

Eswatini

Population ¹	1,124,753
Area (km ²) ¹	17,360
GDP per capita (USD) ¹	3,941.90
TPES (Mtoe) ²	N/A
Energy intensity (toe/10 ³ 2010 USD) ²	N/A
CO ₂ emissions - energy (MtCO ₂) ²	N/A

Sources:

1. The World Bank 2017

2. ©IEA 2018, www.iea.org/statistics

Eswatini's overall risk level against the assessed areas is **moderate**.

Unpredictable policy and regulatory change remains the lowest risk. It is followed by *discrimination between foreign and domestic investors*, which has increased compared to 2018. *Breach of State obligations* continues to be the highest risk area.

Eswatini has performed moderately on three of the EIRA indicators, and it has a good score on one indicator. It has maintained a score of 76 on *foresight of policy and regulatory change*. The score for *regulatory environment and investment conditions* has gone up by 3 points, and is now at 60. On the other hand, the performance on *management of decision-making processes* has gone down compared to last year and stands at 56. On *rule of law* it has once again scored 44 points.

On a more detailed level, Eswatini's overall sub-indicator performance is moderate. *Communication of vision and policies* continues to be the highest-scoring sub-indicator (78), followed by *robustness of policy goals and commitments* and *institutional governance*, both with 75 points. *Restrictions on FDI* stands at 70, while *management and settlement of investor-State disputes* is at 55. *Regulatory effectiveness* has received a score of 50 after increasing 6 points since last year. The performance on *transparency* has gone down from 44 to 36. *Respect for property rights* continues to be the lowest-scoring sub-indicator with 33 points.

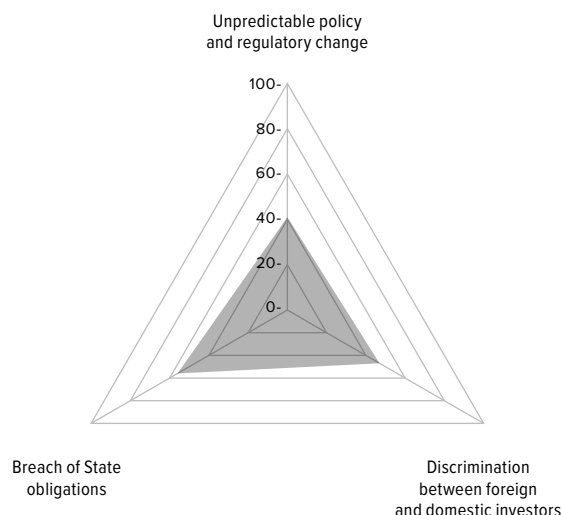
While there are some policies and measures in place, more concrete steps must be taken to strengthen Eswatini's performance across all indicators and underlying sub-indicators. Particular attention should be given to increasing transparency and reinforcing respect for property rights.

YEAR-ON-YEAR COMPARISON

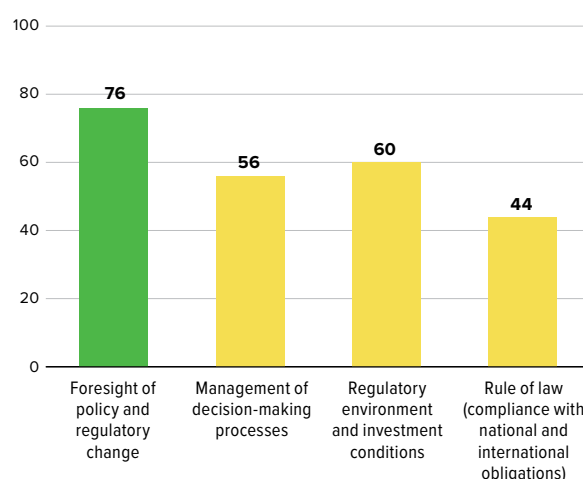
RISK AREAS	2018	2019
Unpredictable policy and regulatory change	40	41
Discrimination between foreign and domestic investors	46	47
Breach of State obligations	56	56

INDICATORS	2018	2019
Foresight of policy and regulatory change	76	76
Management of decision-making processes	60	56
Regulatory environment and investment conditions	57	60
Rule of law	44	44

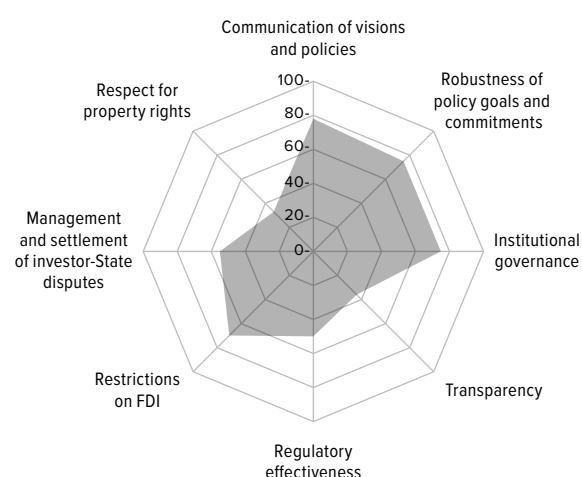
RISK LEVEL



INDICATOR PERFORMANCE



SUB-INDICATOR PERFORMANCE



Foresight of policy and regulatory change

QUICK FACTS

The National Development Strategy (adopted in 1999) addresses the challenges of the energy sector transformation and the overall development of the country.

The updated National Energy Policy 2018 and the National Energy Policy Implementation Strategy 2018 reflect the vision for the energy sector until 2030.

The National Climate Change Policy 2016 provides guidelines for climate change mitigation and adaptation policies.

STRENGTHS

The updated version of the National Energy Policy 2018 builds on the progress already made in terms of security of supply, power reliability and reduction of energy poverty. The Government has been developing mechanisms to fully exploit the country's renewable energy potential and reduce its reliance on imports. In October 2018, the Energy Masterplan 2034 was adopted. It identifies concrete actions for ensuring 50 per cent renewable energy in the electricity mix by 2030. The Plan is based on thorough energy demand and supply assessment. Some of the actions include the deployment of new solar and wind capacity as well as the construction of additional gas power plants. To this end, the Eswatini Electricity Company (EEC) has recently issued a tender for the construction of a 10MW solar park.

The Ministry of Natural Resources and Energy continues to be the principal State authority responsible for evaluating the implementation of the national strategy documents. Initiatives undertaken by the Government, in collaboration with international and regional organisations, involve non-State institutions in the monitoring process. The National Climate Change Committee is charged with the effective coordination of climate change initiatives across sectors.

AREAS FOR IMPROVEMENT

Although the Government has placed emphasis on improving energy efficiency to reduce its reliance on imported electricity, a detailed action plan in this area is needed. In line with the improvement suggested in 2018, the adoption of a cross-sectoral energy efficiency action plan with quantifiable goals will increase the country's capability to realise its priorities.

As acknowledged in the National Energy Policy 2018, the creation of a robust monitoring and evaluation system will assist the Ministry of Natural Resources and Energy to track the progress of its national and international targets and identify any issues in the implementation of its energy policy.

Management of decision-making processes

QUICK FACTS

The Energy Department of the Ministry of Natural Resources and Energy is responsible for the implementation of the national energy policy and the overall management of energy resources in the country.

The Ministry of Commerce, Industry and Trade is responsible for formulating the overall investment policy.

The Eswatini Investment Promotion Authority informs investors about business opportunities and facilitates permits and company registration.

STRENGTHS

The Government has given attention to increasing its institutional capacity and strengthening coordination across ministries. The Inter-Ministerial Committee, comprised of various ministers as well as representatives from the civil society, the private sector and the research community, oversees the implementation of the SE4All Country Action Plan 2014. A designated coordinator within the Ministry of Natural Resources and Energy is tasked with the mobilisation of the required investment and the allocation of resources across the project operations.

The Swazi Legal Information Institute provides free access to national laws, case law from all courts and labour arbitration awards. Electronic copies of national legislation are available on the official ministerial websites and the Government's portal. The Eswatini Energy Regulatory Authority (ESERA) publishes data on electricity tariffs and methodology for their calculation, tenders and licences. Public consultation takes place before the adoption of laws and policies, for instance in the context of the National Energy Policy 2018 and the Energy Masterplan 2034.

AREAS FOR IMPROVEMENT

The Government should take significant measures to ensure greater public access to information and promote the proactive disclosure of information by public authorities. It is recommended that official websites should contain complete and up-to-date data on programmes, outcomes, and procurement procedures. Moreover, the availability of legal information can be streamlined through an online Official Gazette, which is a useful tool for citizens, economic actors, and public authorities. Finally, the currently informal solicitation of stakeholders' input must be institutionalised. A law detailing the process and the timeframes for public consultation would be a step in the right direction.

Regulatory environment and investment conditions

QUICK FACTS

The ESERA was established under the Energy Regulatory Act 2007 to regulate the electricity sector.

The Minerals Management Board (MMB), under the Ministry of Natural Resources and Energy, administers the mining and minerals industry and monitors compliance with the relevant legislation.

The Eswatini Investment Promotion Act 1998 provides for equal treatment of foreign and domestic investors.

STRENGTHS

The ESERA and the MMB have maintained the level of autonomy they enjoyed last year, including the right to collect fees from licensing activities. The ESERA has a dedicated budget and the freedom to implement it. The members of its Board as well as those of the MMB have a limited tenure and are eligible for reappointment once. The ESERA cooperates with the Eswatini Competition Commission, an independent statutory body, to curb monopolistic behaviour in the regulated sectors.

The legal framework of Eswatini remains open to foreign investment. As part of the Common Market for Eastern and Southern Africa and the Southern African Development Community (SADC), Eswatini extends *national treatment* to investors from other States party to these agreements. Investment in the energy sector is prioritised. Independent power producers (IPPs) already operate in the generation of electricity, and the Government proactively seeks to increase private entities' participation. There have been no recent changes to the free currency convertibility and the movement of capital regime.

AREAS FOR IMPROVEMENT

In line with last year's suggested area of improvement, MMB and ESERA's functional and financial independence should be reinforced. Their budget should be subject to thorough audit and oversight by external bodies. Also, a better delineation of responsibilities between the ESERA and the EEC in the area of procurement will help attract IPPs in projects other than cogeneration and small-scale renewable energy undertakings.

The Government has been trying to put in place an effective incentive scheme to encourage foreign investment, including the enactment of a Special Economic Zones Act in 2018. Nevertheless, restrictions on land tenure and complexities in the registration of foreign business as national are liable to hinder, deter or make investment less attractive.

Rule of law

QUICK FACTS

Eswatini ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1971.

Eswatini is not a signatory to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

The right to property is guaranteed under the Constitution Act 2005.

STRENGTHS

Recourse to international arbitration continues to be an avenue open to foreign investors under domestic laws. Complaints against administrative decisions regarding the electricity sector can be heard by the Electricity Disputes Tribunal, whereas disputes between the holder of mineral rights and the Government may be referred to the Commissioner under the Mines and Mineral Act 2011. Eswatini has adopted the SADC Model BIT, which contemplates mediation as an amicable and neutral mechanism for dispute resolution. No retroactive changes affecting foreign investors were made in the past year.

The laws prohibit expropriation or nationalisation except where necessary, conducted pursuant to a court order and upon payment of fair and adequate compensation. Protection of intellectual property rights has been reinforced with the enactment of the Intellectual Property Tribunal Act 2018. The Patent Act 2018 repeals and replaces the Patent and Design Act 1997 and the Patent, Designs and Trade Marks Act 1936. Despite the lack of specific legislation providing for enforcement of awards under international conventions, national courts have effectively enforced court decisions and international arbitration awards in the past. Currently, there are no restrictions on the transfer of technology.

AREAS FOR IMPROVEMENT

Steps have been taken to modernise aspects of the legal regime that are relevant to foreign investors. Nevertheless, important pieces of legislation such as the Arbitration Act 1904 and the Trade Marks Act 1981 remain outdated. In line with last year's suggested improvement, the Government should consider revising these legislation and supplementing them with the necessary regulations for their implementation.

As mentioned in EIRA 2018, the introduction of a criteria for what constitutes "public interest" as grounds for expropriation will help eliminate any perception of arbitrariness in cases of deprivation of private property.