LESOTHO INVESTOR ROADMAP

A GUIDE TOWARDS A MORE CONDUCIVE BUSINESS AND INVESTMENT CLIMATE

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Technical Report:

Investor Roadmap Lesotho

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# USAID Southern Africa Trade Hub

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<th>African Growth and Opportunities Act</th>
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<td>BDS</td>
<td>Business Development Services</td>
</tr>
<tr>
<td>BEDCO</td>
<td>Basotho Enterprises Development Corporation</td>
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<tr>
<td>BLNS</td>
<td>Botswana, Lesotho, Namibia, Swaziland</td>
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<tr>
<td>CET</td>
<td>Common External Tariff</td>
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<td>CMA</td>
<td>Common Monetary Area</td>
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<tr>
<td>COMTRADE</td>
<td>Commodity Trade Statistics Database</td>
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<td>DC</td>
<td>District of Columbia</td>
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<tr>
<td>DCC</td>
<td>Duty Credit Certificates</td>
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<tr>
<td>DDPR</td>
<td>Department of Dispute Prevention and Resolution</td>
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<td>DOE</td>
<td>Department of Environment</td>
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<td>DOI</td>
<td>Department of Immigration</td>
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<tr>
<td>EBA</td>
<td>Everything But Arms</td>
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<td>EFTA</td>
<td>European Free Trade Association</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EU</td>
<td>European Union</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>FOB</td>
<td>Freight on Board</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft fur Internationale Zusammenarbeit</td>
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<tr>
<td>GOL</td>
<td>Government of Lesotho</td>
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<td>IBCC</td>
<td>International Business Classification Codes</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>IRC</td>
<td>Industrial Relations Council</td>
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<td>ITC</td>
<td>International Trade Centre</td>
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<tr>
<td>LAA</td>
<td>Land Administration Authority</td>
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<tr>
<td>LDC</td>
<td>Least Developed Country</td>
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<tr>
<td>LEWA</td>
<td>Lesotho Electricity and Water Authority</td>
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<tr>
<td>LNDC</td>
<td>Lesotho National Development Corporation</td>
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<td>LRA</td>
<td>Lesotho Revenue Authority</td>
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<tr>
<td>LSPP</td>
<td>Department of Land Surveys and Physical Planning</td>
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<tr>
<td>NAFTA</td>
<td>North American Free Trade Area</td>
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<tr>
<td>MCA</td>
<td>Millennium Challenge Account</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>MMC</td>
<td>Maseru Municipal Council</td>
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<tr>
<td>MOFDP</td>
<td>Ministry of Finance and Development Planning</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>MPS</td>
<td>Ministry of Public Service</td>
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<tr>
<td>MTICM</td>
<td>Ministry of Trade, Industry, Cooperatives and Marketing</td>
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<tr>
<td>NES</td>
<td>National Environmental Secretariat</td>
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<tr>
<td>OCIS</td>
<td>Own Construction Incentive Scheme</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<tr>
<td>OSBFC</td>
<td>One Stop Business Facilitation Centre</td>
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<tr>
<td>PAYE</td>
<td>Pay-As-You-Earn</td>
</tr>
<tr>
<td>RSA</td>
<td>Republic of South Africa</td>
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<tr>
<td>SACU</td>
<td>Southern Africa Customs Union</td>
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<tr>
<td>SAD</td>
<td>Single Administrative Document</td>
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<tr>
<td>SADC</td>
<td>Southern African Development Community</td>
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<tr>
<td>SAIEA</td>
<td>Southern African Institute for Environmental Assessment</td>
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<tr>
<td>SARS</td>
<td>South African Revenue Service</td>
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<tr>
<td>SATH</td>
<td>Southern Africa Trade Hub</td>
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<tr>
<td>SEZ</td>
<td>Special Economic Zones</td>
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<td>SME</td>
<td>Small and Medium Sized Enterprises</td>
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<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
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<tr>
<td>TCIDP</td>
<td>Textile and Clothing Industry Development Programme</td>
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<tr>
<td>TIN</td>
<td>Taxpayer Identification Number</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>US</td>
<td>United States</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>USD</td>
<td>United States Dollars</td>
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<tr>
<td>UTM</td>
<td>Universal Transversal Mercator</td>
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<tr>
<td>VAT</td>
<td>Value Added Tax</td>
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<tr>
<td>VIP</td>
<td>Very Important Person</td>
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<tr>
<td>WASA</td>
<td>Water and Sewage Authority</td>
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<tr>
<td>WASCO</td>
<td>Water and Sewage Company</td>
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<tr>
<td>WCO</td>
<td>World Customs Organization</td>
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<tr>
<td>WEF</td>
<td>World Economic Forum</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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ACKNOWLEDGEMENT

During the data collection phase of this Lesotho Investor Roadmap exercise, the Lesotho National Development Corporation (LNDC) provided indispensable assistance to the roadmap consulting team. LNDC officials offered invaluable insights and guidance, while the counterparts assigned to the consultants spared no effort in ensuring a full schedule of meetings as well as smooth flow of other logistical arrangements. We wish to acknowledge this assistance and express our appreciation thereof.

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EXECUTIVE SUMMARY

Large investments in the apparel industry and the Lesotho Highlands Water Project have been the key source of Lesotho’s success in attracting both foreign and domestic investment in the economy. As these sources of investment and economic growth dry up, Lesotho needs to stimulate and support investment into its economy in order to sustain and support equitable economic growth. The Government of Lesotho (GOL) is committed to attracting both domestic and foreign direct investment. To support this initiative, Lesotho National Development Cooperation (LNDC), in collaboration with USAID Southern Africa Trade Hub (SATH), embarked on the Lesotho Investor Roadmap project aimed at pinpointing administrative, procedural and regulatory impediments that may deter investment in Lesotho.

The Investor Roadmap is a tool which supports government efforts in undertaking critical reforms that can spur entrepreneurial investment in the economy of Lesotho. It is at once an analytic tool, a detailed prescriptive document and a catalyst for meaningful change. The Roadmap examines the individual procedures that represent the critical path to business start-up and operation and creates a series of Action Plans to eliminate the red tape that inflates the cost of investments.

In assessing the investment and administrative regime in Lesotho, some general observations were identified that are common to the four process areas of the Roadmap (Employing, Reporting, Locating, and Operating). The Roadmap identified that procedural transparency in Lesotho is a major concern. Most government agencies, with a few exceptions, do not have procedural guides and websites that inform potential investors of the legal requirements, submission requirements, time frames and costs of starting and operating a business. The Roadmap also encountered instances of a lack of policy coordination; where government agencies did not communicate with one another thus leading to cases where one regulator approved a particular request while another declined it.

The Investor Roadmap identified that the most problematic of the four process areas were locating and employing procedures. Reporting procedures did not raise major concerns, partly because the new Companies Act (2011) came into operation in October 2011 to ease issues pertaining to company registration. Operating procedures were not considered to be problematic except regarding certain trade facilitation issues directly related to the computerization of the Lesotho Revenue Authority (LRA), as well as a few procedural concerns.

The critical and significant binding constraints on stimulating investment and enhancing economic growth in Lesotho are detailed below:

- **Access to Land.** Prior to the introduction of the Land Act of 2010, the land system did not permit a modern land market to develop in which investors and others requiring land were able to freely purchase and obtain titles from others and put the land to improved commercial use. The Act has provided a legal framework for the development of a modern land market. Now the key to enhancing access to land for Basotho and to support their entrepreneurial activity is to accelerate the process of the provision of land leases and adequate zoning of land. The fundamental objective regarding access to land for foreign investors is to support them in obtaining land for the construction of factories. In the past, investors wishing to invest in Lesotho were often forced to invest elsewhere due to the unavailability of serviced land for their
ventures. As a result, up to 15,000 possible jobs were not created in Lesotho and GDP growth was up to 1% lower than the potential. A well-functioning land market is also crucial in enhancing entrepreneurs’ access to the formal credit market, since in the absence of land titles it is not possible to use land as collateral for obtaining a loan. Therefore, improving access to land is also likely to enhance access to credit which is another key constraint on investment in Lesotho.

- **Access to Credit.** Despite the presence of well-capitalized and modern banks in Lesotho, obtaining credit is one of the key problems for investment and economic growth. The Doing Business indicators rank Lesotho 150th out of 184 countries in the world on “Getting Credit”; an indicator which measures the ease with which it is possible to get credit in a country. Both new and well established entrepreneurs have highlighted that accessing credit is one of the key constraints on their business growth. Vital challenges faced by Lesotho and other developing countries include being unable to provide collateral assets due to insufficient protection of property rights as well as information asymmetry problems whereby prospective lenders face difficulties in “informing” financial institutions regarding prospective profits for adequate risk assessment of loans.

The Investor Roadmap has revealed that Lesotho is implementing several reforms aimed at improving access to land and credit, for example, Parliament has passed the Land Act, the Financial Institutions Bill, the Credit Reporting and Data Protection Bill and the Partial Credit Guarantee Scheme. Full implementation of these reforms is the key to enhancing access to land and credit.

The Investor Roadmap also identified Lesotho’s uncompetitive business environment, including a high regulatory burden to register property and deal with construction permits, as a crucial issue impeding both foreign and domestic investment.

- **Securing construction permits:** According to the World Bank Doing Business 2012, dealing with construction permits is a critical constraint in Lesotho. Out of 183 countries in the Doing Business report, Lesotho was ranked 157 in 2012 and 158 in 2011. Maseru City Council issues building permits following inspection and approval of the building plans and diagrams. The mandated time limit for permits to be issued is 30 days however, it was reported that it often takes much longer. Once a permit is issued, the municipality is authorized to undertake on-site pre-approval for each stage of construction. However, lack of resources and capacity constraints at municipalities hamper their ability to carry out these inspections. Once a building is completed, all the necessary utilities are connected. The time it takes to get a telephone connection is estimated at 180 days while the cost for connection depends on whether the business is foreign or locally owned. Local businesses pay M500 (US$65) while foreign companies pay M5,000 (US$652). This is contrary to the norm in the region where companies are generally charged consistent fees for services.

Based on the analysis of the Investor Roadmap the following key recommendations are proposed:

**A. EMPLOYING**

**Allow for visas to be issued within one working day.** Currently, many countries have shifted their policies and issue visas at Embassies and Consulates on the day of application. Lesotho has comparatively few Embassies and Consulates around the world. This creates a significant obstacle to prospective visitors to Lesotho who come from
countries that without an Embassy or Consulate. Issuing visas on the same day would allow these individuals to travel to Pretoria or Johannesburg, obtain a visa there and continue travelling to Lesotho. Currently, some investors and tourists are forced to stay in Pretoria or Johannesburg for up to three working days to obtain a visa.

**Allow for multiple entry visas to be issued at Embassies and Consulates.** Currently, in order to obtain a multiple entry visa an investor or tourist needs to go through the process of application twice – once for a single entry visa and once for multiple entry visas. In order to lift this duplicative procedure and support investment and tourism, Lesotho Embassies should be allowed to issue multiple entry visas. The Ministry of Home Affairs should work towards drafting appropriate criteria and regulations that would allow Embassies and Consulates to issue multiple entry visas.

**Delegate authority to issue work and residence permits.** Currently, the final decision regarding work and residence permits lies with respective Ministers. Streamline this process by delegating the authority to approve these certificates to the Commissioner of Labor, the Ministry of Labor and Employment the Director of Immigration and the Ministry of Home Affairs and Public Safety, respectively. This delegation of authority is likely to decrease the time and hence the cost of obtaining both work and residence permits.

**B. REPORTING**

** Expedite the institutionalization of the One Stop Business Facilitation Centre (OSBFC).** The ongoing development of a new organizational structure and human resource framework for the OSBFC should be advanced. This should finalize OSBFC governance arrangements and whether or not the organization should become a private agency or remain a government agency with multiple accountabilities. The OSBFC could become a wholly privatized agency, earning revenue through the registration of companies and issuing of licenses, or could remain in its current form as a government owned entity and continue to be governed through its inter-departmental Memorandum of Understanding (MOU).

**Undertake legislative amendments that would allow the OSBFC to perform its mandate.** Processes, including legislative amendments for the location of a number of licensing institutions not currently located in the OBFC, should be accelerated. Legislation creating and regulating licensing activities in the line ministries do not currently allow the formal or permanent location of their staff in the OSBFC.

**C. LOCATING**

**Allocate all investors wishing to invest in Lesotho.** A key short term priority for the LNDC is to provide all investors wishing to invest in Lesotho an opportunity to so. This has the capacity to bring about significant increases in employment and economic growth in Lesotho. In order to achieve this, several short term solutions are possible:

All remaining space in Tikoe Industrial Estate should be immediately allocated to investors. The Water and Sewage Corporation (WASCO) and Lesotho Electricity Corporation (LEC) should deliver all necessary utilities to these sites. There are several solutions for LNDC to finance these operations:

- LNDC can apply for a commercial loan from Lesotho or international banks. Given LNDC’s strong financial situation this should be feasible provided the investments in
infrastructure, including factory construction, would be on “cost recovery” bases. It is therefore necessary for LNDC to charge market prices for its industrial building rentals.

- LNDC can enter into joint venture operations with prospective investors and become at least a 20% stakeholder in the investments. This will allow for the investor to lease land outside of the current LNDC owned estates. However, the supply for industrial land from the private sector and government is limited and might not satisfy the needs of an investor.

**Commission a consultancy company to undertake an audit of industrial land availability in Lesotho.** The audit should focus primarily but not exclusively on Maseru and Maputsoe metropolitan areas. The consultancy should answer several interrelated questions, including:

- What is the capacity to expand industrial land availability in Maseru and Maputsoe areas? Where is additional land for expansion?
- What are the infrastructure needs at each of these sites?
- What is required to lease any additional land?
- What is the “cost recovery price” for rent in the existing LNDC estates?

**Commission a study to explore the possibility of setting up Special Economic Zones (SEZ) in Lesotho.** The key factor within these zones is that a foreign investor should be able to purchase land directly from the government without restriction on national ownership. This would be possible only within the SEZ and would require a special Act of Parliament. Such a regulatory change has been done before in the case of Standard Bank (South Africa). When Lesotho Bank was privatized and Standard Bank (South Africa) bought a 70% share of the privatized bank, parliament had to enact a special law to hold land in its own right and not as a sub-lessee. This law covers only Standard Bank and does not apply to any other investors, whether local or foreign. A similar regulatory change would need to be undertaken to allow foreign investors to hold land in SEZ.

Another suggested provision within SEZ is that maintenance and utilities should be at least partially on cost recovery basis in order to ensure self-sustainability of the SEZ. As noted by World Bank (2009a) “in recent years though, the public development costs of modern industrial estates have been reduced internationally through a greater reliance on the private sector (both domestic and foreign) to develop and operate factory shells. For example, industrial zones in Mauritius, Madagascar and Kenya have all performed extremely well.”

**Improve zoning of land in Lesotho.** Carry out a reform of the current land planning system which will entail systematically zoning land in Lesotho. This will involve inter alia improvements in the provision of information regarding land, creation of actual land plans, especially in the main cities, and should form a part of the inter-Ministerial task force that deals with enhancing investors’ access to land in Lesotho.

**Set up a comprehensive Training and Support Program for Small and Medium Sized Enterprises (SMEs) for credit provision.** The aim of the Training and Support Program would be to provide coherent and holistic support for SMEs to obtain the necessary financing for growth. The program would offer training to new and existing enterprises and provide business advisory services regarding how to get credit, writing business plans and project proposals. Such a program should be an addition to the existing private sector
development activities of organizations responsible for business promotion in Lesotho such as Basotho Enterprises Development Corporation (BEDCO) or LNDC. The support program should be available to all types of industries and may be modeled on the activities of the Credit and Export Development Agency (CEDA) in Botswana which has been quite successful in this regard. CEDA provides training and mentoring, which are interconnected as they both attempt to cultivate entrepreneurial skills by providing companies with services for business related functions such as marketing management; financial management; operations management and human resources management. Support with regards to access to credit is one of CEDA’s top priority areas. In addition, the introduction of mentoring services could provide the necessary skills for enterprises in Lesotho to seek credit from formal sector financial institutions.

D. OPERATING
Lesotho should consider introducing an online tax filing system: Lesotho should aim at introducing a system that will allow entrepreneurs to file and pay their taxes online. This has a positive impact not only on the total tax compliance time but also the number of tax payments. Electronic filing and payment systems are now available in nearly 70 countries worldwide including developing countries. An electronic filing system has several advantages e.g. it is easier, more convenient and faster to process, complete and file tax returns. It also limits interactions with tax officials, thus taking away possibilities for corruption. With properly developed systems, errors can be identified instantly, and returns are processed quickly.

Fast track the computerization and automation of customs clearance. Given the number of disadvantages that Lesotho is facing as a result of the non-automation of customs clearance, it is recommended that computerization and automation of customs clearance processes should be fast tracked. Computerization and automation would bring about interfacing with other systems (e.g. Direct Trader Input system (DTI) and Electronic Data Interchange system (EDI). Computerization and automation would also cater for the interests of all concerned with revenue, trade statistics, transport, and trade facilitation.
1. INTRODUCTION

1.1 PROJECT CONTEXT

The Kingdom of Lesotho is a mountainous and landlocked country (Figure 1) entirely contained within South Africa. This unique geographical spot provides Lesotho with good access to some of the fastest growing industrial and economic hubs in the region, notably, Johannesburg and Pretoria. Lesotho is also within reasonable reach of international ports such as Durban and Cape Town. Table 1 shows a snapshot of the economic and social indicators in Lesotho.

The economy of Lesotho is agriculture based. About 77 % of people live in the rural areas and make their living through subsistence farming. In the early 1980s, agriculture contributed over 10 % to Gross Domestic Product (GDP) and this went down to 7.9 % in 2009/10. The manufacturing sector, dominated mainly by the textile and clothing sector, is the largest employer outside agriculture. Lesotho has very few natural resources except for abundant water reserves, some diamonds and natural beauty. The economic potential of these endowments has not been fully explored and tapped.

Figure 1: Map of Lesotho

Source: African Development Bank, African Economic Outlook 2011
Lesotho’s economic development trajectory is premised around her economic setting in Southern Africa. Since Lesotho is a member of the Southern African Customs Union (SACU)\(^1\) and her trade policies are kept in line with those of SACU. It is also a member of the Common Monetary Area (CMA)\(^2\) which influences and guides its monetary policy. South Africa is Lesotho’s main trading partner and supplies nearly 90% of all imported goods. With regards to exports, over 50% of exports are destined for South Africa while the rest is shared between the United States (US) and the European Union (EU).

In the past decade, Foreign Direct Investment (FDI) has been one of the key drivers of growth for Lesotho. Between 2000 and 2004, Lesotho received large investments in the textile and clothing sector. These investments were driven mostly by preferential market access opportunities through the US African Growth and Opportunity Act (AGOA). Lesotho is the largest African textile exporter to the US market. The textiles and clothing sector accounted for over 80% of all manufacturing jobs and employed 39,762 people in 2005. This figure increased to 45,262 in 2008. In 2010, this figure stood at around 43,000. The majority of the people employed in the industry are women.

Despite this impressive record of achievements brought about by increased investment, Lesotho is faced with several challenges. In spite of the market access opportunity provided through AGOA, Lesotho has been unable to diversify its product range exported to the US and in addition has not been able to diversify away from the US market.

Lesotho was adversely affected by several regional and international developments as a result of the global economic shock in 2008. As a result of the crisis, Lesotho’s economic growth declined by about 4.4% in 2008 to 1.9% in 2009. The textile and clothing industry

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\(^{1}\) SACU consists of Botswana, Lesotho, Namibia, South Africa and Swaziland

\(^{2}\) CMA is comprised of Lesotho, Namibia, South Africa and Swaziland
was hit hard by a reduced demand for textiles from US buyers thus forcing some domestic textile producers to close down. This led to significant job losses in 2009. In addition, the global demand for diamonds decreased and forced mines to suspend operations. Besides the impact of the economic crisis, Lesotho exports have been faced with stringent competition from Asian countries. It has also been argued that Lesotho is a relatively high-cost source of exports for American buyers compared to their Asian and South American competitors. According to the Lesotho Textiles Exporters Association, in 2010, the unit costs of production for Lesotho producers were almost 80% higher than those of Pakistan.

At the same time, SACU revenues, which account for about 60% of total government revenues declined by about 27% generating a 4.9% budget deficit. According to the African Development Bank (AFDB), the deficit is expected to widen further to 9.8% and 11.3% in 2010 and 2011 respectively. The unemployment rate is currently estimated at 25.3% by the Lesotho Bureau of Statistics while the African Economic Outlook estimates it to be well above 40%.

However, as the global economy began to recover, Lesotho’s GDP in 2010 grew by an estimated 3.8% (African Economic Outlook, 2011). This recovery in economic growth was attributed both to firming commodity prices and high government capital expenditures. The mining and construction sub-sectors, in particular, experienced some buoyancy. In addition, rising commodity prices led to the improved viability of mining activities resulting in the reopening of some of the mines that had shut down at the peak of the crisis.

According to the 2010 United Nations Conference on Trade and Development (UNCTAD) World Investment Report, FDI has also been declining in Lesotho. Between 2007 and 2009, FDI inflows to Lesotho declined by 50.5% from US$97 million in 2007 to US$48 million in 2009 before recovering slightly to US$55 million in 2010. The FDI performance of Lesotho has stepped up calls by both the private sector and government for further introspection and improvement in the investment climate.

In addition to the challenges discussed above, Lesotho’s performance in various international competitiveness indicators has been declining. As shown in Table 2 below, Lesotho’s performance across the various competitiveness indicators demonstrates a decline with Lesotho placing in the bottom half in all indicators.

According to the World Bank Doing Business indicators, in 2010, Lesotho was ranked 137 out of 183 countries with respect to the Ease of Doing Business slipping to 138 in 2011. Between 2010 and 2011, Lesotho registered improvement in only two indicators, trading across borders and closing a business, while the rest of the indicators declined. On the starting business indicator, Lesotho went down six places from 140 in 2010 to 134 in 2011. Lesotho ranks 11th in comparison to the 15 Southern Africa Development Community (SADC) countries.

The 2011/12 Global Competitiveness report prepared by the World Economic Forum (WEF) shows similar trends to those of the World Bank Doing Business. Lesotho was ranked 107 in 2009/10 and slid down to 128 out of a total of 135 countries in 2010/11 in terms of the global competitiveness index. In 2011/12, Lesotho continued to decline to 135 out of 145 countries. In comparison to other SADC countries, Lesotho is ranked 14 out of 15 SADC countries and is placed just above Angola.

In terms of the “Index of Economic Freedom”, Lesotho ranks 156 out of 179 countries. The “Corruption Perception Index” is the only index that showed a positive change with Lesotho improving by 11 positions in the ranking.
### Table 2: Lesotho’s Competitiveness Indicators

<table>
<thead>
<tr>
<th>Indicator</th>
<th>World Ranking</th>
<th>Change</th>
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<tbody>
<tr>
<td>Global Competitiveness Index</td>
<td>107 (2009)</td>
<td>135 (2011/12)</td>
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</tbody>
</table>

Note: Respective years are provided in brackets.

In spite of these challenges, Lesotho has many features which make the country attractive to potential investors. These include:

- Macroeconomic Stability;
- 0% corporate tax on income generated from exporting manufactured goods outside of the SACU;
- Easy access to major SACU markets;
- Easy repatriation of manufacturing profits;
- Abundant, literate and a regionally competitive and readily trainable labor force.

The deteriorating fiscal and current account deficits, coupled with declining competitiveness indicators, have led the Government of Lesotho (GOL), in partnership with international development partners, to engage in policy reform processes aimed not only at fostering private-sector activity but also at improving the business environment. These reforms include the enactment of a new Land Act and revisions to the Financial Institutions Act. The passing of the Land Act (2010) and the subsequent establishment of the land register will go a long way in addressing the challenges of access to finance, especially for Small- and Medium-enterprises (SMEs) that will now be in a position to use their land as collateral in securing finance. These reforms will contribute towards improving the country’s attractiveness for foreign investment. The government has also made substantial progress in drafting and completing its industrial and competition policies.

In addition, a new Companies Act of 2011 has been enacted to replace the Companies Act of 1967. The focus on improving the business environment to a level similar to or better than that of neighboring countries is therefore important if Lesotho is to attract and retain investment. This means that stimulating private-sector investments is imperative for accelerating growth and productivity in the economy, which is important for raising per capita income.

It is within this context that the US Agency for International Development (USAID) Southern Africa Trade Hub (SATH) partnered with the Lesotho National Development Corporation (LNDC) as the central investment promotion agency in Lesotho to develop an Investor Roadmap for Lesotho. The Roadmap process will assist in identifying and overcoming the barriers to investment. This is in light of the fact that significant barriers to investment and a burdensome regulatory environment increases the cost of FDI and thus constrains the development of a vibrant private sector.
It is planned that the outcome of this intervention will result in improvements in the regulatory and business climate in Lesotho that will assist the LNDC in its investment promotion efforts and will in turn promote increased investment.

1.2 ROADMAP GOALS AND METHODOLOGY

A critical question is, to what extent are the administrative systems, regulations, and procedures that govern investment operating efficiently and in alignment with the country’s overall policy goals. In many countries, administrative barriers that arise can have a negative effect on the economy by raising the cost of doing business and deterring investment. Individually, these administrative constraints may seem like mere nuisances, but looked at as a whole they can become overwhelming. These administrative barriers undermine a country’s competitiveness in a number of ways including:

- Contributing to the transaction costs of conducting business thus eroding firm competitiveness;
- Stifling possibilities of increased investment;
- Increasing economic, political, and regulatory risk, which raises the cost of capital and ultimately deters investment and economic diversification;
- Creating unpredictable and uncertain environment for companies to operate;
- Contributing to significant inefficiencies.

The Investor Roadmap is at once an analytical tool, a detailed prescriptive document and a catalyst for meaningful change. The Roadmap examines the individual procedures that represent the critical path to business start-up and operations and creates a series of Action Plans to eliminate the red tape that imposes costs on entrepreneurial activity. The Lesotho Investor Roadmap is consistent with this methodology and has five related goals. These are to:

1. Identify and analyze all of the steps, timeframes, costs, and submission requirements involved with starting up and operating a business in Lesotho;
2. Collect and review the relevant legislation establishing the various administrative procedures considered;
3. Create a document that can contribute to the development of a procedural investment guide for the country;
4. Analyze the efficiency of the present investment regime in Lesotho; and
5. Craft recommendations for meaningful, practical reform.

Conceptually, the methodology is derived from an understanding that regulatory and administrative reforms are necessary to create an enabling environment for private-sector activity. The Millennium Challenge Account (MCA) Lesotho compact provides a good reference for this methodology. The best policies and laws have no impact if not implemented appropriately. Creation of a truly supportive enabling environment requires improvement in the implementation of policy to eliminate administrative and other constraints that impede investment and business operation. As such, the Roadmap focuses on the procedural steps, regulatory requirements, and legal infrastructure that govern the day-to-day interaction between government and investors at the start-up and operational phases. Furthermore, some administrative reforms can often be adopted more
quickly and easily (i.e. without legislative change and a large commitment of new funds) and can produce an impact that can more rapidly benefit investors.

The Roadmap methodology segments the critical path of business start-up and operations into four process group areas – employing, reporting, locating, and operating – as elaborated below:

1. **Employing procedures**, including securing visas, obtaining residency and work permits for foreign investors and expatriate workers, and procedures for hiring and dismissing local employees;

2. **Reporting to government**, including company registration, obtaining local or sectoral business licenses and permits, and acquiring incentives;

3. **Locating issues**, including site acquisition, site development procedures, obtaining utility hook-ups, and environmental compliance;

4. **Operating issues**, which include tax registration and payment, import/export clearance, adhering to mandatory standards, and complying with currency controls.

The diagnostic phase of the Roadmap involved a review of several information sources to present an accurate, qualitative snapshot of the regulatory environment at the time the research was conducted. One major source of information was public sector officials who are directly responsible for administering the procedures presented in the report. In the process of developing the Roadmap, several meetings including stakeholder workshops were held with public officials from a number of government and quasi-government agencies and departments. Based on these meetings and a review of official documents, including forms and process guides, the consulting team produced a series of draft descriptions of the procedures. After these procedural descriptions were drafted, the relevant regulators/departments were given the chance to review and validate the write-ups. Additionally, all relevant legislation was reviewed.

The consultants held interviews with a number of leading investors in the country who represented several different sectors, and international as well as domestic owners, to discuss their experience of procedures and perspectives on the leading investment constraints. In addition, interviews were held with representatives of the country’s major business associations. It is our considered view that input from the entrepreneurs who were interviewed is invaluable to the analysis of the constraints which face business in Lesotho that are identified in the report. This analysis is supplemented by interviews with representatives of the donor community who are working on several issues that pertain to the investment climate survey. These interviews were held with representatives from the World Bank Project, the MCA, and the Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ). In addition, the SATH Team undertook a review of the relevant literature, including reports sponsored by the donor community, the Central Bank of Lesotho, national reports and private sector analysts.

The Roadmap analysis is based on two main sources:

1. The expressed perception of barriers as voiced by the private sector;

2. Government publications.

Based on the analysis, recommendations were crafted. While the recommendations are designed to be practical, readily implementable, and based on international experience in administrative reform, they should not be considered definitive and exhaustive. Rather, the recommendations should be seen as proposals for implementing change and should be
reviewed and revised to suit local conditions and sensitivities, as well as resource constraints. The reform agenda will complement all other initiatives that the country is putting in place to provide a conducive environment for investment.

This process will be followed up by the development of an implementation plan for the Roadmap: SATH will work with the LNDC and other critical stakeholders to develop an implementation plan for the Roadmap recommendations. This implementation plan will identify the lead institution and possible time frame for the implementation of recommended changes. SATH will follow up on the status of the implementation plan throughout the year and provide additional technical assistance as required.

This report was prepared by Tomasz Iwanow, Trade Economist and Reginald Selelo, Investment Promotion/FDI Specialist from SATH. Additionally, SATH used the services of Morabo Morojele, Senior Consultant at Sechaba Consulting. The SATH Team conducted a two-week assessment mission in Maseru, Lesotho, in July and August 2011.

1.3 OUTLINE OF THE REPORT

In line with the process group areas described above, this report is comprised of four major chapters. Chapter 2 addresses the Employing related procedures, including acquiring visas and work permits and hiring and firing local workers. Chapter 3 is devoted to Reporting related procedures, including company registration, obtaining licenses, and acquiring incentives. Locating procedures, including acquiring land, developing a site, obtaining utility hook-ups, and complying with environmental laws, comprise Chapter 4. Chapter 5 focuses on Operating procedures, including registering for and paying taxes, importing and exporting, and complying with currency exchange controls.
2. EMPLOYING

2.1 INTRODUCTION

This chapter of the Investor Roadmap includes an analysis of government/private-sector labor relations in Lesotho. In particular, the chapter analyzes the procedures regarding obtaining visas, residency and work permits and dispute resolution related to labor issues. The issues overviewed in this chapter are important not only because they facilitate FDI and improve skill availability but also because they support fair and equitable employee/employer relations.

Investors require entry visas in order to enter the country to assess the investment opportunities and as such the efficiency of issuing visas is important for investment. Similarly, a residence permit confers an investor with the right to reside in the country and do business whereas a work permit allows a foreigner to work in the host country.

2.2 OVERVIEW OF KEY GOVERNMENT INSTITUTIONS RESPONSIBLE FOR ISSUANCE OF VISAS, WORK AND RESIDENCE PERMITS

The Department of Immigration (DOI) of the Ministry of Home Affairs and Public Safety (MHAPS) is charged with issuing multiple entry visas and residence permits only. The DOI derives its authority from the Aliens Control Act of 1966 and the related Lesotho Citizens Order of 1971. The Department plays a critical role in providing an enabling environment for private sector development as it is charged with delivering immigration services. The DOI is the first government entity that foreign investors, tourists and others entering Lesotho face. Critical first impressions can therefore be formed based on these interactions and can have a long lasting effect on the way in which Lesotho is perceived by foreigners. Hence, increasing FDI is reliant on high quality and efficient immigration and passport services.

The DOI is managed by the Director and his Deputy. Lesotho has 15 border posts with land points of entry and one international airport outside of Maseru. Lesotho is one of only three countries that are fully encompassed by another country – South Africa – therefore all of its land borders are with this country. As a landlocked country, Lesotho does not have any water ports of entry.

The Director is in charge of the day-to-day operation of the Department and has a staff of approximately 250 officers. Due to staff shortages, only six of the 15 points of entry are actually staffed by the DOI. The remaining eight ports of entry are manned and operated by “cross designated” personnel. This generates some problems since the “cross designated” personnel often do not apply unified standards within the immigration and passport services. Furthermore, there is currently no unified computerized system for the services at any of Lesotho’s borders.

The Ministry of Foreign Affairs and International Relations is responsible for the distribution of visas to foreign nationals wishing to travel for business and leisure purposes to Lesotho. This function is carried out by the foreign missions of the Ministry. Table 3 provides a list of these Missions.
Table 3: List of Lesotho’s Foreign Missions

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<tr>
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<th>Country</th>
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<th>Country</th>
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<tr>
<td>1</td>
<td>Belgium</td>
<td>10</td>
<td>Kuwait</td>
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<td>2</td>
<td>Canada</td>
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<td>3</td>
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<td>Italy</td>
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<td>United States</td>
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<td>9</td>
<td>Japan</td>
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</table>

It is important to note that visas to visit Lesotho can be obtained at Lesotho’s Diplomatic and Consular Missions but entry into Lesotho is the responsibility of the DOI.

The Department of Labor (DOL) at the Ministry of Labor and Employment is the government entity that issues work permits. The Ministry has the following objectives:

- To formulate, review and enforce labor legislation in order to keep abreast with international labor standards and to ensure adherence to national labor standards;
- To provide training to social partners in order to minimize conflict at workplaces and cultivate the culture of negotiations between workers and employers;
- To resolve disputes through mediation, conciliation arbitration and adjudication in order to promote industrial peace and harmony;
- To strengthen government/unions/employers social dialogue in order to promote social understanding and harmony;
- To formulate and monitor the implementation of employment policies and promote employment opportunities in order to create a conducive environment for the creation of employment and ensure social peace and economic growth and stability;
- To promote statistical information on trends in the labor market in order to minimize distortions and facilitate decision making by potential investors;
- To promote occupational safety, health and welfare in order to prevent the occurrence and/minimize the adverse effects of industrial accidents and illnesses;
- To develop policies and strategies and monitor their implementation in order to safeguard the welfare of migrant workers and their dependents.

The Ministry is comprised of several departments including the National Employment Services, Occupational Safety and Health Department, the Ntlafatso Skills Training Centre, the Department of Disputed Prevention and Resolution (DDPR). The two key
departments from the perspective of Investor Roadmap are the DOL which issues work permits and DDPR which deals with labor relations.

2.3 ACQUIRING A BUSINESS VISA

Lesotho’s consulates and embassies are delegated to issue visas for individuals outside the boundaries of Lesotho. The DOI issues visas for individuals who seek residence or employment in Lesotho as well as for those who would like to reside in Lesotho for an extended period of time. In addition, the DOI is required to issue all emergency visas. The LNDC also supports foreign investors in obtaining a visa. This assistance is voluntary and investors may interact with the DOI directly if they so wish.

The division of responsibilities in issuing a visa seems to be complex as there is a lack of a centralized body responsible for all visa related issues.

Currently there are three ways of obtaining business visas for Lesotho:
1. An investor/employee may apply for a visa in his or her country of residence at the Lesotho Embassy or Consulate.
2. An investor/employee may apply for a visa at the nearest embassy or consulate to his or her country of residence.
3. Guest workers or investors who arrive at a Lesotho port of entry without a valid visa, can be granted “deferred inspections” by the immigration official. “Deferred inspection” implies that the investor or guest worker needs to present him- or herself to an immigration officer at the DOI within 72 hours in order to complete the inspection and visa granting process. If an individual fails to abide by these conditions, it will result in a breach of the visa regulations and an automatic denial of entry.

Table 4 shows the list of countries that require a visa to enter Lesotho. The government policy is to provide visa free travel to nearly all Commonwealth countries. There is also an agreement within SADC to remove visa requirements for citizens of SADC Member States. However, Lesotho has lagged behind in updating relevant legislation to facilitate visa free travel within SADC. For example, until the end of 2010, Lesotho immigration authorities required visas from citizens of Mozambique.

SACU citizens as well as those from several countries including the US, Canada, Germany, France, Spain and Japan do not require a visa to enter Lesotho for up to 30 days for tourist and business purposes.

Table 4: List of countries that require a visa for Lesotho

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<tr>
<th>Afghanistan</th>
<th>Georgia</th>
<th>Northern Marianna Is.</th>
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<td>Jordan</td>
<td>Saint Helena</td>
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<td>Bosnia &amp; Herzegovina</td>
<td>Kazakhstan</td>
<td>Samoa</td>
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<td>Zaire-Congo</td>
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<td>Gabon</td>
<td>North Korea</td>
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</table>

**Visa requirements**

The requirements to obtain a visa from the Lesotho Embassy in Pretoria, South Africa, are as follows:

**Business visa**

- Passport with validity of at least six months from date of submission of application
- Visa application form duly completed in duplicate
- Two passport size photographs
- Copy of return air ticket
- Invitation letter
- Details of contact person or entity in Lesotho
- Proof of accommodation

**Tourist visa**

- Passport with validity of at least six months from date of submission of application
- Visa application form duly completed in duplicate
- Two passport size photographs
- Copy of return ticket
- Details of contact person or entity in Lesotho
- Proof of accommodation
- Proof of sufficient funds to sustain living during period of sojourn

The costs of visas are:

- Single Entry Visa: M1,000 or around (US$130)
- Multiple Entry Visa: M2,000 or around US$260

The processing time is two business days.

The requirements for obtaining a visa from the Embassy in Washington DC are slightly different and are as follows:

- Valid passport or travel document with a visa for transit or re-entry into the Republic of South Africa where applicable. Copy of the passport is required.
- One passport-size photograph
- Copy of the return ticket or itinerary
- Police Clearance certificate from country of origin
- Invitation letter from the inviting party
- A vaccination certificate is required for visitors coming from countries where cholera or yellow fever is endemic.

The procedure to obtain a multiple entry visa is more complicated. The multiple entry visa is valid for 6 months. In most Lesotho Embassies and Consulates, it is only possible to obtain a single entry visa to Lesotho. Therefore, it is only possible to obtain a multiple entry visa once a single entry visa has been granted at an Embassy and the investor/guest worker is already in Lesotho. Multiple entry visas are issued at the DOI headquarters. The process to obtain a multiple entry visa is indicated in figure 2 below.

**Figure 2: Process to obtain a multiple entry visa in Lesotho**

As previously indicated, an investor may work with the LNDC to obtain a visa for Lesotho. The LNDC provides “letters of endorsement” to the investors which facilitate visa issuance and vouch for the investor in question. Overall this is significant for prospective and current investors needing a visa, however, not all of these investors choose to request support from the LNDC on this matter as some may not be aware of such possibility.

It is important to note that the procedures to obtain a Lesotho visa are not fully standardized between border posts, embassies and consulates. For example, the Sani Pass border post is staffed by the cross designated personnel from various government
departments and the majority of personnel are from the Mafiteng Police. South African citizens from countries that require a visa are able to obtain one without any additional documents such as a letter of invitation, return ticket, etc. This visa is obtained for only 72 hours and facilitates tourism travel in the Sani Pass region. This is not the case at other border posts where a range of additional documentation is required when applying for a “deferred inspection” for 72 hours.

**Recommendations**

**Short Term Recommendations**

**R1: Decrease the cost of both single and multiple visas.** The current cost of visas are very high for tourists and investors alike. As a result, Lesotho is likely to have a lower number of tourists and lower FDI than it would have had otherwise. The current costs of a visa, which is implemented in order to increase government revenue, could actually decrease this revenue. The costs of forgone FDI and revenue from tourism are highly likely to outweigh the income that the government receives from visa fees. It is impossible to pinpoint the exact number but the revenue forgone because of the high fees can be large. Each tourist visiting Lesotho is likely to spend at least M1000 in the country. This already justifies decreasing visa fees.

For a small economy that seeks to increase tourism and diversify its economy, the high cost of entering Lesotho for investors and tourists might actually decrease employment and tourist flow with associated negative economic effects.

The cost of visas in the SACU region is currently much lower than in Lesotho. The Namibian visa is, for example, M350, a Swaziland visa is only M80 and a Schengen\(^3\) visa is Euro 60 or around M420. Thus, the current visa cost is significantly above its regional partners and worldwide standards. It is advised that the charge for a Lesotho visa be decreased to a level comparable with other countries in the region.

**R2: Review the list of countries that require a visa.** The key purpose of visas is to regulate the flow of foreign nationals to Lesotho and guard against overstay and other illegal activities in the country. The government has recognized that citizens of SACU, SADC and the majority of Commonwealth countries do not pose a significant risk to the security and stability in Lesotho and may enter Lesotho visa free. However, the current list of countries seems to contain several nationalities that are unlikely to pose any security risk but are likely to enter Lesotho for investment and tourist purposes. These countries include:

- European Union (EU) Member States
- European Free Trade Association (EFTA) Member States
- Higher Middle Income South American Economies

It is important to note that Lesotho requires a visa for a particularly large number of countries. The list of countries that require a visa for Lesotho is longer than that for South Africa or even the EU.

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\(^3\) The Schengen Agreement is one of the European Union treaties signed on 14 June 1985 near the town of Schengen in Luxembourg. The Treaties created Europe's borderless Schengen Area which operates very much like a single state for international travel with external border controls for travelers travelling in and out of the area, but with no internal border controls.
Currently, in Lesotho, there is a short list of countries that constitutes the vast majority of visa overstays. Visa requirements should therefore be aimed primarily at citizens from these countries whereas citizens from countries that primarily enter Lesotho for tourist and investment purposes should be granted visa free travel.

R3: Allow for visas to be issued within one working day. Many countries have shifted their policies and issue visas at embassies and consulates on the day of application. Lesotho has only a few embassies and consulates around the world. This creates a significant obstacle to prospective visitors to Lesotho who come from countries with no Lesotho embassy or consulate. Issuing visas on the same day would allow these individuals to travel to Pretoria/Johannesburg to obtain a visa there and then to continue traveling to Lesotho. At the moment, some investors/tourists are forced to stay in Pretoria or Johannesburg for up to three working days to obtain a visa.

R4: Allow for multiple entry visas to be issued at embassies and consulates. Currently, in order to obtain a multiple entry visa an investor/tourist needs to go through the application process twice – once for the single entry visa and once for the multiple entry visa. In order to eliminate this duplication and support investment and tourism, Lesotho Embassies should be allowed to issue multiple entry visas. The Ministry of Home Affairs should develop appropriate criteria and regulations that would allow embassies and consulates to issue multiple entry visas.

Long-Term Advice

R5: Commence negotiations with the South African government to either: issue Lesotho visas in countries without Lesotho Embassies, or allow for a South African visa to be valid for entry into both South Africa and Lesotho.

Given Lesotho’s small size, it only has embassies and consulates in a comparatively few countries. This is an additional challenge for tourists and investors from countries that do not have a Lesotho Embassy or Consulate. To remedy the situation, it is proposed that Lesotho allow for South African visas to be valid also for Lesotho or for South Africa to issue Lesotho visas. Allowing other countries to issue visas is common practice in the world and is not seen as a significant reduction in the authority of government or the security of its citizens. For example, Poland and the Czech Republic have recently signed an agreement for each country to issue visas in the other country’s embassy or consulate in cases where no diplomatic service is provided in the state of residence of the visa applicant. In addition, both countries are signatories of the Schengen Agreement which allows for individuals holding a valid “Schengen” visa to travel to 17 other EU countries.

Lesotho should therefore consider commencing negotiations with South Africa to implement either of the two options described above. This would significantly ease the process of obtaining a visa for tourists and investors alike.

2.4 ACQUIRING WORK AND RESIDENCE PERMITS

2.4.1 Overview

The principal Act that regulates the residence of foreigners in Lesotho is the Aliens Control Act of 1966. The key provision of the Act is that non-citizen employees or self-employed individuals as well as their dependents are able to obtain a permit to reside in Lesotho.
The Act describes the conditions under which an application for a residence permit can be considered by the authorities.

As in the case of multiple entry visas, the DOI at the Ministry of Home Affairs has the sole authority to issue temporary and permanent residence permits. Under the Aliens Control Act, the Ministry has the power to delegate this authority. Recently the Minister of Home Affairs and Public Safety has delegated the authority to issue residence permits to the One Stop Business Facilitation Centre (OSBFC) at the Ministry of Trade, Industry, Cooperatives and Marketing (MTICM). An employee of the Ministry of Home Affairs and Public Safety is delegated to OSBFC and has the authority to issue residence permits to firms in the manufacturing industry. Investors and employees in the manufacturing sector therefore are no longer required to visit the headquarters of the Ministry of Home Affairs to submit their application for residence permits.

Investors who wish to acquire a work or residence permit can also seek assistance from the LNDC. This is not a formal requirement to obtain these permits although it can facilitate the process. This free service from the LNDC includes, inter alia, providing application forms and information regarding fees, checking whether the application is completed correctly and facilitating communication between the investor and the DOI. Most importantly, the LNDC vouches for the investor and provides a letter of support to the Director of Immigration.

### 2.4.2 Residence Permits

**Procedural Requirements**

The requirements for obtaining a residence permit are as follows:

**Business and Employment Residence Permit:**

1. Police Clearance Certificate
2. Work Permit
3. Traders License
4. Tax Clearance Certificate
   - a. Personal
   - b. Companies
5. Memorandum (Traders)
6. Employment Contract (Employees)
7. Letter from Employer (Personal)
8. Letter from Employee
9. Copy of valid Passport

**Residence Permits for Husbands/Wives**

1. Marriage Certificates
2. Copy of valid Passport for both the applicant and the spouse
3. Letter of application
4. Police Clearance Certificate
**Joining Relatives:**

1. Police Clearance Certificate
2. Copy of valid Passport
3. Letter from the Sponsor
4. Copy of a valid Residence Permit of the Sponsor
5. Letter from the applicant

All the categories of residence permit applicants are required to pay an application fee of M1,500 (US$195) upon submission of the application.

Furthermore, the GOL also provides temporary residence permits for individuals who will be residing in Lesotho for a short-term period. These permits are given for three months with the possibility of a one-time extension for an additional three months. The cost of the permit is M1,600 (US$209) but if the permit is not extended for another three months the applicant is refunded M1,100 (US$143).

**Application Process**

Once an applicant has completed all the necessary documentation he/she must submit it to the Ministry of Home Affairs and Public Safety. The process of approval of residence permits is presented in Figure 3.

**Figure 3: The process of approval of residence permits**

1. Applicant submits an application
2. Immigration officer provides an approval/denial recommendation
3. Director of Immigration reviews the application and provides an approval/denial recommendation
4. Principal Secretary reviews the application and provides an approval/denial recommendation
5. The Minister reviews the application and makes a final approval/denial decision
According to Figure 3, the application process goes through four approval/denial processes until it reaches the Minister of Home Affairs and Public Safety who makes a final decision regarding an approval or denial of the permit. Firstly, the residence permit applications are submitted to an immigration officer who reviews them and offers an approval/denial recommendation. The file is then passed to the Director of Immigration who makes another review of the application and also offers recommendations regarding the approval or denial of the application. If the Director recommends approval, the file is transferred to the Principal Secretary of the Ministry who again reviews each application and offers yet another approval/denial recommendation. Finally, if the Principal Secretary also approves the application, it is then passed on to the Minister of Home Affairs and Public Safety. The Minister then grants or rejects the application.

The Ministry has recently made efforts to decentralize services regarding residence permits. It is currently possible to apply for a residence permit in all 12 provinces.

2.4.3 Work Permits

Overview of Procedures to Obtain Work Permits

According to Section 165 of the Labor Code Order of 1992, every employee or self-employed person who is a non-Lesotho citizen must have a certificate of employment or a work permit. A work permit is issued according to a labor quota formula by the Labor Commissioner who must be satisfied that no qualified Lesotho citizen is available for the position. A company can generally employ one expatriate worker for every 20 Basotho workers. The statutory maximum duration of a work permit is two years. A work permit may be cancelled before term or renewed. No substantive distinction is made between an employee and a self-employed businessman.

At present, the procedures to review or recommend the approval of work permits lies with the Labor Review Board which is comprised of representatives from various ministries. The Board provides a recommendation regarding an approval or denial of a work permit to the Minister of Labor and Employment who makes the final decision regarding the issuance of the permit.

The documentation required to obtain a work permit is as follows:

1. Letter from the employer justifying the application.
2. A certified copy of applicant’s identity document or passport
3. The employer’s certified and current Tax Clearance Certificate issued by the Lesotho Revenue Authority (LRA).
4. Certified copies of the applicant’s educational qualifications.
5. A written offer of employment from the employer.
6. In the case of a company director, a certified copy of company’s Memorandum and Articles of Association is required.
7. A certified copy of the employer’s Manufacturing License issued by the relevant department in the Ministry of Trade, Industry, Cooperatives and Marketing (MTICM).
8. A medical report including a chest X-ray examination.
9. A completed application form.

There are essentially 3 steps in the application process:
1. Completion of the application form.

2. Submission of the application form to the DOL along with all the necessary documentation as detailed above.

3. In an event that the work permit is approved, the applicant must collect a letter of approval from the DOL and obtain the work permit in person from the central police station in Maseru. At the police station a photograph of the applicant will be taken after which the applicant will be provided with a work permit.

The fees for a Work Permit are as follows:

• Maloti or ZAR750 (US$98) for the first application and M70 (US$9) for a photograph.
• M1,000 (US$130) for renewal of the work permit.

A work permit may be renewed or cancelled before end of term. Applicants must submit details of qualifications and a lifetime employment and salary history.

In addition to these requirements, the employer must place an advertisement in local media (most commonly newspapers) for the position for which he/she is seeking an expatriate worker. Only in the event that no suitable local employee can be found will the investor be allowed to employ a foreign worker. The verification procedures are described below.

Analysis

Obtaining work and residence permits are frequently cited by investors as time consuming and as a particularly difficult component of doing business in Lesotho.

Currently, there is a backlog of several months in approving residence permits. It is not unusual for applicants have a permit approved more than a year after application. It has been noted that, in some cases, where permits have been issued after delays of 18 months or more, the applicant may already have completed his/her stay in Lesotho and returned home. Although it has also been reported that applicants are able to obtain work permits more quickly, it is still a long and burdensome process which is costly both in terms of money and time for employees and employers alike.

Current procedures require applicants to submit tax clearance certificates and medical clearances. In addition, a self-employed applicant must submit company registration documents, bank statements and a trading or manufacturing license if applicable. A recent rule also requires every applicant to have a sponsor or guarantor which may be a government ministry or a resident individual. An employee must additionally supply evidence of educational attainment. Current practice is to consider renewal on the basis of re-submission of all the above-listed documentation.

Another issued raised by the Ministry of Home Affairs and Public Safety is that there is high staff turnover which, given the requirement for training, slows down the process of approving residence permits.

Recommendations

Short-term recommendations

R6: Diminish the backlog in applications for residence permits. The backlog in the processing of applications currently amounts to hundreds of applications. The approval or
denial of a residence permit should be made a short-term priority for each of the government officials responsible. This will result in a swift decrease in this critical backlog.

**R7: Improve information dissemination regarding work and residence permits.** The DOI and the DOL, as the agencies responsible for the issuance of the permits, should publish all relevant information regarding the application process, including the application forms, online. This information should also be easily available in the headquarters and field offices of the Departments. It is therefore proposed that these Departments produce an informational leaflet or booklet as well as a website containing all relevant information.

**R8: Delegate authority to issue work and residence permits.** Streamline the work and residence permits process by delegating the authority to approve these certificates to the Commissioner of Labor, the Ministry of Labor and Employment, the Director of Immigration, and the Ministry of Home Affairs and Public Safety, respectively. Currently, the final decision regarding permits lies with the respective Ministers. This delegation of authority is likely to significantly decrease the time and hence the cost of obtaining both work and residence permits.

**R9: Increase frequency of Immigration Board meetings.** In case the delegation of authority to disburse work permits to the Commission of Labor is delayed, it is recommended that the frequency of board meetings to approve such permits be increased. In addition, as noted in the Swaziland Investor Roadmap (2004) which seems to have encountered a similar problem, “if approval criteria are clear and the information collected is adequate, it is not clear why a Board meeting would be necessary at all, as granting Residence Permits should become a routine function. If the Board must meet, it should commit to weekly meetings unless no applications are pending.”

**R10: Set up procedures that allow for easy tracking of applications.** Several investors have indicated that it is difficult to track the status of applications. Any tracking of the applications requires physically visiting the DOI and the DOL. Often, several visits may be required to keep the process going. Improving this process may involve, among other things, training staff to provide detailed updates of the application process by phone.

**Long-term recommendations**

**R11: Unify residence and work permits.** This recommendation proposes the establishment of an integrated system of work and residence permits, preferably in the form of a single permit. At the very least, the terms of the work and residence permits should be uniform and of sufficient duration to cover the period of employment contract or work assignment as this has not always been the case in the past. Procedures for applying for separate permits are usually similar and duplicative hence it would save both government and investor resources to apply for a permit only once. This proposal would be rather easy to implement as an integrated permit may indicate whether an individual is allowed to work in Lesotho or not.

**R12: Reduce excessive and unnecessary submission requirements.** Investors highlight that one of the key reasons why obtaining residence and work permits is time-consuming is due to the large number of supporting documents required. Some of the supporting documents may create significant obstacles in obtaining a permit while not fulfilling the useful purpose of determining the validity of granting work and residence permits. For example, a letter of application and an application form essentially serves the same purpose. It is therefore proposed that the requirement for a letter of application be removed. In addition, rather than requiring applicants to submit all educational certificates
it is sufficient to ask only for the most recent or the most advanced educational certificate. Similarly, rather than requiring a full set of company documents including a manufacturing license, memorandum, Articles of Association and tax clearance, it could be sufficient to require only the manufacturing license.

2.5 LABOR RELATIONS

2.5.1 Policy Environment

Lesotho’s Labor Code of 1992 regulates labor relations in areas such as employment terms and conditions and worker health, safety and welfare. The Labor Code Order No. 24 of 1992 provides *inter alia* for severance payments, sick pay and maternity benefits. The Labor code was amended in 2000.

Lesotho is a member of the International Labor Organization (ILO) since 1966 and has ratified 23 international labor conventions, including all eight fundamental human rights instruments of the ILO. In addition, Lesotho is a signatory to the following Conventions which enable social dialogue to take place: Freedom of Association and Protection of the Right to Organize Convention, 1947 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Workers’ Representatives Convention, 1971 (No. 135); Tripartite Consultation Convention, 1976 (No. 144); and Labor Administration Convention, 1978 (No. 150).

To facilitate proper implementation of the legislative framework and to give both employers and employees guidance on the labor law, countries such as Lesotho, Namibia and South Africa have promulgated Codes of Good Practice on a variety of labor-related issues. The Lesotho Labor Code (Codes of Good Practice) Notice of 2003 even provides a model recognition agreement to guide employers’ organizations, workers and trade unions on the process of collective bargaining.

2.5.2 Government entities dealing with Labor Disputes

Lesotho’s labor laws have been consolidated into the new Labor Code Order No. 24 of 1992 and its amendment (Labor Code Amendment 2000). This legislation also guides both employees and employers on relevant procedures in all aspects of industrial relations. The Labor Court and the Labor Court of Appeal are the key judiciary entities dealing with labor disputes.

In 2000, two institutions were established to form the stakeholders in labor dispute resolution in Lesotho. The first institution is the Department of Dispute Prevention and Resolution (DDPR) at the Ministry of Labor and Employment. According to the DDPR website, it is “a semi-autonomous labor tribunal, established in terms of section 46B of the Lesotho Labor Code (Amendment) Act, 2000. It has been established as a juristic person. It is independent of the government, political parties, trade unions, employers and employers’ organizations.”

In terms of the establishing Act, the DDPR has the following four statutory functions:

- To attempt to prevent trade (labor) disputes from arising or escalating;
- To resolve trade disputes through conciliation and arbitration;

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- To advise employers, employers’ organizations, employees and trade unions on the prevention and resolution of trade disputes; and
- To compile and publish information about its activities, statistics on dispute prevention and resolution and significant arbitration awards.

The institution consists of the Director (who is the Chief Accounting Officer), the Deputy Director, Conciliators, Arbitrators appointed by the Minister of Labor and Employment in consultation with the Industrial Relations Council (IRC) and other members of staff appointed by the Director. The DDPR operates from three main regional offices, (1) Post Office Building, Maseru; (2) Teba Complex, Leribe; and (3) Opposite Race Course, Mohale’s Hoek. It also has seven satellite offices in other districts of Lesotho.

Section 226 of the Labor Code requires that the following disputes of right must be resolved by arbitration, through the DDPR:
- Any dispute which parties agree should be settled by arbitration;
- Any dispute concerning the application or interpretation of a collective agreement, a breach of contract of employment or a wages order;
- Any dispute concerning the underpayment of any monies due under the Labor Code; and
- Any unfair dismissals other than those for participating in a strike, as a consequence of a lockout or in relation to the operational requirements of the employer.

The Director of the Directorate may refer any of these disputes of right to the Labor Court if he/she is of the opinion that it may also concern matters that fall within the jurisdiction of the Labor Court.

The LNDC is the second key institution that deals with labor disputes. The function of the LNDC in this context is to bring parties together before any formal process is set in motion. Here the key role is played by the Labor Relations Manager at LNDC. The Manager, for example, intervenes in strikes and tries to reconcile workers and managers. When this informal process fails, the more formal process of the DDPR can be engaged which can consist of conciliation and arbitration.

The other key institutions that deal with labor disputes in Lesotho are the two labor Courts: the Labor Court and the Labor Court of Appeals.

### 2.5.3 Procedures for Dispute Resolution in Lesotho

The first step in a labor/employer dispute in Lesotho usually entails factory-level mediation. In most cases, the Labor Relations Manager at the LNDC is involved and he is the first mediator in the dispute. All parties can at any time take the dispute to the DDPR if they are unhappy with the outcomes of the factory-level process.

In cases where an informal dispute resolution fails, the dispute is forwarded to the DDPR. Once the DDPR is contacted, it will appoint a conciliator who will assist the parties to resolve the dispute and reach a consensus. An appointment of a conciliator is a compulsory first step but the outcomes of this process are fully dependent on the will of the parties. The conciliator alerts and advises the parties on the relevant laws and the possible consequences of the positions they have taken.
If an agreement is reached, the conciliator will provide assistance to the employer and employee to write down the terms of the agreement. The agreement is then signed by all three sides in the dispute.

According to the Labor Code, if no agreement is reached by the conciliator the issue must go to arbitration which is also undertaken by the DDPR. In the case of a dispute over interests, the complainants have a right to embark on a strike or a lockout although they may agree to go for arbitration. Essential service providers, such as police or medical staff, are however obliged to refer their dispute for a compulsory arbitration.

Where the DDPR gets involved, the result could include any agreed settlement or a binding arbitration award. A DDPR arbitrator’s decision is binding. It has the same force and effect as an order of a court of law. It can however be taken for review by the Labor Appeal Court. During the process, it is up to the parties to communicate the proceedings and outcomes of the process to their constituencies. The most common cases that the DDPR deal with are unfair dismissals but also disputes over workers’ benefits.

Figure 4: The Formal Process of Labor/Employer Dispute Resolution in Lesotho

In a very few instances, the process of an employer/employee dispute can go through all of the steps in the procedure described above. The process is then prolonged and can sometimes take up to several years to go through all of the appeal options. Nevertheless, as will become more apparent in the section below, given the strength of the dispute resolution systems only in very few cases does a dispute end up in the courts.

5 Strikes have been rather rare in Lesotho in the past decade but their frequency has somewhat increased in the past two years.
6 The Appendix contains the number of cases deal with by the DDPR disaggregated by sector of economic activity.
2.5.4 Labor Disputes Analysis and Recommendations

The system of labor dispute resolution in Lesotho seems to adhere to the generally perceived international standards in the field. The structure of the system emphasizes giving priority to consensus-based processes as well as to prevention through early intervention. Only a small fraction of disputes actually reaches the Labor Courts but, if this occurs, given the complexity of procedures, the process is protracted and can last up to several years. Lesotho also has well-established structures for tripartite dispute resolution which, in the case of group disputes, also includes the labor union.

Overall, the dispute resolution system serves its function of providing efficient and impartial compromises and arbitration quite well. Therefore the recommendations provided below are relatively minor and do not attempt to redesign the current structures. However, given increased tensions between largely foreign owned firms and domestic workers, efficiency improvements in the system are necessary to cope with the anticipated increases in labor grievances.

Recommendations

Short-term Recommendations

R13: Enhance financial resources available to DDPR. The key constraint for proper functioning of the DDPR is the availability of financial resources to undertake its statutory functions. The GOL has instigated significant budget cuts throughout nearly every government department and the DDPR is no exception. It has been reported by the DDPR that it currently only has resources in the budget for salaries and office maintenance. The budget cuts within the department have forced it to halt a series of employer and employee training sessions as well as other important activities. Such significant budget cuts can also impact on the DDPR’s ability to solve disputes efficiently.

R14: Employ additional staff in order to support the work of the Labor Relations Manager at LNDC. One of the key issues in attaining smooth labor relations is the ability to mediate disputes early in the process. The role of the Labor Relations Manager at the LNDC is crucial in this respect. Additional staff can support the work of the manager, relieve him from some of the current functions and ensure continuity in the task in case the Manager is on leave or away from office for any other reason.

Long-term Recommendations

R15: Computerize the dispute resolution management system. The DDPR has noted that an important constraint that decreases the efficiency of the dispute resolution system in Lesotho is the lack of a computerized system for dispute management. As in other areas of the government, such computerization might bring about improvements in the speed and effectiveness of dispute resolution. As in many other fields, computerization may improve efficiency by improving the speed of access to information.

2.5.5 Hiring and Termination

Analysis of procedures

As mentioned previously, the Labor Code of 1992 contains substantial provisions regarding hiring and termination procedures in Lesotho. The Code applies to all contracts...
of employment with the exception of apprentices and trainees, who are subject to the Technical Vocational Training Act, 1984.

According to the World Bank Doing Business Indicators, Lesotho is ranked 67 overall in the indicator of Employing Workers. The index, which includes a base of nearly 200 countries, quantifies how easy it is for an employer to employ and dismiss workers. Lesotho ranks roughly in the second quartile of the distribution of countries on this indicator. This indicator implies that Lesotho’s Labor Code is not particularly stringent in terms of employing and dismissing workers.

The provisions of the Labor Code, introduce contracts of indefinite duration, contracts of fixed duration, and contracts to perform specific work or to undertake a specified journey (sec. 62(1)). There are several provisions that spell out circumstances of termination of employment.

- The expiry of a fixed-term contract;
- The completion of the task for which the contract was concluded; and
- Employee retirement.

According to Section 66(10) of the Labor Code, an employee shall not be dismissed, whether adequate notice is given or not, unless there is a valid reason for termination of employment. Termination of employment is only valid where it concerns:

- The capacity of the employee to do the work he or she was employed to do (including, but not limited to, an employee’s fraudulent misrepresentation of having specific skills required for a skilled post);
- The conduct of the employee at the workplace; or
- The operational requirements of the undertaking, establishment or service.

Importantly, the burden of proof lies with the employer to show that that he or she acted reasonably in treating the reason for dismissal as sufficient grounds for terminating employment. In addition, dismissal that takes effect during a statutory maternity leave of an employee shall automatically be deemed as unfair dismissal.

Where the employment relationship is terminated by the employer due to the operational requirements of the undertaking, the employee is entitled to severance payments amounting to two weeks of wages for each completed year of service in addition to accrued holiday pay.

According to Article 66(4) of the Labor Code, a dismissed employee is entitled to have an opportunity at the time of dismissal to defend himself or herself against the allegations made, unless the circumstances are such that the employer cannot reasonably be expected to provide this opportunity.

For contracts without reference to limit of time, the employer may terminate the contract upon giving the following notice periods:

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7 The Difficulty of Hiring index is the core index of the Employing Workers indicator. The index has several components which all take values between 0 and 100, with higher values indicating more rigid regulation. The Difficulty of Hiring index measures: (i) whether fixed-term contracts are prohibited for permanent tasks; (ii) the maximum cumulative duration of fixed-term contracts; and (iii) the ratio of the minimum wage for a trainee or first-time employee to the average value added per worker.
- One month’s notice, where the employee has been working continuously for one year or more;
- Two weeks’ notice, where the employee has been continuously employed for more than six months but less than one year; and
- One week’s notice, where the employee has been continuously employed for less than six months.

The employer is to provide a written statement of the reason for any dismissal to any employee who is dismissed. The Labor Code does not entail special requirements concerning the procedure to be followed during a collective dismissal.

2.6 CONCLUSION

This chapter has indicated that the areas of visa issuance, work and residence permits need immediate attention from policymakers. The aim of reform in these areas would be not only to improve the efficiency of procedures but also to increase investment and tourism in Lesotho which would be beneficial for economic growth and poverty alleviation.

Currently, the terms under which visas, work and residence permits are issued and the costs of obtaining these documents discourages both investment in Lesotho and the importation of skilled individuals for business development. Difficulties in obtaining visas have often been singled out by tourists and investors as an important contributing factor that constrains their ability to enter Lesotho.

A reform of the visa and work permit system should aim to ensure that only those individuals that are legally permitted to stay in Lesotho are allowed to stay but should also aim not to hinder the entrance of foreigners into the country. Current practices act as constraints to the expansion of export-oriented manufacturing and tourism - the two areas that the government desires to develop.

The 2003 UNCTAD Investment Policy Review has concluded that “labor policy and administration is a commendable feature of the Lesotho investment framework – it has developed pro-actively and has focused on sustaining a competitive advantage for Lesotho over alternative nearby locations for FDI. In these respects, it is a model for other countries.” Research for this report has made similar conclusions nearly a decade later.
3. REPORTING

3.1 INTRODUCTION

This chapter describes the policy, legislative and procedural arrangements for the establishment of businesses in Lesotho. Where appropriate, it differentiates business incorporation requirements for foreigners from those for locals although, in general, generic sets of obligations exist for both.

The provisions of the long-awaited Companies Act of 2011 were due to come into operation on 1 October 2011. The provisions of the Act were intended to make significant improvements to the transaction of business in Lesotho and, if implemented and operationalized as intended, they should result in significant improvements in Lesotho’s “Doing Business” rankings across various categories.

In addition, a number of new enterprise development policies and pieces of legislation have recently been drafted and are intended to be finalized over the coming six to nine months.

These new policies and pieces of legislation include the Micro-, Small- and Medium-Enterprises Policy for Lesotho, the Lesotho Industrial Policy 2011 - 2013, the Investment Promotion and Protection Policy, as well as recently gazetted amendments to the Trade and Enterprise Regulations which make new amendments to a number of regulations.

Finally, a number of the GOL and development partner-funded initiatives are seeking to complement improvements to the business climate through a number of specific interventions, the most pertinent of which is the World Bank-funded Private Sector Competitiveness Project8, whose Lesotho Enterprise Assistance Project (LEAP) provides significant incentives of up to 80% of the costs incurred by private companies for investments in training, product development, marketing and related activities.

The following section presents the situation in Lesotho as of 1 October 2011, following entry into force of the new Companies Act. The section further explains the situation in respect to other company registration arrangements that have not been amended through provisions of the new Act and accompanying regulations.

3.2 THE POLICY ENVIRONMENT

Lesotho does not currently have a specific and overarching policy directed at foreign direct investment (FDI). Policy instruments that have guided FDI in the past have been the Companies Act of 1967 and various sectoral pieces of legislation covering mining, tourism and the industrial sector, with a focus on manufacturing and the textiles and garments sector in particular.

The draft industrial development policy seeks to bring a degree of coherence and focus both to local and foreign investment by:

- Introducing new industrial governance structures in the MTICM;

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8 The objective of the World Bank’s Private Sector Competitiveness Project is to facilitate increased growth and competitiveness of the Lesotho private sector and to stimulate private sector development to attain the high and sustainable levels of growth needed to reduce poverty and realize the Millennium Development Goals (MDGs). The Project Development Objective is to facilitate increased participation of the private sector in the economy by creating conditions for improving its productivity and competitiveness.
- Streamlining and strengthening industrial development support institutions;
- Promoting Basotho entrepreneurship and Small- and Medium-enterprise (SME) linkages;
- Diversifying the range of manufacturing products produced;
- Increasing the level of value-added created in Lesotho;
- Diversifying export markets;
- Improving the quality of infrastructure; and
- Promoting e-commerce and e-government.

For its part, the draft Investment Promotion and Protection policy seeks to create a favorable environment for foreign investors specifically through initiatives to:
- Provide investors with administrative assistance in locating in Lesotho;
- Ensure investors of the principle of national treatment (non-discrimination) and that their investment will be protected;
- Establish a liberal approach to the transfer of funds and foreign exchange regulations; and allow investors adequate scope for the employment of non-citizens.

The analysis was unable to determine when the draft policy is intended to be finalized.

**Analysis**

There is clearly some degree of complementarity between the draft industrial development policy and draft investment promotion and protection policy, both of which are to be spearheaded by the MTICM. The main challenge to the Ministry is likely to be the degree to which both policies are given meaning through specific and measureable activities, outcomes, outputs and timeframes; and the extent to which they facilitate the removal of restrictions to doing business and incentivize both local and inward investment. A further challenge will be to ensure that the two policies do not result in a duplication of efforts.

### 3.3 BUSINESS REGISTRATION

This chapter of the report describes the processes for the registration of companies under the provisions of the new Companies Act.

#### 3.3.1 Company Law

Businesses in Lesotho are regulated by the Companies Act of 1967 and the Companies Amendment Act of 1984. The Act has now been superseded by the Companies Act of 2011 which came into effect on 1 October 2011.

The new Companies Act provides for significant changes to the form and processes for the registration of private and public shareholding companies in Lesotho. The preface to the Act describes its purpose as being to:

- Provide for standard and adaptable requirements for the incorporation, organization, operation and liquidation of companies;
• Define the relationship between companies and their shareholders, directors and creditors;
• Encourage efficient and responsible management of companies;
• Protect shareholders and creditors against abuse of management power;
• Provide for registration of external companies in Lesotho; and
• Set out the responsibilities of the Registrar of Companies and to provide for incidental matters.

A key purpose of the new Companies Act is to reduce the time required for the registration of companies significantly. Through processes currently being conducted by the One Stop Business Facilitation Centre (OSBFC) located in the premises of the MTICM, it is anticipated that the registration of a company will now take no more than 2 days, as compared to the more than 20 days required before. The high time costs of registering companies under the past regime were mainly due to:

The need for the appointment of lawyers to register companies along with the attendant costs of the use of lawyers, which is now no longer required;
• The manual companies names search process which will now be automated; and
• The up to 14 days required for public health inspections, which will now be replaced by post-inspection, or inspection after the registration of the company.

The company registration process will now also be automatically linked to registration with the Lesotho Revenue Authority (LRA) for tax purposes.

3.3.2 Business Types

The Companies Act of 2011 prescribes that all companies incorporated before the new Companies Act commences will be regarded as having been registered and incorporated under this new Act. It defines a company as a body corporate incorporated or registered according to this Act or the Companies Act of 1967 which is limited by shares or with unlimited liability.

The Act governs the activities of private, public and external (foreign) companies and companies limited by guarantee (which are effectively not-for-profit entities).

Private companies are limited in membership to between 1 and 50 employees, (allowing, for the first time, the establishment of single-person companies), are restricted in their right to transfer their shares and are prohibited from inviting the public to subscribe to their shares or debentures.

A public company is defined as any company that is not a private company. External companies are defined as body corporates incorporated outside of Lesotho.

3.3.3 The One Stop Business Facilitation Centre

The One Stop Business Facilitation Centre (OSBFC) was established in 2007 to ease the administration of establishing businesses and obtaining licenses and work permits for foreigners. A number of agents of the following departments and agencies are located in the OSBFC:

• The Department of Trade and Industry;
• The Lesotho Revenue Authority (LRA);
• The Department of Customs and Excise;
• The Department of Home Affairs; and
• The Department of Employment and Labor.

The OSBFC is given legal authority through a Memorandum of Understanding (MoU) between the above-mentioned and the Ministries of Finance and Development Planning (MoFDP) and the Ministry of Public Service (MPS). With the reorganization of the OSBFC as a direct consequence of the implementation of the Companies Act of 2011, the Registrar of Companies will also be located at the OSBFC. Efforts are underway, including through the enactment of new legislation, to enable the re-location of additional departments at the center, in particular the Ministry of Tourism which is responsible for the issuance of tourism and related licenses.

A draft organizational development and human resource development strategy has been developed for the OSBFC but is yet to be endorsed. Issues still under consideration include whether or not the OSBFC should become a stand-alone body which is to be governed by its own legislation and regulations and perhaps rendered more efficient by becoming an agency. This would also require the establishment of a new organizational structure for the OSBFC which would reform currently distributed governance arrangements through which employees are still accountable to the ministries from which they have been deployed.

Under new governance arrangements, other requirements would be the need to improve and standardize staff performance and to offer standard conditions of employment, given the different standards currently offered to the employees of government departments and statutory agencies, in particular the LRA.

The restructuring of the OSBFC would also require government’s approval and the provision of a regular, predictable and sufficient budget for the center, as opposed to the current cost-sharing approach through which the different parties to the MOU make differing contributions to costs.

Finally, it is intended to establish OSBFCs in all of Lesotho’s nine Districts although it is not clear, given the current constraints to the national fiscus, when these new offices will be established. It remains uncertain whether the changes will be implemented under current organizational arrangements or under a reformed institutional platform.

3.3.4 Registration Procedures

The Companies Act of 2011 has made a number of substantive changes to the process of registering companies in Lesotho. The first major change to be implemented is to the process of searching for and registering a company name which used to be a manual process which could take up to a week, but is now due to be replaced with a computerized process. Existing hard copy memoranda of association are in the process of being scanned and loaded onto a single companies’ database.

Secondly, whereas in the past lawyers were required to draft memoranda and articles of association, the OSBFC has developed and made available model templates which no longer require the use of lawyers. The use of lawyers in drafting memoranda and articles normally took a period of some 20 days and cost between 2,500 to M4,000. In addition to
reducing the cost of doing business, this new provision will significantly speed up the company registration process.

The new Act also provides for the simultaneous and automatic incorporation of companies with registration for tax with the LRA and the use of single company tax identification numbers (TINs). This has been coupled with efforts for the use of single company identification numbers across all government departments and other statutory bodies.

Finally, once companies are incorporated, they can apply for trading licenses which are issued by the Trading License Board following meetings convened on a weekly basis. The issuance of these licenses is almost automatic and the evidence indicates that more than 95% of applicants are normally successful in their applications. Applications are rejected if applicants do not meet the necessary application requirements. The issuance of sectoral licenses is contingent on other factors discussed later in this report.

The new procedures are described in the figure below.

Figure 5: Company registration procedure through the OSBFC

The following are requirements for the registration of all companies, barring companies limited by guarantee.

Applicants for company licenses are required to submit:

- A completed Application Form: Form 1 (Companies Registry/Schedule 1, the Companies “Act”);
- Consent Forms for each director: Form 8;
- Articles of Incorporation (their own or the Registrar’s);
- Certified copies of subscribers’ identification documents; and
- Certified copies of directors’ identification documents.

On receipt of properly completed application forms and supporting documents, the Registrar of Companies will then:
• Register the particulars of the company; and
• Issue a Certificate of Incorporation.

The whole registration process is not anticipated to take more than two days.

Companies limited by guarantee are not-for-profit companies for which:
• An application must be submitted to the Minister of Trade and Industry;
• The Minister must grant a licence if he is satisfied that an association:
  o Exists for a lawful purpose;
  o Is pursued for the public interest;
  o Intends to apply its profits or income to promote its objects; and to prohibit paying any dividends to its members.
• The Minister then grants licenses to register without the word “Limited”.

There are currently no fees charged for the incorporation of companies.

It is intended that OSBFC would charge a fee for the incorporation of companies but, at the time of this writing, no agreement had been reached on the fee to be charged.

3.3.5 Company Registration in the Districts

At present, there is no provision for company registration in the districts and all individuals seeking to register companies have to do so in Maseru. Licenses are issued in the districts, however, through monthly sittings of licensing boards established in MTICM offices in the districts.

It is intended to establish OSBFCs in the districts and to enable the provision of the full range of services on offer in Maseru, with the exception of a number of sectoral licenses which will still be issued by specific ministries.

Analysis

The new Companies Act requires new companies to register their details by using International Business Classification Codes (IBCCs), which was not the case before. However, while the Act removes a previous restriction that companies can only engage in one type of business activity, companies are not required to register additional IBCCs on engaging in these new activities.

This amendment is likely to result in a number of challenges. While companies may be registered under particular IBCCs, for which data will be kept, they may engage in activities which are not documented and for which there would be no record, (except through licensing data).

Secondly, and this was the view of banking sector participants at a recent Companies Act presentation, while companies may secure bank loans for particular activities in line with approved business plans, they may divert these funds to other enterprise activities they are also engaged in. While the onus should be on banks to monitor the implementation of approved business plans, this multi-functional nature of businesses under the new Act may raise a few difficulties.
The OSBFC brings together a streamlined and integrated suite of services aimed at assisting businesses and investors. The facility is staffed by officials from several government departments. The OSBFC currently operates manually and its objective is to make it easier to do business in Lesotho through providing many services under one roof. These services include:

- Trading licenses,
- Manufacturing licenses,
- Export Permits,
- Rebates,
- Visas,
- Import permits,
- Work Permits,
- Residence Permits.

Processes for tourism licensing are also intended to be located in the OSBFC and efforts are currently underway to facilitate the physical relocation of tourism licensing staff with necessary licensing infrastructure to the OSBFC.

As the new procedures have just been implemented, it is likely that they will require some time to become established and to achieve their intended efficiencies. Furthermore, in all probability, the establishment of functioning OSBFCs in the districts is likely to take some time, due the need to transfer existing staff or recruit new staff, to locate and rent offices and to install necessary office equipment, infrastructure and computer linkages.

**Recommendations**

**R16: Expedite the institutionalization of the OSBFC.** The ongoing processes being directed towards the development of a new organizational structure and human resource framework for the OSBFC should also be expedited. These would bring to finality the governance arrangement of the OSBFC and would clarify whether or not the organization should become an agency or remain as it is as a government agency with multiple accountabilities. The OSBFC should become a wholly privatized agency, earning revenue through the registration of companies and issuance of licenses, or it could remain in its current form as a government-owned entity and continue to be governed as it is, through its inter-departmental MoU;

**R17: Undertake legislative amendments that would allow the OSBFC to perform its mandate.** Processes, including legislative amendments for the location of a number of licensing institutions not currently located in the OSBFC should be accelerated, as legislation creating and regulating the activities of licensing departments in the line ministries currently do not allow formal or permanent location of their staff in the OSBFC;

**R18: Fast-track the automation of the One-Stop Center.** Since Lesotho has already established an investment facilitation office through the auspices of the OSBFC, it is recommended that the facility be automated. The exchange of data electronically would bring about significant efficiency improvements.
3.4 REGISTERING FOR TAX

Company taxation is regulated by the Income Tax Act of 1993 as amended and the Value Added Tax (VAT) Act of 2001 as amended. The Acts require all business entities to register for tax, for Pay-As-You-Earn (PAYE) and for VAT for companies or income tax for self-employed individuals.

The procedures for registration for tax have been amended by provisions of the new Companies Act, which now provides for the immediate and automatic registration of companies for tax on their incorporation as business entities through the OSBFC. However, new procedures do not make for immediate registration of companies for other taxes, specifically PAYE, for value added tax and for income tax for self-employed individuals.

The steps currently in place for company tax registration are as follows:

- Complete an application form;
- Submit the application to the Advice Office of the LRA; and
- Receive a Corporate Tax Clearance Certificate from the LRA.

Documents required for this purpose include:

- Income Tax Registration form;
- Certified copies of Memoranda and Articles of Association;
- Certified copies of Directors’ identification documents; or
- Copies of the identification documents of persons given power of attorney to register the company for tax.

For VAT, applicants are required to submit to the LRA:

- VAT 1 and TIN registration forms;
- Certified copies of Memoranda and Articles of Association;
- Certified copies of Directors’ identification documents; or
- Copies of the identification documents of persons given power of attorney to register the company for VAT.

For PAYE, the following is required:

- A completed Employer’s Registration Form;
- Certified Copies of Memoranda, Articles and Certificates of Association;
- Certified copies of Directors’ identification documents; or
- Certified copies of the identification documents of persons given power of attorney to register the company for PAYE; and
- A list of all employees, including part-time staff, casuals, laborers and temporary staff.

Resident individuals registering for income tax are required to submit an Individual Initial Form and full information on his/her business and personal details, whilst non-resident are also required to submit certified copies of work permits and identity documents.
Analysis

New arrangements for the immediate and automatic registration of companies applying for company registration as tax payers are welcome and should contribute to the more integrated identification of companies across all government and quasi-government departments and agencies. The MTICM will need to lead this process through government. Other tax registration processes are not considered onerous or as inhibitors to company establishment.

3.5 REGISTERING AS AN IMPORTER

Business enterprises wishing to import and export goods into and from the SACU region are required to register as importers under the Customs and Excise Act of 1982.

Applicants are required to:
- Complete an application form; and
- Submit the application to the OSBFC.

Requirements for applications are:
- A completed application form;
- Certified copies of Memoranda of Association, Articles of Association, Certificates of Association and Manufacturing License; and
- Certified copies of company directors’ identification documents.

3.6 REGISTERING A BONDED WAREHOUSE

All applicants who wish to register for a bonded warehouse, in which dutiable goods may be stored, manipulated or undergo a manufacturing process for purposes of export, under the Customs and Excise Act of 1982 are required to:
- Complete an application form; and
- Submit the application to the OSBFC.

Requirements for applications are:
- A completed application form;
- Certified copies of Memoranda, Articles and Certificates of Association and Manufacturing License; and
- Certified copies of company directors’ identification documents.

Analysis

Through Supplement No. 9 to Gazette No. 84 of 11 December 2009, the Import Restrictions (Amendment) Regulations, there are legislative restrictions to the importing of certain scheduled goods (See Annex 2). The restrictions are on goods varying from agricultural products including meat and poultry, and fruit and vegetable products to petroleum, precious and semiprecious stones, vehicles and explosives. Importers are obliged to apply for special dispensations for the import of these goods from various ministries or from the OBFC.
The requirements for establishing bonded warehouses are not onerous and do not represent a major constraint to establishing businesses and normally take one week.

### 3.7 Health Certificates

All incorporating businesses are required to apply for Health Certificates, which are either issued by the Maseru Municipal Council (MMC), when companies intend to operate in areas under the municipality’s jurisdiction, or by the Department of Public Health of the Ministry of Health and Social Welfare for all other jurisdictions.

Applicants are required to submit application forms, copies of leases and sub-leases of the premises where they intend to operate and copies of Memoranda, Articles and Certificates of Association.

Fees for health certificates are levied at 10% of licenses the applicant holds (see section on trading licenses).

The process of applying for health certificates can take up to 20 days and is contingent on the availability of health inspectors of the MCC or of the Department of Public Health.

However, under the provisions of the new Companies Act, the registration and incorporation of companies is not dependent on the submission of health licenses. In the future, health inspections and clearances can be done after the registration of companies, which should speed up the incorporation process. However, companies are not allowed to engage in business until all provisions of the necessary sectoral licenses have been met.

### 3.8 Registering for Municipal Rates

Businesses are required to register for municipal rates (municipal tax) either with the MCC or with offices of the District Administrator in all other districts. However, in reality it does not represent an obligatory procedure for many enterprises, particularly small enterprises, because of poor enforcement.

Nevertheless, to register for the payment of municipal rates, enterprises are required to submit applications to the appropriate municipal authority, supported by certified copies of Memoranda, Articles and Certificates of Association and certified copies of company directors’ identification documents, or where appropriate certified copies of identification of proxies.

### 3.9 Obtaining Sectoral Licenses

#### 3.9.1 Obtaining a Traders License

The issuance of traders’ licenses is governed by the Trading Enterprises Order, 1993, as amended in 1996, and the Trading Enterprises Regulations, 1999, as amended in 2011. Every person and business intending to engage in business has to have a trader’s license of which there are more than 200 types.

The intended purposes of the issuance of trader’s licenses are to:

- Ring-fence the types of activities in which only locals are allowed to engage;

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9 Copies of the Trading Enterprise Regulations were not available at the time of the preparation of this report and neither were its revised amendments, planned to have been gazetted in October 2011. Status changed perhaps?
• Ensure consumer protection;
• Regulate sole proprietors and partnerships that previously did not have to be registered with the Registrar of Companies, although this provision has now been changed by the new Companies Act;
• Enable the collection of data on businesses to enable the provision of training and the like; and
• To collect revenue.

The issuance of traders’ licenses is carried out on a weekly basis at the OSBFC in Maseru and on a monthly basis in MTICM offices in the districts. License fees range from as low as M100 (US$13) to a upper limit of M1,000 (US$130) and are half the maximum rate for individuals who operate as sole traders.

The new Companies Act provides for the registration of businesses according to the IBCC. The OBFC intends to ensure the alignment of traders’ licenses to these codes.

3.9.2 Obtaining a Manufacturing License

Manufacturing licenses are covered by the Industrial Licensing Act of 1969 (which is currently under reconsideration) and the Pioneers Industries Encouragement Act of 1969.

The steps for the acquisition of a Manufacturing License are as follows:

• Complete an application form;
• Pay the statutory application processing fee of M50 (US$6.50);
• Submit the application form to the Department of Industry official at the OBFC;
• Make a formal presentation at the Pioneer Industries Board to motivate for the application;
• Pay for the annual license fee of M1,000 or US$130 if the application is successful; and
• Receive the license at the OBFC.

Documents required in applying for a Manufacturing License include:

• A completed Manufacturing License Application form;
• Certified copies of company Memoranda and Articles of Association and Certificates of Incorporation;
• A copy of leases or sub-leases for the premises to be utilized;
• Certified copies of directors’ identification documents;
• An Environmental Certificate;
• An Occupational Health and Safety Certificate; and
• A Health Certificate for food handlers.

For the majority of manufacturing license applications, Environmental Certificates issued by the National Environmental Secretariat (NES) are sufficient. However, where manufacturing activities are assumed to have actual or potential environmental impacts, an Environmental Impact Assessment is required, which needs to be signed off by the
The requirements and detailed procedures for carrying out EIAs are contained under Overview of Procedures Required for Site Development, Chapter 4.3.3 of this report.

In order to ease the process of obtaining manufacturing licenses, the Department of Industry in which the Pioneer Industries Board is located has:

- Reduced the length of the application form from 16 pages to 2 pages;
- Caused the Pioneer Industries Board to convene as and when required, rather than on a monthly basis as mandated by the legislation;
- In practice, issued licenses even when the board has not been in quorum; and
- Has de-emphasized one of the key objectives of governing legislation, the protection of existing local businesses, in its review of applications.

The original purpose of the Pioneer Industries Board was to facilitate and monitor the registration of manufacturing companies to ensure they accorded with national development priorities and to protect local manufacturing companies from foreign-owned competitors, under the Import Substitution Industrialization policies of the past. The Board’s purpose has now changed to enable it to more effectively and efficiently respond to a much more liberalized business regime.

3.9.3 Obtaining a Mining License

Operating under the Mines and Minerals Act of 2005, the Commissioner of Mines in the Ministry of Natural Resources is authorized to issue mineral rights to both foreigners and local investors.

In applying for mineral rights, applicants are required to:

- Identify themselves and provide the names, addresses and nationalities of all directors, officers and holders of 5% or more of the equity, and their local registration and Articles and Memoranda of Association;
- Provide information on their financial status, including balance sheets, profit and loss statements for the previous 2 to 5 years, banking and other financial references, proposed financial plans including loan and equity capital, anticipated lenders (if any), and anticipated interest costs and repayment schedules, with new companies requiring valid references from financiers;
- Provide information on the applicants’ technical experience and competence including experience in previous mining projects, and the Curriculum Vitae (CVs) of proposed project managers, senior geologists and mining engineers, whilst qualified and locally registered mining companies can also be contracted to provide requisite technical capacity;
- Provide information on the proposed project, including the description of the physical location of a proposed site, a proposed detailed work program for the mining or prospecting license being applied for, describing estimated reserves, estimated average grade, proposed mining and treatment method, anticipated daily through-put and recovery, anticipated processing method, anticipated realized values (drilling program, proposed program and proposed bulk sampling program), infrastructure requirements, proposed employment of nationals and expatriates by category of skill, anticipated payrolls and anticipated housing and other amenities;
• Describe proposed marketing arrangements, including the product to be marketed and market area and furnish information on the proposed marketing organizations, including the names, addresses and particulars of the directors and principals, their marketing experience and valuation procedures;

• Describe anticipated service arrangements, including patent and know-how licenses and anticipated management, engineering and other service contracts;

• Furnish financial analysis of the project, including feasibility reports, cash flow projections, pro forma balance sheets, profit and loss and source and application of funds statements and financial assumptions and projected rates of return;

• Secure police clearance; and

• Ensure the completion of a project Environmental Impact Assessment (EIA) through the National Environmental Secretariat for which guidelines exist; and

• Submit a final mining lease application.

Although legal provision is for the Board that supports the Commissioner of Mines to meet twice a year to review and approve licenses, it now meets as and when required. On approval, it takes about a month for both prospecting and mining licenses to be issued.

The costs of both mining and prospecting licenses are M1,000 or US$130 a year, renewable annually.

3.9.4 Obtaining a Tourism License

There are no explicit procedures for securing tourism licenses except as provided for in the Accommodation, Catering and Tourism Enterprise Act of 1997 and the Liquor Licensing Act of 1998. The act provides for a Tourism Licensing Board which is responsible for the issuance and renewal of licenses for camp sites, hotels, lodges, restaurants, self-catering establishments, bed and breakfasts, youth hostels, resorts, motels, catering and guest houses.

Applicants for any of the above licenses are required to apply to the Board three months before its sitting and lodge applications to the Secretary of the Board, accompanied by a lease, or sub-lease (or Form C2 – issued by traditional chiefs), and company memoranda of association. Applications must contain applicants’ names and addresses, describe the nature of the license sought and describe the location of the facility for which the license is sought.

When an application is submitted for a license in the area of a municipality’s jurisdiction, a number of national and/or local authorities, specifically the Ministries of Health and Tourism, the Lesotho Tourism Board, the Police Department and the Maseru City Council, are required to carry out inspections and to submit inspection reports to the Board on prescribed forms.

The Board does not issue a license unless it is satisfied that the premises meet the minimum requirements as set out in Schedule I of the act. Licenses are granted for the duration of one year from their date of issuance and cost M1,000 (US$130). Licensees wishing to renew their licenses are required to submit an application three months before the date of its expiry and are liable for penalties determined by the Minister should they fail to submit their applications for renewals in good time.
The Tourism Board is legislated to sit once a quarter to approve new license applications and once a month for license extensions. There is the intention to amend legislation to enable it to sit as and when required and to enable the location of Tourism staff to the OSBFC.

3.9.5 Obtaining a Liquor License

Liquor licenses are covered under the Liquor Licensing Act of 1998, which provides for the licensing of the sale of liquor and related matters for: hotels; taverns; off-sales; clubs; service canteens; discotheques; motels; night clubs; lodges; public bars; shebeens; restaurants and resorts.

Liquor licenses are issued by the Liquor Licensing Board which requires applicants to submit:

- Valid lodge, motel, hotel or restaurant licenses issued under the Accommodation, Catering and Tourism Enterprises Act of 1997;
- Evidence that the applicant intends to operate on premises which are a *bona fide* lodge, resort, motel or hotel at which meals are intended to be provided; and
- That the applicant is a fit and proper person to whom a license can be issued.

Applications for liquor licenses for restaurants, taverns, shebeens, discotheques, night clubs or off-sales are required to satisfy the Board that the applicant:

- Is a holder of a valid restaurant license issued under the Accommodation, Catering and Tourism Enterprises Act of 1997;
- The applicant intends to keep a *bona fide* restaurant, shebeen, tavern etc. intended for the purposes for which they have been licensed;
- In case of renewal, has not violated licensing conditions; and
- That the applicant is a fit and proper person to whom a license can be issued.

The approval of liquor licenses is contingent on meetings of the Liquor Licensing Board which sits once a quarter.

Analysis

A number of constraints have been identified in the issuing of licenses. Standard licenses issued by the OSBFC are obtainable within a week, while most sectoral licenses are issued within a period of a month, provided that applicants meet business compliance, documentation and other requirements.

However, the Tourism Board sits on a quarterly basis and as such delays the process of establishing and doing business in Lesotho. The Ministry is in the process of amending legislation to enable, amongst other things, the Board to meet more frequently.

The major constraint in the issuing of manufacturing licenses relates to capacity constraints in the National Environmental Secretariat (NES) who are responsible for the issuance of Environmental Impact Assessment (EIA). Anecdotal evidence indicates that the EIA process can take anything up to one year to finalize. EIA is discussed in more detail in the next chapter.
Finally, as the issuance of manufacturing licenses is based almost solely on the submission of licenses issued by other agencies including the NES, Ministries of Trade, Labor and Home Affairs, it would not appear to have its own intrinsic value. Under the new act, the OSBFC will link new companies to the tax regime and issue TIN or single company identification numbers intended to be used across the whole system of government. Thus, the compliance monitoring function embodied in the issuance of licenses could easily be shifted to the OSBFC.

Consequently, we recommend that the efficacy of manufacturing licenses be reviewed, with the view to its removal as a regulatory requirement for manufacturing, for which legislative amendments would have to be crafted. The onus of ensuring compliance with other requirements, particularly EIAs on the part of large manufacturers, should be transferred to the OSBFC which, with the NES, should also have transparent criteria indicating which types of manufacturing should carry out EIAs.

In respect of traders' licenses, it is not clear that their issuance serves their intended purposes. Firstly, in terms of consumer protection, inspections are carried out by the MCC in Maseru and the Department of Public Health in the districts, both of which have limited capacity. Anecdotal reports of the sale of products that have exceeded their sell-by-dates with attendant health consequences attest to weaknesses in this area.

In terms of ring-fencing certain business activities for locals, there is considerable evidence that the licensing regime has been unable to do so as there are a significant number of expatriates engaged in basic trading reserved for locals, which points to the existence of extensive corruption in issuance of licenses. The reservation of business activities is not a good practice in itself, however there are cogent arguments for such a practice in the context of a well-articulated small enterprise policy that seeks to capacitate and grow small indigenous businesses.

In terms of data collection, the reality of the paucity of accurate and reliable trade and commerce data points to the lack of a system for the updating and collation of enterprise data; the fact that licensing has been paper based is probably a key contributing factor.

Finally, in terms of capacity building, the MTICM neither facilitates nor provides training to small and medium enterprises; although some of the recent Ministry of Finance and Development Planning (MoFDP) allocation to the small enterprise sector will be channeled towards business development services (BDS) and to the guarantee of loans by commercial banks.

**Recommendations**

**R19: Computerize the issuance of licenses.** The issuance of licenses should be computerized to enable the collection of meaningful data on enterprise activity, in order to enable the ongoing formulation and monitoring of enterprise development policies and programs.

### 3.10 ACQUIRING INCENTIVES

With the cessation of Duty Credit Certificates (DCCs) under the Textile and Clothing Industry Development Program (TCIDP) in March 2010, there are no direct incentives for businesses in Lesotho. Originally targeted at textile manufacturing companies, the
incentives were tradable instruments which could be used to offset the duty on fabric and garment imports.

More generalized incentives, applicable to all textile exporters, have as their competitive base the benefit of non-reciprocal preferential market access, currently created through the AGOA with the US and to a lesser extent, through the Everything-But-Arms (EBA) amendment to the EU's Generalized System of Preferences.

A further general incentive for manufacturing companies is through corporate taxation of manufacturing activities, which is 10%, compared to 25% for other activities. Furthermore, tax on income from exports to outside the SACU region is 0%.

Mining companies are exempt from sales tax on capital during mine evaluation and construction, with royalties set at between 6% and 8%.

Finally, subsidies on rentals can be made available by the LNDC for new manufacturing industries located in LNDC serviced sites. However these are not standard and have to be negotiated on a case by case basis. There are no explicit criteria for the issuance of these subsidies.

**Analysis**

Preferential market access incentives are, more often than not, the prerogative of bilateral or multilateral trading partners whose outcomes Lesotho can seek to influence, but cannot always determine or specify. In the current local and international economic context, there would appear to be limited scope for sizeable new incentives additional to the ones that already exist.

In view of revenue challenges which have seen government revenue decline by some 40% recently, the scope for local long-term incentives is also limited. Even in-kind incentives, such as rent holidays or subsidies in industrial parks, or preferential rates on utility costs have limited scope due to the revenue maximization obligations imposed on most statutory bodies. A recently launched grant facility of M200 million or US$26 million offered to textile manufacturing companies seeks to ensure their continued operations in the short term (two years) but is only available to already existing companies. The details of the grant facility were not available at the time of the preparation of this report.

3.11 **POLICE CLEARANCE**

Renewable police clearances are required annually for the registration of companies by foreigners and for obtaining some sectoral licenses. Police clearance is required for the issuance of mining licenses and for licenses for individuals dealing with explosives, arms, ammunition and related items.

Processes for the issuance of police clearances are relatively straightforward and in the case of foreigners, requires the submission of:

- A work permit;
- A residence permit;
- Copies of passports; and
- A justifying letter issued by the applicant’s place of employment.
Police clearance fees are M100 (US$13) and for foreigners take a maximum of two months to be issued.

For locals, only copies of passports and the payment of a M100 (US$13) fee are required, and clearance certificates are normally issued after a period of one month.

**Analysis**

Anecdotal evidence suggests that police clearance certificates have the effect of prolonging company registration processes, particularly for foreigners. In other countries, including neighboring South Africa, police clearance is only required from foreigners on the incorporation of companies and on the extension of work and residence permits which are of at least two years duration. There is no requirement for applications for annual police clearance certificates.

The practice in Lesotho probably exists for historical reasons and has been perpetuated by less than sufficient rule of law and oversight, which has resulted in considerable illegal immigration and the illegal acquisition of passports, resident and work permits and business licenses by individuals who are not entitled to them. However, the requirement for police clearance does not seem to have stopped these abuses.

**Recommendations**

R20: Introduce the Automated Fingerprint Identification System (AFIS). Anecdotal evidence shows that speedy issuance of police clearance is hindered by manual processes. Introduction of AFIS will impact positively on the waiting periods for results and feedback to customers. For example, it should take Police less than three days to provide courts with records of previous convictions instead of weeks. In addition, on-the-spot background checks, fingerprint clearance for employment, company registration and permits will be greatly enhanced by the system.
4. LOCATING

4.1 INTRODUCTION

This chapter examines the procedures that domestic and foreign investors in Lesotho encounter when acquiring a property, developing it, connecting to utility networks, and complying with environmental standards and regulations. The chapter not only provides a procedural outline and highlights the main issues investors face in acquiring and developing land but also provides recommendations to decrease relevant entry barriers.

Before proceeding to an analysis of the issues pertaining to locating investment in Lesotho, this section provides some background facts regarding Lesotho’s land.

Lesotho has a land area of 30,355 km². It is one of only three countries in the world to be fully inside another country – South Africa. It has a mountainous topography and over 60% of its territory is 2000 meters above sea level. The lowlands, comprised of a narrow strip 20-50 km wide along the western border, encompass 17% of the country’s land and support most of the population of about 1.8 million. The foothills with an elevation ranging from 1,800 and 2,000 meters are a narrow patch between the lowlands and mountains. The rest of area is mountains and is above 2000 meters.

Only about 10% of the land is arable, and soil degradation is a serious problem. A small portion of land is suitable for intensive cultivation and more than 80% of it is in the lowlands. Animal and human pressures on land are high. Lesotho’s population density increased from 53 persons per sq. km in 1986 to 62 persons in 2006; the pressure on arable lands was 588 persons per sq. km in 1996 (KoL 2000 cited in World Bank, 2005).

This chapter is structured as follows: Section 4.2 overviews and analyses procedures regarding acquisition of land in Lesotho and section 4.3 examines site development issues.

4.2 LAND ACQUISITION

4.2.1 Overview of Key Issues Regarding Land Acquisition

According to the Constitution of Lesotho “land in Lesotho is vested in the Basotho Nation and is held in trust by the King”. Culturally the land belongs to the nation while individuals have use rights. In practice this means that no land in Lesotho is privately owned. The grant of a title to land in urban areas is in the form of a lease. The first Land Act was passed by the Lesotho Parliament in 1979. The Act eliminated chiefs’ rights of land allocation and introduces a leasehold title system for land in designated urban, agricultural and development areas. The remaining rural land is held in a less formal system of allocation. This land can be leased from the GOL and allocated in titled form.

In Lesotho, the regulations that govern acquisition of land for investment or other purposes are as follows:

- Land Act, 2010
- Land Administration Authority Act, 2010
- Land Survey Act, 1980
- Deeds Registry Act, 1967
• Stamp Duties (Amendment) Act, 2001
• Town and Country Planning Act, 1980
• Local Government Act, 1997
• The Valuation and Rating Act, 1980

One of the unique legal features of Lesotho is legal dualism. It means that Lesotho has both formal and customary legal systems as well as a dual system of courts. The land regulations are no exception. Within the dual system of land administration, customary law is applied in rural areas and a more formal system of land holding rooted in Dutch Law in urban areas. In addition, it is crucial to note that a fundamental feature of the customary land tenure system is that land is communally owned and cannot be sold by the landholder. Land in customary law systems is held in a less formal system of “allocation” but can be acquired by the Government for designation and allocated in a titled form.

After nearly a decade of preparation, a significant land reform was introduced in 2010. In that year, the Lesotho Parliament passed a Land Act that supersedes the 1979 Act. The 2010 Land Act is a significant step forward with regards to enhancing both foreign and domestic investment in Lesotho as well as providing a high quality land management system. Several important provisions in this regard are worth mentioning. The Act ends or decreases discrimination against some sections of the society in inheriting or owning land. In particular it:

• Decreases discrimination against women in owning and inheriting titles to land although the discriminatory sections in the Deeds Registry Act 1967 particularly sections 14 and 35 (c) still remain.

• Ends discrimination against citizens of Lesotho who are not ethnically Basotho. The repealed Land Act of 1979 contained a restriction of title to land to citizens who are Basotho. This was contrary to article 18 of the Constitution. The Land Act of 2010 removes the limitation on land holding by non-Basotho citizens. The effect of this change is that there is no longer a distinction in the law between Basotho and non-Basotho citizens.

• Enhances tenure security for all land occupants and supports the use of land as collateral in order to obtain credit.

The passing by Parliament of the Land Administration Authority Act, 2010 which established a government entity of the same name was a key regulatory provision in this regard. According to the statute, the Land Administration Authority (LAA) is an autonomous agency of the Ministry of Local Government and Chieftainship. LAA is tasked with the administration of the leaseholds land tenure system, the registration of deeds and surveys and mapping. Its key functions are to:

• Administer the leasehold land tenure system including the grant of leasehold title, granting consents for lease transactions, and keeping of records of land holdings in Lesotho

• Administer the deeds registration system; and

• Administer surveying, regulate land surveys, provide general purpose mapping and spatial data, and maintain the nation’s spatial data infrastructure.

The LAA is merging and replacing the existing departments of Lands Surveys and Physical Planning and the Deeds Registry previously responsible for these activities.
In 2011, LAA commenced providing its statutory services with new staff and customer service. As noted by Donker (2010) “with a population of 1.8 million, Lesotho only has 15,000 leases in the Deeds Registry. One of the reasons for this low number is the existence of informal settlements in the urban area of Maseru.” The Government of Lesotho, with financial support from the US Government’s Millennium Challenge Corporation (MCC), is currently undertaking a project entitled “Land Administration in Reform in Lesotho”. The MCC provides US$362.5 million for a series of projects that include water, health and private-sector development.

The key executive entity for the land administration reform project is the LAA. Changes in the new Land Act and provisions already in force in the Land Survey Act, 1980, now allow LAA “to quickly and relatively cheaply survey and define up to 55,000 parcels of peri-urban land over the next three years for owners and occupiers to receive registered leases.”

The project has completed its pilot phase and is currently preparing for its implementation phase. Initial outcomes are encouraging with several thousand parcels in the Maseru peri-urban area having been granted a lease. At the end of the project the systematic urban land tenure regularization activity is expected to achieve a fully revamped, modern, and efficient land agency, effectively administering largely formal leasehold titles in the Maseru urban area. Successful completion of the project is likely to fully transform the land market in Maseru, making land marketable and increasing its economic potential. It will allow a larger share of the population to secure loans and mortgages and increase investment. All this is likely to lead to increased employment, alleviating poverty and increasing economic growth.

The Agrarian Reform and Rural Development Report (2006) on Lesotho states that the land management system is “characterized by unplanned human settlements, particularly in the urban and peri-urban areas. A lot of settlements in these areas are situated on the 9% arable land, further decreasing its potential for agricultural production. As these areas are unplanned, they also tend to be overcrowded with no space for basic services such as roads, and they are vulnerable to high-risk environmental and health problems.” Urban sprawl in Lesotho has resulted in unplanned extra-legal allocations for a vast number of Basotho who have bypassed the largely dysfunctional administrative systems to obtain urban and peri-urban land rights.

4.2.2 Analysis of Lesotho’s Land Management System from the Perspective of Investment and Economic Development

The development of the land market in Lesotho is quite low. As mentioned above Maseru only has 15,000 land title deeds registered in a city of 250,000 people. In a fully functioning land market the number of leases should be at least five times that amount. The most recent available data (2001) shows the total value of transferred properties in Maseru in the order of M6.1 million. This sum is only around US$1 million - an unduly low number.

The 2003 UNCTAD Lesotho Investment Policy Review concluded its analysis of the land market development as follows: “the land system has not permitted a sensible land market to develop in which investors and others requiring land are able freely to purchase and encumber titles from others and put the land to improved commercial use.” The introduction of the new Land Act is likely to improve land market development somewhat,

10 Johnson and Matela (2011)
11 Swedsurvey 2006.
however critical bottlenecks may remain. The key achievement that is likely to produce large tangible results in the short term is the establishment of the LAA and its effort to title land in Maseru and other urban areas. This is expected to provide a large number of local micro enterprises, which are estimated to be among the biggest employers in the country. Recent estimates show that there are over 250,000 such micro-enterprises which are often run by women and are visible almost everywhere. Up until now these micro-entrepreneurs had no or little access to credit from the formal banking sector. This might change as a result of the introduction of the new Land Act as owners of micro enterprises with a formal title to their land might be able to seek formal banking sector credit and expand investment.

The remainder of section 4.2.2 analyses some of the key features of Lesotho’s land management system such as customary law, zoning and land identification from the perspective of investment constraints and challenges.

**Customary Law**

World Bank (2002) highlights three key weaknesses in the application of customary law to a large section of land in Lesotho.

- Customary land tenure system does not offer security of tenure. The allottee is entitled only to a form of usufruct during its lifetime. On his/her death, the land reverts to the allocating chief or headman for reallocation. The allottee can neither sell the land nor lease the land.

- The allocating chief or headman has power to allocate land exclusively to their own ‘subjects’. They cannot allocate land to a foreign investor, for example.

- Customary land tenure is designed to encourage subsistence farming and, in fact, discourages allocation of land for commercial farming. Indeed, land can be taken away from a person who, in the opinion of the allocating chief or headman, has more land than necessary for the needs of their household.

These three issues and the first point in particular essentially preclude the development of a land market on land where customary law is applied.

**Zoning**

Physical planning and adequate zoning of land are inadequate to the needs of Lesotho’s modern economy. Almost by definition, land under customary law is not zoned, so any long-term development planning is difficult. The situation is not significantly better on zoning of land which falls outside of customary law. The statistics are difficult to obtain but it is well known that current land planning does not cover vital urban and rural areas. To give an example, the areas immediately around the Thetsane Industrial Estates have seen the development of informal settlements which have precluded the expansion of the estates.

The Government proposes to develop the legal framework and the administrative guidelines for land use and physical planning in urban and rural areas. Guiding principles will be set for the major land use categories – agriculture, forestry, grazing, settlement, industry and mining and water storage. The rationalization and restructuring of land use and physical planning will be followed in order to integrate and harmonize the work of the newly established LAA and other government entities dealing with the acquisition of land.
**Identifying Land**

A key factor that shows underdevelopment of the land market in Lesotho is a lack of estate agents. In fact, Maseru does not have any recognized estate agents, domestic or international. There are no branches of international and regional estate agents such as Knight Frank, Seeff or Pam Golding in contrast to all other SACU countries. Some small-scale estate agents with limited offers do exist in the low-end and high-end residential markets but with limited land market development, they are unable to develop into larger indigenous companies. These are often small companies that provide a diversity of property-related services, and for which these are typically a small component of the business. Therefore, one of the most important ways for identifying land for development in Lesotho i.e. contacting an estate agent, is in most cases not open to investors.

Another route to identify land is to find suitable government land and obtain a lease from the government. Because of inadequate land planning and procedural complexity, it is particularly difficult for investors to obtain land through this channel (see section 4.2.2.4 for details of procedures). Furthermore, publically available information regarding the availability of government land for business purposes is limited. There are several government ministries involved in the process, with little information sharing and cooperation aimed at facilitating the provision of land to investors. In fact, land administration is fragmented into nine separate ministries. The Ministries of Agriculture, of Local Government, of Justice, of Trade and Industry, of Public Works, of Natural Resources, of Tourism, of Environment, of Education, Finance and LNDC are all involved for a variety of reasons.

**Land registration and deed transfers**

Under the old 1979 Land Act securing a lease was a complicated, long, costly and uncertain process. As stated in the Land Policy Review Commission (2000) “due to inadequate human, technical and financial resources, land administration is chaotic and that a simple exercise like registration of a lease sometimes takes upwards of six years to complete. Three to four years is considered normal. The system of land administration that Lesotho has is such that delays especially in the issuing of leases are inevitable”.

One reason for the delay is that under the Land Act, 1979, Ministerial consent is required at various stages before a lease or a sublease can be granted. Bureaucratic paperwork that is required to register a lease is unnecessarily plentiful and very complex. Surveying and valuation facilities are minimal. There is no register or record to indicate how much land individual holders have in Lesotho and the value of their holdings.

With the establishment of the LAA, land registration and deed transfers are likely to be much faster and more reliable. As mentioned above the tilting of land is already under way and the process should now be shortened to a few months.

Another improvement is an extension of the duration of leases. Previously industrial land could only be leased for 30 years. Article 32(1)(b) of the New Land act states that a “lease shall not be granted for a term exceeding 60 years where the lease is for heavy industrial purposes, commercial and light industrial purposes and hotel purposes.” The land reform undertaken in 2010 is a significant step forward with regards to the development of a well-functioning land market in Lesotho, but its impact will be less than desired as issues such as zoning and land identification have not been improved.
Access to land for foreign owned companies

The 2010 Land Act has made some changes to allow for easier access for foreign investors to acquire land. Key features of new Land Act regarding foreign investors’ access to land in Lesotho are as follows:

- Allow foreign enterprises to hold titles for land provided it is for investment purposes and provided that Basotho form at least 20% of the membership or shareholding of the enterprise.
- Under these conditions a foreign investor is allowed to lease land directly from the government. Previously, under the Land Act of 1979, “land can only be held by a citizen who is Basotho” and it could not be held by an individual of foreign or non-Basotho origin.
- Consent of two ministers is required. According to Article 4 of the Land Regulations which accompany the Land Act “the Minister (of Local Government) shall seek written recommendation or advice of the Minister responsible for trade or any other Minister for purpose of the investment to be undertaken by such foreign enterprise. The Minister shall, upon receipt of the recommendation or advice, give written approval for allocation or holding of land by a foreign enterprise.”

The present provisions in the Land Act continue to be a disincentive to foreign investments. Firstly, there are only few Basotho who have the willingness and resources to hold even 20% shares in a company. These provisions impact negatively on investors decisions to invest. Furthermore, investors complain that it is difficult to expand their production because the land that is sublet to them may not be able to accommodate an expansion. Ministerial approvals make obtaining a lease to land bureaucratically difficult and time-consuming.

Restrictions on access to land for foreigners are usually implemented to avoid land speculations and excessive ownership of national land by non-locals. However, in the short to medium term this is unlikely to be a significant problem in Lesotho. Moreover, given Lesotho’s relatively small economic size and the limited capacity of local entrepreneurs it is crucial for Lesotho to attract foreign investment. FDI is likely to provide employment and some technology transfer to local companies; therefore, from the perspective of overall economic development it may be more effective to liberalize access to land for foreigners for investment purposes. This policy may be implemented in a carefully managed way and once, for example, foreign purchases reach a certain percentage of Lesotho’s total land for investment purposes, automatic restriction on such purchases will re-apply.

According to World Bank (2006), because of these constraints, “foreign investment tends to be low value-added and highly foot-loose and Lesotho is self-selecting what may be the sub-optimal types of foreign investment”. The bank also notes that “the system constrains the foreign investors to set up enterprises only in the existing LDNC industrial estates.” In addition, access to credit continues to be impaired as the problems with acquiring land prevent both domestic and foreign firms from using land as collateral.

Obtaining Land from the LNDC

The LNDC is a development arm of the GOL in terms of its founding Act, with the central goal of industrializing the economy. In pursuing this, the LNDC has used a two tiered
approach: i) attracting FDI for export production primarily by providing factory shells; and, ii) developing the local private sector.

The previous section has highlighted that Lesotho's land legislation is overly restrictive and deters investment in industrial property development from the private sector in general and foreign investors in particular. The LNDC provides a stopgap solution for this problem. The Corporation leases tracts of land from the Government and then sub-leases it to foreign investors for industrial purposes.

In the past decade, the LNDC has developed several industrial estates in the Maseru Industrial Zone, Thetsane, Nyenye and more recently Tikoe. This support entails not only provision of land, but also the provision of necessary road infrastructure as well as utilities to the Industrial Estates. In most cases, the LNDC also builds ready-made factory shells to accommodate investors.

In the past two decades the LNDC has provided dozens of foreign investors with land subleases and factory shells. This support has been instrumental in the development of the large textiles and garment industry in Lesotho which currently employs 40,000 people and exports products to the value of US$300 million to the US.

Factory shells are rented out at a subsidized rate often between US$1-2 per square meter. Consequently, in Lesotho, investors often choose to establish firms in existing LNDC estates because the Corporation charges below market rental. This deters private investment in factory space and means, in effect, that the number of foreign investors in Lesotho is limited by the capacity of the LNDC to build serviced sites. This capacity has been stretched to the limit for several years now and there is a shortage of LNDC serviced land and factory shells for investors. A number of prospective investors were already forced to locate elsewhere (Swaziland, RSA) due to the lack of factory spaces in Lesotho and this trend may continue if a solution to the problem is not obtained. At any given point in time, the LNDC holds a list of around 12 to 15 prospective investors that wish to establish their operations in Lesotho. These investors come from a variety of sectors including food processing, printing of cigarette packaging, vehicle parts assembly and energy saving light bulbs. The majority of them target the Southern African market implying diversification away from the traditional export market to the US and reliance on textiles.

The root cause of this shortage is that Lesotho's land legislation is overly restrictive and deters investment in industrial property development from the private sector in general and foreign sources in particular.

In a recent study, it was calculated that if it were possible to allocate all prospective investors wishing to invest in Lesotho, this would increase economic output (by M390 million or around US$51 million); employment (by almost 4,000 new vacancies) and above all economic growth. It is important to note that unavailability of factory shells seems to be the binding constraint on growth of the manufacturing sector in Lesotho as without available land, investors are not able to establish operations in Lesotho.

In order to support the private sector in constructing factory shells, the LNDC introduced an Own Construction Incentive Scheme (OCIS) which supports private entrepreneurs in building their own factory buildings for rent to investors. Unfortunately, the scheme results were below expectation as the uptake of the Incentive Scheme was low. The scheme was further hampered by the availability of serviced land. The incentive could not pick up because services such as water reticulation and sewage drainage systems are unavailable in some of the areas.
4.2.3 Procedures to Register a Property in Lesotho

Table 5 provides a list of procedures required to register a property in Lesotho prior to the establishment of the new Land Act from the “Registering Property” Indicator of the World Bank’s Doing Business Project.

Table 5: Registering Property in Lesotho according to the Doing Business Indicators (2010)

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Description</th>
<th>Time to complete</th>
<th>Cost to complete</th>
<th>Agency</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>File for land inspection and surveying at the Ministry of Local Government</td>
<td>1 day</td>
<td>no cost</td>
<td>Ministry of Local Government</td>
<td>Parties should request an inspection at the Local Government. Chief Land Surveyor should be present at this request. The client or the lawyers file the lease and the other documents for the sales transaction at the LAA. An inspection is applied for separately from the Surveying and Evaluation Department. The inspection is done for valuation purposes.</td>
</tr>
<tr>
<td>2</td>
<td>Inspection and surveying of the property</td>
<td>14 days</td>
<td>no cost</td>
<td>Municipality</td>
<td>The surveyors of the Municipality will inspect the survey and prepare a report. Parties must provide transportation to the surveyors if they do not have it.</td>
</tr>
<tr>
<td>3</td>
<td>The lawyers conduct a deeds search</td>
<td>1 day</td>
<td>LSL3 + LSL 2,000 (lawyer fees)</td>
<td>Registry of Deeds</td>
<td>Most lawyers will conduct a deeds search to check for encumbrances and indicts on the property as part of their due diligence before drafting the deed of transfer. The title search can be done both at the Registry of Deeds or the Department of Land Surveys and Physical Planning (LSPP) within the Ministry of Local Government that also issues the ministerial consents (see procedure 4). Both agencies have essentially the same records. Because all land in Lesotho is Crown Land, the LSPP will always have a record.</td>
</tr>
<tr>
<td>4</td>
<td>Submit the deed of transfer and application to a lawyer or legal practitioner</td>
<td>5 days</td>
<td>LSL2,500</td>
<td></td>
<td>The Deeds Registry Act 1967 requires that a deed of sale has to be lodged by a lawyer. The deed of sale is the sales contract and the deed of transfer is prepared for the purpose of registration.</td>
</tr>
<tr>
<td>5</td>
<td>Land transfer application filed for government approval at the Ministry of Local Government</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The new Land Act and the Land Administration Authority Act have made significant changes to the procedures for registration of property. One of the key changes in the new Land Act of 2010 is that most types of transactions in the land market no longer require consent from the Minister of Local Government. Some of these functions have been taken over by the Commissioner of Labor. Table 6 provides a list of procedures that still require consent from the authorities. Another important change is that a legal practitioner is no longer required to carry out land registration. The LAA now takes over that function. The LAA is now in the process of moving the deeds registrar to its premises which should further facilitate obtaining and transferring titles. In order to establish whether a deed cannot be claimed by another individual or entity, the LAA undertakes advertisement campaigns. These reformed procedures in land registration are likely to improve efficiency and simplify land registration.

Overall, since the Land Act was only introduced a few months prior to the drafting of the Investor Roadmap, it remains to be seen whether an efficient land market will develop in Lesotho in the next few years.

Table 6: Land transactions that require consent from Commissioner of Land

<table>
<thead>
<tr>
<th>Type of Transaction</th>
<th>Consent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encumbrance of leased land by way of mortgage</td>
<td>Not required</td>
</tr>
<tr>
<td>Provisions for inheritance of a lease in favor of a citizen in the event of death (transmission)</td>
<td>Not required</td>
</tr>
<tr>
<td>Surrender of leased land (cession)</td>
<td>Not required</td>
</tr>
<tr>
<td>Donation of lease or derivative right to a citizen</td>
<td>Not required</td>
</tr>
<tr>
<td>Donation of lease or derivative right to a non-citizen</td>
<td>Consent by CoL</td>
</tr>
<tr>
<td>Transfer of a lease</td>
<td>Consent by CoL</td>
</tr>
<tr>
<td>Subleasing</td>
<td>Consent by CoL</td>
</tr>
<tr>
<td>Creation of servitudes</td>
<td>Consent by CoL</td>
</tr>
</tbody>
</table>
Recommendations

Short-Term Recommendations

R21: Allocate factory space/land to all investors wishing to invest in Lesotho. A key short term priority for the LNDC is to provide all investors wishing to invest in Lesotho an opportunity to do so. As already mentioned, this has the capacity to bring about significant increases in employment and economic growth in Lesotho. In order to achieve this several short term solutions are possible:

All remaining space in Tikoe Industrial Estate should be immediately allocated to investors. Water and Sewage Corporation (WASCO) and Lesotho Power Corporation (LEC) should deliver all necessary utilities to these sites. There are several solutions for the LNDC to finance these operations:

- LNDC can apply for a commercial loan from the Government of Lesotho (GOL) or international banks. Given the LNDC’s strong financial situation this should be feasible provided the investments in infrastructure, including factory construction, would be on “cost-recovery” bases. It is necessary therefore for the LNDC to charge market prices for its industrial building rentals.
- LNDC can enter into joint venture operations with prospective investors and become at least a 20% stakeholder in the investment. This will allow for the investor to lease land outside of the current LNDC owned estates. However, the supply for industrial land from the private sector and the government is limited and might not satisfy the needs of investors.

R22: Undertake an audit of commercial and industrial land availability in Lesotho. The audit should focus primarily but not exclusively on Maseru and Maputsoe metropolitan areas. The consultancy should answer several interrelated questions, including:

- What is the capacity to expand industrial land availability in Maseru and Maputsoe areas? Where is additional land for expansion?
- What are the infrastructure needs at each of these sites?
- What is required to lease any additional land?
- Establish what is the “cost-recovery price” for rent in the existing LNDC estates?

R23: Support private sector participation in constructing and/or managing industrial estates. A recent review of the LNDC conducted by the World Bank (2010) argues that a private partnership could form a part of the solution to the problem of provision of land to investors. The report argues that “the lack of adequate factory shells for foreign investors could be addressed by increasing private sector participation in the construction and management of industrial estates. The first option would be to explore private management of existing LNDC constructed factory shells and the second would be to promote and support private sector investments in industrial site development.”

R24: Clarify roles of the LAA and the Department of Land Surveys and Physical Planning (LSPP) within the Ministry of Local Government. The Land Act of 2010 does not provide any reference to the newly established LAA. The legal instrument that
underpins the creation of the LAA is the Land Administration Authority Act that was passed by parliament the day after the Land Act. There appears to be confusion among the office of the Commissioner of Lands and the LAA with respect to land administration functions in Lesotho. The two entities appear to have overlapping statutory roles in land administration matters due to ill-defined legal instruments. The GOL has recently commissioned Land Equity Consultancy Company to draft a report aimed at reviewing the functions of the Commissioner of Lands with the objective of clarifying the responsibilities of the Commissioner of Lands and the Land Administration Authority’s Director of Lease Services in order to improve the process of lease and approval and issuance. Since the recommendations from the study by Land Equity are also relevant for the Investor Roadmap they are reproduced in Box 1 below.

**Box 1: Recommendations from Land Equity Report**

**Recommendation 1**
Besides the fact that the Commissioner of Lands and the Land Administration Authority are answerable to the Minister of Local Government, the Minister of Local Government is empowered by law to determine the land policy of the GOL. Further, the law rests the responsibility upon the Minister to ensure the effective coordination of the policies for land administration. It is therefore appropriate and essential that the Minister articulates the Government’s policy on the roles and functions of the two bodies. Based on clearly articulated policy, the two relevant laws then must be harmonized through an Act of Parliament.

**Recommendation 2**
Addressing the current policy vacuum with respect to the future status and institutional rearrangement of the office of the Deeds Registry is imperative. The rational policy options on the way forward seem for the Government to decide either to dissolve the Deeds Registry Office and reassign the remaining powers and duties to relevant government agencies; or to affirm the continued existence of the Office to perform the remaining functions, i.e. functions other than those that have been taken over by the LAA. However, the former option would be consistent with comparative best practices

**Recommendation 3**
The Government ought to articulate its policy in respect of the fate of the office of the Chief Surveyor and the Land Surveyors’ Board in respect of responsibilities rested upon them by virtue of the Land Survey Act 1980, which are not directly related to the functions of the Land Administration Authority. Any policy on this should aim to clarify the existing legislative ambiguities. Put differently, the policy must clarify whether all the duties and powers vested in the office of the Chief Surveyor and the Land Surveyor’s Board is taken over by the Land Administration Authority. The policy should also clarify the Government’s position on the fate of the Chief Surveyor’s office.

**Long-Term Recommendations**

R25: Commission a study to explore the possibility of setting up Special Economic Zones (SEZ) in Lesotho. The key factor within these zones should be that a foreign
investor should be able to purchase land directly from the government without restriction on national ownership. This would only be possible within the area of SEZ and would require a special Act of Parliament. Such a regulatory change has been done before in the case of Standard Bank (South Africa). When Lesotho Bank was privatized and Standard Bank (South Africa) bought a 70% share of the privatized Bank, parliament had to enact a special law to hold land in its own right and not as a sub-lessee. This law covers only the Standard Bank and does not apply to any other investors, whether local or foreign. A similar regulatory change would need to be undertaken to allow foreign investors to hold land in SEZ.

Another likely provision within SEZ is that maintenance and utilities should be at least partially on cost-recovery basis in order to ensure self-sustainability of the SEZ. As noted by World Bank (2009a) "in recent years though, the public development costs of modern industrial estates have been reduced internationally through a greater reliance on the private sector (both domestic and foreign) to develop and operate factory shells. For example, industrial zones in Mauritius, Madagascar and Kenya have all performed extremely well."

R26: Enhance long-term provision of land for formal commercial use. This would entail setting up a fully-fledged system that would provide leases of government land to prospective investors. One way of creating this is to set up an inter-Ministerial task force responsible for setting up such a system. This is essential, as cooperation between ministries is the key in this realm. The commission should commence its work with establishing how to unlock the provision of industrial land in Lesotho.

R27: Amend the 2010 Land Act to facilitate investment in Lesotho. In particular the Act should be amended with several specific provisions that enhance investor access to land. The key provision would be to allow foreign investors to lease land without the necessity to have 20% equity share of a Basotho. As mentioned before few Basotho have the necessary financial means or business skills to obtain 20% stakes in foreign companies. Therefore, in reality, even if access to land for foreign investment were relaxed, de facto, few investors will still be able to satisfy all criteria and establish operations in Lesotho without support from the LNDC. As mentioned, this policy may be implemented in a carefully managed way and once, for example, foreign purchases reach a certain percentage of Lesotho’s total land for investment purposes automatic restriction on such purchases will re-apply.

R28: Improve zoning of land in Lesotho. Carry out a reform of the current land planning system which will entail systematically zoning land in Lesotho. This will involve inter alia improvements in the provision of information regarding land, creation of actual land plans, especially in the main cities, and should form a part of the inter-Ministerial task force that deals with enhancing investors access to land in Lesotho.

R29: Set up a National Land Reform Commission/Forum. Similar initiatives have already been undertaken in the past but need to be repeated until land regulation and efficiency of the land market reach a level that is conducive to investment. The key factor within this Commission should be inclusiveness. All relevant stakeholders, including government, the private sector, the general public and especially the democratic opposition should form part of this Land Commission. The key aim of the Commission would be to convince stakeholders that a free and efficient land market is essential for development in Lesotho. Despite a relatively high population density, Lesotho does not suffer from shortages of land for business and industrial purposes. The problem lies with the particularly inefficient land management system which essentially precludes the land
market from development. Therefore, another key aim of the Commission should be to prepare an amendment to the Land Act which would facilitate the implementation of recommendations contained in this section. In particular, the discussion at the forum should deal with relaxing restrictions on foreigners owning land, abolishing customary law, improving zoning etc.

4.3 SITE DEVELOPMENT

4.3.1 Overview of Procedures Required for Site Development

This part of the chapter analyses all steps that an investor is required to undertake in order to build a factory, warehouse or headquarters and then connect them to the necessary utilities. Table 7 provides a list of procedures regarding the above, obtained from the Doing Business Indicators. The table also includes the cost and time spent by an investor to fulfill all these bureaucratic procedures.

Table 7: Procedures, duration and cost of obtaining a building Permit according to the Doing Business Indicators

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Duration (Days)</th>
<th>Cost (Maloti)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hire an environmental specialist to prepare an Environmental Impact Study</td>
<td>1</td>
<td>77,000</td>
</tr>
<tr>
<td>Obtain an Environmental Impact Assessment from the National Environment Secretariat</td>
<td>25</td>
<td>0</td>
</tr>
<tr>
<td>Request and obtain a land lease from the Ministry of Home Affairs</td>
<td>180</td>
<td>1,200</td>
</tr>
<tr>
<td>Request and obtain a construction guarantee from a bank</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>Submit building plans and diagrams and obtain approval</td>
<td>30</td>
<td>7,000</td>
</tr>
<tr>
<td>Request and obtain a building permit from the Maseru City Council</td>
<td>65</td>
<td>3,250</td>
</tr>
<tr>
<td>Receive on-site pre-approval inspection</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Request water connection services 1 day LSL 4,000</td>
<td>1</td>
<td>4,000</td>
</tr>
<tr>
<td>Receive on-site inspection by the water company</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Connect to water services</td>
<td>30</td>
<td>0</td>
</tr>
<tr>
<td>Request inspection by Electricity Corporation</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Connect to electrical power services</td>
<td>270</td>
<td>14,000</td>
</tr>
<tr>
<td>Request and obtain telecommunications connection</td>
<td>180</td>
<td>500</td>
</tr>
</tbody>
</table>
Lesotho’s rank on the “Obtaining Construction Permits” indicator of the Doing Business Project shows that the investment climate needs to be improved. As shown in the Table 8 below, Lesotho ranks 163rd in the world on the ease of obtaining a construction permit. This is a poor rank in comparison to the world average as well as in comparison to other Sub-Saharan African nations.

Table 8: Lesotho’s rank in the “Dealing with Construction Permits” in DBI.

<table>
<thead>
<tr>
<th>Economy</th>
<th>Dealing with Construction Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong SAR, China</td>
<td>1</td>
</tr>
<tr>
<td>Singapore</td>
<td>2</td>
</tr>
<tr>
<td>South Africa</td>
<td>52</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>53</td>
</tr>
<tr>
<td>Mali</td>
<td>87</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>149</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>150</td>
</tr>
<tr>
<td>Lesotho</td>
<td>163</td>
</tr>
<tr>
<td>Poland</td>
<td>164</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>182</td>
</tr>
</tbody>
</table>

In the remainder of this section we analyze the procedural efficiency of obtaining a building permit from the Maseru City Council (MCC), receiving an Environmental Clearance and connecting to water and electricity services.

4.3.2 Obtaining a Construction Permit

Construction permits are obtained from city councils. This section analyzes the procedures required to obtain building permits from the MCC as it is a council in the biggest urban center in the country and one that grants the largest amount of building permits.

\[12\] In the research phase for the Investor Roadmap, it was not possible to meet with representatives of MCC, hence this section is primarily based on literature review.
According to the Urban Governance Act of 1983 (Part IV, Section 37) the MCC has the following powers and duties:

i. To control, manage and administer the municipality and generally assist in the maintenance of good order and governance within the area;

ii. Generally promote the public health, welfare and convenience, and the development, sanitation and amenities of the municipality;

iii. Act as a rating authority and undertake all the duties with respect to rating as may be imposed on any local authority under this Act, or under the Valuation and Rating Act of 1980 or under any other law;

iv. Undertake the duties and responsibilities as land authority in respect of all land within the municipality under Section 24 (1) of the Land Act 1979 when called upon so to do by the Minister; undertake the functions of the planning authority for the purposes of Section 11 (4) of the Town and Country Planning Act 1980; and exercise any of the powers of consultation conferred on the public by the Act, including the lodging of objections under Section 7 (1) (c) of the Town and Country Planning Act 1980.

A key provision of the Town and Country Planning Act 1980 is to grant authority to the MCC and other councils to distribute building permits. In order to obtain such a permit an investor needs to submit building plans and diagrams to the MCC and obtain approval for such plans. Once an approval is made an investor needs to request a building permit from the MCC. The MCC will provide such a permit only after an on-site pre-approval inspection is carried out. The whole process is quite lengthy and expensive, since in different stages of the process an investor needs to pay up to M10,000 (US$1,300). Obtaining a construction permit is likely to take 3-4 months but in some cases might take much longer.

**Recommendations**

**R30: Improve the speed of obtaining a construction permit.** The time that an investor currently spends obtaining a building permit is around 3 months. This time means lost income for investors as construction and commencement of business are delayed. MCC should aim at restructuring business processes in order to shorten the time it takes to obtain a building permit.

**R31: Develop information brochures and websites for the site development process by the MCC.** As noted by Swaziland’s Investor Roadmap, Mbabane City Council already developed brochures and a website back in 2004. This can serve as an example for Lesotho local authorities to develop and publish information. Mbabane City Council has a good website (www.mbabane.org.sz) where there are comprehensive guidelines regarding the building permit application process. There is even a Frequently Asked Questions section, which includes answers to many interesting and relevant questions.

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13 As previously mentioned Lesotho ranks 168th in the world on “Dealing with Construction Permits” which assess the speed and costs to obtain such a permit.
4.3.3 Environmental Impact Assessment

One of the key administrative procedures which an investor needs to undertake in order to establish a business in Lesotho is to acquire an Environment Impact Assessment (EIA) License. The Department of Environment (DOE) formerly known as the National Environment Secretariat at the Ministry of Tourism, Environment and Culture, is government’s governing body responsible for the awarding of EIA licenses. The application for EIA licenses in Lesotho is based upon the requirements of the Environment Act of 2008.

In terms of EIA administration, the DOE plays a proactive role in steering the EIA process. Its functions according to the South African Institute of Impact Assessment (2009) include the following:

- Review and comment on the project brief and decide whether an EIA License can be issued on the strength of the project brief, or whether further information is required before a decision can be taken, or whether the study should proceed to an EIA;
- Write an acknowledgement of acceptance of receipt of the EIA;
- Request additional information to supplement that found in the EIA;
- Consult with the Line Ministries relevant to the project and decide whether to approve the project and issue an EIA License or not;
- Attach terms and conditions to the EIA License and write a record of decision;
- Conduct environmental monitoring in conjunction with the relevant Line Ministry;
- Carry out environmental audits of project implementation and compliance.
- Invite comments from the public;
- Determine the need for a public hearing;

The DOE provides detailed EIA requirements and guidelines on its website. In order to assess the efficiency of procedures and provide some recommendations below we provide a description of procedures and requirements of the EIA in Lesotho.

Before proceeding, it is crucial to note that the concept of sustainable development recognizes that all development intrinsically involves “trade-offs” between potentially conflicting goals, such as between economic growth and conservation, between industrial development and environmental concerns. The key of sustainable development is therefore to strike the right balance. The Constitution of Lesotho acknowledges these trade-offs and recognizes the importance of protecting the environment. It states that “Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavor to assure to all its citizens a sound and safe environment adequate for their health and well-being”.

An EIA is required for the majority of new projects taking place in Lesotho. Table A1 in the Appendix provides a list of the types of projects that require an EIA. It is important to add that the EIA policy applies to both private and public projects.

The process of EIA is depicted in Figure 6. It shows that the process is fairly complicated and involves several stages.

14 www.environment.gov.ls
Figure 6: EIA Procedures in Lesotho

Source: SAIEA (2009)
Due to the complexity of the process of obtaining an EIA the DOE advises investors to seek an EIA early in the investment process. The process can take up to a year. It is advised that the first contact with the DOE be made at the concept stage of an investment.

In addition to the many stages in the process, the actual information required in the EIA is plentiful. Table A2 in the Appendix overviews the required information to be included in an EIA. By looking at the number of individual items required by the EIA – this number is 65 – one can conclude that the information requirements may be tedious to investors.

In some instances, investors have been forced to move to other countries as they have not satisfied the various EIA procedures and requirements. In addition, for more complicated and sophisticated projects the Department requires Environment Management Plans. An additional duty of the DOE is to carry out inspection and verify compliance with the plans.

A frequent problem in obtaining an EIA is appropriate connection to sewage facilities and solid waste management. The Government has created the National Committee on Waste Management and undertook a reform of WASCO to rectify the situation.

The process of obtaining an EIA involves procuring a consultant to prepare the EIA report. However, there are no regulations as to what qualifications a consultant should have in order to be able to provide such services although the DOE provides EIA guidelines. The charges for EIA Consultancy Reports are set by the consultants themselves and vary a great deal depending on the nature of the project, the experience of the consultants etc. Lesotho allows for consultants from other countries to provide services in Lesotho given that there is currently only a limited pool of consultants that provide such services in Lesotho.

According to the Environment Act, the DOE is obliged to complete an application for an EIA within 30 days after full documentation is submitted. In addition, the DOE carries out inspections to verify whether the Environmental Management Plans have been carried out appropriately.

The DOE undertakes all these tasks despite being critically short of staff. Currently, it has only two staff members that are solely responsible for the EIA process. This is a critical bottleneck in the swift and efficient awarding of EIAs to investors.

**Recommendations**

**R32: Simplify procedures for obtaining EIAs.** Currently the procedures to obtain an EIA are very detailed, tedious and time-consuming. As noted by the DOE, the process for some difficult projects might take up to a year. There are several ways to ease the procedural burdens in obtaining an EIA. For example:

- Decrease the number of sectors and industries that require a full EIA. This can be achieved by review of all sectors that require EIAs and reducing EIA requirements for the least polluting sectors.
- Simplify the information requirements that need to be included in an EIA.

**R33: Enhance the capacity of the DOE to carry out EIAs.** With only two people on full time staff, the EIA Secretariat is stretched to the limit in undertaking its statutory...
function. Therefore there is an immediate need to increase the number of employees at the department.

### 4.3.4 Obtaining a Water Connection

The WASCO is mandated to provide potable water and to collect and treat wastewater in all the designated urban centers of Lesotho. The company has around 47,000 water connections classified into: domestic, non-domestic and stand pipes. WASCO also provides sewer connections and emptying services for conservancy tanks and VIP latrines. The Company has 2,141 sewer connections.

WASCO also serves many industries and commercial premises, particularly in Maseru, which use about 40% of the water supplied by the Corporation. In total, 60% of the water produced is used in industries and commerce. The water supply sector in Lesotho has recently undergone an institutional reform. The Water and Sewage Authority (WASA) was renamed WASCO and an overseeing authority was created. WASCO continues to be fully government owned.

According to WASCO’s Annual Report, the company is structured as an autonomous utility and is responsible for grid services to the urban areas. With some 440 employees, it manages the entire urban water cycle, including providing water and sewerage services to newly urbanizing areas.

In the past decades, the population of Maseru - WASCO’s largest consumer base - has expanded dramatically. Infrastructure improvements in water and sewage have however failed to keep up with the requirements. In addition, WASCO continues to operate below cost-recovery tariffs. These tariffs are key obstacles to improving WASCO’s performance. WASCO and the Department of Rural Water Supply are unable to finance all required investments in water abstraction, treatment and distribution as well as wastewater collection and treatment. The multimillion dollar Metolong Dam, due to be operational in the near future, is expected to significantly improve the availability of treated water in Maseru but the infrastructure constraints are likely to remain.

The problem of below cost-recovery tariffs is even more significant for sewer infrastructure. Sewer discharge is priced at a tariff that is even more below the recovery price than treated water. Hence, every connection to the sewer grid that WASCO undertakes is at a loss to the company. As a result, the availability of appropriate sanitation facilities is below potential for both private citizens and investors alike. This poses a significant problem. Several of the textile companies in Lesotho do not have connections to the sewer system and are forced to discharge their sewage into a nearby river.

### 4.3.5 Procedure to Obtain a Water Connection

WASCO has a website where most of their application forms are available and which contains considerable information including the tariff structure. The applicant can also get an application form at the reception desk of any of the corporation’s offices. WASCO is forced to reject a number of residential applicants because of the distance from existing services and also rejects some non-residential users for the same reason.
According to WASCO the procedures to obtain a water connection are as follows:

Step 1
a) Visit any of the customer care offices of WASCO in Lesotho and inform them about your wish to make a new water connection.

b) The staff at the customer care offices will establish whether the area you stay in is reticulated by asking you some questions, for example, whether your immediate neighbors have water connections.

Step 2
a) If your site is in a reticulated area, you will have to pay M50.00 (US$6.5) in order for a survey to be done. The survey is done to establish the distance of your site from the main water pipe. The maximum distance allowed to draw water from the main water pipe is 150m.

b) If the survey indicates that your site is within 150m, a quotation will be prepared within two weeks and you will be informed to fetch it when it is ready.

Step 3
a) You will be expected to pay the quoted amount in order for a connection to be done. The customer has two options available to settle the quoted amount:

- Pay the whole amount in full and have a water connection within a month
- Or pay a 50% deposit and settle the remaining amount in installments. The customer can choose to pay the amount in installments for a period ranging from one to twelve months. (A water connection is only installed once the deposit\(^{15}\) has been paid in full). The customer also has to bring along a certified copy of his/her passport and a letter requesting to pay the balance in installments

b) A refundable amount of M75.00 (around US$10) is paid in addition to the quoted amount. With this amount the customer is allocated an account number.

Recommendations

R34: Establish a “Strategic Committee” comprised of WASCO, the Ministry of Natural Resources, LNDC and other relevant stakeholders to devise a strategy to improve WASCO’s capacity for provision of sewage facilities. This is particularly urgent at the current industrial estates and should arguably be set as the priority for the committee. The strategy should entail the establishment of concrete organizational structures and estimated financial costs in the provision of sewage facilities.\(^{16}\)

R35: Encourage development of water recycling facilities. Lesotho should encourage investors who wish to utilize recycled water resources by sharing recycling facilities’ construction costs – particularly in areas where they would serve the greatest number of operations. Clearly this is one of the priorities at the existing

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\(^{15}\) You are issued with a quote which takes into consideration the distance etc. Once you get the quote, you pay 50% of that quote upon which connection will be made

\(^{16}\) This committee should not be confused with the solid waste committee already operational.
industrial estates such as Thetsane, Nene. Textile sector entrepreneurs note that raw water is not available at these estates and availability of such water would not only lower the cost of production at the estates but also make companies at these estates more environmentally friendly.

4.3.6 Obtaining an Electricity Connection

Lesotho Electricity Act of 1969 established the Lesotho Electricity Corporation (LEC) which until 2007 operated as a government parastatal. In 2007, a significant change in organizational structure occurred. The Lesotho Electricity and Water Authority (LEWA) was established and there was a change in the legal status of Lesotho Electricity Corporation from that of Corporation governed under the Electricity Act 7 of 1969 to being a Proprietary Limited Company, governed under the Companies Act of 2011. The Government of Lesotho remains the sole shareholder of the Lesotho Electricity Company. The LEWA is a government entity that oversees both the LEC and WASCO.

The LEC does not produce electricity. Almost 90% of electricity consumption in Lesotho is produced by the Muela at Kate Dam. The remainder is bought from Eskom, the South African electricity company.

Table 9 provides a description of procedures to obtain electricity connection in Lesotho as presented by the Doing Business Indicators. It shows that procedures to obtain a connection are complex, time consuming and expensive. In fact, it take 140 days, 5 procedures and costs 2,664% of Lesotho’s income per capita to obtain an electricity connection. Given such high costs it is not surprising that according to the World Development indicators only 5% of Lesotho’s population have access to electricity.

Investors that have been interviewed for the purpose of the Investor Roadmap have confirmed that obtaining an electricity connection is expensive and time-consuming.

Table 9: Application for electricity in Lesotho

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Days</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply for the internal inspection at Lesotho Electricity Company (LEC) and await and receive inspection and obtain certificate</td>
<td>11</td>
<td>0</td>
</tr>
</tbody>
</table>

A site inspection of the internal wiring is done before the application. The electrician of the customer applies for testing of the internal wiring in person at LEC after the wiring has been completed. After requesting the internal inspection, the customer/electrician has to wait for the inspection. LEC then goes with the electrician to the wired house to test whether the electrician has done the wiring according to LEC’s standards. If the wiring passes the test, LEC gives the electrician a certificate. The electrician gives the certificate to the customer.
Submit application at Lesotho Electricity Company (LEC), pay refundable security deposit and await and accept estimate

After completing the application, the customer has to wait for the external inspection and after the external inspection for the estimate. A warehouse would fall into the industrial category - low voltage. For this category, LEC introduced a refundable security deposit of M26,000 flat fee (US$3,390). The customer first has to pay the security deposit before receiving a quotation for the connection. Once the customer has accepted the quotation, he/she signs the contract and pays for the quotation. The customer pays for the quotation at the front desk of the utility and obtains a final quote. If the customer decides to pay the quoted amount, he/she gets an invoice from the clerk and pays the final quoted amount at the cash office.

The utility's subcontractor carries out external connection works and meter installation

Once the client has paid, the utility has to appoint a contractor from its existing list of registered contractors. Once the contractor has been awarded the contract, the contractors buy the relevant material. Material used to be provided by the utility, but lately contractors buy the material. The meter is also installed by the electrical contractor. The meter is installed at the same time as the connection.

Lesotho Electricity Company (LEC) inspects the works and commissions the meter

Upon completion of the construction works (external works), the customer opens an account at the utility. When the electrical contractor has finished the external connection works as per LEC standards they immediately report to LEC that the work is done. LEC then goes to the warehouse to inspect the works and to commission the meter (this is a sort of registration of the meter) and hand out a form to the customer. LEC goes within 24hrs after the electrical contractor has reported that he is done. The commissioning takes less than an hour

The customer opens an account at Lesotho Electricity Company (LEC) and electricity is supplied.

Afterwards, the customer can go to LEC immediately to open an account. The customer can go to the LEC customer service office with the form to open an account and to activate the meter in the LEC system and he/she can purchase electricity units at any service point thereafter. The meter usually comes with 5 units from the manufacturers, which the customer will use immediately after the private contractor has completed the external connection.
**Recommendations**

**R36: Reduce delay in obtaining an electricity connection.** Investors note that connections to electricity are plagued by significant delays especially in situations where an investor is far away from the existing electricity grid. LEC should attempt to speed up the process by streamlining procedures and decreasing bureaucratic requirements.

**R37: Improve the availability of the Annual Report on the LEC website.** The most recent Annual Report available on the LEC website is from 2004. LEC should improve the availability of Annual Reports to provide more transparency in its operations.
5. OPERATING

5.1 INTRODUCTION

Once a business entity is established in Lesotho, the enterprise must be registered for the purposes of paying taxes. Throughout its existence, the business enterprise is expected to pay various taxes and for this reason the enterprise must be prepared to comply with the requirements of the tax laws and regulations. If the enterprise is engaged in manufacturing for export from imported raw materials, it will pay duties and taxes on imports and exports, and must comply with import and export procedures. The business and personnel of most enterprises will need foreign exchange, for a number of reasons, e.g. to procure inputs used in production. Dealing in foreign currency is controlled by the foreign exchange laws. This chapter concerns the various taxes that the enterprise or its personnel will encounter, which are:

- Income Tax and Value Added Tax - collected by Lesotho Revenue Authority
- Customs and Excise duties – collected by Lesotho Revenue Authority
- Miscellaneous taxes, fees, charges, levies - collected by various authorities

The chapter further presents the exchange control restrictions and allowances that are prescribed by the Central Bank and administered through authorized dealers.

5.2 OVERVIEW

The Lesotho Revenue Authority (LRA) is an autonomous institution established through the Lesotho Revenue Authority Act No 14 of 2001. This institution has been in operation since 2003. The LRA is charged with the responsibility of tax administration and the enforcement of laws pertaining to national revenue collection. This body is also responsible for the administration of tariff concessions or rebates and for control of eligible goods. Lesotho has signed a number of Double Taxation Agreements (DTA) with Germany, the Republic of South Africa, Mauritius and the United Kingdom. Other DTAs are still being negotiated with other countries.

5.3 TAX REGISTRATION

According to the Lesotho tax laws, in particular the Income Tax Act (1993) as amended, any individual that earns income or runs a business entity within Lesotho is required to register for tax. Tax registration is also a requirement for acquiring other statutory instruments such as trade licenses, manufacturing licenses etc. A specific TIN, which is an identification number that is used in both customs and VAT, is assigned to an individual or company through tax registration. In order to be assigned a TIN, the registrant has to conform to and meet all necessary requirements for registration. The requirements for registration are as follows:

- Application form
- Memorandum and Articles of Association
- Certificate of Incorporation
Provisions of the new Companies Act amended the tax registration process, by providing for the immediate and automatic registration of companies for tax on their incorporation as business entities. This process of registration is done through the One Stop Business Facilitation Centre (OSBFC). However, the Lesotho tax laws do not make any reference to activities taking place at the OSBFC. The time frame for tax registration has been reduced by the use of a single number, TIN. This number along with a single form and a single office are used for both VAT and income tax purposes.

Business enterprises are assigned a TIN number immediately upon registration, and a certificate of registration is also generally issued on the same day. Tax registration is done for free in order to encourage compliance with tax laws.

5.4 INCOME TAX

Income Tax in Lesotho is governed by the Income Tax law of 1993 and its regulations as amended from time to time. Lesotho applies the source basis of taxation i.e. tax is charged on income derived or sourced from operations in Lesotho. However, residents are also subject to tax on their income accrued from foreign sources.

Taxes levied under the Income Tax Act are as follows:

- Corporate Income Tax
- Advance Corporation Tax (ACT)
- Individual (Personal) Income Tax
- PAYE
- Withholding Tax (WHT)
- Fringe Benefit Tax (FBT)

### 5.4.1 Corporate Income Tax

Corporate Income Tax refers to the tax levied on resident companies. A company or other body of persons is regarded as resident in Lesotho if it is incorporated or formed under the laws of Lesotho, if it has its management and control in Lesotho or undertakes the majority of its operations in Lesotho. The corporate income tax rate applies to all income of a Lesotho branch of a non-resident company. A preferential zero-rate is applied to income from manufacturing companies that export goods outside SACU. Lesotho operates a four-tier corporate income tax rate system. Table 10 below provides a summary of the corporate tax rates in Lesotho.

#### Table 10: Summary of the Corporate Tax Rates

<table>
<thead>
<tr>
<th>Tier</th>
<th>Type of income</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>Manufacturing income derived from the exportation of manufactured goods outside SACU</td>
<td>0%</td>
</tr>
<tr>
<td>Tier 2</td>
<td>Manufacturing income derived from a manufacturing activity or enterprise which promotes industrial, scientific, educational or other development within Lesotho</td>
<td>10%</td>
</tr>
<tr>
<td>Tier 3</td>
<td>Income from farming operations</td>
<td>10%</td>
</tr>
<tr>
<td>Tier 4</td>
<td>Other Income</td>
<td>25%</td>
</tr>
</tbody>
</table>

Lesotho does not have provision for taxing a holding company or its subsidiaries/branches on a group basis. Each company in a group of companies incorporated as per the company registration laws in Lesotho is treated as an individual taxpayer under Lesotho tax legislation. Therefore any income arising from activities taking place in Lesotho will be taxable. Branches and subsidiaries in Lesotho are subject to income tax on the chargeable income at the corporate tax rate of 25%.

**Advance Corporation Tax**

According to the Income Tax Act of 1993, as amended, a resident company which pays a dividend is liable for advance payments of income tax. This income tax is referred to as Advance Corporation Tax. This tax is not imposed on the company itself but on the shareholders receiving such dividends.
**Annual Assessments of Corporate Income Tax and Remittances**

The tax year ends 31 March; in some instances, permission may be granted to have a different year-end. An income tax return must be filed for each year of income by the last day of the third month following the end of that year. In order to support the return, a taxpayer must file financial statements.

Taxpayers may choose an accounting system either on a cash or accrual basis. However, if the taxpayer’s income exceeds M150,000, accounts must be prepared on an accrual basis.

The Lesotho Income Tax Act makes provision for the payment of income tax in installments. Three installments are payable and due on 30 September, 31 December and 31 March of the year of assessment. The flexible payment systems ease the burden on companies by reducing the impact on cash flow.

### 5.4.2 Individual or Personal Income Tax

Individual or personal income tax is levied on persons or individuals considered resident for tax purposes, if they are present and reside in Lesotho for more than 182 days in any consecutive 12-month period, or have a normal place of residence in Lesotho and are present in Lesotho for any part of the year of assessment. Each individual in a family with an income is assessed separately. Individual or personal income tax rates vary between 22% and 35%.

The source of income for individual tax purposes is remuneration for services rendered or to be rendered in Lesotho. This remuneration is taxable irrespective of where or by whom it is paid. However, remuneration paid to employees who, for temporary periods, are transferred from other countries to Lesotho may be exempt under the terms of a double tax treaty described above. Employment income excludes fringe benefits, in kind as well as cash payments. Taxable income is computed as gross income less any allowable deductions. In Lesotho, capital gains are not subject to personal income tax. There are allowable deductions also applicable in the case of individual or personal income tax.

The personal income tax year is the same as that for companies. Income tax returns must be filed for each year of income by the last day of March. Payment for tax by employees is in accordance with the PAYE system.

Table 11 below shows the tax rates applicable to personal income tax.

#### Table 11: Income Tax Rates for resident individuals

<table>
<thead>
<tr>
<th>Taxable income as exceeds (M)</th>
<th>Taxable income does not exceed (M)</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>26 160</td>
<td>48 744</td>
<td>22%</td>
</tr>
<tr>
<td>48 744</td>
<td></td>
<td>35%</td>
</tr>
</tbody>
</table>

---

17 At present, people whose annual incomes are between M22,788 (US$2,970) and M40,368 (US$5,262) pay at the rate of 22%. The range will be increased to M26,160 (US$3,410) and M48,744 (US$6,354). These rates are effective 1st April 2012.
Pay as you Earn (PAYE)

PAYE is a tax charged by an employer from an employee’s earnings/remuneration, then remitted to the revenue authority. Under this system, the employers withhold tax in compliance with prescribed regulations. Therefore, payment of personal/individual income tax by employees is almost entirely in accordance with the PAYE system. A resident individual (other than a resident minor) is allowed a non-refundable personal credit of M 5,000 against the individual’s liability for income tax. As a general rule, the personal credit is only available to residents of Lesotho. However, it will also be available to non-residents who are employed full-time or engaged full-time in a business in Lesotho.

5.5 WITHHOLDING TAXES (WHT)

A withholding tax is a tax on income imposed at the source. In this instance, a third party (normally referred to as the withholding agent) is charged with the responsibility of deducting the tax from the specified types of payments and remitting the amount to the revenue authority. The payer (withholding agent) makes payment to the payee, less the withholding tax deduction, and remits such to the revenue authority. As a general rule, withholding taxes are levied on supply of services and are applicable to both resident and non-resident suppliers. This withholding tax is provided for in sections 107, 108 and 109 of the Income Tax Act 1993. Table 12 below shows the withholding tax rates.

A withholding tax may be final or non-final. If final, the tax deducted or withheld becomes the final liability of the taxpayer. If non-final, the amount withheld will be credited against the taxpayer’s final liability and adjusted accordingly.

The following are the different types of withholding taxes:

Tax on dividends to non-resident shareholders
Dividends paid to a non-resident shareholder are subject to 25% withholding tax. Dividends distributed by a manufacturing company to local and foreign shareholders are not subject to withholding tax.

Tax paid on Interest
Interest paid by a resident to a non-resident is subject to withholding tax at the rate of 25%, and this tax is a final tax. Interest paid by a resident, other than an individual, to a resident is subject to a withholding tax of 10%. This will be a final tax if paid to a resident individual or an exempt organization. In general, interest payments on loans are deductible provided the loans are used in the production of income. Interest received by a resident company is included in taxable income.

Tax on Natural Resource payments
Natural resource payments are defined in the Act as payments made for minerals or a living or non-living resource of the land, and are subject to withholding tax at 25%. This tax considers the quantity or value of minerals or living or non-living resources taken from the land.
**Tax on Royalties and Fees**

Royalties are subject to withholding tax. The rate applicable if paid to a non-resident is 25%. All non-resident withholding tax is a final tax, unless the non-resident files a return of income, in which case the non-resident individual may opt to be assessed according to the normal tax rates. The rate is 15% in respect to Lesotho source royalties paid by manufacturing concerns that are subject to a concessional rate of tax.

Contractual fees paid to a resident contractor are subject to 10% withholding tax. This will be credited against their final tax assessment.

Management fees paid to non-residents will be subject to withholding tax of 25%. This is a final tax. If the management fees or administrative fees are paid by a manufacturing concern that is subject to the concessional rate, the withholding tax rate applied is 15%. Payments to non-residents with regard to service contracts will be subject to withholding tax at the rate of 10%. This is a final tax unless a non-resident elects to be taxed by assessment. If a non-resident elects to be taxed by assessment they will be subject to tax at the rate of 40%.

**Table 12: Summary of Withholding Tax Rates**

<table>
<thead>
<tr>
<th>Withholding tax rates: Non residents</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends, interest, royalties</td>
<td>25%</td>
</tr>
<tr>
<td>Natural resource payments, trustee’s fees</td>
<td>25%</td>
</tr>
<tr>
<td>Management charges</td>
<td>10%</td>
</tr>
<tr>
<td>Other fees</td>
<td>10%</td>
</tr>
</tbody>
</table>

The rates of withholding tax explained above are often influenced by DTAs that Lesotho has signed with a number of countries. Table 13 below shows the maximum withholding tax rates applied on instances where a double taxation agreement is in place.

**Table 13: Withholding Tax Rates where DTA exists (Percent)**

<table>
<thead>
<tr>
<th>Country of Residence for the recipient</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
<th>Management Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>15</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Mauritius(^{18})</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>-</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

\(^{18}\) The Double Taxation Agreement between Lesotho and Mauritius does not include Management Charges
5.6 **FRINGE BENEFIT TAX (FBT)**

The Fringe Benefit Tax is a tax imposed by the LRA on the employer based on the fringe benefit taxable amount that the employer provides to the employee. Issues pertaining to fringe benefits are provided for in Chapter 3 of the Income Act 1993. The applicable tax rate on fringe benefits is 40%. It is a requirement of the law that taxpayers file a return at the end of the financial year. According to the Act, fringe benefits include:

- car
- housing,
- utilities,
- domestic assistance,
- meal or refreshment,
- medical,
- loan,
- debt waiver,
- excessive superannuation contributions (pension)

The fringe benefit taxable amount is calculated in a specific way for each of the benefits alluded to above. There are, however, some fringe benefits that are exempt from this tax. These include:

- A meal or refreshment provided in a canteen, cafeteria, or dining room operated by or on behalf of the employer solely for the benefit of employees;
- A medical fringe benefit available to all non-casual employees on equal terms is an exempt fringe benefit;
- A fringe benefit whose value is so small as to make accounting for it unreasonable or administratively impracticable.

5.7 **EXEMPTIONS AND DEDUCTIONS FROM INCOME TAX**

5.7.1 Exemptions from Income Tax

The following activities are exempted from income tax:

- Public international organizations, diplomatic institutions and embassies
- **War pensions**: War pensions and gratuities paid by the Lesotho Government in respect of persons who retired before the date of enactment of this order are exempt from income tax;
- **Interest**: The first M500 (US$65) of interest derived from one savings account by a resident individual who is not a minor is exempt from income tax;
- **Farming**: Income derived by a resident individual from farming carried out in Lesotho. Farming includes primary farming operations, whether pastoral or agricultural;
• **Maintenance and Child Support**: Payments towards maintenance or child support.

### 5.7.2 Deductions Permitted

Deductions are allowed for an expense or loss incurred in the production of income subject to tax. A deduction is allowed for the depreciation of a taxpayer’s depreciable assets. Depreciable assets are defined as “tangible movable property or an industrial building which is likely to lose value because of wear and tear or obsolescence”. A taxpayer may choose to use the pooling system or the single asset method. Depreciation is calculated using only the reducing balance method. The following deductions are permitted in income tax assessment.

• **Interest Deduction**: A taxpayer is entitled to a deduction of interest incurred on a loan the taxpayer used in the production of income subject to tax.

• **Approved Training Expenditure**: A taxpayer carrying on business in Lesotho is allowed to deduct 125% of expenditure incurred for training or tertiary education of a citizen of Lesotho who is employed by the taxpayer in a business the income from which is subject to tax in Lesotho.

• **Repairs, Spare Parts, and Minor Capital Equipment**: A deduction is allowed for expenditure (other than expenditure of a capital nature) incurred on repairs to assets used in the production of income subject to tax.

• **Losses on Disposal of Business Assets**: A loss arising from the disposal of a business asset, whether or not the asset was on capital or revenue account, is allowed as a deduction.

### 5.8 VALUE ADDED TAX (VAT)

VAT was introduced in Lesotho on 1 July 2003 replacing the General Sales Tax (GST) and is administered by the LRA. VAT is levied on all imported and locally produced goods and services with a few exceptions. All business entities whose turnover exceeds M 500,000 per annum are required by Law to register for VAT. However, companies with a turnover lower than M500,000 (US$65,177) may voluntarily register for VAT. This threshold will be increased from M 500,000 to M850,000 (US$110,802). There are four rates of VAT as clearly shown in Table 14 below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate levied on most goods and services</td>
<td>14%</td>
</tr>
<tr>
<td>VAT on all alcoholic beverages and cigarettes</td>
<td>15%</td>
</tr>
<tr>
<td>VAT on water, electricity and telephone services</td>
<td>5%</td>
</tr>
<tr>
<td>VAT applied on certain goods (e.g. maize and pulses)</td>
<td>0%</td>
</tr>
</tbody>
</table>
The export of goods and services (except exports of diamonds which attracts 14% VAT rate) does not attract VAT. VAT is levied on all imports based on the c.i.f. price, plus duties and storage fees on board. However, indications are that VAT is not charged on storage fees at destination. As already indicated, some goods and services are exempted from VAT. These include:

- Education services;
- Financial services;
- Passenger transport services;
- Public Postal services;
- Supply of undeveloped land;
- Leasing or letting of immovable property (for manufacturing purposes);
- Water supply;
- Supplies to diplomats and diplomatic missions upon identification;
- Sales or transfer of second-hand motor vehicles already registered in Lesotho;
- Services of doctors and dentists;
- Amateur sporting activities;
- Cultural activities;
- Supply of Charity arrangements; and
- Sale/lease of Residential property.

Lesotho and South African revenue authorities have entered into an agreement which intends to avert evasion of paying import VAT and thus ensure compliance. In this instance, import VAT on goods and services is levied on the South African side of the border and is remitted into the LRA coffers quarterly by South African Revenue Service (SARS). Importers are mandated to declare and pay VAT on imports of goods and services valued at M150 (US$20). This exemption threshold has been increased to M250 (US$33) as of 1 April 2012. In order to ease the tax burden, Lesotho has introduced an Import VAT Credit Facility (IVCF). IVCF is a credit facility whereby goods can be imported without having to pay VAT upfront at the port of entry. Payments for IVCF are expected on or before the 20th day of the month following the month in which goods were imported on credit.

In order to register for VAT the following documentation is required:

- Completed application forms;
- certified copies of the Memorandum of Association;
- the Articles of Association, the Certificate of Incorporation, and the Manufacturing License;
- certified copies of each directors’ identification documents/ passport;
- local bank details.
5.9 MISCELLANEOUS TAXES, LEVIES, CHARGES AND FEES

In addition to income tax and customs duties and taxes, there are a number of other taxes, levies and fees that an investor may have to pay. For the sake of completeness, all these miscellaneous taxes, levies and fees are briefly described here. It is to be noted that these charges are raised for various purposes;

**Sand and Stone Levy**

This levy is imposed on any sand or stone removed from Lesotho. A person undertaking the removal pays the levy. The levy is also charged on the use of sand and stone for commercial purposes. The rate of the levy is M0,25 (US$0.03) per load not exceeding 5 tons and M0,50 (US$0.06) per load exceeding 5 tons.

**Stamp Duty**

Stamp duty is imposed in Lesotho in accordance with the Stamp Duty Order No 20 of 1972, as amended. Lesotho government, Lesotho Savings Bank and other parastatals organizations are exempted from paying stamp duty. The rates of stamp duty vary and the rate will depend on the instrument or document presented for stamping and its value.

**Transfer Duty**

As already indicated in Chapter 3, there are no freehold properties in Lesotho. Property rights are based on a leasehold system. The transfer duty is a duty levied on the transfer of immovable property including lease contracts for at least ten years and any rights on minerals. The Registrar of Companies assesses duties. On average, transfer duties are 3% on the first M10,000 (US$1,303) of the value of the property and 4% on the excess value.

**Gambling Levy**

Gambling levy is based on a percentage of the gross gaming room takings of the licensee (casino) less any amount paid out as winnings to casino patrons and is payable on an annual basis. The levy is 15% of the gross profits. Gambling levy is based on the Casino Act, No 26 of 1969, legal order No 42, and casino order No 4 of 1989. A casino license holder is also liable to pay the normal tax.

**Fuel Levy**

In line with the Fuel and Service Control Act No 23 of 1983 and legal notice No 63 of 1988, Lesotho levies a fuel levy on petroleum products except paraffin. The fuel levy is charged at 43 cents per liter for petrol and 37 cents per liter for diesel, and it is included in the price of fuel. In addition, there is an equalization fund levy of 3 cents per liter.

**Ground Rent**

Ground rent is a fee for use right to occupy land. This rent is charged according to the area of land and location. Residential land is charged M0,05 - 0,10 (US$0.06-0.12) per annum per square meter while commercial land is charged M 0,25 – 0,30 US$0.03-0.04) per annum per square meter.

**Property Rates**

The property rates are provided for in the Valuation and Rating Act of 1980, Urban Government Act 1993 and legal Notice No 10 of 1997. The rates are taxes on urban
land and improvements based on value of property. Improvements are valued on the basis of depreciated replacement value. Rates of 0.25% on residential property, 2% on commercial property and 2.75% on industrial property are levied on property.

**Toll gate fee**

This fee is levied on vehicles leaving Lesotho and is applied each time the vehicle crosses the border. The rate is M2 (US$0.26) and M6 (US$0.78) for cars and trucks respectively.

**Diamond sales tax**

This sales tax is levied on the value of every diamond found in Lesotho and exported. The diamond sales tax is provided for in the Precious Stones Order No 24 of 1970.

### 5.10 ISSUANCE OF A TAX CLEARANCE CERTIFICATE

Before certain transactions can be authorized, a tax clearance certificate must be presented. A tax clearance certificate is a document issued by the revenue authority to a taxpayer who is compliant with tax laws or obligations. The objective of the tax certificate is to account for all those taxpayers with an income and to enforce the collection of all outstanding taxes.

A tax clearance certificate is therefore issued to certify that there is no tax outstanding against the person (natural or corporate) concerned. In this regard, the certificate is issued only under the following conditions:

- The person concerned has furnished all the required returns of income in respect of each year of assessment in question;
- Where applicable, all provisional tax payments in respect of any year of assessment have been fully paid;
- Any dully assessed tax in respect of any year of assessment has been fully paid or a commitment to make payment agreed to with the revenue authority;
- All remittances as regards PAYE and other withholding taxes have been made; and
- In the case of employees deriving income solely from employment, the production of an employee’s tax certificate in respect of the relevant year is prima facie proof that such person has met his/her tax obligations.

A tax clearance certificate is normally required for:

- The issue, renewal, or transfer of any license or similar document relating to any trade, business, profession, or vocation;
- The registration or deregistration of a company;
- The tendering processes for the provision of goods or services to the government

### 5.11 TAX APPEALS

According to income tax law, a taxpayer who is not satisfied with tax assessment may appeal or object to the assessment with the Commissioner. The Commissioner
will then reconsider the assessment and make a ruling in writing. If the taxpayer is unhappy with the decision by the Commissioner, he/she can then appeal the decision within 60 days at the Tax Tribunal. Either party may appeal the decision of the tribunal by lodging an appeal at the High Court within 60 days. The decision of the High Court may then be appealed also within 60 days. The decision of the Court of Appeal is final.

The decision from hearings before the Tax Tribunal can be open to the public unless the taxpayer requests that such proceeding be held behind closed doors. The decision of the tribunal is supposed to be made as quickly as practicable and notified to the parties in writing. With respect to appeals that go before the High Court and the Court of Appeal, these can take a long time due to backlog as they follow the court roll.

**Analysis**

As already indicated above, Lesotho has a plethora of taxes ranging from income tax, customs duties, VAT and other miscellaneous taxes. Customs dues are set for Lesotho through their membership in SACU. Given the various taxes in place especially miscellaneous taxes, there are several authorities charged with the responsibility of collecting these taxes. The efficiency in the collection of these revenues is questionable. Information pertaining to these taxes and any adjustments are not readily available online. Given the number of taxes applied potential investors may have the impression that Lesotho is a country with too many taxes which is not conducive to attracting new investment.

According to World Bank Doing Business 2011, the world over, countries that make paying taxes easy for domestic companies typically offer electronic (online) systems for tax filing and payment have one tax base and use a filing system based on self-assessment. Figure 8 below, shows international best practices in tax administration and compliance. The application of these best practice indicators has been seen to bring about immense benefits in reducing the time companies spend in complying with tax laws, increasing tax compliance and reducing the cost of revenue administration.
The income tax regime in Lesotho is generally viewed as investment friendly although there is scope for further improvements. All the companies that were interviewed expressed satisfaction with the income tax regime. Most companies, especially in the textile industry, export to the US through AGOA and as such they are not charged corporate tax in order to promote export oriented investment in Lesotho. However income tax is forgone as a result of this initiative. There could be potential for Lesotho to access additional revenue through corporate tax for all companies irrespective of where their exports are destined for. In terms of regional comparison, as shown in Table 15 below, Lesotho’s corporate tax rate is comparable to other SADC countries. Most countries have a flat corporate tax rate including wealthier countries such as Mauritius, Botswana and South Africa but Lesotho has opted for tiered corporate rate.

Table 15: Corporate Tax Rates in the SADC region (%)

<table>
<thead>
<tr>
<th>Country</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botswana</td>
<td>22%</td>
</tr>
<tr>
<td>Mauritius</td>
<td>15%</td>
</tr>
</tbody>
</table>
Some companies interviewed complained about the delays and time it takes to comply with tax law. In this case, they complained of long queues at revenue authority offices especially during month end. In order to address this concern, the companies raised an issue with respect to online tax filing. Online tax filing is not available in Lesotho. However, online tax filing is expected to make a positive impact not only on the total tax compliance time, but also the number of tax payments. For example, according to the World Bank, Madagascar tax declarations were computerized in 2005 and as result businesses can file the same declaration with the click of a mouse. Consequently, the time needed to comply with taxes fell dramatically from 400 hours per year in 2006 to 200 hours in 2010.

In the discussions with officials at the LRA, a number of concerns were raised, especially with respect to compliance by taxpayers. Research has shown that longer compliance time by taxpayers is indicative of unclear tax rules or a general lack of information. One way to remedy this is for the tax administration to issue clearer regulations and guidance notes and to make them widely available to taxpayers. Having a transparent and simple tax law benefits not only the businesses. According to research conducted by the World Bank, having clear tax laws could increase tax revenue by 6% on average (World Bank Doing Business 2011).

**Recommendations**

**R38: Reduce the frequency of payments and filings of VAT:** Currently in Lesotho, as an administrative requirement, all businesses registered for VAT are required to file a return every month and make payment where it is due. In many other countries, such as South Africa, they are paid much less frequently. Lesotho could consider reducing the frequency of payments to quarterly intervals. If this recommendation is followed, the number of payments would drop from 12 to 4. Obviously, reducing the number of payments would have a cash flow implication for both firms and the revenue authorities. Therefore it is imperative that this reform be preceded by a comprehensive cash flow analysis for the LRA to ensure that a reduction in the frequency of payments does not adversely impact the flow of revenue requirements.

**R39: Lesotho should consider introducing an online filing system:** Lesotho should aim at introducing a system that will allow entrepreneurs to file and pay their taxes online. This has a positive impact not only on the total tax compliance time, but also the number of tax payments. Electronic filing and payment systems are now available in nearly 70 countries worldwide. Among the countries that have adopted these online tax systems include developing countries. An electronic filing system has several advantages e.g. it’s easier, more convenient and faster to process, complete and file tax returns. It also limits interactions with tax officials thus reducing corruption. With properly developed systems, errors can be identified instantly, and returns are processed quickly.
R40: Enable easier compliance with tax rules by producing public awareness materials and conduct outreach activities to all districts, especially for small and medium business enterprises. Lesotho could make a number of tax regulations and guidelines, e.g. income tax and VAT guidelines, available through their website. This will bring about enhanced clarity on tax legislation and regulations. In order to improve compliance, the authorities should also examine whether the current tax system is adequately commensurate with the accounting and tax compliance skills of small business entrepreneurs, as done, for example in South Africa.

R41: Consider Computerizing Revenue Authority: Modernization and computerization of the LRA could be considered by Lesotho in the short to long term. There are numerous benefits that could arise from such a computerization effort, such as compliance management and automated risk assessment.

5.12  CUSTOMS AND EXCISE DUTIES - IMPORTS AND EXPORTS

5.12.1 Customs Duties

Lesotho is a Member of SACU and thus applies customs-related measures harmonized under SACU, including the Common External Tariff (CET). Import duties on imports from third parties are contained in the SACU Tariff book. Even though SACU countries apply the same taxes against imports from third parties, each country has internal taxes that apply to imports from third parties. In Lesotho, this internal tax is the VAT which is governed by the VAT Act (2003). The Customs and Excise Act No. 10 of 1982 governs issues pertaining to Customs and Excise duties. The Act provides for the implementation of the SACU Customs tariff in Lesotho as amended from time to time.

All goods imported into Lesotho are subject to customs control. The goods have to be declared using the Single Administrative Document (SAD) form. The SAD form was introduced in 2006 in the context of the SADC. The SAD applies to all imports and exports regardless of their origin or destination. Imports destined for Lesotho are classified into two distinct categories for purposes of taxation. These are,

a.) Goods that originate from inside SACU (Intra-SACU)

b.) Goods that originate outside SACU (Extra-SACU)

Goods imported into Lesotho from within SACU (intra-SACU), are cleared for VAT purposes at the inland borders, the international airport or post office. These goods are not subject to customs duties. On the other hand, goods imported from outside SACU are subject to customs duties. Customs clearance on SACU imports takes only a few minutes as they are processed instantly on submission of declaration documents whereas non-SACU imports may take over two days to be cleared.

The customs duty and excise tariff (tariff book) are contained in Part 1 of the Schedule No 1 of the Customs and Excise Act. The tariff classification is based on the Harmonized Commodity description and coding system (Harmonized System) of the World Customs Organization. The level of detail in the product coding goes up to 8-digit level.

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19 SACU tariff book can be assessed from www.sars.org.za
The tariff book contains about 6,695 tariff lines at HS 8-digit level as well as a number of schedules providing for excise duties and rebates and exemptions from duties. The tariff book consists of a number of columns showing the preferential rates applying to trade with countries that Lesotho (SACU) has a preferential agreement with. These columns are the general “Most Favored Nation” rates, European Union preferential rates of duty, and SADC preferential rates. For a number of products, the tariff book provides for both ad valorem and specific rates of duty. The ad valorem rates of duty range from 0-60%.

Lesotho is a signatory to the World Trade Organization (WTO) Agreement on Customs Valuation. Therefore, for the purposes of charging ad valorem rate of duty, goods are valued in accordance with this agreement. Lesotho, as is the case in SACU, has opted for Free on Board (FOB) price as the basis for calculating duties.

5.12.2 Excise Duties
The Excise Tariff is contained in Part 2 of Schedule No. 1 of the Act. Excise duty is charged on both imported and locally manufactured goods, but it applies only to a limited number of consumer products like prepared foodstuffs, beverages, spirits, vinegar, tobacco, beer made from malt, traditional African beer, wines, cigarettes and cigars. As already explained, excise duty is an SACU-wide tax and therefore all collections are remitted into the SACU revenue pool.

5.12.3 Customs Concessions or Rebates
Customs concessions or rebates within the SACU are generally harmonized as is the case with most customs related issues. According to Article 21 of the 2002 SACU Agreement, Member States are supposed to apply identical rebates, refunds or duty drawbacks of customs duties on imported goods. There are currently two types of rebates that Lesotho is applying; industrial rebates and temporary rebates. Industrial rebates apply to inputs not produced in the SACU or in short supply in the SACU. In addition, industrial rebates apply to final goods to be used in the region. On the other hand, "temporary" rebates apply to final goods for inputs, for exports and for specific use (e.g. national disasters, donations). In general these rebates are used by all the SACU Member States including Lesotho. The only country-specific rebates are those for wheat (HS 1011) and dairy products (HS 04), which are used only by Botswana, Lesotho, Namibia and Swaziland (BLNS).

5.13 IMPORT AND EXPORT PROCEDURES
5.13.1 Single window
According to the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) a single window is a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all company registration, import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once. In practical terms, the single window aims to expedite and simplify information flows between trade and government and bring meaningful gains to all parties involved in cross-border trade. According the World
Bank Doing Business, Lesotho is ranked 148 in the trading across borders indicator with an indication that it takes about 31 days to fulfill export procedures requiring eight documents. Currently, there is customs single window in Lesotho.

5.13.2 Registration and Import Permits

All goods imported into Lesotho from outside the SACU common customs area require an import permit. In general, Lesotho's import permit system aims to monitor imports of goods and thus guarantee a statistical database. According to the Agricultural Marketing Act of 1967, imports and exports from and to all sources (including SACU) of all agricultural produce, except cereals and cereals products, require a permit. Import permits on any other products are issued by the MTICM. Special permission is also required from the Ministry of Health for the importation of generic vaccines, and drugs for human and veterinary use.

5.13.3 Customs Procedures for Importing

Lesotho is a land-locked country sharing its borders with South Africa. Given Lesotho’s unique geographic setting, customs transit for both imports and exports is an extremely important procedure. The efficient movement of the country’s imports and exports is entirely dependent on the facilitation of transit traffic by South Africa and Lesotho.

Other customs procedures pertain to importation for home use, exportation, warehousing-in-bond, and removal-in-bond. These procedures are governed by the Customs and Excise Act. Currently, clearance of goods in Lesotho is not automated. This is in stark contrast to what is applied in other SACU countries where Botswana, Namibia and Swaziland use ASYCUDA, and South Africa uses the CAPE system. Once the borders are computerized and automated, customs clearance procedures and documentation will improve drastically.

Most imports from overseas to Lesotho enter the common customs territory through the Port of Durban in South Africa. In accordance with SACU customs procedures, customs clearance of imports into the common customs territory can take place in two ways. First, clearance could be done at the first point of entry into the territory or at final destination. For the convenience of importers as well as for commercial and administrative purposes, goods are normally cleared at their final destination. Therefore, goods move in bond until their final destination. In most instances, it is convenient for importers to clear goods at destination where all the formalities can be accomplished. These include payment not only of import duties, but also of VAT.

If goods are to be cleared at final destination, it is a requirement in Durban that the goods are declared for transit. Transit formalities require a security bond if the goods are being moved by road, to cover the duty and taxes due on them should the goods be illicitly diverted into home-use in South Africa. However, a security bond is not required for goods moving by rail because of the very low probability that they will be illicitly diverted for home use. If goods are entered for home use in Durban, South African VAT would have to be paid unless the goods are declared for transit to Lesotho. If so, security would be required to cover the risk of losing South African value added tax (VAT) should the goods be illicitly diverted into home-use in South Africa.
The majority of companies interviewed either use a customs clearing agent (CCA) located in Lesotho to do their customs clearance or have an in-house import-export section to handle the logistics of customs clearance. This is because the process is complex and can be slow and costly if not done professionally. The other advantage of using a CCA is that the importer need not be concerned with formalities in South Africa. A reputable CCA will entrust the task to a correspondent in South Africa that is registered with the SARS. Transporters, freight forwarders and CCAs that are accredited to SARS have a general security bond that is debited with the amount required by a particular transaction and credited when the transaction is discharged. Furthermore, the amount of bond required depends on the probability of loss; the least amount will be required of a reputable CCA or freight forwarder that has a clean record. Such a CCA may also afford to charge a cheaper premium.

When the goods arrive in Lesotho they may be entered and declared for home use or for processing as raw materials or inputs, mostly in the textile and clothing industry. In the event that the goods are entered as inputs in export production, rebates and concessions will apply. Lastly, the goods may be entered for warehousing where they will be stored in bond until the importer is ready to enter them for home use or otherwise.

The following specific steps are required in order to import into Lesotho;

**Step 1:** Compile and prepare the necessary documentation. Customs clearance requires a number of documents, the following of which are standard:

- The bill of entry (Form SAD 500): this is the declaration form showing the country of importation, the means of transport used, the port where the goods were discharged, the point of entry into the country, the export number, their value and the basis of the value, the rates of duty and taxes applicable to them, and the amounts.

- Other supporting documents: these include the commercial and transport documents like invoices, bills of lading, road manifest, packing list, and administrative documents like import permits, Sanitary and Phytosanitary (SPS) certificates, and certificates of origin.

**Step 2:** Submit documentation to Customs Officials for processing. The processing of documents includes checking:

- that all the necessary documents are attached and are completed properly;
- the correctness of codes entered for different purposes;
- the tariff headings entered for the goods;
- the basis of the value for the goods and the correctness of the calculation;
- the calculation of the amounts of duty and taxes; and
- Entitlement to rebates, tax concessions and exemptions.

In the event that customs officials conclude that the invoice price is too low, they require the importer to justify the circumstances warranting such a low price. If they are not satisfied with the importer’s justification, the customs officials may value the goods on the basis of previously imported identical or similar goods.

**Step 3:** Pay import duty and taxes. Once the customs officials are satisfied with the declaration, the importer is required to pay the duty and taxes where goods are not
duty-free or duties and taxes not rebated. Before releasing the goods, Customs may decide to examine them physically. The decision is based on a number of factors, like the nature of the goods, the perceived integrity of the importer or the CCA clearing them, and other circumstances surrounding the importation.

**Step 4:** Take delivery of the goods. Once the customs formalities are completed, the goods are released by Customs.

On average, customs clearance takes one to two days, but can take up to a week in cases where there are issues to settle, like the value of the goods, and their customs tariff classification.

### 5.13.4 Customs Procedures for Exports

As already indicated, most exports from Lesotho destined for overseas markets go through the Port of Durban. Most exports to Durban are transported via road or rail considering the lead times and time sensitivity of the export product.

All the companies interviewed indicated that the process for exportation is less cumbersome as opposed to that of importation. However, they still use professional CCAs or freight forwarders since they can handle the export logistics in South Africa, which include provision of a security bond to cover the goods while they are in transit to Durban.

The following specific steps required in order to export from Lesotho:

**Step 1:** Load the transport unit/container. If the exportation of goods will result in the refund of duty or taxes or in the discharge of a security, the customs officials should be called to supervise the loading if the loading is done at the exporter's premises. The supervising officer will write a record of the goods loaded or approve a packing list that will be submitted with the export and supporting documents to get a refund or to discharge the security.

**Step 2:** Compile and prepare export documentation. These will include the export bill of entry, Exchange Control Form and supporting documents like the invoice, road manifest, SPS certificate and certificates of origin. The processing of documents is relatively simple since there are no issues of valuation and calculation of duties. The consignment may be examined; especially if there will be a claim for refund or discharge of a security after their exportation.

**Step 3:** Seal the unit of transport. Once document processing and examination of the goods is finalized, the unit/container of transport is sealed by the customs officials with a customs seal and released for exportation. When a unit of transport is sealed, the customs offices in transit, even in South Africa, only to check the integrity of the seal. If it is intact the good have not been interfered with. The container is not supposed to be opened by the customs officials of the transiting country.

### Analysis

**Computerization and automation of customs clearance:** In November 2006, the LRA commenced the Customs Trade Program (CTP), aimed at, inter alia, computerizing customs systems, in collaboration with the SARS. During the research phase of the roadmap, the status of the customs trade program was unclear. It is
hoped that once fully implemented, the CTP will be a major step towards the establishment of a one-stop border arrangement between Lesotho and South Africa. The LRA is also taking steps to tackle smuggling and tariff evasion in Lesotho. The main form of evasion concerns the importation of second-hand motor vehicles (mostly from Japan and Singapore), through misclassification and undervaluation (double invoicing). As noted above, Customs clearance is not computerized and there is no computerized management information system.

The Customs laws and Regulations are old, outdated and not codified: Analysis of the customs and excise issues showed that the Customs laws and regulations are outdated. Like the income tax legislation, the customs law is very old. In January 2009, the USAID Southern Africa Trade Hub conducted a study aimed at reviewing the current Lesotho Customs Legislation to assess if it complied with international standards and best practices. The key findings from that assessment were that Lesotho Customs Legislation was not compliant with international best practice, especially with most provisions of the World Customs Organization (WCO) Revised Kyoto Convention. In light of this work, draft customs laws and regulations were developed and the current status of the draft regulations is unclear. It has emerged that the customs legislation needs to be modernized and be brought in line with the WCO revised Kyoto convention.

Publication of timely and up to date trade statistics: The publication of trade statistics is years behind schedule. Trade statistics both on imports and exports are critical for gauging the growth of the economy and its level of diversification. Trade statistics are also important in guiding research for the country. However, an analysis of the key international trade databases shows a number of discrepancies in the Lesotho trade data which raises concerns regarding the validity and reliability of the data. In addition availability of trade statistics in the public domain is inadequate and questionable. The most recently available official trade statistics are available for 2008, which means the data is over three years behind. In most instances, some of the data is scanty. A review of major databases, UN COMTRADE and International Trade Centre (ITC) Trade Map shows that the data is inadequate. In addition, lengthy and tedious data reconciliation is normally done, aimed at assisting in a revenue sharing arrangement. This process is normally protracted due to the trade data inconsistencies.

Recommendations

R42: Fast-track the computerization and automation of Customs clearance. Given the number of disadvantages that Lesotho is facing as a result of non-automation of customs clearance, it is recommended that computerization and automation of customs clearance processes should be fast tracked. The computerization and automation would bring about interfacing with other systems (e.g. Direct Trader Input system (DTI) and Electronic Data Interchange system (EDI). The computerization and automation would also cater for the interests of all concerned with revenue, trade statistics, transport, and trade facilitation.

R43: Fast-track and establish a customs team to review the customs laws and regulations. Taking into cognizance previous work carried out by SATH in this area, Lesotho would have to work towards modernizing the customs laws and regulations.
R44: Undertake training for Customs officials as well as members of the public. In order to reduce smuggling and undervaluation, Lesotho has to provide training courses for customs officials and members of the public. To facilitate this process, training packages/modules suitable for customs officials and the private sector would have to be produced. Donor technical assistance could be explored in this regard.

R45: Negotiate and consult with SARS on the best way of controlling transit traffic. As already pointed out, South Africa is the only entry point into Lesotho. Imports and exports from Lesotho transit through South Africa and therefore the importance of close collaboration between LRA and SARS cannot be overemphasized. The Commissioners of customs administration in Lesotho and South Africa should constantly discuss the best measures for controlling transit traffic to and from Lesotho. In instances where bilateral consultations do not yield expected results, the issues could be raised through the appropriate SACU organs.

R46: Establish a customs single window for Lesotho. Since Lesotho does not have a single window facility in customs, it is recommended that Lesotho creates a customs single window facility which will bring together the necessary institutions that deal with trading across borders. This single window should be automated ensuring electronic data exchange. This will bring about significant efficiency improvements.

5.14 COMPLYING WITH EXCHANGE CONTROLS

5.14.1 Introduction
Lesotho’s fiscal and monetary policies operate within the context of her membership of the Common Monetary Area (CMA). The CMA consists of Namibia, Swaziland and South Africa. In terms of the CMA Agreement, the national currency, the loti, is fixed at par to the South African rand. The latter is also a legal tender and co-circulates with the loti in Lesotho.

In spite of several benefits that Lesotho derives out of the CMA arrangement such as easy availability of the rand to Basotho, the elimination of exchange rate risk between Lesotho and South Africa, and, more importantly, macroeconomic stability, the agreement poses some policy challenges for Lesotho in a number of quarters. These challenges pivot largely upon the harmonization of fiscal and monetary policies.

5.14.2 Dealings in Foreign Currency
No person is permitted to deal in foreign currency other than an authorized dealer. A resident requiring foreign currency for permissible purposes must apply through an authorized dealer, and a resident who acquires foreign currency must sell it to an authorized dealer in exchange for local currency.

Lesotho residents wishing to buy foreign currencies (currencies other than the rand) may do so only through an authorized dealer in foreign exchange. Travel agents, hotels, restaurants, shops and other persons whose business is directly related to the tourism industry may be authorized by the authorized dealers to accept, at the commercial rate of exchange, foreign bank notes and foreign currency travelers’
checks from visitors to Lesotho in payment of goods supplied and services rendered against a written undertaking that such foreign currency instruments will be sold to an authorized dealer, in exchange not later than the following business day after acquisition thereof.

There are three Authorized Dealers in foreign exchange in Lesotho, namely Standard Lesotho Bank, Nedbank Lesotho and First National Bank, Lesotho. These local banks operate/serve the public from 08.30 – 15.30 during the week days. There are no foreign exchange services on weekends and public holidays. In addition, there is one private bureau de change licensed and operational.

5.14.3 Foreign Exchange Out-Payments

Authorized dealers have been delegated powers by the central bank to approve most foreign exchange transactions, and persons intending to affect a transfer should consult them. Applications that are not within the powers of the authorized dealer (bank) have to be submitted to the Central Bank by the authorized dealer on behalf of the customers.

5.14.4 Payment for Imports

A local importer may buy foreign currency for payment to an overseas supplier subject to the specified terms and conditions. These conditions include production of documentation evidencing that the goods have been or are to be received in Lesotho, such as bills of lading, relative invoices and parcel post receipts, where appropriate.

For goods subject to import permit, the import permit must be produced in order for the payment/transfer to be effected. The permit is required for endorsement of the amount used. Advance payments for imports are not normally approved but exceptions may be allowed by the Central Bank.

5.14.5 Analysis of compliance to the exchange controls

In light of Lesotho’s membership of the CMA, the exchange control regime explained above reflects the monetary policies applying within the CMA. There is a general feeling within Lesotho that the membership of the CMA has served the country well by ensuring tight monetary discipline and capitalizing upon close economic integration and cooperation with South Africa. The rate of inflation in Lesotho also follows that of South Africa, with the kingdom dependent largely on the overall price level and exchange movements in this neighbor. Exchange controls in Lesotho are thus generally not liberalized.

During the research phase of the Roadmap, the private sector persons interviewed generally expressed satisfaction with the exchange control regime and with the efficiency of the commercial banks (authorized dealers) in this regard. There is no exchange control restriction or prohibition that can be considered to be a hindrance to investment, and the allowances are considered generous. The only major concern was raised with respect to the value of the rand/loti against major currencies. Currently the South African rand has been appreciating quite heavily against major currencies and this has put strain on Lesotho’s exports.
The analysis has also shown that most of the authorized dealers in Lesotho are not online and therefore information on exchange controls is not readily available to them. It was shocking to note that exchange control laws and regulations are also not available on government or central bank websites.

**Recommendations**

R47: Upload exchange control laws and regulations on the website. The Ministry of Finance and the Central Bank are the key custodians of the fiscal and monetary policy in Lesotho. In order to promote transparency, it is recommended that exchange control laws and regulations be uploaded into the government and regulator’s website. This will improve the level of compliance with exchange control laws.

5.15 OBTAINING CREDIT AND FINANCIAL DEVELOPMENT

Financial markets, when functioning well, connect firms to lenders and investors willing to fund their investments and share some of the risks (World Bank, 2005). However, the design of policies and institutions that enable such well-functioning markets is not straightforward, as was vividly illustrated by the difficulties in strengthening financial regulation after the 2008-2009 crises. Key challenges faced by Lesotho and other developing countries are information problems, often worsened by insufficient protection of property rights.

The financial sector in Lesotho is rather small and undiversified and is characterized by the strong presence of a few large foreign owned banks and many “foreign majority shareholding” insurance companies together with a number of small money lenders. There are several Banks in Lesotho of which the majority are at least partially foreign owned. These are Standard Bank Lesotho Ltd, Nedbank (Lesotho) Ltd, FNB Branch in Lesotho and Lesotho Post Bank. All these banks are part of larger multinational banking groups with headquarters in South Africa.

Despite the presence of well-capitalized and modern banks in Lesotho, obtaining credit is one of the key problems for investment and economic growth. The Doing Business indicators rank Lesotho 150th in the World on its “Getting Credit” indicator which measures the easy with which it is possible to get credit in a country. As shown in Table 16 most of Lesotho’s regional and global competitors score much better on this indicator. Lesotho’s low ranking on the “Getting Credit” measure is primarily due to the lack of a credit bureau which collects data on creditworthiness of firms and individuals and insufficient creditor rights protection.

**Table 16: The Ranking of the “Getting Credit” assessment in the Doing Business**

<table>
<thead>
<tr>
<th>Economy</th>
<th>Getting Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>1</td>
</tr>
<tr>
<td>Poland</td>
<td>8</td>
</tr>
</tbody>
</table>
It is important to note that sound collateral laws enable businesses to use their assets, especially movable property, as security to generate capital while having strong creditor rights has been associated with higher ratio of private sector credit to GDP.

As the result of poor access to credit the ratio of private sector credit to GDP is low in Lesotho in comparison to other countries. This is despite the fact that this indicator has increased substantially in the past years. As seen in Table 17 in 2009 the ratio of private credit to GDP was only 11.5% up from 5.6 in 2004.

Table 17: Private Credit to GDP ratio in Lesotho

<table>
<thead>
<tr>
<th>Year</th>
<th>Credit/GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>5.6</td>
</tr>
<tr>
<td>2005</td>
<td>6.8</td>
</tr>
<tr>
<td>2006</td>
<td>8.1</td>
</tr>
<tr>
<td>2007</td>
<td>9</td>
</tr>
<tr>
<td>2008</td>
<td>10.1</td>
</tr>
<tr>
<td>2009</td>
<td>11.5</td>
</tr>
</tbody>
</table>

The growth in credit to the private sector was fuelled by the reduction in borrowing costs as interest rates continued on a downward trend. The growth in credit extension to the private sector is quite encouraging given the critical role the private sector plays in stimulating economic growth. The ongoing reforms in the financial sector, such as plans to establish a credit bureau, are expected to facilitate further expansion of credit to the private sector. Nevertheless, as mentioned above and in comparison to other developing countries, Lesotho’s ration of private sector credit to GDP is low. For example this ratio for South Africa is 152%, for Botswana is 19% and for Kenya it amounts to 23%.

The analysis of evolution of growth in Lesotho shows that local banks have played a minimum role in financing economic growth in the country\(^20\). For example the

Lesotho Highlands Water Project (LHWP) was financed from external resources and the manufacturing infrastructure that facilitated reaping of the benefits of the African Growth Opportunities Act (AGOA) was financed by Government and external loans.

In the past decade the GOL had implemented a range of reforms aimed at supporting the access to credit for firms and individuals in Lesotho. In 2011 there was a significant reform process, which has been implemented with the passing of the Financial Institutions Bill by the Parliament. At the time of writing the Bill was awaiting Royal signature to become a law. The Bill aims to strengthen the supervision of the banking sector by the central bank especially regarding the emergence of Ponzi (pyramid schemes). The Bill primarily seeks to grant the Commissioner of Financial Institutions, in this case the Central Bank of Lesotho (CBL), enhanced investigatory powers against entities suspected to be conducting illegal banking or financial services business without “a valid license”. It will also enhance the ability of the commissioner to grant timely protection to depositors and customers against unlawful credit and banking business. Another key legal text that has already been passed by parliament and is awaiting the signature of the King is the Credit Reporting and Data Protection Bill. The key provision of the Bill is the creation of legal framework for the establishment of a Credit Bureau. The Bureau is envisaged to collect and publicize information on creditworthiness of citizens and foreigners and could play a critical role in facilitating the flow of information on firms’ reputations, which can strengthen contract security between firms and the financial sector. Despite the fact that the law has not yet been passed the Central Bank has already commenced procedures for procurement of a computer system to manage and supervise credit bureaus.

In 2011 the LNDC inaugurated a partial credit guarantee scheme to support local entrepreneurship in Lesotho. The First National Bank (FNB) in Lesotho, which is a South African subsidiary, and the Lesotho National Development Corporation (LNDC), signed a M10 million (US$1.3 million) partial credit guarantee, risk sharing agreement. The agreement stipulates that the corporation will share the risk on qualifying loans from the private sector while the credit application process will still be the same with applicants qualifying after meeting the requirements of the bank when seeking loans. A similar partial credit guarantee scheme has also recently been unveiled by the Ministry of Finance and Development Planning. This scheme aims particularly at providing support in obtaining credit to help micro, small and medium enterprises and other Basotho-owned businesses. According to the Ministry of Finance and Development Planning the scheme seeks to provide part of the collateral that most banks require before lending money. The initial funding from the Ministry amounts to M 50 million.

Despite these recent reforms of the financial sector access to banking services is possibly below its potential in Lesotho as only approximately 38 % of household heads in Lesotho have access to banking and these are predominantly in the core urban areas.

A crucial issue regarding access to credit is finalization of the National Identity Card project. In the past years the GOL, with financial support from the MCA has been implementing such a project which has been suffering some delays due to problems in the procurement system. The lack of a well-established National Identity System has significantly lowered Bank’s ability to screen and verify candidates for credit purposes. As a result many of bank’s customers were not able to obtain a loan.
Another important issue that is often voiced by the private sector and private banks’ alike is cumbersome procedures for getting credit and a shortage of suitable loan proposals. These cumbersome procedures are often related to difficulties in using land and movable assets as collateral in obtaining a loan. As explained in detail in Chapter 4, because of the Land Act of 2010 Lesotho is already providing some tangible improvements with regards to titling land and using this land as collateral for loans but the process if far from being implemented on a country wide basis and hence support the access to credit to a wide section of the population. In fact, the difficulty with obtaining land leases in order to provide collateral for the loan may be one the one single most important problem for obtaining a loan in Lesotho.

In addition credit applications are often of “insufficient quality”. In some instances the applications do not provide a clear purpose for the loan, anticipated returns and other necessary information may be missing. This highlights that increasing “soft” skills for leasing with the banks may improve firms’ and individuals’ ability to obtain credit.

As a result of problems in the formal market for credit many small; medium and large money lenders have emerged to fill the gap in the provision of credit to the Basotho. Money lending in Lesotho is legislated by the Money Lending (amendment) Act of 1993. In fact, Lesotho is one of the few LDCs that legislated money lending. Despite that, according to the Central Bank, formal money lending in Lesotho, outside of the Banking sector, has suffered a setback because of losing a case in the Commercial Court to charge an interest rate above 25%. Consequently, the interest rate that moneylenders are able to charge is effectively capped at 25% and money lenders have significantly decreased their operations, as they claim that this interest rate does not allow them to make profit on operations.

In the light of the above issues pertaining to getting credit and the development of the financial sector the following recommendations are made:

**Recommendations**

**R48: Finalize the creation of the Credit Bureau.** The recent passing by parliament of the Financial Institutions Act has created a legal framework for the emergence of credit bureau in Lesotho. The Central Bank of Lesotho together with key government stakeholders should undertake a coordinated action to swiftly facilitate the creation of such a bureau. This will ideally entail supporting the private sector in the creation of a bureau. As discussed above, credit bureaus play a critical role in facilitating the flow information on firms’ reputations, which can strengthen contract security not only among enterprises but also between firms and the financial sector. World Bank (2005) found that on average, countries without credit registries have a private credit-to-GDP ratio of about 16 %, those with publicly owned credit registries about 40 %, and those with private bureaus about 67 %. The Credit Reporting and Data Protection Bill legitimize the creation of private credit bureaus therefore all efforts should be made to facilitate the creation of the bureau by the private sector.

**R49: Finalize the introduction of National Identity Cards.** The issue of appropriate identification of credit applicants is crucial for the security of the lending procedure. At present there are no identity cards in Lesotho and the only identification document recognized by the banks is the passport, which is time consuming and expensive to obtain. As a result, a large share of the population does
not own a passport and is thus effectively excluded from the formal credit market. The introduction of identity cards to all citizens of Lesotho is likely to decrease these problems and enhance access to credit.

**R50: Set up a comprehensive Training and Support Program for SMEs for credit provision.** The aim of the Training and Support Program would be to provide coherent and holistic support for micro, small and medium enterprises to obtain the necessary financing for companies’ growth. The program would offer training to new and existing enterprises and provide business advisory services regarding how to get credit, writing business plans and project proposal. Such program should be an addition to the existing private sector development activities of organizations responsible for business promotion in Lesotho such as BEDCO or LNDC. The support program should be available to all types of industry and may be modeled on activates of the Credit and Export Development Agency in Botswana which has been quite successful in the provision. CEDA provides training and mentoring are interconnected as they both attempt to cultivate the right entrepreneurial skills by providing the firms with services for business related functions such as marketing management; financial management; operations management, and human resources management. Support with regards to access to credit is one of CEDA’s top priority areas. In addition, the introduction of mentoring services, whereby a mentor provides coaching, and counseling support, could provide necessary skills for enterprises in Lesotho seek credit from formal sector financial institutions.
6. CONCLUSION

In an endeavor to improve the investment climate in Lesotho and ultimately lead to increased levels of both foreign and domestic investment, the Lesotho Investor Roadmap identified several constraints spanning from administrative to procedural issues. The roadmap further benchmarked Lesotho against her FDI competitors.

In its assessment of the administrative regime pertaining to investment in Lesotho, the roadmap identified certain general observations, common to its four process areas (Employing, Reporting, Locating, and Operating). The roadmap identified that procedural transparency in Lesotho is a major concern. Most government agencies, with a few exceptions, do not have procedural guides and websites that inform potential investors of the legal requirements, submission requirements, time frames and costs of starting and operating a business. Moreover, instances have been shown where government agencies lack administrative and policy coordination; failed communication has led to instances where one regulator approves a particular request while another declines.

Furthermore, a number of significant constraints on stimulating investment and enhancing economic growth in Lesotho were identified. These include:

- **Access to Land.** Prior to the introduction of the Land Act of 2010 the land system has not permitted a modern land market to develop in which investors and others requiring land are able to freely purchase and obtain titles from others and put the land to improved commercial use. The Act has provided a legal framework for the development of a modern land market. It is expected to enhance Basothos’ access to land and in doing so support entrepreneurial activity by accelerating the processes involved in the provision of land leases and through the adequate zoning of land. Regarding access to land for foreign investors, the key is to support these investors in obtaining land for the construction of factories. In the past years investors wishing to invest in Lesotho were forced to invest elsewhere due to the unavailability of serviced land for their enterprises. As a result, up to 15,000 jobs have not been created in Lesotho and GDP growth was up to 1% lower than the potential. A well-functioning land market is also crucial in enhancing entrepreneurs’ access to the formal credit market, since in the absence of land titles it is not possible to use land as collateral for obtaining a loan. Therefore, improving access to land is also likely to enhance access to credit which is another key constraint on investment in Lesotho.

- **Access to Credit.** Despite the presence of well-capitalized and modern banks in Lesotho, obtaining credit is one of the key problems for investment and economic growth. The Doing Business indicators rank Lesotho 150th out of 184 countries in the World on its “Getting Credit” an indicator which measures the ease with which it is possible to get credit in a country. Both new and well-established entrepreneurs have highlighted that accessing credit is one of the key constraints on their business growth. Lesotho, like other developing countries, faces the dual challenges of firstly, information asymmetry, whereby prospective lenders face difficulties in “informing” financial institutions regarding prospective profits for adequate risk
assessment of loans, and secondly, that potential lenders are unable to provide assets as collateral due to the insufficient protection of property rights.

- **Securing construction permits**: According to the World Bank Doing Business 2012, dealing with construction permits is yet another critical constraint in Lesotho. Out of 183 countries in the Doing Business report, Lesotho was ranked 157 in 2012 and 158 in 2011. Maseru City Council issues building permits which are issued after inspection and approval of the building plans and diagrams. The mandated time limit for one to be issued with a permit is 30 days however, it was reported that often takes much longer than 30 days. Once a permit is issued, the municipality is mandated to undertake on-site pre-approval for each stage of construction. However, lack of resources and capacity constraints at the municipalities hamper the ability to carry out these inspections. Once the building is completed, all the necessary utilities are connected. The time it takes to get a telephone connection is estimated at 180 days while the cost for connection depends on whether the business is foreign or locally owned. Local businesses pay M500 (US$65) while foreign companies pay M5,000 (US$652). This is contrary to the norm in the region where, companies a charged a same fee for a service.

In order to address these constraints the roadmap came up with 50 recommendations covering the four process areas of the roadmap. Table 18, below provides a summary of the number of recommendations across the process areas. A list of all recommendations is provided in Appendix A4.

### Table 18: Number of Recommendations across the Process Areas

<table>
<thead>
<tr>
<th>Process Area</th>
<th>Number of recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employing</td>
<td>15</td>
</tr>
<tr>
<td>Reporting</td>
<td>6</td>
</tr>
<tr>
<td>Locating</td>
<td>17</td>
</tr>
<tr>
<td>Operating</td>
<td>12</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
</tr>
</tbody>
</table>

With a view towards guiding the implementation process, an Action Plan has been developed and attached as Appendix A5.
Bibliography


APPENDICES

Appendix A1: Projects and Development Requiring EIA in Lesotho

1. General-
   (a) any activity out of character with its surroundings;
   (b) any structure of a scale not in keeping with its surroundings;
   (c) major changes in land use.

2. Urban and Rural Development including-
   (a) designation of new urban areas;
   (b) establishment of industrial estates;
   (c) establishment or expansion of recreational areas;
   (d) establishment or expansion of recreational areas in mountain areas, national parks and game reserves;
   (e) rezoning;
   (f) shopping centers and complexes;
   (g) Hotels and other tourist facilities.
   (i) buildings with a total floor space of 500m or more;
   (j) declaration of development areas; and
   (k) Other infrastructure (both urban and rural).

3. Transportation including-
   (a) major roads;
   (b) all roads in scenic, wooded or mountainous areas;
   (c) airports and airfields;
   (d) pipelines;
   (e) water transport activities;
   (f) bridges;
   (g) railways;
   (h) cable ways and cable stations;
   (i) public transport mode transfer facilities;

4. Dams, rivers and water resources including-
   (a) reservoirs, levees, storage dams, barrages and weirs;
   (b) canals, channels, aqueducts, river diversions and water transfers;
   (c) flood control schemes;
   (d) pipelines and water reticulation systems;
   (e) projects or activities affecting other water sources such as ground water, springs and wells;

5. Aerial spraying.

6. Mining, mineral extraction including quarrying and open-cast extraction of-
   (a) precious stones, minerals and metals;
   (b) coal;
   (c) stone and slate;
   (d) aggregates, sand and gravel;
(e) clay; 
(f) Tunneling. 
(g) diamonds; 
(h) limestone and dolomite; 
(i) Base metals.

7. Forestry related activities including-
(a) clearance of forest areas; 
(b) deforestation and afforestation; 
(c) timber harvesting; 
(d) Propagation of invasive alien species.

8. Agriculture including-
(a) large scale agriculture; 
(b) use of agro-chemicals; 
(c) introduction of new crops, animals and management practices; 
(d) manufacture, handling, storage and transport of hazardous waste, chemicals and pesticides and other agro-chemicals; 
(e) use of new pesticides; 
(f) mass commercial production of livestock and battery and feedlot farming installations; 
(g) release of any organism outside its natural area of distribution that is to be used for biological pest control; 
(h) genetic modification of organisms and release of such organisms; 
(i) Large scale land reclamation.

9. Processing and manufacturing industries including-
(a) brick and earthware manufacture; 
(b) explosives or ammunition plants; 
(c) tanning and dressing of hides and skins; 
(d) abattoirs and meat processing plants; 
(e) brewing and malting; 
(f) food processing plants; 
(g) bulk grain-processing plants; 
(h) mineral, processing reduction of areas or minerals; 
(i) smelting and defining of ores or minerals; 
(j) foundries; 
(k) plants for the manufacture or assembling of motor vehicles; 
(l) plants for the manufacture of textiles; 
(m) industries producing or utilizing hazardous substances or materials; 
(n) industries producing, handling, treating or disposing of effluent; 
(o) industries emitting major atmospheric pollutants; 
(p) industries transporting or storing hazardous substances or other chemical products; 
(q) industrial installations for the bulk storage of fuel; 
(r) bulk distribution facilities.

10. Energy and electric infrastructure including-
(a) electrical generation stations;
(b) electrical transmission lines;
(c) electrical substations;
(d) cable ways and cable way stations.
(e) nuclear installations.

11. Waste handling, storage, transport, treatment and disposal including-
(a) sites for solid waste disposal and wastewater treatment;
(b) sites for hazardous waste disposal;
(c) sewerage treatment and disposal works;
(d) activities or practices that may produce offensive odors;
(e) industrial effluent;
(f) major atmospheric emissions;
(g) transportation and storage of hazardous substances or waste;
(h) recycling plants.

12. National conservation areas including-
(a) creation of national parks and game reserves;
(b) commercial exploitation of natural fauna and flora;
(c) introduction of alien species of fauna and flora into ecosystems;
(d) establishment of natural heritage sites;
(e) formulation or modification of forest management policies;
(f) formulation or modification of water catchment management policies;
(g) policies for management of ecosystems, especially by use of fire;
(h) any government policy on the use of natural resources.

13. Camp sites and hiking and ski trails developed for tourists.

14. Permanent racing and test tracks for cars and motorcycles

15. Communication facilities, including telephone, television and radio transmission masts.

16. Projects or activities that could affect the following areas or features:
(a) selected development areas;
(b) protected natural environments, wilderness areas, nature reserves or national parks;
(c) mountain catchment areas;
(d) national monuments;
(e) national heritage sites;
(f) archaeological and paleontological sites;
(g) graves and burial sites;
(h) national gardens of remembrance;
(i) conservation areas;
(j) sites of conservation significance;
(k) meteorites;
(l) lake areas.

17. Projects or activities that could affect any of the following areas or features which have been demarcated as such by central or local authority:
(a) streams and river channels, and their banks;
(b) floodplains and wetlands;
(c) indigenous forests;
(d) high potential agricultural land;
(e) caves;
(f) green belts or public open space in municipal areas;
(g) buildings;
(h) battle sites;
(i) burial sites;
(j) immovable property;
(k) landscapes;
(l) islands in rivers;
(m) biotic assemblages and communities;
(n) habitat of Red Data Book species;
(o) architectural precincts;
(p) aquifers and aquifer recharge areas;
(q) areas with a high natural water table;
(r) damaged land;
(s) unstable soil;
(t) natural resource areas (including minerals);
(u) sites of geological significance;
(v) geologically and geo technically unstable areas;
(w) areas or sites of outstanding natural beauty;
(x) scenic drives and panoramic views;
(y) areas or sites of special scientific interest;
(z) areas or sites of religious or spiritual significance;
(za) areas or sites of special social, cultural or historical interest.
(zb) bird migration sites.

18. Any policy that will lead to projects which have or are likely to have an impact on the environment.
Appendix A2: Requirements for an EIA in Lesotho

General information

1. Table of Content (incl. figures, maps and attachments/annexes)
2. Non-technical summary
3. Introduction (background of the study)
4. Terms of reference for the consultant team (incl. CVs and contribution to the report)
5. Assumptions and limitations of the study (Financial and time constrains)
6. Administrative, legal and policy requirements (other legislation and planning procedures)
7. Conclusions

Location plans

8. Overall plan on appropriate scale (e.g. 1:4,000), location according to contracts etc. Other locations at the site, showing the location of the company/activity in relation to the surrounding sites with indication of e.g. topographic, roads, railways, cable ways, rivers, lakes, wetland, forest, agricultural land, urban and rural areas.
9. Universal Transversal Mercator co-ordinates, boarders and boundaries etc.
10. Map on appropriate scale (e.g. 1:500), showing the detailed location of e.g. buildings, pavement, roads, supply lines (water/gas pipes, electrical power/wires/transformer stations, sewage/drainage pipes etc.).
11. Information on the physical planning performed in the area in which the activity/development is located, and use of adjacent area (industrial/urban/natural areas). Compliance with both National and District Environmental Action Plans. Effects of the project/activity on topography, soil erosion etc.
12. Discussion of alternative allocations, pros and cons. And argumentation for choosing the actual area.

Biophysical environment

13. Climate (wind characteristics, precipitation, temperatures etc.)
14. Geology in the area (incl. types, layers and formations, erosion and preventive mitigation)
15. Flora (incl. endangered, protected and endemic species)
16. Aquatic and terrestrial life (e.g. wildlife –mammals, birds and marine life)
17. Protected areas

Establishment

18. Expected dates of completion of building and construction works, and of commencement of operation/initiation or closure/rehabilitation of the activity.
19. Traffic and road planning during construction and operation (incl. max. axle load, feature (asphalt/gravel), density of traffic, type of trucks and period of operation (e.g. 7 a.m. to 5 p.m.) + season.
20. Permission to occupy the land: Rental agreements, building license, deed and trade license.

Design and operation

21. Plan/map on appropriate scale, showing location of production, services and storage and vacant areas. Height of buildings, constructed/roofed areas/buildings, wastewater treatment plants silos/tanks (above and underground) basins and similar permanent constructions. Location of pollution sources, e.g. noise, vibrations, air pollution from stacks, effluent discharge (outlet onto river/sewage system/storm drains), solid and liquid waste/chemicals and other
emissions of substance from e.g. filters, and from cleaning, ventilation etc., shall be indicated.

22. Nature, and consumption of raw materials (including fresh/rain/ground water and electricity), auxiliary substances, and information on transportation/delivery and storage facilities (e.g. products/chemicals/fuel) likely to present pollution risks.

23. Description of processes operation, types of machinery and methods.

24. Schematic description of processes (e.g. flowchart/mass balance), identifying all points of emission.

25. Possible operational, maintenance failures or accidents liable to cause significant increased pollution.

26. Daily operation (e.g. 6 a.m. to 6 p.m.), both for heavily polluting equipment and machinery, noisy equipment, and for the site as a whole. Information on operation on Saturdays, Sundays and holidays.

27. Temporarily operations the expected time of ending operation shall be indicated.

Socio-Economic Impact

28. Number of employees during construction phase and during operation. Establishment of housing for workers during construction and operation.

29. Services e.g. schools, clinics and shopping options etc.

30. Effects on human lives of the proposed activity on both workers and neighbors living close to the plant or activity.

31. Infrastructure e.g. water supply, electricity, sewage and waste collection systems related to the housing of workers, access roads and transportation.

32. Relation to national policies and the effects of the project or activity on the national as well as the local economy situation.

33. Public participation processes, public comments, and public hearing.

34. Cultural and historical environment (e.g. sites of architectural, archaeological and cultural interest, visual impact).

Best Available Technology

35. A well-documented account of the use of low-impact technology in connection with the intended project, with respect to raw materials, energy, water and other auxiliary substances, production equipment, processes and waste generation. Information on the best possible technology and environmental protection measures.

Air Pollution

36. Composition of emissions of individual substances into the atmosphere, Quantities and

37. Mass flow of individual air substances. Mass flow shall be determined before filters and averaged over one shift (i.e. 8 hours or one shift).

38. Emission data, concentrations, during normal operation. Parameters shall be indicated with the definitions specified in current Lesotho guidelines and air pollution control.

39. Emission estimated (worst case scenario) during accident, by-pass or break down

Of filters etc.

40. Diffuse emissions from e.g. dust from roads or handling of dusty material.

41. Installed filters, scrubbers, cyclones and specifications on capacity and their

Maintenance/replacement etc.

42. Height and dimensions of stacks and outlets, the height should be measured from

Ground level.

43. Indication of emissions calculations (calculation of concentrations in the

Surroundings of significant substances).

44. Odor and noxious smell (incl. preventive mitigation measures)
Wastewater

45. Composition of wastewater generated at the activity, with outlet data/analysis.

46. Information on quantities per unit product or per year.

47. Calculation of emission limit values achievable for each substance.

48. Wastewater treatment methods and control.

Noise and vibrations

49. Special sources of noise and vibrations likely to present major nuisance to the surroundings.

50. Calculated/estimated noise level in the surroundings of the company/activity, specifying calculation method. Access and exit roads to the company/activity used for haulage, and its nuisances to the surroundings.

Waste (Solid and Liquid)

51. Composition and types of wastes generated and stored on the site, including annual quantities of residues (e.g. filter bags, wastewater sludge), solid, domestic and hazardous or chemical waste.

52. Quantities of waste generated.

53. Methods of handling waste generated

54. Methods of storage on-site and site of removal/disposal of the waste.

55. Options for reuse and recycling of waste on-site and in other facilities e.g. in Lesotho.

Pollution control

56. Cleaning procedure, with indication of substances/chemicals etc. used.

57. Measures/preventive action to reduce and control air emissions from stacks (particles/gasses), effluent discharge and other controllable outlets as well as diffuse sources (e.g. road dust, dust from digging/blasting etc.)

58. Measures to control wastewater quality.

59. Measures to reduce and control noise and vibrations, both with respect to equipment and machinery separately, and to the site and its surroundings as a whole.

60. Measures to prevent and control odor/smells.

61. Measures to reuse/recycle or minimise/sort the type of wastes.

62. Measures to prevent operational failures, spills and accidents.

63. Occupational Health and Safety aspects, incl. surveys performed and equipment provided to workers, procedures and management systems

64. Quality and Environmental Management Systems

65. Fire and disaster Management (incl. risks analysis/assessment)
## Appendix A3: List of Institutions Interviewed

<table>
<thead>
<tr>
<th>Institution</th>
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<tbody>
<tr>
<td>1. Directorate of Dispute Prevention and Resolution</td>
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<tr>
<td>2. Trend Group and Also member of Business Chamber</td>
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<tr>
<td>3. African Clean Energy (Pty) Ltd</td>
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<tr>
<td>4. Millennium Challenge Account-Lesotho</td>
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<tr>
<td>5. Deutsche Gesellschaft Fur Internationale Zusammenarbeit (GIZ) GmbH</td>
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<tr>
<td>6. Project Implementation Unit</td>
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<tr>
<td>Land Administration Reform Project</td>
</tr>
<tr>
<td>7. Lesotho National Development Corporation (LNDC)</td>
</tr>
<tr>
<td>8. Department of Industry, Ministry of Trade and Industry, Cooperatives and Marketing</td>
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<tr>
<td>9. Department of International Trade, Ministry of Trade and Industry, Cooperatives and Marketing</td>
</tr>
<tr>
<td>10. Department of Environment, Ministry of Tourism and Environment</td>
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<tr>
<td>11. Land Administration Authority</td>
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<tr>
<td>12. Lesotho Textile Exporters Association</td>
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<tr>
<td>13. Private Sector Competitiveness and Economic Diversification Project</td>
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<td>14. Lesotho Revenue Authority (LRA)</td>
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<tr>
<td>15. Ministry of Finance and Development Planning-Private Sector Development Division (PSDD)</td>
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<tr>
<td>16. Ministry of Trade and Industry, Cooperatives and Marketing-One Stop Business Facilitation Centre</td>
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<tr>
<td>17. Private Sector Foundation</td>
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<tr>
<td>18. Ministry of Labour and Home Affairs</td>
</tr>
<tr>
<td>19. Water and Sewerage Company(WASCO)</td>
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Appendix A4: Lesotho Investor Roadmap Recommendations

1. **EMPLOYING**

   **R1: Decrease the cost of both single and multiple visas.** The current cost of visas is very high for tourists and investors alike. As a result, Lesotho is likely to have a lower number of tourists and lower FDI than it would have had otherwise. The current costs of a visa, which is implemented in order to increase government revenue, could actually decrease this revenue. The costs of forgone FDI and revenue from tourism are highly likely to outweigh the income that the government receives from visa fees. It is impossible to pinpoint the exact number but the revenue forgone because of the high fees can be large. Each tourist visiting Lesotho is likely to spend at least M1000 in the country. This already justifies decreasing visa fees.

   For a small economy that seeks to increase tourism and diversify its economy, the high cost of entering Lesotho for investors and tourists might actually decrease employment and tourist flow with associated negative economic effects.

   The cost of visas in the SACU region is currently much lower than in Lesotho. The Namibian visa is, for example, M350, a Swaziland visa is only M80 and a Schengen visa is Euro 60 or around M420. Thus, the current visa cost is significantly above its regional partners and worldwide standards. It is advised that the charge for a Lesotho visa be decreased to a level comparable with other countries in the region.

   **R2: Review the list of countries that require a visa.** The key purpose of visas is to regulate the flow of foreign nationals to Lesotho and guard against overstay and other illegal activities in the country. The government has recognized that citizens of SACU, SADC and the majority of Commonwealth countries do not pose a significant risk to the security and stability in Lesotho and may enter Lesotho visa free. However, the current list of countries seems to contain several nationalities that are unlikely to pose any security risk but are likely to enter Lesotho for investment and tourist purposes. These countries include:

   - European Union (EU) Member States
   - European Free Trade Association (EFTA) Member States
   - Higher Middle Income South American Economies

   It is important to note that Lesotho requires a visa for a particularly large number of countries. The list of countries that require a visa for Lesotho is longer than that for South Africa or even the EU.

   Currently, in Lesotho, there is a short list of countries that constitutes the vast majority of visa overstays. Visa requirements should therefore be aimed primarily at citizens from these countries whereas citizens from countries that primarily enter Lesotho for tourist and investment purposes should be granted visa free travel.

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21 The Schengen Agreement is one of the European Union treaties signed on 14 June 1985 near the town of Schengen in Luxembourg. The Treaties created Europe’s borderless Schengen Area which operates very much like a single state for international travel with external border controls for travelers travelling in and out of the area, but with no internal border controls.
R3: Allow for visas to be issued within one working day. Many countries have shifted their policies and issue visas at embassies and consulates on the day of application. Lesotho has only a few embassies and consulates around the world. This creates a significant obstacle to prospective visitors to Lesotho who come from countries with no Lesotho embassy or consulate. Issuing visas on the same day would allow these individuals to travel to Pretoria/Johannesburg to obtain a visa there and then to continue traveling to Lesotho. At the moment, some investors/tourists are forced to stay in Pretoria or Johannesburg for up to three working days to obtain a visa.

R4: Allow for multiple entry visas to be issued at embassies and consulates. Currently, in order to obtain a multiple entry visa an investor/tourist needs to go through the application process twice – once for the single entry visa and once for the multiple entry visa. In order to eliminate this duplication and support investment and tourism, Lesotho Embassies should be allowed to issue multiple entry visas. The Ministry of Home Affairs should develop appropriate criteria and regulations that would allow embassies and consulates to issue multiple entry visas.

R5: Commence negotiations with the South African government to either: issue Lesotho visas in countries without Lesotho Embassies, or allow for a South African visa to be valid for entry into both South Africa and Lesotho.

Given Lesotho’s small size, it only has embassies and consulates in a comparatively few countries. This is an additional challenge for tourists and investors from countries that do not have a Lesotho Embassy or Consulate. To remedy the situation, it is proposed that Lesotho allow for South African visas to be valid also for Lesotho or for South Africa to issue Lesotho visas. Allowing other countries to issue visas is common practice in the world and is not seen as a significant reduction in the authority of government or the security of its citizens. For example, Poland and the Czech Republic have recently signed an agreement for each country to issue visas in the other country’s embassy or consulate in cases where no diplomatic service is provided in the state of residence of the visa applicant. In addition, both countries are signatories of the Schengen Agreement which allows for individuals holding a valid “Schengen” visa to travel to 17 other EU countries.

Lesotho should therefore consider commencing negotiations with South Africa to implement either of the two options described above. This would significantly ease the process of obtaining a visa for tourists and investors alike.

R6: Diminish the backlog in applications for residence permits. The backlog in the processing of applications currently amounts to hundreds of applications. The approval or denial of a residence permit should be made a short-term priority for each of the government officials responsible. This will result in a swift decrease in this critical backlog.

R7: Improve information dissemination regarding work and residence permits. The DOI and the DOL, as the agencies responsible for the issuance of the permits, should publish all relevant information regarding the application process, including the application forms, online. This information should also be easily available in the headquarters and field offices of the Departments. It is therefore proposed that these Departments produce an informational leaflet or booklet as well as a website containing all relevant information.
R8: Delegate authority to issue work and residence permits. Streamline the work and residence permits process by delegating the authority to approve these certificates to the Commissioner of Labor, the Ministry of Labor and Employment, the Director of Immigration, and the Ministry of Home Affairs and Public Safety, respectively. Currently, the final decision regarding permits lies with the respective Ministers. This delegation of authority is likely to significantly decrease the time and hence the cost of obtaining both work and residence permits.

R9: Increase frequency of Immigration Board meetings. In case the delegation of authority to disburse work permits to the Commission of Labor is delayed, it is recommended that the frequency of board meetings to approve such permits be increased. In addition, as noted in the Swaziland Investor Roadmap (2004) which seems to have encountered a similar problem, “if approval criteria are clear and the information collected is adequate, it is not clear why a Board meeting would be necessary at all, as granting Residence Permits should become a routine function. If the Board must meet, it should commit to weekly meetings unless no applications are pending.”

R10: Set up procedures that allow for easy tracking of applications. Several investors have indicated that it is difficult to track the status of applications. Any tracking of the applications requires physically visiting the DOI and the DOL. Often, several visits may be required to keep the process going. Improving this process may involve, among other things, training staff to provide detailed updates of the application process by phone.

R11: Unify residence and work permits. This recommendation proposes the establishment of an integrated system of work and residence permits, preferably in the form of a single permit. At the very least, the terms of the work and residence permits should be uniform and of sufficient duration to cover the period of employment contract or work assignment as this has not always been the case in the past. Procedures for applying for separate permits are usually similar and duplicative hence it would save both government and investor resources to apply for a permit only once. This proposal would be rather easy to implement as an an integrated permit may indicate whether an individual is allowed to work in Lesotho or not.

R12: Reduce excessive and unnecessary submission requirements. Investors highlight that one of the key reasons why obtaining residence and work permits is time-consuming is due to the large number of supporting documents required. Some of the supporting documents may create significant obstacles in obtaining a permit while not fulfilling the useful purpose of determining the validity of granting work and residence permits. For example, a letter of application and an application form essentially serves the same purpose. It is therefore proposed that the requirement for a letter of application be removed. In addition, rather than requiring applicants to submit all educational certificates it is sufficient to ask only for the most recent or the most advanced educational certificate. Similarly, rather than requiring a full set of company documents including a manufacturing license, memorandum, Articles of Association and tax clearance, it could be sufficient to require only the manufacturing license.

R13: Enhance financial resources available to DDPR. The key constraint for proper functioning of the DDPR is the availability of financial resources to undertake its statutory functions. The GOL has instigated significant budget cuts throughout nearly every government department and the DDPR is no exception. It has been
reported by the DDPR that it currently only has resources in the budget for salaries and office maintenance. The budget cuts within the department have forced it to halt a series of employee and employer training sessions as well as other important activities. Such significant budget cuts can also impact on the DDPR’s ability to solve disputes efficiently.

**R14: Employ additional staff in order to support the work of the Labor Relations Manager at LNDC.** One of the key issues in attaining smooth labor relations is the ability to mediate disputes early in the process. The role of the Labor Relations Manager at the LNDC is crucial in this respect. Additional staff can support the work of the manager, relieve him from some of the current functions and ensure continuity in the task in case the Manager is on leave or away from office for any other reason.

**R15: Computerize the dispute resolution management system.** The DDPR has noted that an important constraint that decreases the efficiency of the dispute resolution system in Lesotho is the lack of a computerized system for dispute management. As in other areas of the government, such computerization might bring about improvements in the speed and effectiveness of dispute resolution. As in many other fields, computerization may improve efficiency by improving the speed of access to information.

2. **REPORTING**

**R16: Expedite the institutionalization of the OSBFC.** The ongoing processes being directed towards the development of a new organizational structure and human resource framework for the OSBFC should also be expedited. These would bring to finality the governance arrangement of the OSBFC and would clarify whether or not the organization should become an agency or remain as it is as a government agency with multiple accountabilities. The OSBFC should become a wholly privatized agency, earning revenue through the registration of companies and issuance of licenses, or it could remain in its current form as a government-owned entity and continue to be governed as it is, through its inter-departmental MOU.

**R17: Undertake legislative amendments that would allow the OSBFC to perform its mandate.** Processes, including legislative amendments for the location of a number of licensing institutions not currently located in the OSBFC should be accelerated, as legislation creating and regulating the activities of licensing departments in the line ministries currently do not allow formal or permanent location of their staff in the OSBFC.

**R18: Fast-track the automation of the One-Stop Center.** Since Lesotho has already established an investment facilitation office through the auspices of the OSBFC, it is recommended that the facility be automated. The exchange of data electronically would bring about significant efficiency improvements.

**R19: Computerize the issuance of licenses.** The issuance of licenses should be computerized to enable the collection of meaningful data on enterprise activity, in order to enable the ongoing formulation and monitoring of enterprise development policies and programs.

**R20: Introduce the Automated Fingerprint Identification System (AFIS).** Anecdotal evidence shows that speedy issuance of police clearance is hindered by
manual processes. Introduction of AFIS will impact positively on the waiting periods for results and feedback to customers. For example, it should take Police only less than three days to provide courts with records of previous convictions instead of weeks. In addition, on-the-spot background checks, fingerprint clearance for employment, company registration and permits will be greatly enhanced by the system.

3. LOCATING

R21: Allocate factory space/land to all investors wishing to invest in Lesotho.
A key short term priority for the LNDC is to provide all investors wishing to invest in Lesotho an opportunity to do so. As already mentioned, this has the capacity to bring about significant increases in employment and economic growth in Lesotho. In order to achieve this several short term solutions are possible:

All remaining space in Tikoe Industrial Estate should be immediately allocated to investors. Water and Sewage Corporation (WASCO) and Lesotho Power Corporation (LEC) should deliver all necessary utilities to these sites. There are several solutions for the LNDC to finance these operations:

- LNDC can apply for a commercial loan from the Government of Lesotho (GOL) or international banks. Given the LNDC’s strong financial situation this should be feasible provided the investments in infrastructure, including factory construction, would be on “cost-recovery” bases. It is necessary therefore for the LNDC to charge market prices for its industrial building rentals.
- LNDC can enter into joint venture operations with prospective investors and become at least a 20% stakeholder in the investment. This will allow for the investor to lease land outside of the current LNDC owned estates. However, the supply for industrial land from the private sector and the government is limited and might not satisfy the needs of investors.

R22: Undertake an audit of commercial and industrial land availability in Lesotho. The audit should focus primarily but not exclusively on Maseru and Maputsoe metropolitan areas. The consultancy should answer several interrelated questions, including:

- What is the capacity to expand industrial land availability in Maseru and Maputsoe areas? Where is additional land for expansion?
- What are the infrastructure needs at each of these sites?
- What is required to lease any additional land?
- Establish what is the “cost-recovery price” for rent in the existing LNDC estates?

R23: Support private sector participation in constructing and/or managing industrial estates. A recent review of the LNDC conducted by the World Bank (2010) argues that a private partnership could form a part of the solution to the problem of provision of land to investors. The report argues that “the lack of adequate factory shells for foreign investors could be addressed by increasing private sector participation in the construction and management of industrial estates. The first option would be to explore private management of existing LNDC
constructed factory shells and the second would be to promote and support private sector investments in industrial site development.”

R24: Clarify roles of the LAA and the Department of Land Surveys and Physical Planning (LSPP) within the Ministry of Local Government. The Land Act of 2010 does not provide any reference to the newly established LAA. The legal instrument that underpins the creation of the LAA is the Land Administration Authority Act that was passed by parliament the day after the Land Act. There appears to be confusion among the office of the Commissioner of Lands and the LAA with respect to land administration functions in Lesotho. The two entities appear to have overlapping statutory roles in land administration matters due to ill-defined legal instruments. The GOL has recently commissioned Land Equity Consultancy Company to draft a report aimed at reviewing the functions of the Commissioner of Lands with the objective of clarifying the responsibilities of the Commissioner of Lands and the Land Administration Authority’s Director of Lease Services in order to improve the process of lease and approval and issuance.

R25: Commission a study to explore the possibility of setting up Special Economic Zones (SEZ) in Lesotho. The key factor within these zones should be that a foreign investor should be able to purchase land directly from the government without restriction on national ownership. This would only be possible within the area of SEZ and would require a special Act of Parliament. Such a regulatory change has been done before in the case of Standard Bank (South Africa). When Lesotho Bank was privatized and Standard Bank (South Africa) bought a 70% share of the privatized Bank, parliament had to enact a special law to hold land in its own right and not as a sub-lessee. This law covers only the Standard Bank and does not apply to any other investors, whether local or foreign. A similar regulatory change would need to be undertaken to allow foreign investors to hold land in SEZ.

Another likely provision within SEZ is that maintenance and utilities should be at least partially on cost-recovery basis in order to ensure self-sustainability of the SEZ. As noted by World Bank (2009a) “in recent years though, the public development costs of modern industrial estates have been reduced internationally through a greater reliance on the private sector (both domestic and foreign) to develop and operate factory shells. For example, industrial zones in Mauritius, Madagascar and Kenya have all performed extremely well.”

R26: Enhance long-term provision of land for formal commercial use. This would entail setting up a fully-fledged system that would provide leases of government land to prospective investors. One way of creating this is to set up an inter-Ministerial task force responsible for setting up such a system. This is essential, as cooperation between ministries is the key in this realm. The commission should commence its work with establishing how to unlock the provision of industrial land in Lesotho.

R27: Amend the 2010 Land Act to facilitate investment in Lesotho. In particular the Act should be amended with several specific provisions that enhance investor access to land. The key provision would be to allow foreign investors to lease land without the necessity to have 20% equity share of a Basotho. As mentioned before few Basotho have the necessary financial means or business skills to obtain 20% stakes in foreign companies. Therefore, in reality, even if access to land for foreign investment were relaxed, de facto, few investors will still be able to satisfy all criteria and establish operations in Lesotho without support from the LNDC. As mentioned,
this policy may be implemented in a carefully managed way and once, for example, foreign purchases reach a certain percentage of Lesotho’s total land for investment purposes automatic restriction on such purchases will re-apply.

**R28: Improve zoning of land in Lesotho.** Carry out a reform of the current land planning system which will entail systematically zoning land in Lesotho. This will involve inter alia improvements in the provision of information regarding land, creation of actual land plans, especially in the main cities, and should form a part of the inter-Ministerial task force that deals with enhancing investors access to land in Lesotho.

**R29: Set up a National Land Reform Commission/Forum.** Similar initiatives have already been undertaken in the past but need to be repeated until land regulation and efficiency of the land market reach a level that is conducive to investment. The key factor within this Commission should be inclusiveness. All relevant stakeholders, including government, the private sector, the general public and especially the democratic opposition should form part of this Land Commission. The key aim of the Commission would be to convince stakeholders that a free and efficient land market is essential for development in Lesotho. Despite a relatively high population density, Lesotho does not suffer from shortages of land for business and industrial purposes. The problem lies with the particularly inefficient land management system which essentially precludes the land market from development. Therefore, another key aim of the Commission should be to prepare an amendment to the Land Act which would facilitate the implementation of recommendations contained in this section. In particular, the discussion at the forum should deal with relaxing restrictions on foreigners owning land, abolishing customary law, improving zoning etc.

**R30: Improve the speed of obtaining a construction permit.** The time that an investor currently spends obtaining a building permit is around 3 months. This time means lost income for investors as construction and commencement of business are delayed. MCC should aim at restructuring business processes in order to shorten the time it takes to obtain a building permit.

**R31: Develop information brochures and websites for the site development process by the MCC.** As noted by Swaziland’s Investor Roadmap, Mbabane City Council already developed brochures and a website back in 2004. This can serve as an example for Lesotho local authorities to develop and publish information. Mbabane City Council has a good website (www.mbabane.org.sz) where there are comprehensive guidelines regarding the building permit application process. There is even a Frequently Asked Questions section, which includes answers to many interesting and relevant questions.

**R32: Simplify procedures for obtaining EIAs.** Currently the procedures to obtain an EIA are very detailed, tedious and time-consuming. As noted by the DOE, the process for some difficult projects might take up to a year. There are several ways to ease the procedural burdens in obtaining an EIA. For example:

- Decrease the number of sectors and industries that require a full EIA. This can be achieved by review of all sectors that require EIAs and reducing EIA requirements for the least polluting sectors.
- Simplify the information requirements that need to be included in an EIA.
R33: **Enhance the capacity of the DOE to carry out EIAs.** With only two people on full time staff, the EIA Secretariat is stretched to the limit in undertaking its statutory function. Therefore there is an immediate need to increase the number of employees at the department.

R34: **Establish a “Strategic Committee” comprised of WASCO, the Ministry of Natural Resources, LNDC and other relevant stakeholders to devise a strategy to improve WASCO’s capacity for provision of sewage facilities.** This is particularly urgent at the current industrial estates and should arguably be set as the priority for the committee. The strategy should entail the establishment of concrete organizational structures and estimated financial costs in the provision of sewage facilities.

R35: **Encourage development of water recycling facilities.** Lesotho should encourage investors who wish to utilize recycled water resources by sharing recycling facilities’ construction costs – particularly in areas where they would serve the greatest number of operations. Clearly this is one of the priorities at the existing industrial estates such as Thetsane, Nene. Textile sector entrepreneurs note that raw water is not available at these estates and availability of such water would not only lower the cost of production at the estates but also make companies at these estates more environmentally friendly.

R36: **Reduce delay in obtaining an electricity connection.** Investors note that connections to electricity are plagued by significant delays especially in situations where an investor is far away from the existing electricity grid. LEC should attempt to speed up the process by streamlining procedures and decreasing bureaucratic requirements.

R37: **Improve the availability of the Annual Report on the LEC website.** The most recent Annual Report available on the LEC website is from 2004. LEC should improve the availability of Annual Reports to provide more transparency in its operations.

4. OPERATING

R38: **Reduce the frequency of payments and filings of VAT:** Currently in Lesotho, as an administrative requirement, all businesses registered for VAT are required to file a return every month and make payment where it is due. In many other countries, such as South Africa, they are paid much less frequently. Lesotho could consider reducing the frequency of payments to quarterly intervals. If this recommendation is followed, the number of payments would drop from 12 to 4.

Obviously, reducing the number of payments would have a cash flow implication for both firms and the revenue authorities. Therefore it is imperative that this reform be preceded by a comprehensive cash flow analysis for the LRA to ensure that a reduction in the frequency of payments does not adversely impact the flow of revenue requirements.

R39: **Lesotho should consider introducing an online filing system:** Lesotho should aim at introducing a system that will allow entrepreneurs to file and pay their taxes online. This has a positive impact not only on the total tax compliance time, but
also the number of tax payments. Electronic filing and payment systems are now available in nearly 70 countries worldwide. Among the countries that have adopted these online tax systems include developing countries. An electronic filing system has several advantages e.g. it’s easier, more convenient and faster to process, complete and file tax returns. It also limits interactions with tax officials thus reducing corruption. With properly developed systems, errors can be identified instantly, and returns are processed quickly.

R40: Enable easier compliance with tax rules by producing public awareness materials and conduct outreach activities to all districts, especially for small and medium business enterprises. Lesotho could make a number of tax regulations and guidelines, e.g. income tax and VAT guidelines, available through their website. This will bring about enhanced clarity on tax legislation and regulations. In order to improve compliance, the authorities should also examine whether the current tax system is adequately commensurate with the accounting and tax compliance skills of small business entrepreneurs, as done, for example in South Africa.

R41: Consider Computerizing Revenue Authority: Modernization and computerization of the LRA could be considered by Lesotho in the short to long term. There are numerous benefits that could arise from such a computerization effort, such as compliance management and automated risk assessment.

R42: Fast-track the computerization and automation of Customs clearance. Given the number of disadvantages that Lesotho is facing as a result of non-automation of customs clearance, it is recommended that computerization and automation of customs clearance processes should be fast tracked. The computerization and automation would bring about interfacing with other systems (e.g. Direct Trader Input system (DTI) and Electronic Data Interchange system (EDI). The computerization and automation would also cater for the interests of all concerned with revenue, trade statistics, transport, and trade facilitation.

R43: Fast-track and establish a customs team to review the customs laws and regulations. Taking into cognizance previous work carried out by SATH in this area, Lesotho would have to work towards modernizing the customs laws and regulations.

R44: Undertake training for Customs officials as well as members of the public. In order to reduce smuggling and undervaluation, Lesotho has to provide training courses for customs officials and members of the public. To facilitate this process, training packages/modules suitable for customs officials and the private sector would have to be produced. Donor technical assistance could be explored in this regard.

R45: Negotiate and consult with SARS on the best way of controlling transit traffic. As already pointed out, South Africa is the only entry point into Lesotho. Imports and exports from Lesotho transit through South Africa and therefore the importance of close collaboration between LRA and SARS cannot be overemphasized. The Commissioners of customs administration in Lesotho and South Africa should constantly discuss the best measures for controlling transit traffic to and from Lesotho. In instances where bilateral consultations do not yield expected results, the issues could be raised through the appropriate SACU organs.

R46: Establish a customs single window for Lesotho. Since Lesotho does not have a single window facility in customs, it is recommended that Lesotho creates a
customs single window facility which will bring together the necessary institutions that deal with trading across borders. This single window should be automated ensuring electronic data exchange. This will bring about significant efficiency improvements.

**R47: Upload exchange control laws and regulations on the website.** The Ministry of Finance and the Central Bank are the key custodians of the fiscal and monetary policy in Lesotho. In order to promote transparency, it is recommended that exchange control laws and regulations be uploaded into the government and regulator's website. This will improve the level of compliance with exchange control laws.

**R48: Finalize the creation of the Credit Bureau.** The recent passing by parliament of the Financial Institutions Act has created a legal framework for the emergence of credit bureau in Lesotho. The Central Bank of Lesotho together with key government stakeholders should undertake a coordinated action to swiftly facilitate the creation of such a bureau. This will ideally entail supporting the private sector in the creation of a bureau. As discussed above, credit bureaus play a critical role in facilitating the flow information on firms' reputations, which can strengthen contract security not only among enterprises but also between firms and the financial sector. World Bank (2005) found that on average, countries without credit registries have a private credit-to-GDP ratio of about 16%, those with publicly owned credit registries about 40%, and those with private bureaus about 67%. The Credit Reporting and Data Protection Bill legitimize the creation of private credit bureaus therefore all efforts should be made to facilitate the creation of the bureau by the private sector.

**R49: Finalize the introduction of National Identity Cards.** The issue of appropriate identification of credit applicants is crucial for the security of the lending procedure. At present there are no identity cards in Lesotho and the only identification document recognized by the banks is the passport, which is time consuming and expensive to obtain. As a result, a large share of the population does not own a passport and is thus effectively excluded from the formal credit market. The introduction of identity cards to all citizens of Lesotho is likely to decrease these problems and enhance access to credit.

**R50: Set up a comprehensive Training and Support Program for SMEs for credit provision.** The aim of the Training and Support Program would be to provide coherent and holistic support for micro, small and medium enterprises to obtain the necessary financing for companies’ growth. The program would offer training to new and existing enterprises and provide business advisory services regarding how to get credit, writing business plans and project proposal. Such program should be an addition to the existing private sector development activities of organizations responsible for business promotion in Lesotho such as BEDCO or LNDC. The support program should be available to all types of industry and may be modeled on activates of the Credit and Export Development Agency in Botswana which has been quite successful in the provision. CEDA provides training and mentoring are interconnected as they both attempt to cultivate the right entrepreneurial skills by providing the firms with services for business related functions such as marketing management; financial management; operations management, and human resources management. Support with regards to access to credit is one of CEDA’s top priority areas. In addition, the introduction of mentoring services, whereby a
mentor provides coaching, and counseling support, could provide necessary skills for enterprises in Lesotho seek credit from formal sector financial institutions.
## Appendix A5: The Lesotho Investor Roadmap Action Plan

<table>
<thead>
<tr>
<th>PROCESS AREA</th>
<th>RECOMMENDATIONS</th>
<th>PRIORITY</th>
<th>IMPLEMENTATION TIMETABLE</th>
<th>RESPONSIBILITY</th>
<th>LEAD AGENCY</th>
<th>DECISION</th>
<th>ACTION TO BE TAKEN</th>
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<tbody>
<tr>
<td>Employing</td>
<td>R1: Decrease the costs of both single and multiple visas</td>
<td>High</td>
<td>Short term</td>
<td>Ministry of Home Affairs and Public Safety</td>
<td>Department of Immigration</td>
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<td></td>
<td>R2: Review the list of countries that require a visa</td>
<td>Medium</td>
<td>Short term</td>
<td>Ministry of Home Affairs and Public Safety</td>
<td>Department of Immigration</td>
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<td>R3: Allow for visas to be issued within one working day</td>
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<td>Short term</td>
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<td>R4: Allow for multiple entry visas to be issued at Embassies and Consulates</td>
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<td>Short term</td>
<td>Ministry of Home Affairs and Public Safety</td>
<td>Department of Immigration</td>
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<td>R5: Negotiate with South Africa for the South African authorities to either: issue Lesotho visas in countries without Lesotho Embassies, or allow for a South African Visa to be valid for entry into both South Africa and Lesotho</td>
<td>High</td>
<td>Long Term</td>
<td>Ministry of Home Affairs and Public Safety</td>
<td>Department of Immigration</td>
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<td>R6: Diminish the backlog in application for residence permits</td>
<td>High</td>
<td>Short term</td>
<td>Ministry of Home Affairs and Public Safety</td>
<td>Department of Immigration</td>
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<td>R7: Improve information dissemination regarding the work and residence permits</td>
<td>High</td>
<td>Short term</td>
<td>Ministry of Home Affairs and Public Safety, Ministry of Labour</td>
<td>Department of Immigration, Department of Labour</td>
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<tr>
<td>Employing</td>
<td>R8: Delegate authority to issue work and residence permits</td>
<td>Low</td>
<td>Short term</td>
<td>Ministry of Home Affairs and Public Safety</td>
<td>Department of Immigration</td>
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<td>R9: Increase frequency of Immigration Board meetings</td>
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<td>Short term</td>
<td>Ministry of Labour</td>
<td>Department of Labour</td>
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<td>R10: Set up procedures that allow for easy tracking of application</td>
<td>High</td>
<td>Short Term</td>
<td>Ministry of Home Affairs and Public Safety, Ministry of Labour</td>
<td>Department of Immigration, Department of Labour</td>
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<td>R11: Unify residence and work permits</td>
<td>Low</td>
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<td>Ministry of Home Affairs and Public Safety, Ministry of Labour</td>
<td>Department of Immigration, Department of Labour</td>
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<td>R12: Reduce excessive and unnecessary submission requirements.</td>
<td>Medium</td>
<td>Medium Term</td>
<td>Ministry of Home Affairs and Public Safety, Ministry of Labour</td>
<td>Department of Immigration, Department of Labour</td>
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<td>R13: Enhance financial resources available to DDPR</td>
<td>Medium</td>
<td>Medium Term</td>
<td>Ministry of Finance</td>
<td>Budget</td>
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<td>R14: Employ additional staff in order to support the work of Labor Relations Manager at LNDC</td>
<td>Low</td>
<td>Short Term</td>
<td>LNDC</td>
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<td>R15: Computerize the dispute resolution management system</td>
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<td>Medium Term</td>
<td>DDPR</td>
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<td>REPORTING</td>
<td>R16: Expedite the institutionalization of the OSBFC</td>
<td>High</td>
<td>Short term</td>
<td>MTICM</td>
<td>OSBFC OFFICE</td>
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<td>REPORTING</td>
<td>R17: Undertake legislative amendments that would allow the OSBFC to perform its</td>
<td>High</td>
<td>Medium to Long term</td>
<td>MTICM, MOJ</td>
<td>OSBFC</td>
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<td><strong>R18</strong>: Fast track the automation of the one stop center</td>
<td>high</td>
<td>Medium to long term</td>
<td>MTICM, MoFDP</td>
<td>OSBFC</td>
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<td><strong>R19</strong>: Computerize the issuance of licenses</td>
<td>Low</td>
<td>Medium term</td>
<td>MTICM, OSBFC, MoFDP</td>
<td>Department of Industry</td>
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<td><strong>R20</strong>: Introduce the Automated Fingerprint Identification System (AFIS)</td>
<td>Medium</td>
<td>Medium term</td>
<td>MoJ, Police</td>
<td>Lesotho Police</td>
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### LOCATING

<p>| <strong>R21</strong>: Allocate factory space/land to all investors wishing to invest in Lesotho. | High | Short Term | LNDC | LNDC |
| <strong>R22</strong>: Undertake an audit of commercial and industrial land availability in Lesotho. | High | Short Term | LNDC | LNDC |
| <strong>R23</strong>: Support private sector participation in constructing and/or managing industrial estates | High | Short Term | LNDC | LNDC |
| <strong>R24</strong>: Clarify roles of the LAA and the Department of Land Surveys and Physical Planning (LSPP) within the Ministry of Local Government | High | Short Term | Ministry of Local Government | Ministry of Local Government |
| <strong>R25</strong>: Commission a study that would explore the possibility of setting up Special Economic Zones (SEZ) in Lesotho | High | Short Term | LNDC | LNDC |
| <strong>R26</strong>: Enhance long-term provision of land for formal commercial use | High | Short Term | Ministry of Local Government | Ministry of Local Government |
| <strong>R27</strong>: Amend the 2010 Land Act | High | Long Term | GOL | GOL |</p>
<table>
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<tr>
<th>R28: Improve zoning of land in Lesotho</th>
<th><strong>High</strong></th>
<th>Long Term</th>
<th>Ministry of Local Government</th>
<th>Ministry of Local Government</th>
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<tr>
<td>R29: Set up a National Land Reform Commission/Forum</td>
<td><strong>Low</strong></td>
<td>Long Term</td>
<td>GOL</td>
<td>GOL</td>
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<td>R30: Improve the speed of obtaining a construction permit</td>
<td><strong>Medium</strong></td>
<td>Short Term</td>
<td>MCC</td>
<td>MCC</td>
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<td>R31: Develop information brochures and websites for the site development process by the MCC</td>
<td><strong>Medium</strong></td>
<td>Short Term</td>
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<td>R32: Simplify procedures for obtaining EIA</td>
<td><strong>High</strong></td>
<td>Short Term</td>
<td>Ministry of Tourism, Environment and Culture</td>
<td>Department of Environment</td>
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<td>R33: Enhance the capacity DOE to carry out EIAs</td>
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<td>Department of Environment</td>
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<tr>
<td>R34: Establish a &quot;Strategic Committee&quot; comprised of WASCO, Ministry of Natural Resources, LNDC and other relevant stakeholders which would deal with devising a strategy to improve WASCO’s capacity for provision of sewage facilities</td>
<td><strong>Medium</strong></td>
<td>Medium Term</td>
<td>WASCO, Ministry of Natural Resources, LNDC and others</td>
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<td>R35: Encourage development of water recycling facilities</td>
<td><strong>Medium</strong></td>
<td>Medium Term</td>
<td>WASCO, Ministry of Natural Resources, LNDC and others</td>
<td>WASCO, Ministry of Natural Resources, LNDC and others</td>
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<td>R36: Reduce delay in obtaining an electricity connection</td>
<td>Medium</td>
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<td>R37: Improve the availability of Annual Report on the LEC website</td>
<td>Low</td>
<td>Sort Term</td>
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**OPERATING**

<p>| R38: Reduce the frequency of payments and filings of VAT | Medium | Short to medium term | LRA, MoFDP |
| R39: Lesotho should consider introducing an online filing system | Medium | Short to medium term | LRA, MoFDP |
| R40: Enable easier compliance with tax rules through producing public awareness materials and conduct outreach activities to all districts, especially for small and medium business enterprises | Medium | Short term | LRA, Business Sector Organizations | LRA |
| R41: Consider computerizing Revenue Authority | High | Medium term | LRA, MoFDP | LRA |
| R42: Fast track the computerization and automation of Customs clearance | High | Medium to long term | LRA, MoFDP | LRA |
| R43: Fast track and establish a customs team to review the customs laws and regulations | Medium | Short term | LRA, MoFDP | LRA |
| R44: Undertake training for Customs officials as well as members of the public | Low | Short term | LRA, Business sector organizations | LRA |
| R45: Negotiate and consult | Low | Short term | LRA, MoFDP | LRA |</p>
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<td>with SARS on the best way of controlling transit traffic</td>
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<td>R46: Establish a customs single window in Lesotho</td>
<td>Medium</td>
<td>Medium to long term</td>
<td>LRA, MTICM, MoFDP</td>
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<td>R47: Upload exchange control laws and regulations on the website</td>
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<td>CBL, Commercial banks</td>
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<td>R48: Finalize the creation of the credit bureau</td>
<td>High</td>
<td>Medium to long term</td>
<td>BoL, MoFDP</td>
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<td>R49: Finalize the introduction of the national identity cards</td>
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<td>MHA</td>
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<td>R50: Set up a comprehensive Training and Support Program for SMEs for credit provision</td>
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<td>Long term</td>
<td>MoFDP</td>
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