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PART C

LEGAL NOTICE NO. 475 OF 2022

THE PUBLIC FINANCE MANAGEMENT ACT, 2017
(Act No. 10 of 2017)

THE ESWATINI AGRICULTURE DEVELOPMENT FUND REGULATIONS, 2022
(Under Section 41)

In the exercise of the powers conferred by section 41 of the Public Finance Management Act, 2017, the Minister for Finance makes these Regulations-

ARRANGEMENT OF REGULATIONS

PART I
PRELIMINARY PROVISIONS

Citation and Commencement

1. (1) These Regulations may be cited as the Eswatini Agriculture Development Fund Regulations, 2022.

(2) These Regulations shall come into force on the date of publication in the Gazette.

Interpretation

2. In these Regulations, unless the context otherwise requires-

"contribution" means any monies, other financial instruments, or in-kind goods or services given voluntarily without expectation of repayment or in exchange for any other benefit;

"contributor" means any government entity, private enterprise, international partner, individual, or other legal person that makes one or more contributions to the Fund;

"corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public officer or politician;

"Fiduciary" includes a member of the Secretariat, financial institution, implementing partner, Members of the Steering Committee or any other recipient of fund resources;

"Financial institution" means an institution which conducts banking business as contemplated in the Financial Institution Act, 2005;

"Fund" means the Eswatini Agriculture Development Fund established in terms of section 41 of the Act and this Regulations;

"fund account" means the bank account established with the selected Financial Institution or other institution that maybe mandated to discharge the functions of the Fund;

"fund resources" means any contribution in the Fund's name, under the control of the Fund, or otherwise available to the Fund;

"Government" means the government of the Kingdom of Eswatini;

"Secretariat" means the person designated in terms of regulation 10(1);

"Implementing partner" means a public or private entity who have entered into an agreement with the Fund to implement certain activities along the agriculture value chains;

"Minister" means the Minister responsible for agriculture;

" Ministry" means the ministry responsible for agriculture;

"personal interest" means any financial or non-financial benefit or harm likely to be realized by the individual, any member of his or her family, or other personal relation; and

"Principal Secretary" means the Principal Secretary in the Ministry of Agriculture.

PART II
THE ESWATINI AGRICULTURE DEVELOPMENT FUND

Establishment of the Fund

3. (1) There is established a fund to be known as the Eswatini Agriculture Development Fund.

(2) The Fund shall consist of-

(a) money appropriated by Parliament;

(b) remittances and levies to the Fund;

(c) donations, gifts, grants, or loans raised or accepted by the Minister responsible for Finance; and

(d) any interest accrued from the dedicated account of the Fund and interest accrued from any activities financed by the Fund.

Object of Fund

4. (1) The object of the Fund is to-

(a) mobilize financial and non-financial resources to develop agriculture value chains;

(b) invest in agriculture infrastructure; and

(c) create a conducive environment for farming and private sector investment in the agro-food system industry.

(2) The purpose of the Fund is to ensure that the Ministry achieves the following-

(a) blended agriculture financing products including smart subsidies, guarantees, grants for producers or actors;

(b) developing critical infrastructures for agriculture such as dams, pack-houses and processing facilities, access roads; and any other related agriculture infrastructure;

(c) provide incentives for a nexus of enterprises including value chain driver firms, market hub firms, mechanization service providers, soil testingservice providers;fertiliser provider enterprises, seed enterprises, veterinary services, artificial insemination services, livestock breeding service, milk collection, feed producers;

(d) support establishment of sector or industry associations and drafting of sector development plan agreements;

(e) support the establishment of farmer organizations for aggregation purposes;

(f) monitoring and evaluating the use of the Fund assets;

(g) reporting on the use of the Fund assets and the performance of agriculture value chains; and

(h) any other incentives or activities connected to agriculture enterprises.

Functions of the Fund

5. The Fund shall-

(a) catalyse investments along potentially transformative value chains through de-risking investments by private sector players and farmers;

(b) provide a special vehicle for strategic investments by Government in public infrastructure to catalyse further value chain investments by farmers and private sector;

(c) mobilise additional financial resources for investment in the Country's agriculture sector from domestic and international sources;

(d) streamline financial investments in agriculture value chains by all the relevant stakeholders including Government Ministries, state institutions, private sector and development partners; and

(e) establish accountability measures for investment performance of partners in the agriculture sector.

Administration of Fund

6. (1) The Fund shall be administered by the Principal Secretary.

(2) The Minister responsible for Finance, with the approval of Cabinet shall prescribe the amount which shall be available at the commencement of the operation of the Fund, and thereafter such amount as may be made available each financial year.

(3) The Ministry shall enter into a management agreement with a financial institution for administration and maintenance of the Fund.

(4) The monies due to the Fund shall be deposited into the dedicated bank account in accordance with sub- regulation (3).

(5) The operations of the Fund shall be in compliance the Public Finance Management Act No. 10 of 2017 or its successor.

PART III
STEERING COMMITTEE OF THE ESWATINI AGRICULTURE DEVELOPMENT FUND

Establishment of Steering Committee

7. (1) There is established a Steering Committee of the Eswatini Agriculture Development Fund.

(2) The Minister shall appoint the members of the Steering Committee of the Eswatini Agriculture Development Fund.

(3) The Steering Committee appointed under sub-regulation (3), shall consist of four (4) members or representatives of the following institutions-

(a) Principal Secretary from the Ministry of Agriculture;

(b) Principal Secretary of the Ministry of Finance or a representative of the Principal Secretary for the Ministry of Finance;

(c) Principal Secretary of the Ministry of Economic Planning and Development or representative; and

(d) Principal Secretary from the Ministry of Commerce Industry and Trade or a representative.

(4) The Principal Secretary from the Ministry of Agriculture shall be the Chairperson of the Steering Committee.

(5) The Steering Committee shall be responsible for providing oversight to the operation of the Fund including-

(a) approval of the Fund's strategic plans;

(b) approval of annual work plans and budget;

(c) consideration and approval of proposals and investments to be supported by the Fund;

(d) review and approval of the Fund's performance reports on quarterly and annual basis;

(e) ensuring development and adherence to internationally accepted fiduciary principles, standards, rules and policies governing the use of the Fund resources;

(f) supporting resource mobilization strategies for the Fund;

(g) ensuring establishment of ad-hoc committees and co-opting of technical expertise for supporting the Secretariat in furtherance of the objectives of the Fund; and

(h) performing other related functions assigned by the Principal Secretary.

(6) There shall be established a Technical Committee, consisting of the following members -

(a) Principal Agriculture Economist, who shall be the chairperson;

(b) Director Agriculture or a representative;

(c) Director for Veterinary and Livestock Services or a representative;

(d) representative of the Managing Director of the financial institution;

(e) representative of the horticulture industry;

(f) representative of the livestock industry; and

(g) representative of the crop or grain industry.

(7) The Technical Committee shall-

(a) provide technical support to inform decisions of the Fund Steering Committee;

(b) inform and review the Fund strategy, work plans and budget and make recommendations to the Steering Committee;

(c) evaluate proposals and investments to be supported by the Fund for recommendation to the Steering Committee;

(e) provide technical support for resource mobilization strategies and plans; and

(f) undertake site inspections and assess progress on implementation of supported projects.

Meeting of Steering Committee

8. (1) The Steering Committee of the Eswatini Agriculture Development Fund shall meet at least quarterly or as and when required.

(2) The quorum shall be constituted by four (4) members and the Chairperson shall have a casting vote.

(3) The Steering Committee shall regulate its own procedure.

(4) The meetings of the Committee may be held physically or virtually.

(5) If there is an urgent decision to be taken, a resolution shall be through round robin provided more than four (4) members of the committee append their signature to a resolution within seventy-two (72) hours.

(6) The members of the Steering Committee shall be paid sitting allowances as prescribed by the Minister responsible for Finance.

PART IV
RESPONSIBILITIES OF THE MINISTRY AND IMPLEMENTING PARTNER

Responsibilities of the Ministry

9. (1) The Ministry, through the Department responsible for the Eswatini Agriculture Development Fund, shall undertake to promote, and provide support to agriculture development programs through public and private sector participation.

(2) The Ministry shall ensure that the implementing partner complies with the objects of the Fund in terms of the National Agriculture Investment Plan, through facilitating-

(a) blended agriculture financing products including smart subsidies, guarantees, grants for producers or actors;

(b) developing critical infrastructures for agriculture such as dams, pack-houses and processing facilities, access roads;

(c) providing incentives for a link of enterprises including value chain driver firms, market hub firms, mechanization service providers, soil testing service providers; fertiliser provider enterprises, seed enterprises, veterinary services, artificial insemination services, livestock breeding service, milk collection, feed producers;

(d) supporting establishment of sector industry associations and drafting of sector development plan agreements;

(e) supporting establishment of farmer organizations for aggregation purposes;

(f) monitoring and evaluate the use of Fund assets; and

(g) reporting on the use of fund assets and the performance of agriculture value chains in such a form and frequency as determined by the Steering Committee.

(3) The implementing partner shall-

(a) submit proposals to the Steering Committee for the request for Fund resources through prescribed instruments to implement value chain activities in furtherance of the sector development plan agreements;

(b) comply with the provisions of the Procurement Act No.7 of 2011 or its successor and the Procurement Regulations of 2008 for the purpose of outsourcing services for carrying out of the objects of the Fund; and

(c) designate a focal person to be responsible for liaising with the Secretariat on the activities of the Fund.

(4) The Ministry shall enter into a Memorandum of Understanding with an implementing partner for the carrying out the activities of the Fund.

Secretariat

10. (1) There is established a semi- autonomous Secretariat under the Ministry on contractual basis, to be responsible for carrying out the objects of the Fund.

(2) The contractual period for the Secretariat shall be a period not exceeding three (3) years, with an option for renewal.

(3) The Ministry shall appoint a Director who shall be the administrator and Head of the Secretariat.

(4) The Secretariat shall-

(a) develop a strategy, annual work programmes and budget for the Fund;

(b) engage the private sector, Government, international partners, and people in Eswatini to contribute to the Fund;

(c) develop or adopt internationally accepted fiduciary principles, standards, rules and policies governing the use of the Fund resources;

(d) implement transparent and fair processes to receive, review, and approve proposals for the use of the Fund resources;

(e) facilitate processes for the financing of activities in the furtherance of the objects of the Fund in line with the National Agriculture Investment Plan and development strategy;

(f) facilitate and coordinate development and endorsement of commodity sector development plan agreements;

(g) establish a framework for monitoring and evaluation of the portfolio and overall performance of the Fund;

(h) facilitate the establishment of a bank account for the Fund in consultation with the Accountant General; and

(i) exercise such other functions as may be appropriate to fulfil the objects of the Fund.

(5) The Secretariat shall provide administrative support for the activities of the Fund as follows-

(a) make all arrangements for meetings and serve as a day-to-day liaison of the Committees under the guidance of the chairperson;

(b) prepare reports that may be required by the Minister or for regulatory compliance;

(c) liaise with contributors, Implementing Partners, Financial Institutions and cooperating bilateral and multilateral institution and agencies; and

(d) establish and run effective knowledge management practices.

(6) The offices of the Secretariat of the Fund shall be within the Ministry of Agriculture or in any other place the Minister may deem fit.

(7) The remuneration of the Secretariat shall form part of the budget of the Fund.

PART V
ROLE OF FINANCIAL INSTITUTION

Financial institution

11. The financial institution shall-

(a) host the Eswatini Agriculture Development Fund account;

(b) receive funds and facilitate disbursements for activities approved by the Steering Committee;

(c) produce reports on a quarterly basis for Government updates; and

(d) participate in audits and other investigations and subsequent compliance with the findings and recommendations of such audits and investigations;

PART VI
FINANCIAL PROVISIONS

Bank Account

12. (1) The Accountant General shall open a special bank account for the Fund in the financial institution under regulation 6(3).

(2) The bank account shall be in the name of the Eswatini Agriculture Development Fund and all monies due to the Fund are to be deposited in the special bank account.

Signatories to bank account

13. (1) The persons whose designated positions appear below, shall be signatories to the bank account of the Fund-

(a) Principal Secretary in the Ministry of Agriculture;

(b) Principal Agriculture Economist;

(c) Accountant General; and

(d) Deputy Accountant General.

(2) In this regulation, any two (2) of the four (4) persons mentioned in sub-regulation (1), (b) and (c) shall counter-sign at the same time, while the signature of the person mentioned in sub-regulation 1 (a) is mandatory.

PART VII
MISCELLENEOUS PROVISION

Use of Fund Resources

14. (1) The Fund resources, except as allowed under these Regulations, shall be used in furtherance of the objects of the Fund in the manner provided for disbursement and procurement under these Regulations or any other law.

(2) The designated financial institution shall disburse fund resources after receiving a written notice from the Principal Secretary and the Accountant General.

(3) An entity or individual that uses Fund resources for any unauthorised purpose shall reimburse the Fund the value of those fund resources or be liable for the value of those fund resources plus any costs incurred to recover the fund resources.

(4) The Fund may not finance activities that have recurrent cost implications for the Government or other entity, provided there is an express agreement between the Government and the Steering Committee of the Fund.

Code of Conduct

15. (1) The Secretariat, financial institution, implementing partner, and any other recipient of fund resources are fiduciaries of the Fund and shall prioritise achieving the fund's objects despite any personal interest.

(2) A fiduciary of the Fund shall-

(a) disclose any personal interest, real or perceived, related to any matter that comes before the Fund;

(b) recuse themselves from any matter in which they have a personal interest, regardless of whether the personal interest has been disclosed; and

(c) not participate in any corrupt practices, directly or indirectly, by offering, giving, receiving, or soliciting anything of value to influence improperly the actions of another person.

(3) A Fiduciary shall report to the Principal Secretary any conduct or other activities, real or suspected, violating the terms of this Regulation and any other code of conduct adopted by the Fund.

Accountability of Fund

16. (1) The Principal Secretary shall be accountable to the Minister, and the Minister shall ensure that activities of the Fund approved by the Steering Committee conform to these Regulations.

(2) The Principal Secretary shall-

(a) submit to the Minister quarterly and annual reports on the Fund's operations, financed activities, financial accounts, risk profile, and progress towards achieving the Fund's objects; and

(b) report on the performance of the Fund to the Principal Secretary of the Ministry responsible for Finance in accordance with the provisions of the Public Finance Management Act, 2017.

(3) The Minister shall report on the activities and performance of the Fund quarterly to Parliament.

PART VIII
FINAL PROVISION

Audit of the Fund

17. (1) Subject to sub-regulation (2), the Fund shall be audited annually by an external auditor, registered with the Eswatini Institute of Accountants or other accrediting authority in Eswatini.

(2) The Steering Committee shall select the auditor.

(3) The Fund shall pay for the audit services and the outcome of the results of the audit are to be made available to the Steering Committee, the Minister, Cabinet and Parliament.

(4) Where there are significant issues or weaknesses identified by the Auditor, the Auditor shall report the issue to the Minister for Finance and the Minister for Finance shall address the issues.

(5) The audited financial statements shall be forwarded to the Minister for Finance and the Auditor General.

(6) This regulation may not preclude the Auditor General from conducting an audit of the Fund, if the need arises.

Power to develop guidelines

18. The Minister for Finance may develop guidelines consistent with these Regulations on issues relating to donations, grants and loans in order to avoid possibilities of money laundering.

NEAL H. RIJKENBERG
MINISTER FOR FINANCE

The Government Printer, Mbabane