested in the Authority and, subject to section 41, all monies earned or arising therefrom; and
- (e) such other monies or property as may, in any manner, become payable to or vest in the Authority in respect of any matter incidental to its purposes and functions.

Bank accounts

40. The Authority may open and maintain an account or accounts with an approved bank.

Interest and earnings

41. The Authority shall remit to the MCC all interest and other earnings that accrue on the MCC Funding in accordance with section 2.4 of the Compact and the Programme Implementation Agreement.

Appropriation of monies

42. All income and property and all monies of the Authority acquired from whatever source are to be applied exclusively to the fulfilment of the purposes of the Authority in accordance with the Compact, the Programme Implementation Agreement and this Act.

Exemption from taxation

43. Notwithstanding anything to the contrary in any written law contained, and without limiting the generality of Section 2.7 of the Compact, the Authority is not liable to pay any tax on any income or profits from any source payable under the Income Tax Act 1993², the Value Added Tax (VAT) Act 2001³, transfer duties payable under the Transfer Duty Act 1966⁴, stamp duties payable under the Stamp Duties Order 1972⁵, any fees, taxes or duties payable under the Deeds Registry Act 1967⁶, ground rent payable under the Land Act 1979 and rates payable under the Valuation and Rating Act, 1980⁷, and any fees, taxes or duties levied under the Customs and Excise Act 1982⁸, and no fees, taxes, duties or any other governmental charges of any kind or nature shall be assessed or levied upon the Authority, its activities, employees, agents, contractors or sub-contractors, or in respect of MCC Funding or Programme Assets unless otherwise agreed between Government and the MCC.

Authority to cover outgoings

44. The Authority shall so perform its functions as to ensure that, taking 1 year with another, its available resources are sufficient to meet the expenditures properly chargeable to the Authority.

Accounts and audit

45. (1) The Authority shall keep proper accounts and other financial records in relation to the operations of the Authority and such accounts and records shall conform to internationally accepted standards.

(2) The accounts of the Authority shall be audited by an external auditor appointed by the Authority and approved by the MCC, provided that no person shall be qualified for appointment as an auditor of the Authority unless he or she is a member of the Lesotho Institute of Accountants, in accordance with section 14 of the Accountants Act, 1977¹⁰.

(3) Audits of the Authority shall be performed in accordance with the Compact and the Programme Implementation Agreement and shall be subject to quality assurance oversight by the Inspector General.

(4) The following persons shall not be appointed as auditors of the Authority:

- (a) a member of the Board, an officer or employee of the Authority;
- (b) a person who is a partner of a member of the Board, or of an officer or of an employee of the Authority;
- (c) a person who is an employer or employee of a member of the Board, or of an officer or of an employee of the Authority;
- (d) a person who is an officer or employee of a body corporate which is employed by the Authority; or
- (e) a person who, by himself or his partner or his employee, regularly performs the duties of Secretary or book-keeper to the Authority.

(5) The Authority shall provide access to its accounts, financial records and facilities to the Inspector General, the United States Government Accountability Office and the MCC and their agents to conduct any audit, assessment, review, evaluation or inspection of the Authority or the Programme as contemplated by the Compact.

Information to be furnished to the Minister

46. The Authority shall, not later than 6 months after the end of the financial year, submit to the Minister:

- (a) a balance sheet and profit and loss account that truly and correctly reflects the state of affairs of the Authority at the end of the last preceding financial year;
- (b) a report signed by the auditor appointed under section 45 after examination of the accounts of the Authority:
 - (i) containing a statement that to the best of his or her knowledge and belief and on information supplied to him, the balance sheet and profit and loss account reflect a true statement of the assets and liabilities of the Authority at the end

of the last preceding financial year and of the profit and loss for the period covered; or

- (ii) if he or she is unable to make the statement or to make it without qualification, containing particulars of the facts or circumstances that prevent him or her from making that statement, or an indication of that qualification, as the case may be; and
- (c) a report of the Authority concerning the operations of the Authority during the last preceding financial year and its future policy programmes.

Superannuations, pensions etc.

47. (1) The Authority may establish and maintain such pensions, superannuation, provident and other funds as it may consider desirable for the provision of payment or other allowances on death, sickness, injury, superannuation, resignation, retirement or discharge of its officers or employees and their dependants.

(2) The Authority may contract with an insurance company or other body for the maintenance of such funds.

Financial year

48. The financial year of the Authority shall commence on the first day of April and be for the 12 consecutive months thereafter terminating on the last day of March of the following year.

PART VII FISCAL AND PROCUREMENT AGENTS

Fiscal agent

49. The Authority shall engage a Fiscal Agent through an open, internationally competitive process approved by the MCC to discharge financial management activities on behalf of the Authority which shall include the following:

- (a) preparing the fiscal accountability plan specifying fiscal management and procurement related controls to be followed by the Authority;
- (b) ensuring and certifying that re-disbursements of the MCC Funding is properly authorised in accordance with control procedure set out in the Programme Implementation Agreement and other ancillary agreements;
- (c) managing cash and performing account reconciliation of any permitted account established and maintained for the purpose of receiving disbursements of MCC Funding and making re-disbursements as defined in the Compact;
- (d) providing applicable certifications in connection with the MCC Disbursement Requests;
- (e) maintaining proper accounting records and a document disaster recovery system of all the MCC-funded financial transactions; and
- (f) Assisting in the preparation of budget development procedures.

Procurement agent

50. (1) The Authority shall engage a Procurement Agent through an open, internationally competitive process approved by the MCC to carry out procurement activities on behalf of the Authority.

(2) The Procurement Agent shall be responsible for the implementation of the procurement standards set forth in the Compact, the Programme Implementation Agreement and the Procurement Guidelines.

PART VIII MISCELLANEOUS

Regulations

51. The Minister may, on the recommendation of the Board and with the concurrence of the MCC, make regulations consistent with the Compact and this Act for the better functioning of the Authority.

Winding up of the Authority

52. (1) The provisions of the Companies Act 1967, read with the Insolvency Proclamation 1957¹¹ and the Common Law in regard to the judicial management and winding up of companies are excluded.

(2) Any judicial management or winding up shall be effected only by Act of Parliament.

Continuation of the Authority

53. The Minister may, within 12 months of the expiry of the Compact, or if any extension or renewal of the Compact then of such extension or renewal, determined by notice in the Gazette that the Authority shall continue to exist and function, in which event, effective from the date stated in such notice, which shall not be less than 120 days from the date of expiry of the Compact, any reference to the MCC and its functions and to the Compact shall be deemed to be removed from this Act.

NOTE

1. Act No. 25 of 1967
2. Act No. 17 of 1979
3. Order No. 9 of 1993
4. Act No. 14 of 2001
5. Act No. 7 of 1966
6. Order No. 5 of 1972
7. Act No. 12 of 1967
8. Act No. 10 of 1980
9. Act No. 9 of 1982
10. Act No. 9 of 1977
11. Proclamation No. 51 of 1957