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SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

VOL. XXIX] MBABANE, Friday, July 19th., 1991 [No. 811

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SUPPLEMENT TO
THE
SWAZILAND GOVERNMENT
GAZETTE
EXTRAORDINARY

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THE FINANCIAL INSTITUTIONS, (CONSOLIDATION) (AMENDMENT) ACT, 1991

(Act No. 2 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

3rd January, 1991

AN ACT

entitled

An Act to amend the Financial Institutions (Consolidation) Order, 1975 (hereinafter referred to as "the Order").

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Financial Institutions (Consolidation) (Amendment) Act, 1991.

Amendment of section 2.

2. Section 2 of the Order is amended by replacing the definition "banking business" and "financial institution" with the following -

- (a) "banking business" means -
 - (i) the business of receiving funds from the public or from members thereof through the acceptance of money, deposits of money payable upon demand or after a fixed period or after notice or any similar operation through the periodic sale or placement of bonds, certificates, notes or other securities and the use of such funds either in whole or in part for loans, advances, investments or any other operation authorised by law or customary banking practice, for the account and at the risk of the person doing such business;
 - (ii) any other activity recognized by the Central Bank as customary banking practice which a financial institution may be authorized by the Central Bank to engage in;
- (b) "financial institution" means any person carrying on banking business or the business of a stockbroker or dealer in stocks, bonds or shares."

Amendment of section 18.

3. Section 18 of the Order is amended as follows -

(a) in subsection (1)(a) -

(i) in subparagraph (i) by replacing the words "one hundred thousand (Emalangeni (E100,000.00))" with the words "one million Emalangeni (E1,000,000.00)" and by deleting the word "and" after the semi-colon;

(ii) in subparagraph (ii) by replacing the words "twenty-five per cent" with the words "ten per cent" and by adding the word "and" after the semi-colon; and

(iii) by adding the following subparagraph -

"(iii) the sum of capital and reserve accounts together shall not be less than eight per cent of the sum of its risk assets computed in the manner prescribed by the Central Bank from time to time by Notice in the Gazette."

(b) In subsection (1)(b)(i) in the proviso by replacing the words "fifty thousand Emalangeni (E50,000.00)" with the words "five hundred thousand Emalangeni (E500,000.00)".

(c) by replacing subsection (2) with the following subsection -

"(2) If -

(a) the minimum capital of a financial institution, prescribed in reference to its liabilities, exceeds the amount of its unimpaired capital, such institution may, provisionally and subject to the approval of the Central Bank for such period as it may approve, include in the computation of its capital any unimpaired balance in its reserve account;

(b) the sum of capital and reserve accounts of a financial institution, falls below eight per cent of the sum of its computed risk assets, such institution may, on application to the Central Bank, be granted a reasonable time not exceeding one year for compliance."

Amendment of section 22.

4. Section 22 of the Order is amended in subsection (3) by inserting after paragraph (c) the following paragraph -

"(cc) securities issued by the Central Bank and maturing within one hundred and eighty days."

Amendment of section 33.

5. Section 33 of the Order is amended in subsection (1) by deleting the words "after consultation with the Minister".

Amendment of section 40.

6. Section 40 of the Order is amended by adding after subsection (3) the following subsection -

"(4) A person who is a director, officer or employee of a financial institution shall not serve at the same time as a director, officer or employee of any other financial institution except where the Central Bank after consultation with the Minister permits, in writing, such service in respect of not more than one such other institution."

MONEY-LENDING AND CREDIT FINANCING ACT, 1991

(Act No. 3 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

3rd January, 1991

AN ACT
entitled

An Act to regulate money-lending and credit financing by persons other than recognized financial institutions.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Money-Lending and Credit Financing Act, 1991.

Interpretation.

2. In this Act unless the context otherwise requires:

“annual interest rate” means a rate calculated by multiplying the interest rate per period by the number of such periods in one year;

“borrower” means any person to whom a lender grants a loan of a sum of money in terms of a money-lending transaction or any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a borrower in respect of a money-lending transaction are transferred;

“credit transaction” means any transaction by which a lender and a credit receiver agree that the lender sells, supplies or grants the use or enjoyment of movable property or services to the credit receiver against payment by the credit receiver to the lender of a stated or determinable sum of money at a stated or determined future date or in whole or in part in instalments over a period in the future;

“lenders” means -

- (a) any person who grants a loan of a sum of money to a borrower in terms of a money-lending transaction;
- (b) any person who grants credit to a credit receiver in terms of a credit transaction;

- (c) any person to whom, whether by delegation, cession or otherwise, the rights and obligations of a lender are transferred;
- (d) the holder of an instrument of debt executed in respect of a money lending or credit transaction;

“Minister” means the Minister for Finance;

“Money-lending transaction” means any transaction which, whatever its form may be and whether or not it forms part of another transaction, is substantially one of money lending;

“prescribed” means prescribed by regulations under section 3 of this Act;

“principal debt” means -

- (a) in relation to a money-lending transaction;
 - (i) the cash amount in money actually received by or on behalf of a borrower in terms of such transaction; plus
 - (ii) the costs in respect of stamp duties and other duties actually paid or payable by the lender in connection with such transaction and which are recoverable from the borrower;
- (b) in relation to a credit transaction:
 - (i) the selling price of movable property or services or the total sum of money, excluding finance charges, charged by the lender for the use or enjoyment of movable property or services or, if applicable, the difference between the selling price of, or amount charged for the use or enjoyment of, movable property or services and the cash amount in money paid or payable for such property or services to the lender by the credit receiver for application in reduction of the selling price; or
 - (ii) the costs in respect of stamp duties and other duties actually paid or payable by the lender in connection with such transaction.

Maximum annual interest rates chargeable in respect of money-lending or credit transaction.

3. (1) Where in respect of any money-lending or credit transaction the principal debt -
- (a) does not exceed E500 or such amount as may be prescribed from time to time, no lender shall charge an annual interest rate of more than 10 percentage points, or such amount as may be prescribed from time to time, above the rate for discounts, rediscounts or advances announced from time to time by the Central Bank under section 38 of the Central Bank of Swaziland Order, 1974.
 - (b) exceeds E500 or such amount as may be prescribed from time to time, no lender shall charge an annual interest rate of more than 8 percentage points, or such amount as may be prescribed from time to time, above the rate for discounts, rediscounts and advances announced from time to time by the Central Bank under section 38 of the Central Bank of Swaziland Order, 1974.
- (2) No lender shall calculate interest charges according to periods which are shorter or longer than those according to which the instalments or outstanding balance of the principal debt shall be paid in terms of an agreement in connection with the money lending or credit transaction.

(3) Where in connection with a money-lending or credit transaction it is agreed by the parties that payment of the principal debt and finance charges shall be effected in any manner other than by way of regular payments, the annual finance charge rate at which finance charges may be levied shall be calculated on the balance of the principal debt owed from time to time by the borrower or credit receiver.

(4) The provision of sub-section (3) shall not be construed as prohibiting the recovery of finance charges according to periods of one month or longer in the case of a money-lending or credit transaction in respect of which the period between instalment payments or the period between the date on which the principal debt was incurred on the one hand and on the other hand the date on which the principal debt is payable, is longer than one month.

Compulsory disclosure of interest charges.

4. A lender shall, in connection with any money-lending or credit transaction for which finance charges are payable, state in the instrument of debt executed in respect of any such transaction, the following particulars:

- (a) the cash amount in money, or the value of the use or enjoyment, of movable property or services actually received by or on behalf of the borrower or credit receiver;
- (b) all other charges shown separately but which form part of the principal debt;
- (c) the principal debt, that is, the sum of the amounts referred to in paragraphs (a) and (b);
- (d) the amount in Emalangenzi and cents of the finance charges;
- (e) the finance charges expressed at an annual finance charge rate; and
- (f) as the case may be,
 - (i) the date upon which or the number of instalments in which the principal debt together with the finance charges shall be paid;
 - (ii) the amount of each instalment; and
 - (iii) the date on which each instalment becomes due and the manner in which the date is determined.

Information to be furnished by lender to borrower or credit receiver.

5. A lender shall, within 14 days after the conclusion of a money-lending or credit transaction deliver or send by post to the borrower or credit receiver:

- (a) a duplicate or true copy of the instrument of debt executed in connection with the transaction; or
- (b) where no such instrument is executed, a duplicate or true copy of any document signed by the lender and borrower or credit receiver or by their duly authorised representatives as evidence of the transaction.

Conditions for sums recoverable from borrower or credit receiver.

6. (1) Any agreement in connection with any money-lending or credit transaction that is not in conformity with the provisions of this Act shall be null and void, and shall not be enforceable against the borrower or the credit receiver by the lender.

(2) No lender shall in connection with any money-lending or credit transaction obtain judgement for or recover from a borrower or credit receiver an amount exceeding the sum of -

- (a) the principal debt owed by the borrower or credit receiver;
- (b) the interest charges on the principal debt;
- (c) the additional finance charges calculated in the manner prescribed by section 7;
- (d) in the case where judgement is obtained for recovery of the principal debt or finance charges due from the borrower or credit receiver, legal costs awarded in terms of such judgement.

(3) No lender shall in any proceedings against a borrower or credit receiver in respect of any loss, damage or expense alleged to have incurred by him in connection with a money-lending or credit transaction, obtain judgement for any sum not recoverable under subsection (1) of this section.

Conditions for sums recoverable on default or deferment or payment.

7. Where a borrower or credit receiver:

- (a) fails to pay an amount owed by him when such amount becomes due; or
- (b) enter into an agreement with the lender to defer payment of the amount owed by him;

the lender shall be entitled to recover from him in respect of the finance charges an additional amount which shall be calculated by reference to the total amount due but which is unpaid, the annual finance charge rate at which the finance charges were initially levied on the principal debt and, as the case may be, the period during which the default continues or the period for which payment is deferred.

Recovery of overpaid principal debt and interest charges.

8. Any borrower or credit receiver who in connection with a money-lending or credit transaction pays an amount in excess of the amount which in terms of this Act is lawfully recoverable from him may, at any time within three years from the date of such payment, recover from the person to whom the payment was made a sum equal to the amount overpaid by him.

Regulations.

9. The Minister may, by notice in the Gazette, make regulations with regard to all matters which in terms of any provision of this Act are required to achieve the objects of this Act.

Exemptions.

10. The provisions of this Act shall not apply to:

- (a) any money-lending or credit transaction to which the Pawnbroking Act, 1894 applies;
- (b) any money-lending or credit transaction to which the Land and Agricultural Loan Act, 1929 applies;
- (c) any institution licensed under the Building Societies Act, 1962 or the Financial Institutions (Consolidation) Order, 1975;
- (d) any hire purchase transaction to which the Hire-Purchase Act 1969, applies;
- (e) any credit card scheme recognized and adopted by any institution licensed under the Building Societies Act, 1962 or the Financial Institutions (Consolidation) Order, 1975.

Existing money-lending and credit transaction.

11. All money-lending and credit transactions entered into and in force before the commencement of this Act shall continue in force subject to the provisions of section 3 of this Act.

THE GAME (AMENDMENT) ACT, 1991

(Act No. 4 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

14 January 1991

AN ACT

entitled

An Act to amend the Game Act, 1953 and to provide for matters incidental thereto.
ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Game (Amendment) Act, 1991 and shall be read as one with the Game Act, 1953 referred to in this Act as the "principal Act".

Replacement of section 2.

2. Section 2 of the principal Act is hereby replaced with the following:

"Interpretation.

2. In this Act, unless the context otherwise requires -

"aircraft" means any machine or apparatus which is capable of flying;

"animal" means any vertebrate animal which is indigenous to Swaziland;

"bird" means any bird, or part thereof, or the nest or eggs of any bird, mentioned in the Second and Third Schedules to this Act;

"common game" means any animal or bird which is named in the Third Schedule or any part of any such animal or bird;

“game” includes specially protected game, royal game and common game, or any part of any such game;

“game farm” means a defined area which is surrounded by a game fence and which is used or is intended to be used for producing sustained surpluses from viable capital stocks of animals or birds for commercial purposes;

“game farmer” means any person who has erected a game fence around his property to enclose a viable population of animals or birds for the purpose of propagating surpluses from capital stocks for commercial reasons;

“game fence” means a fence constructed to a standard which is substantially more than a stock fence and which effectively controls the movement of wild animals out of or into defined area;

“game ranger” means a game ranger appointed by the Minister in terms of subsection (1) of section 23 of this Act, or any person acting on the instruction of any such game ranger;

“hunt” includes shooting at, pursuing, taking stealing, killing, injuring, snaring, capturing, trapping or wilfully disturbing animals, and the taking or destruction or wilfully disturbing of the eggs or nests of birds;

“manager” means a person actually present and resident upon a property and who is responsible to the owner for the administration thereof;

“Minister” means the Minister responsible for Natural Resources;

“owner” means the registered owner of land or his spouse or children;

“raw product” means the product of any animal or part of any animal which is still intact and unworked or unprocessed or unmanufactured, provided that a polished product, or a product superficially worked so as to camouflage it from being a raw product, shall constitute a raw product;

“royal game” means any animal or bird which is named in the Second Schedule of this Act or any part of any such animal or bird;

“specially protected game” means any animal which is named in the First Schedule to this Act or any part of any such animal;

“Swazi area” means Swazi Nation land;

“trophy” means any animal or bird, dead or alive, mentioned in the Second and Third Schedules or any part of any such animal or bird, but shall not include the processed product or manufactured curio or other article manufactured to finished form, or the tanned or brayed skin or part thereof;

“traffick” means dealing in, selling, buying, moving, conveying, possessing or otherwise acquiring or disposing of.”

Replacement of section 4.

3. Section 4 of the principal Act is hereby replaced with the following:

“Temporary protection of game.

4. The Minister may from time to time by Notice in the Gazette define areas in Swaziland within which any common game specified in such Notice shall be protected for such period as may be specified in such Notice, and may in like manner vary to revoke such Notice.”

Replacement of section 6.

4. Section 6 of the principal Act is hereby replaced with the following:

"Sanctuaries

6. (1) The Minister may by Notice in the Gazette declare any specified area of Swaziland to be a sanctuary for the protection of any animals or birds specified in such Notice, whether or not such animals or birds are included in the First, Second or Third Schedule to this Act, and may in like manner vary the animals or birds to which the protection of the sanctuary shall apply, or extend or restrict the limits of or abolish any such sanctuary:

Provided that where the Minister does not specify in such Notice the animals or birds to which the protection of the sanctuary shall apply, the sanctuary so declared shall be deemed to have been declared for the protection of all indigenous animals and birds within the sanctuary.

(2) Any person who in any sanctuary hunts or attempts to hunt any animal /or bird protected within the sanctuary, or takes any trophy of any such animal or bird, or who is found within a sanctuary under circumstances which show he is there for the purpose of hunting or taking trophy of any such animal or bird therein shall be guilty of an offence:

Provided that nothing in this subsection shall apply to a game ranger acting in the execution of his duties or to the holder of a special permit granted by the Minister under subsection (1) of section 16 of this Act.

(3) No person shall camp within the limits of a sanctuary unless he has first obtained a permit issued by a game ranger stating the period for which he may camp.

(4) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence.

(5) It is an offence for any person, other than a police officer acting in the course of his official duty or a game ranger acting in the course of his official duty, to carry any firearm in a sanctuary except under the supervision of the game ranger in charge of the sanctuary."

Replacement of section 8 and 9.

5. Section 8 and 9 of the principal Act are hereby replaced with the following:

"Prohibition of hunting and dealing in specially protected and royal game.

8. (1) No person shall hunt or attempt to hunt, or be in possession of a trophy of, any specially protected game unless he holds valid permit issued under subsection (1) of section 16, and otherwise than in accordance with the conditions set out in such permit.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not less than five years but not exceeding fifteen years, without the option of a fine.

(3) Subject to the provisions of section 16, any person who trades or trafficks in the raw product of any specially protected game shall be guilty of an offence and liable on conviction to imprisonment for a period of not less than seven years but not exceeding fifteen years without the option of a fine.

(4) No person shall hunt or attempt to hunt, or be in possession of a trophy of any royal game unless he is in possession of a valid permit issued under subsection (1) of section 16, and otherwise than in accordance with the conditions set out in such permit.

(5) Any person who contravenes the provisions of subsection (4) shall be guilty of an offence and liable on conviction to a fine of not less than four thousand Emalangeni but not exceeding thirty thousand Emalangeni or, in default of payment, to imprisonment for a term of not less than one year but not exceeding five years:

Provided that in all cases any fine imposed shall not be less than the replacement value of the animals or birds in respect of which the offence is committed.

(6) Any person found guilty of an offence under subsection (1), (3) or (4) shall be required by the Court in addition to any penalty imposed under that subsection, to either replace that game or to compensate fully for its replacement value, failing which such person shall be liable to a further period of imprisonment of not less than two years but not exceeding six years.

(7) Any such replacement or compensation shall be made to the owner of the game or, if ownership of the game cannot be established, to the owner of the property where the game was hunted, and where the owner of such game or property cannot be determined, such replacement or compensation shall be made to the Government.

Licences to hunt game during open season.

9. (1) Subject to section 15, the Minister may issue a licence to any person to hunt common game during the open season provided that:

- (a) the written permission of the landowner on whose property the game is to be hunted is produced to the Minister when the application is made for the licence;
- (b) the licence clearly specifies the species and number of animals to be hunted;
- (c) the licence shall be carried by the licensee when hunting and every animal shot shall be recorded on the reverse thereof immediately the animal is recovered.

(2) The Minister may from time to time by Notice in the Gazette fix the fees to be paid for licences to hunt common game during the open season."

Replacement of section 12.

6. Section 12 of the principal Act is hereby replaced with the following:

"Illegal hunting of game or possession of trophy, aiding and abetting, confiscation and disposal of arms, ammunition, etc.

12. (1) Except as otherwise provided in this section any person who without valid licence or permit issued under this Act or contrary to the provisions of any Notice issued by the Minister under section 4 hunts or attempts to hunt any game or is in possession of a trophy of any game shall be guilty of an offence.
- (2) Any person who uses or issues forged or fictitious permit or licence or without lawful authority uses or issues any permit or licence for the purpose of enabling him or another person to traffick illegally in:
- (a) specially protected game or any raw product thereof shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than three years but not exceeding eight years without the option of a fine; or
 - (b) any trophy of any game shall be guilty of an offence and liable on conviction to a fine of not less than two thousand Emalangeni but not exceeding four thousand Emalangeni or to imprisonment of not less than one year but not exceeding four years or to both.

- (3) Any person who in any way aids, abets or solicits any person to contravene any of the provisions of this act shall be guilty of the same offence as the offender and liable to the same punishment to which the offender convicted of such offence is liable.
- (4) Any person convicted of an offence under any section of this Act shall forfeit to the Government by order of the Court any firearm, ammunition, weapon, animal, vehicle, vessel or aircraft which was in his possession at the time of the commission of the offence and any such firearm, ammunition, weapon, animal, vehicle, vessel or aircraft shall be disposed of by public auction by order of the court after proper advertisement, whether or not the convicted person is the owner of such firearm, ammunition, weapon, animal, vehicle, vessel or aircraft, unless such firearm, ammunition, weapon, animal, vehicle, vessel or aircraft is proved by its owner to have been stolen and that the theft has been reported to and duly recorded by the police.
- (5) No firearm, ammunition, weapon, animal, vehicle, vessel or aircraft seized by a game ranger or any person acting under his direct authority, or by a police officer, in respect of any alleged contravention of this Act, shall be released by the court unless the accused is acquitted."

Amendment of section 13.

7. In section 13 of the principal Act replace the word "aeroplane" wherever it occurs with the word "aircraft".

Replacement of sections 15 and 16.

8. Sections 15 and 16 of the principal Act are hereby replaced with the following:
"Privileges and rights of landowners, etc.

15. Notwithstanding anything to the contrary in this Act, any person who is -

- (a) the owner, lessee, or manager of any land in Swaziland; or
- (b) lawfully resident on a land in a Swazi area,

may at any time, except during the closed season mentioned in section 7 of this Act, hunt any common game, other than common game protected under section 4, on such land without obtaining a licence for that purpose.

Free permits.

16. (1) The Minister or an officer authorised in that behalf by him may issue without charge a permit authorising the holder thereof:
- (a) to hunt, kill or capture any game as specified in species and number on the permit, and on such conditions and for such period as the Minister may deem fit, if the permission in writing of the owner of the land in respect of which the permit is to be issued has been obtained;
 - (b) to import or to export any trophy if it is shown that such trophy has been legally acquired.
- (2) The Minister or an officer authorised in that behalf by him may issue without charge a permit to any person to possess a trophy of specially protected game or raw product thereof; provided that the source of such trophy or raw product, if in Swaziland, is authorised in writing by the person on whose land it is taken; provided further that if the source of such trophy or raw product is not in Swaziland, its possession is proved to have been legally acquired."

Replacement of section 19.

9. Section 19 of the principal Act is hereby replaced with the following:

“Export and import of game trophies, etc.

19. (1) Any person who exports from Swaziland or imports into Swaziland any trophy or raw product of any specially protected game without a valid permit issued by the Minister under subsection (2) of section 16, or contrary to the conditions of such permit, shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than five years but not exceeding fifteen years, without the option of a fine.
- (2) Any person who exports from Swaziland or imports into Swaziland any trophy of any royal game without a valid permit issued by the Minister under subsection (2) of section 16, or contrary to the conditions of any such permit, shall be guilty of an offence and liable on conviction to a fine of not less than five thousand Emalangeni but not exceeding twenty thousand Emalangeni, or to a term of imprisonment of not less than three years but not exceeding eight years or both”.
- (3) Any person who exports from swaziland or imports into Swaziland any trophy of any common game, or any trophy of any other indigenous animal or bird, without a valid permit issued by the Minister under subsection (2) of section 16 or contrary to the conditions of any such permit, shall be guilty of an offence and liable on conviction to a fine of not less than two thousand Emalangeni but not exceeding twenty thousand Emalangeni, or to a term of imprisonment of not less than two years but not exceeding five years or both”.

Amendment of section 20.

10. Section 20 of the principal Act is hereby amended by replacing the words “District Commissioner” wherever they occur with the word “Minister”.

Replacement of sections 21, 22 and 23.

11. Sections 21, 22 and 23 of the principal Act are hereby replaced with the following:

“Prohibition of trespass in pursuit of game.

21. (1) No person shall be upon any land at any time in pursuit of or in search of game, whether or not he is the holder of a licence issued under this Act, unless he has the permission in writing of the owner of such land.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.
- (3) Any dog found upon land within a sanctuary may be destroyed forthwith by, or on the order of, the owner or occupier of such land and he shall not be liable to pay any compensation in respect of such destruction.

Right of search.

22. Any game ranger or a police officer who on reasonable grounds believes that there is in any house, tent, vehicle, vessel, receptacle or place -

- (a) anything with respect to which an offence against this Act has been, or is suspected to have been, committed;
- (b) anything that will afford evidence as to the commission of any such offence; or
- (c) anything that is intended to be used for the purpose of committing any such offence.

and that the delay in obtaining a search warrant would defeat the object of the search, may himself search without a warrant for any such thing mentioned in (a), (b) or (c), and seize such thing, if found, and take them before the Court to be dealt with according to

Appointment and powers of game rangers.

23. (1) The Minister after consultation with the Swaziland National Trust Commission may from time to time appoint game rangers for good and sufficient reason may remove or dismiss any such game ranger.
- (2) Any game ranger or person acting on the instructions of a game ranger shall have the powers and the right:
- (a) to carry and use firearms in the execution of his official duty provided such firearms are properly licensed;
 - (b) to use firearms in self defence or if he has reason to believe that his life, or the life of any of his colleagues, is threatened or is in danger;
 - (c) to arrest without a warrant any person suspected upon reasonable grounds of having contravened any of the provisions of this Act or regulations made thereunder;
 - (d) to use reasonable force necessary to effect the arrest of or to overpower any person who resists arrest and who is suspected on reasonable grounds of having contravened any of the provisions of this Act;
 - (e) to carry out searches without a warrant under section 22 of this Act.
- (3) A game ranger or person acting on the instructions of a game ranger shall not be liable to prosecution in respect of any act or omission done in the exercise of his powers of rights under subsection (2) of this section."

Amendment of section 24.

12. Section 24 of the principal Act is hereby amended as follows:
- (i) by replacing subsection (1) with the following:

"Evidence

24. (1) Any trophy seized from any person charged with an offence under this Act or any regulations made thereunder shall be *prima facie* evidence against such person that he has hunted such game."
- (ii) by inserting after subsection (4) the following new subsection:

"(5) Where a trophy is required to be produced as an exhibit in any evidence before a court it shall not be necessary to produce any more than a piece of skin, trotter, head or fur or other distinctive part of the animal sufficient to identify such animal and to determine the number of such animal to be produced before the court."

Amendment of section 25.

13. Section 25 of the principal Act is hereby amended by inserting before the words "the Minister" the words "Subject to the provisions of section 15", and by deleting therefrom the words "game reserve or" wherever they occur.

Replacement of section 26.

14. Section 26 of the principal Act is hereby replaced with the following:

"Penalties.

26. (1) Any person who contravenes the provisions of sections 6(2) or (5), 7(1), 12(1), 13, 14 or 20(1), (2) or (3) shall on conviction be liable to a fine of not less than six hundred Emalangeni but not exceeding two thousand Emalangeni or to imprisonment for a period of not less than six months but not exceeding two years.
- (2) Any person who contravenes the provisions of section 6(4) or 21(1) shall on conviction be liable to a fine of not less than two hundred Emalangeni but not exceeding five hundred Emalangeni or to imprisonment for a period of not less than one month but not exceeding one year.
- (3) In addition to any penalties levied under subsection (1), any person who contravenes the provisions of sections 6(2) or 12(1), shall be required by the Court to either replace that game or to compensate fully for its replacement value, failing which such person shall be liable to a further period of imprisonment of not less than one year but not exceeding three years.
- (4) Any such replacement or compensation shall be made to the owner of the game or, if ownership of the game cannot be established, to the owner of the property where the game was hunted, and where the owner of such game or property cannot be determined, such replacement or compensation shall be made to the Government."

Insertion of new sections 27, 28, 30 and 31.

15. There is hereby inserted immediately after section 26 of the principal Act the following new sections:

"Previous convictions.

27. (1) Before passing sentence on any person convicted under this Act, the court shall call upon the prosecutor for a record of previous convictions of that person, if any.
- (2) Any person who has previously been convicted of an offence under this Act, other than an offence under sections 6(3) and 21(1) shall, upon a second or subsequent conviction, be sentenced to the maximum penalty prescribed in relation to the offence for which he is charged.
- (3) Any person including an official who wilfully interferes with the investigation of any case or who in any way obstructs or frustrates the criminal prosecution of any case or who withholds, suppresses or destroys or causes to be withheld, suppressed or destroyed any evidence including records in connection with such case or in any way attempts to defeat the end of justice shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than twelve months and not more than twenty four months without the option of a fine.

Suspended sentences prohibited.

28. No sentence or part of any sentence imposed under any of the provisions of this Act in respect of any offence shall be suspended by the court.

Reward for informants.

29. Any person who gives any information which leads to the arrest and conviction of another person for an offence under this Act shall receive such reward as may be determined by the Minister.

The Minister to appoint Advisory Committee.

30. The Minister may appoint a committee consisting of such members as he may determine to monitor the administration and enforcement of this Act and to advise him from time to time.

Application of Act.

31. Notwithstanding the provisions of section 43 bis of the Swaziland National Trust Commission Act, 1972, the provisions of this Act shall apply within the boundaries of any park, reserve, monument or relic proclaimed under the National Trust Commission Act, 1972 in relation to any game of the class referred to in this Act."

Replacement of First, Second and Third Schedules.

16. The First, Second and Third Schedules to the principal Act are hereby replaced with the following:

"FIRST SCHEDULE

SPECIALLY PROTECTED GAME

Elephant
White rhinoceros
Black rhinoceros
Lion

Loxodonta Africana
Ceratotherium simum
Diceros bicornis

SECOND SCHEDULE

ROYAL GAME

Animals

Hedgehog	<i>Erinaceus frontalis</i>
Thick-tailed bushbaby	<i>Galago crassicaudatus</i>
Samango monkey	<i>Ceropithecus albogularis</i>
Pangolin	<i>Manis temminckii</i>
Red rock hare	<i>Pronolagus crassicaudatus</i>
Aardwolf	<i>Proteles cristatus</i>
Cheetah	<i>Acinonyx jubatus</i>
Leopard	<i>Panthera pardus</i>
Caracal	<i>Felis caracal</i>
African wild cat	<i>Felis lybica</i>
Serval	<i>Felis serval</i>
Wild dog	<i>Lycaon pictus</i>
Cape fox	<i>Vulpes chama</i>
Side-striped jackal	<i>Canis adustus</i>
Cape clawless otter	<i>Aonyx capensis</i>
Spotted-necked otter	<i>Lutra maculicollis</i>
Honey badger	<i>Mellivora capensis</i>
Striped weasel	<i>Poecilogale albinucha</i>
Zorilla	<i>Ictonyx striatus</i>
African civet	<i>Civettictis civetta</i>
Antbear	<i>Orycteropus afer</i>
Hippopotamus	<i>Hippopotamus amphibius</i>
Giraffe	<i>Giraffa camelopardalis</i>
Black wildebeest	<i>Connochaetes gnou</i>
Red hartebeest	<i>Alcelaphus buselaphus</i>
Tsessebe	<i>Damaliscus lunatus</i>
Blue duiker	<i>Cephalophus monticola</i>
Red duicker	<i>Cephalophus natalensis</i>
Klipsringer	<i>Oreotragus oreotragus</i>
Oribi	<i>Ourebia ourebi</i>
Steenbok	<i>Raphicerus campestris</i>
Sharpe's grysbok	<i>Raphicerus sharpei</i>
Suni	<i>Neotragus moschatus</i>
Grey rhebok	<i>Pelea capreolus</i>
Roan antelope	<i>Hippotragus equinus</i>
Sable	<i>Hippotragus niger</i>
Buffalo	<i>Syncerus caffer</i>
Kudu	<i>Tragelaphus strepseceros</i>
Nyala	<i>Tragelaphus angasii</i>
Nyala	<i>Tragelaphus strepsécero</i>
Bushbuck	<i>Tragelaphus scriptus</i>
Eland	<i>Taurotragus oryx</i>
Reedbuck	<i>Redunca arundinum</i>
Mountain reedbuck	<i>Redunca fulvorufula</i>
Waterbuck	<i>Kobus ellipsiprymnus</i>

BIRDS

All species of birds other than those Gazetted from time to time by the Minister as common game, and those listed on the Third Schedule.

THIRD SCHEDULE

COMMON GAME

Animals

Scrub hare
Rock hyrax
Burchell's zebra
Bushpig
Warthog
Blue wildebeest
Blesbok
Grey duiker
Impala

Lepus saxatilis
Procavia capensis
Equus burchellii
Potamochoerus porcus
Phacochoerus aethiopicus
Connochaetes taurinus
Damaliscus dorcas phillipsi
Sylvicapra grimmia
Aepyceros melampus

BIRDS

Crowned guineafowl

Numida mitrata."

Repeals.

16. Sections 5, 17, 18 and 20(3) of the principal Act are hereby repealed.

THE CUSTOMS AND EXCISE (AMENDMENT) ACT, 1991

(Act No. 5 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

14th January, 1991

AN ACT
entitled

An Act to amend the Customs and Excise Act, 1971.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Customs and Excise (Amendment) Act, 1991 and shall be read as one with the Customs and Excise Act, 1971 (hereinafter called the "principal Act").

Amendment of long title.

2. The long title of the principal Act is replaced with the following -

"An Act to provide for the levying of customs, excise and sales duties and a surcharge, the prohibition and control of the import, export or manufacture of certain goods and for incidental matters."

Amendment of section 2.

3. Section 2 of the principal Act is amended -

(a) in subsection (1) by replacing -

(i) the definition of "common customs area" with the following -

"“common customs area” means the combined area of Swaziland and countries with the governments of which customs union agreements have been concluded under section 51;”

(ii) the definition of "Customs duty" with the following -

"“customs duty” means, subject to the provisions of subsection (2), any duty leviable under Schedule No. 1 (except parts 3 and 4 thereof) or No. 2 on goods imported into Swaziland;”

- (iii) the definition of "department" with the following -

““department” means the Department of Customs and Excise within the Ministry of Finance;”;

- (iv) the definition of "excise duty" with the following -

““excise duty” means, subject to subsection (2), any duty leviable under Part 2 of Schedule No. 1 on any goods manufactured in Swaziland;

- (v) the definition of "manufacture" with the following -

““manufacture”, when used as a noun, includes, as the Commissioner may determine, any process -

- (a) in the manufacture or assembly of any excisable goods or sales duty goods;
- (b) in the conversion of any goods into excisable goods or sales duty goods;
- (c) whereby the dutiable quantity or value of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods or sales duty goods is increased in any manner;
- (d) in the recovery of excisable goods or sales duty goods from excisable goods or any other goods; or
- (e) in the packaging or measuring off of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods or sales duty goods,

and, when used as a verb, has a corresponding meaning, and "manufacturer" has a corresponding meaning;" and

- (b) by replacing subsection (2) with the following -

“(2) for the purposes of the Agreement concluded under section 51 with the Government of the Republic of Botswana, the Kingdom of Lesotho and the Republic of South Africa and published by Legal Notice No. 71 of 1969 on 12 December, 1969 -

- (a) "customs duty" includes any duty leviable under Part 4 of Schedule No. 1 on goods imported into Swaziland and, except for the purposes of articles 13 and 14 of the said agreement, any duty leviable under Part 8 of Schedule No. 1 on goods imported;
- (b) "excise duty" includes, except for the purposes of articles 13 and 14 of the said agreement, any duty leviable under Part 8 of Schedule No. 1 on goods manufactured in the common customs area.”.

Amendment of section 4.

4. Section 4 of the principal Act is amended by replacing -

- (a) subsection (3) with the following -

“(3) No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties, except -

- (a) for the purposes of this Act; or
- (b) when requiring to do so as a witness in a court of law; or
- (c) to the Commissioner of Taxes or any officer in the Office of that Commissioner and designated by that Commissioner, for the purposes of any law with the administration of which he is charged.”

- (b) subsection (4) (d) with the following -

“(d) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in his opinion may afford evidence of any matter dealt with in this Act.”; and

- (c) subsection 4 (8) with the following -

“(8) An officer or any person assisting him may at any time break up any ground or flooring on any premises for the purpose of search and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.”.

Amendment of section 5.

5. Section 5 of the principal Act is amended in subsection (3) by deleting the words “directly from a place outside the common customs area”.

Amendment of section 6.

6. Section 6 of the principal Act is amended -

- (a) in subsection (1) by replacing the words “Chief Customs Officer” with the word “Commissioner.”
- (b) in subsection (4) by replacing the words “the common customs area” with the word “Swaziland;” and
- (c) in subsection (6) by replacing the words “the common customs area” with the word “Swaziland.”

Amendment of Section 9

7. Section 9 of the principal Act is amended in subsection (1) by deleting the words “from a place outside the common customs area.”

Amendment of section 10

8. Section 10 of the principal Act is amended in subsection (1) by deleting the words “directly from a place outside the common customs area.”

Amendment of section 11

9. Section 11 of the principal Act is amended -

- (a) in subsection (1) by deleting the words “directly from a place outside the common customs area;”
- (b) in subsection (4) by deleting the words “directly from a place outside the common customs area;”
- (c) in subsection (7) by deleting the words “directly from a place which is outside the common customs area,” and
- (d) in subsection (II) by deleting the words “other than directly to a place within the common customs area.”

Amendment of section 12

10. Section 12 of the principal Act is amended in subsection (3)(a) and (b) by replacing the words "the Director of Posts and Communications" where they appear, with the words "the Managing Director of the Posts and Telecommunications Corporation."

Amendment of section 14

11. Section 14 of the principal Act is replaced with the following -

"Opening of packages in absence of importer or exporter

14. The controller may, in the absence of the importer or exporter of any package imported into or landed in or exported from or suspected by the controller to have been imported into or landed in or exported from Swaziland, open and examine such package at the importer's or exporter's risk and expense!

Provided that wherever possible the controller shall first make all reasonable efforts to ascertain the whereabouts of such importer or exporter and afford the said importer or exporter the opportunity of himself appearing before the controller and opening the package in question."

Amendment of section 16

12. Section 16 of the principal Act is amended by replacing -

(a) subsection (1)(a) with the following -

"(a) the importer or owner of any imported goods landed in Swaziland or the manufacturer, owner, seller or purchaser of any excisable goods or sales duty goods manufactured in a duty warehouse or the licensee of a duty warehouse in which dutiable goods are manufactured or stored may remove such goods in bond to any place of entry or warehousing place or to any place outside Swaziland:

Provided that such goods manufactured or stored in a duty warehouse may only be so removed to any such warehousing place in Swaziland or any place in a country in the common customs area approved by the government of that country for rewarehousing at that place in another duty warehouse;" and

(b) subsection (3)(a) and (b) with the following -

"(a) removed to a place in the common customs area, that such goods have been duly entered at that place; or

(b) which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area."

Addition of new section 16 bis

13. The principal Act is amended in Part III, after section 16, by adding the following new section -

“Exportation of goods from duty warehouse

16 bis (1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a duty warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods which he so exports.

(2) Subject to subsection (3), any liability for duty in terms of subsection (1) shall cease when it is proved to the satisfaction of the Commissioner by the exporter that the said goods have been duly taken out of the common customs area.

(3) If the exporter fails to submit any such proof as is referred to in subsection (2) within a period of 30 days from the date on which the goods concerned were entered for export, he shall upon demand by the Commissioner forthwith pay the duty due on those goods.

(4) No goods shall be exported in terms of this section until they have been entered for export.

(5) No such entry for export shall be tendered by or may be accepted from a person who has not furnished such security as the Commissioner may require, and the Commissioner may at any time require that the form, nature or amount of that security be altered in such manner as he may determine.

(6) The said exportation of goods shall be subject to the regulations and such conditions as the Commissioner may impose in respect of the goods concerned or any class or kind of those goods or those goods exported in circumstances specified by him, and the Commissioner may refuse to accept bills of entry for the said exportation of goods from an exporter who has persistently failed to comply with the said regulations or conditions or who has committed an offence referred to in section 80.

(7) The Commissioner may refuse the said exportation of goods in respect of which a provision of this Act has not been complied with or which are liable to forfeiture.

(8) The Commissioner may determine the roads and routes and the means of carriage of any goods so exported or any class or kind of those goods or any such goods carried in circumstances specified by him.

(9) No person shall, without the permission of the Commissioner, divert any goods so exported to a destination other than the destination declared on entry for exportation.

(10) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any good so exported or any class or kind of those goods or any such goods exported in circumstances or to a destination specified by him.”

Amendment of section 18.

14. Section 18 of the principal Act is amended by -

(a) replacing subsection (6)(b) with the following -

“(b) **rewarehousing in another duty warehouse or removal in bond as provided in section 16;**” and

(b) deleting subsection (6)(c).

Replacement of section 22.

15. The principal Act is amended by replacing section 22 with the following -

“Aircraft stores consumed in the common customs area.

22. If any goods taken from a duty warehouse under section 18(6) as stores aboard an aircraft destined for a place outside the common customs area, or goods shipped as stores for such aircraft outside Swaziland, are consumed, sold or disposed of on such aircraft at any place in the common customs area when the aircraft is not airborne or on the aircraft on a flight between any places in the common customs area, the pilot of such aircraft shall be liable for the duty on the goods so consumed, sold or disposed of and shall, upon demand by the Commissioner forthwith pay the duty due on such goods:

Provided that the Commissioner may by rule exempt any class or kind of stores or aircraft to which the circumstances specified in such rule apply from any provision of this section.”.

Amendment of section 32.

16. Section 32 of the principal Act is amended after subsection (5) by adding the following subsection -

“(6) Notwithstanding subsection (5), the Commissioner may allow spirits so manufactured to be used or disposed of in such circumstances and at such places as he may deem fit and subject to such conditions as he may impose in each case.”.

Amendment of section 34.

17. Section 34 of the principal Act is amended in subsections (1), (2), (3) and (8) by replacing the words “specific gravity” wherever they appear with the words “relative density”.

Amendment of section 35.

18. Section 35 of the principal Act is amended -

(a) by replacing subsection (1) with the following -

“(1) Every manufacturer of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1, every owner of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 manufactured for him partly or wholly from materials owned by such owner, and every dealer of a class designated by the Commissioner, in pearls, precious and semi-precious stones, precious metals, metals clad with precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or metals clad with precious metals (excluding imitation jewellery), shall licence his premises as a special duty warehouse for sales duty purposes or for purposes of excise duty specified in Section B of Part 2 of Schedule No. 1 in terms of this Act.”; and

- (b) in the proviso to subsection (2) by deleting the words "or dealer".

Amendment of section 36.

19. Section 36 of the principal Act is amended -

- (a) in subsection (3) by replacing the words before paragraph (a) with the following -

"(3) Notwithstanding subsection (2), but subject to subsections (5), (6) (7), (8) and (9), the Commissioner may, on such conditions as he may impose, for the purpose of preserving any goods in a duty storage warehouse or reconditioning such goods which have, as a result of contamination or deterioration or for any other reason, become unsaleable or not readily saleable or for the purpose of fulfilling special orders, permit such goods to be reconditioned or mixed or blended in such warehouse with other goods, and in that event duty shall be paid, in lieu of the duties prescribed in subsection (2), according to the first account taken of any such goods or the total quantity of such reconditioned, mixed or blended goods, whichever quantity is the greater, as follows -";

- (b) in subsection (4) by adding the following proviso -

"Provided that no rebate for any loss or deficiency in respect of petrol and distillate fuel so reconditioned, mixed or blended exceeding the rebate specified in section 75(19)(e) and (f) shall be allowed on such goods.";

- (c) by replacing subsection (5) with the following -

"(5) Notwithstanding anything to the contrary in this Part, the Commissioner, may, on such conditions as he may impose, and in such circumstances and at such place as he may specify, permit the mixing or blending of any mineral oil products with one another or with other goods whether or not such products or goods are in a duty storage warehouse or have passed out of customs and excise control for any purpose, including that of rendering such goods saleable or more readily saleable or of fulfilling special orders."; and

- (d) by replacing subsection (12) with the following -

"(12) There shall be paid on entry for home consumption, in addition to any duty payable in terms of this section and subject to the provisions of sections 25(5) and 75, sales duty or surcharge at the rate applicable in terms of Schedule No. 1 on any sales duty goods or surcharge goods used or incorporated in the manufacture, reconditioning, mixing or blending of any goods to which this section relates and on any such manufactured, reconditioned, mixed or blended goods which are liable to sales duty or surcharge in terms of the aforementioned Schedule.".

Amendment of section 37.

20. Section 37 of the principal Act is amended -

- (a) in subsection (1) by deleting the words "from a place outside the common customs area";

- (b) in the proviso to subsection (1) by replacing the words "one hundred emalangi" where they appear in item (v) with the words "two hundred emalangi"; and

- (c) by replacing subsection (4)(b)(i) with the following -

“(i) in the case of goods to be exported by container, at the time when such goods are delivered to the depot operator or container operator, as the case may be;”

Amendment of section 38.

21. Section 38 of the principal Act is amended -

- (a) **at the end of subsection (2) by replacing the full stop with a colon and adding the following proviso -**

“Provided that the Commissioner may, on such conditions, including conditions relating to security, as he may determine, allow the deferment of payment of duties due in respect of such bills of entry and for such periods as he may specify.”; and

- (b) **after subsection (8) by adding the following new subsection -**

“(8 bis) The Commissioner may specify the documents to be produced by the exporter upon entry for exportation in respect of any goods exported or any class or kind of goods exported or any goods exported in circumstances or to a destination specified by him.”.

Amendment of section 39.

22. Section 39 of the principal Act is amended -

- (a) **at the end of subsection (1)(e) by replacing the full stop with a colon and adding the following proviso -**

“Provided that no bill of entry shall be invalid by reason of any deferment referred to in the proviso to section 38(2)”;

- (b) **in subsection (5) by replacing the words before subsection (a) and subsection (a) with the following -**

“(5) No application for any substitution under subsection (3)(ii) or in that subsection as read with subsection (4) shall be considered by the Commissioner unless it is received by the controller, supported by the necessary document and other evidence to prove that such substitution is justified, within a period of six months -

- (a) from the date of entry for home consumption as provided in section 44(2), of the goods to which the application relates; or”.

Addition of section 43 bis.

23. The principal Act is amended in Part V after section 43 by adding the following new section -

“Joint and several liability for duty or certain amounts.

43 bis Subject to the provisions of sections 35(3)(b)(i) and 99(2)(b), whenever in terms of this Act liability for duty or any amount demanded under section 38(2)(a) devolves on two or more persons, each such person shall, unless he satisfies the Commissioner that his relevant liability has ceased in terms of this Act, be jointly and severally liable for such duty or amount, any one paying, the other or others to be absolved pro tanto.”.

Amendment of section 45.

24. Section 45 of the principal Act is amended by replacing subsection (2) with the following -

“(2) The Minister may by regulation increase the percentage prescribed in subsection (1); in regard to any class or kind of imported goods, or any class or kind of such goods from a particular territory, to which that subsection applies.”.

Amendment of section 46.

25. Section 46 of the principal Act is amended -

- (a) by deleting subsection (1);
- (b) in subsection (4) by replacing the words before paragraph (a) with the following -

“(4) In addition to any fiscal duty which may be payable under subsection (2), customs duty at the most-favoured-nation-rate specified in Column V in any tariff heading or subheading in Part I of Schedule No. 1 shall apply to any goods to which such heading or subheading relates if such goods were produced or manufactured in any territory -”;
- (c) by replacing subsection (5) with the following -

“(5) In addition to any fiscal duty which may be payable under subsection (2), customs duty at the general rate specified in Column IV in any tariff heading or subheading in Part I of Schedule No. 1 shall apply to any goods to which such heading or subheading relates if the most-favoured-nation-rate of duty does not apply to such goods in terms of subsection (4).”;
- (d) by replacing subsection (6) with the following -

“(6) Any export duty which may become payable in terms of section 47 shall be paid into the Consolidated Fund, at the time of entry of export, on such goods as may be specified in Part 6 of Schedule No. 1 in terms of the provisions of the said section.”;
- (e) by replacing subsection (8) with the following -

“(8) Wherever the tariff heading or subheading under which any goods are classified in Part 1 of Schedule No. 1 is expressly quoted in any tariff item, or sales duty item, or surcharge item or item of Part 2,3,4 or 6 of the said Schedule or in any item in Schedule No. 2 in which such goods are specified, the goods so specified in the said tariff item, or sales duty item, or surcharge item or item of the said Part 2, 3, 4 or 6 or in the said item of Schedule No. 2, shall be deemed not to include goods which are not classified under the said tariff heading or subheading.”;
- (f) in subsection (9) by replacing the words before the proviso in paragraph (a) with the following -

“(9) The interpretation of Part 1 of Schedule No. 1 shall be subject to the Explanatory Notes to the Harmonised System and to the Customs Co-operation Council Nomenclature issued by the Customs Co-operation Council, Brussels, from time to time.”;
- (g) by replacing subsection (12)(a)(i) with the following -

“(i) The Commissioner may in writing determine the tariff headings, tariff subheading or items of any Schedule under which any imported goods or goods manufactured in Swaziland shall be classified.”.

Addition of new section 47 bis.

26. The principal Act is amended in Part V after section 47 by adding the following new section -

“Ordinary levy

47. bis Notwithstanding anything to the contrary contained in this Act -

- (1) Any amount leviable under any item of Part 8 of Schedule No. 1 shall be called an ordinary levy;
- (2) any such ordinary levy shall be paid into the Consolidated Fund of Swaziland and shall, for the purposes of section 46(2) be deemed to be a duty paid in accordance with the provisions of Schedule No. 1; and
- (3) any ordinary levy paid in respect of any goods intended for consumption in any territory, other than Swaziland, which forms part of the common customs area shall be paid by the Commissioner to the government of such territory at such times as he may determine.”.

Amendment of section 48.

27. Section 48 of the principal Act is amended in subsection (1) by replacing the words before paragraph (a) with the following -

“(1) Notwithstanding anything in this Act the Minister may by notice in the Gazette, after consultation with the Minister for Commerce, Industry and Tourism, amend the Schedules so as to levy a new, increased or additional duty on any goods -”;

Amendment of section 53.

28. Section 53 of the principal Act is amended by replacing -

- (a) the words “Minister for Finance” where they appear between subsections (1)(b) and (1)(b)(i) with the words “Minister for Commerce, Industry and Tourism”; and
- (b) subsection (2) with the following -

“(2) Any additional duty imposed in terms of subsection (1) shall be set out in the form of a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 7 thereof and to constitute an amendment of Schedule No. 1.”.

Amendment of section 56.

29. Section 56 of the principal Act is amended after subsection (6) by adding the following subsection -

“(7) The provisions of section 47 shall *mutatis mutandis* apply in respect of any amendment made under subsection (1) or (1 bis) of this section.”

Amendment of section 65.

30. Section 65 of the principal Act is amended in subsection (7) by replacing paragraph (b) with the following -

“(b) Subsection (1)(a) and (b) or (3) of section 69 shall *mutatis mutandis* apply to the ascertainment or determination of the value for the purposes of the duty specified in Section B of Part 2 of Schedule No. 1 in respect of any imported goods entered in terms of item 412.18 of Schedule No. 4.”.

Amendment of section 66.

31. Section 66 of the principal Act is amended -

- (a) by replacing the section title "Normal Price:" with the words "*Transaction value.*";
- (b) in subsection (8) by replacing paragraph (d) with the following -
 - "(d) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle, at that port or place, ready for export to Swaziland;"; and
- (c) in subsection (II) by replacing paragraph (a) with the following -
 - "(a) placed on board ship or on any vehicle in the country of exportation, ready for export to Swaziland; or".

Amendment of section 69.

33. Section 69 of the principal Act is replaced with the following -

"69. (1) (a) For the purpose of assessing the excise duty on any goods manufactured in Swaziland and specified in Section B of Part 2 of Schedule No. 1 (other than goods specified in items 122.10 to 122.40), the value thereof shall, subject to this section, be taken as -

- (i) the full and final market price (before deduction of any discounts other than cash discounts) at which, at the time of sale, such or similar goods are freely offered for sale for consumption in Swaziland, for purposes of trade in the principal markets of Swaziland in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any independent merchant wholesaler in Swaziland under fully competitive conditions;
- (ii) the cost of packing and package and all other expenses incidental to placing the goods on rail for delivery to the purchaser; and
- (iii) any non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods, but excluding the non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1 on such goods:

Provided that the Commissioner may, where such goods are not sold to such merchant wholesalers in Swaziland or are so sold in quantities which he considers to be insignificant in relation to the total quantities of such goods sold in Swaziland, regard any other class or purchaser of such goods as such merchant wholesaler and may make such adjustment to the price charged by the manufacturer to such class of purchaser as he considers reasonable, having regard to the wholesale functions taken over by such manufacturer and such class of purchaser and to such other factors relating to such price as he may deem relevant.

(b) For the purpose of assessing the duty on any imported goods entered in terms of item 412.18 of Schedule No. 4 on removal from a duty warehouse and any goods manufactured in Swaziland and specified in items 122.10 to 122.40 of Section B of Part 2 of Schedule No. 1, the value thereof shall be, in a sale between -

- (i) a manufacturer as seller and an independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) at which the manufacturer sells such goods at factory to an independent retail dealer, without any deduction except a cash discount not exceeding two and a half per cent, if any, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser;
- (ii) a manufacturer and consumer or between a wholesale dealer or retail dealer or other reseller as seller and an independent retail dealer or end consumer as purchaser, the highest price (but excluding the excise duty payable in terms of Section B of Part 2 of Schedule No. 1) at which such goods are sold by any such seller to an end consumer without any deduction except thirty-three and a third per cent, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.

(c) For the purposes of this subsection the Commissioner may specify -

- (i) The quantity which shall be deemed to be the usual wholesale quantity;
- (ii) The packing which shall be deemed to be the usual packing ready for sale in the retail trade;
- (iii) The cost of packing or packages or any other expenses incidental to placing the goods on rail.

(2) (a) For the purpose of assessing the excise duty on any goods specified in Section A of Part 2 of Schedule No. 1, the value thereof shall be the price paid or payable for such goods when sold for home consumption in the ordinary course of trade, in the usual trade packing, where applicable, to any buyers not deemed to be related as specified in section 66(2)(a), plus any non-rebated excise duty payable in terms of Section B of Part 2 of Schedule No. 1, but excluding the non-rebated excise duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods.

(b) For the purpose of paragraph (a) 'price paid or payable', means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods.

(3) If in the opinion of the Commissioner goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained in terms of subsection (1)(a), (1)(b) or (2), as the case may be, the Commissioner may determine a value, which shall, subject to the right of appeal to the court, be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(4) The Commissioner may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from -

- (a) the date of first entry of the goods in question;
- (b) the date of the determination made under subsection (3);
- (c) the date of such new determination; or

(d) the date of such amendment.

(5) (a) An appeal against any such determination shall lie to the High Court of Swaziland as established under the High Court Act, 1954.

(b) Such appeal shall be prosecuted within a period of 90 days from the date of the determination.

Amendment of section 75.

34. Section 75 of the principal Act is amended -

(a) in subsection (1) by -

(i) replacing paragraph (b) with the following -

“(b) any imported goods described in Schedule No. 4 shall be admitted under rebate of any fiscal and customs duties applicable in respect of such goods at the time of entry for home consumption, to the extent stated in, and subject to compliance with the provisions of, the item of Schedule No. 4 in which such goods are specified;”;

(ii) by replacing paragraph (c) with the following -

“(c) a drawback or a refund of the ordinary customs duty, anti-dumping duty, countervailing duty and surcharge actually paid on entry for home consumption on any imported goods described in Schedule No. 5 shall, subject to paragraph (f)(i), be paid to the person who paid such duties or any person indicated in the notes to the said Schedule, subject to compliance with the provisions of the item of the said Schedule in which those goods are specified;”;

(iii) by replacing paragraph (d) with the following -

“(d) in respect of any excisable goods described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof or a refund of the excise duty actually paid at the time of entry for home consumption shall, subject to paragraph (f)(i), be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6;”;

(iv) by adding after paragraph (e) the following paragraphs -

“(f) (i) a refund of the ordinary customs duty, anti-dumping duty, countervailing duty or surcharge leviable on any distillate fuel shall be granted to the extent stated in items 533.01 of Schedule No. 5 in which such fuel is specified, subject to compliance with the provisions of the item, or a refund of the excise duty leviable on such fuel shall be granted to the extent stated in item 609.05.10 of Schedule No. 6 in which such fuel is specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to any user who has purchased and used such

distillate fuel in accordance with the provisions of the said items of Schedule No. 5 or 6 or to any person indicated in the notes to the said Schedule No. 5 or 6:

Provided that no such refund shall be paid to any government, department, administration or any body, institution or authority mentioned in item 401.00 of Schedule No. 4 and item 601.00 of Schedule No. 6, including any university, college, school or other educational institution or any regional or local authority, except as provided in the notes to the said Schedule No.5 or 6;

- (ii) notwithstanding subparagraph (i), the Commissioner may investigate any such purchase or use to establish whether such fuel has been duly entered or is deemed to have been duly entered in terms of this Act or has been so used and may refuse to allow or pay any such refund if he is not satisfied that such fuel has been so entered or used;
- (iii) any such distillate fuel purchased shall be deemed to have been used in the order of the dates of such purchases;
- (iv) the extent of the refund referred to in subparagraph (i) shall be the rate of such refund specified in such item of Schedule No. 5 or 6 in operation on the date of issue of the invoice concerned, referred to in subsection (4)(bis)(b)(ii);
- (v) if the extent of such refund is amended and for any reason any liability to repay any refund of duty in respect of any quantity of fuel which the user may incur cannot be assessed or the amount of duty refundable to such user in terms of any item of Schedule No. 5 or 6 cannot be calculated on any quantity of such fuel purchased by such user before such amendment, the quantity of such fuel in respect of any refund which the user is liable to repay, or the quantity used in accordance with any such item for the calculation of the amount refundable to such user, shall be determined by the Commissioner according to the information at his disposal;

“(g) any refund referred to in subparagraph (f)(i) may be granted and paid to any person entitled to that refund in terms of this Act, by any official of any administration to which the moneys concerned have been rendered available by the Commissioner.”;

(b) after subsection (1) by adding the following subsection -

“(1 bis) (a) Notwithstanding anything to the contrary in this Act, the Commissioner may subject to such conditions as he may impose, allow in respect of any refund referred to in subsection (1)(f)(i) any person to grant a provisional refund of duty to any registered user or distillate fuel who purchases such fuel from that person.

(b) Any provisional refund shall be granted in accordance with an estimate of intended use furnished by such user to the person concerned.

(c) The Commissioner may pay to such person or allow him to set off in terms of section 77 against duty for which he is liable, any amount which he granted to such registered user at such times and on furnishing of such particulars as the Commissioner may specify.

- (d) Any amount paid in error by the Commissioner to such person shall be recoverable from such person as provided in section 76 bis.
- (e) The Commissioner may cancel the said registration of such person if such person claims or receives any amount or payment to which he is not entitled.
- (f) Any provisional refund granted by such person to such user shall, subject to paragraphs (g), (h) and (i), be deemed to be a refund paid by the Commissioner in terms of subsection (l)(f)(i).
- (g)
 - (i) Any user who has been granted such a provisional refund shall, in relation to the actual use by him of the fuel concerned, furnish the Commissioner at such times as may be prescribed by regulation, with a declaration in such form and supported by such documents as may be prescribed by regulation.
 - (ii) Such declaration shall be deemed to be an application for a refund referred to in subsection (4 bis)(b)(i).
- (h)
 - (i) If the Commissioner is satisfied after considering the said declaration that the provisional refund granted to the user concerned either exceeds or falls short of any amount refundable in terms of item 533.01 of Schedule No. 5 or item 609.05 of Schedule No. 6, such excess shall be paid by that user upon demand by the Commissioner and any shortfall shall be refunded by the Commissioner to him.
 - (ii) If the user fails to pay the amount demanded in terms of subparagraph (i) such amount shall be recoverable in terms of section 76 bis.

Any user of fuel who has been granted a provisional refund and who fails to comply with paragraph (g) shall be deemed to have used such fuel for a purpose or use other than the purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (h), and the amount of such refund shall be deemed to be a refund not duly payable to such user and shall be recoverable in terms of section 76 bis.”;

- (c) by replacing subsection (4 bis) with the following -
 - “(4 bis) (a) No person shall be entitled to a refund of customs or excise duty on any distillate fuel in terms of the provisions of item 533.01 of Schedule No. 5 or item 609.05.10 of Schedule No. 6 unless he is registered as a user of such fuel with the Commissioner.
 - (b)
 - (i) Any application for refund of such duty shall be in such form and shall declare such particulars and be supported by such documents and shall be for such quantities and for such periods as may be prescribed by regulation.
 - (ii) Any seller of such fuel shall furnish any such user with an invoice reflecting the particulars, and shall keep a copy of such invoice for such time, as may be prescribed by regulation.
 - (c) Any registered user shall complete and keep such books, accounts and documents and furnish at such times such particulars of the vehicle, machinery or other equipment in which such fuel is used or any other particulars as may be prescribed by regulation.

- (d) (i) Notwithstanding anything to the contrary in this Act, any user of such fuel who has been granted such refund and who fails to forthwith furnish an officer at his request with the books, accounts and documents required by regulation to be completed and kept in respect of the use of any distillate fuel purchased by him shall be deemed to have used such distillate fuel for a purpose or use other than a purpose or use stated in the items of Schedule No. 5 or 6 referred to in paragraph (a) and the use declared in the relevant application for refund.
- (ii) A user referred to in subparagraph (i) shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may determine, during a period of two years prior to the date of such request by such officer, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned.
- (e) The Commissioner may refuse to register any person mentioned in paragraph (a) or cancel his registration if such person fails to complete, keep or furnish such accounts, books or documents as may be prescribed by regulation, or claims or receives any refund or payment to which he is not entitled in terms of the said items of Schedule No. 5 or 6.”;
- (d) after subsection (9) by adding the following subsection -
- “(9 bis) Any person to whom a refund of customs or excise duty has been granted on any distillate fuel in terms of item 533.01 of Schedule No. 5 or item 609.05.10 of Schedule No. 6 as the case may be, and who has disposed of such fuel or has applied such fuel or any portion thereof for any purpose or use otherwise than in accordance with the provisions of such items and the use declared in the relevant application for refund, shall pay on demand to the Commissioner the full amount of any refund granted to him in respect of such fuel or such portion thereof as the Commissioner may determine, during such period of two years as the Commissioner may determine, failing which such amount or such portion shall be recoverable in terms of this Act as if it were the duty concerned.”;
- (e) by replacing subsection (12) with the following -
- “(12) (a) No goods may be entered or acquired under rebate of duty under this section or the regulations until the person so entering or acquiring them has furnished such security as the Commissioner may require and has complied with such other conditions (including registration with the Commissioner of his premises and plant) as may be prescribed in respect of goods specified in any item of Schedule No. 3, 4, 6 or 7.
- Provided the Commissioner may, subject to such conditions as he may in each case impose, exempt, with or without retrospective effect, any such person from the provisions of this subsection.
- (b) Application for such exemption for the purpose of applying for a refund of duty shall be made to the Commissioner within six months from any date specified in section 39(5)(a), (b) or (c), as the circumstances may require.
- (c) For the purposes of the application of section 39(5) to any such exemption—

- (i) any bill of entry passed in relation to goods in respect of which exemption is granted under paragraph (a) of this subsection, shall be deemed to have been passed in error by reason of duty having been paid on goods intended for purposes or use under rebated of duty under section 75;
- (ii) the goods concerned shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and
- (iii) the duty paid on the goods concerned, shall be deemed to have been paid on the date on which the exemption referred to in subparagraph (i) was granted.”;

(f) replacing subsection (13) with the following -

“(13) Notwithstanding anything to the contrary in this Act, the Commissioner may, in respect of Schedule 5, 6 or 7, for the purpose of calculating the amount of duty refundable on any imported, excisable or sales duty goods used in the manufacture, reconditioning, mixing or blending of any goods exported or marketed in Swaziland, determine the quantity of such exported goods or such goods marketed in Swaziland which shall be deemed to have been produced, reconditioned, mixed or blended from a given quantity of such imported, excisable or sales duty goods or the quantity of such imported, excisable or sales duty goods which shall be deemed to have been used in the production, reconditioning, mixing or blending of a given quantity of such exported goods or such goods marketed in Swaziland.”;

(g) in subsection (16) by replacing paragraph (b) with the following -

“(b) (i) in respect of any refund referred to in subsection (1)(f), within a period of six months from the last date of any period of use of any distillate fuel to which the application for such refund relates:

Provided that no refund shall be paid if the quantity of distillate fuel to which the application for such refund relates is less than such refund relates is less than such quantity as may be prescribed; and

(ii) in all other cases, within a period of six months from the date on which such refund first becomes due.”;

(h) by replacing subsection (16 bis) with the following -

“(16 bis) (a) Subject to the concurrence of the Minister, the Minister for Commerce, Industry and Tourism may at any time after a permit by virtue of which goods may, in terms of any item of Schedule 3,4 or 6, be entered under rebate of duty has been refused, but not later than two years after duty was paid on those goods, issue a permit authorising entry of those goods under rebate of duty in accordance with the provisions of the item concerned if, with due regard to any facts which became known after such a permit has been refused, he is satisfied that he would have issued such a permit if those facts were then known.

(b) For the purposes of subsections 39(3), 39(4) and 39(5) -

- (i) any bill of entry passed in relation to goods in respect of which a permit is issued under paragraph (a) shall be deemed to have been passed in error by reason of duty having been paid on

goods intended for purposes or use under rebate of duty under this section;

- (ii) the goods in respect of which such a permit is issued shall be deemed to have qualified at the time duty was paid on such goods in all respects for rebate; and
 - (iii) the duty paid on the goods concerned shall be deemed to have been paid on the date on which the permit referred to in paragraph (a) was issued.”;
- (i) after subsection (16 bis) by adding the following subsection -
- “(16 ter) (a) Subject to the provisions of subsection (16 bis), any authorised official, or the Commissioner, may in respect of goods which may, in terms of any item of Schedule No. 3, 4, 5 or 6, be entered under rebate of duty or be subject to a drawback or a refund of duty, issue, subject to such conditions as such authorised official or the Commissioner may specify, with or without retrospective effect, a permit or certificate authorising entry of those goods under rebate of duty, or authorising a drawback or a refund of duty in accordance with the provisions of the item concerned;
- Provided the Commissioner is satisfied in respect of the goods concerned, where the permit or certificate concerned is issued with retrospective effect, that the provisions of such item and such conditions have been complied with.
- (b) Subsection (16 bis)(b) shall apply *mutatis mutandis* in respect of any permit or certificate referred to in paragraph (a).
- (c) Application for such permit or certificate shall be made to the authorised official referred to in paragraph (a) or the Commissioner within six months from any date specified in section 39(5)(a), (b) or (c), as the circumstances may require.”;
- (j) in subsection (17) by replacing paragraph (b) with the following -
- “(b) An amendment made under paragraph (a) which -
- (i) repeals any existing provision in Schedule No. 5 or which excludes any goods from any existing provision of that Schedule, shall not apply in respect of goods, excluding distillate fuels referred to in item 533.01 of Schedule No. 5 which were imported prior to the date of the relevant notice in the Gazette; and
 - (ii) embodies any additional provision in that Schedule applies any existing provision of that Schedule in respect of additional goods,
- shall not, except in so far as the Commissioner so directs and subject to such conditions as he may determine, apply in respect of goods which were imported prior to the date of the relevant notice in the Gazette.”;

(k) in subsection (19) by -

- (i) replacing the words before paragraph (a) with the following -

“(19) Subject to the proviso to section 18 (8) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02, 615.03, 707.01, 707.02 and 707.03 of Schedules Nos. 4, 5, 6 and 7, no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow the deduction from the dutiable quantity of the undermentioned goods of a quantity equal to the percentage stated below in each case, namely -”; and
- (ii) replacing paragraphs (d) and (e) with the following paragraphs -
 - “(d) imported crude petroleum naphtha for use in the refining of petroleum products, or imported or excisable petrol, a percentage equal to the full net loss incurred but not exceeding 0.25 of any quantity entered for storage and stored in a duty storage warehouse during such period as the Commissioner may determine;
 - (e) imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, such percentage, but not exceeding 0.25, for any quantity so entered as may in the opinion of the Commissioner represent a loss by evaporation”; and
- (iii) adding after paragraph (e) the following paragraph -

“(f) distillate fuels entered for storage and stored in a duty storage warehouse, a percentage equal to the full net loss incurred but not exceeding 0.15 of any quantity so entered and stored in such warehouse during such period as the Commissioner may determine.”.

Amendment of section 76.

35. Section 76 of the principal Act is amended -

(a) by replacing subsection (1) with the following -

“(1) No refund of any duty or other charge in respect of imported goods, excisable goods sales duty goods or surcharge goods, other than a refund provided for under section 75 or 77, shall be paid or granted except in accordance with the provisions of this section and any regulations.”;

(b) in subsection (2) by replacing the full stop at the end of paragraph (f) with a semi-colon and adding the word “or” and adding thereafter the following paragraph -

“(g) the duty having been reduced or withdrawn as provided for in section 47(3) and (4).”;

(c) in subsection (4) by -

(i) by replacing paragraph (a) with the following -

“(a) from the date of entry for home consumption as provided in section 44(2), of the goods to which the application relates; or”;

(ii) by adding after paragraph (a) the following paragraph -

“(a) bis) from the date on which the charge to which the application relates was paid; or”.

Addition of section 76 bis.

36. The principal Act is amended in Part X after section 76 by adding the following new section -

“Recovery of certain amounts not duly payable.

76 bis (1) If the Commissioner, acting under the provisions of section 75 or 76, pays to any person by way of a refund or drawback any amount which was not duly payable to that person under those provisions or which was in excess of the amount due to that person by way of a refund or drawback under those provisions, that amount or the excess, as the case may be, shall be repaid by the person concerned to the Commissioner upon demand, failing which it shall be recoverable in terms of this Act as if it were the duty or charge concerned or part of such duty or charge, as the case may be.

(2) Subsection (1) shall apply *mutatis mutandis* to any amount set off in terms of section 77(1).”

Amendment of section 77.

37. Section 77 of the principal Act is amended by replacing -

(a) Subsection (1) with the following -

“(1) Any amount due to a licensee of a duty warehouse who, in terms of the regulations, is permitted to pay excise duty or sales duty monthly or quarterly, in respect of such duty paid by him for which he was not liable or any provisional refund granted by him in terms of section 75(1 bis) or which is refundable to him in terms of item 534.00 of Schedule No. 5 or any item of Schedule 6 or 7 may, at any time within a period of two years from the date on which such amount first becomes due, be set off against any amount for which such licensee subsequently becomes liable in respect of excise duty or sales duty:

Provided the accounts or bills of entry submitted by such licensee in respect of the payment of any amount against which any amount so due to him has been set off are accompanied by a full statement by such licensee, supported by a certificate by an officer, giving full particulars of the excise duty or sales duty so paid and a full account of the circumstances under which the payment thereof took place and by such documentary evidence as the Commissioner may in each case require.”; and

- (b) subsection (3) with the following -

“(3) With the permission of the Commissioner and subject to such conditions as he may impose, any amount of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1 paid by the licensee of a duty warehouse licensed in terms of this Act in respect of sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 sold by him to any person whose premises are not so licensed and who has exported such goods or supplied them to any other person entitled to acquire such goods under rebate of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1, may be set off against any amount for which such licensee subsequently becomes liable in respect of sales duty or excise duty specified in Section B of Part 2 of Schedule No. 1:

Provided proof to the satisfaction of the Commissioner of such export or supply under rebate of duty and the identity of the sales duty goods or excisable goods specified in Section B of Part 2 of Schedule No. 1 so exported or supplied is submitted by such licensee, together with such documentary proof as the Commissioner may in each case require regarding the sale of such goods by the licensee.”.

Amendment of section 80.

38. Section 80 of the principal Act is amended by -

- (a) replacing subsection (1)(j) with the following -

“(j) claims or receives any rebate, drawback, refund or payment to which he knows he is not entitled under this Act”;

- (b) replacing subsection (1)(o) with the following -

“(o) contravenes the provisions of section 16(13), 16 bis (9), 18(7), 33 bis(4), 60(1), 63(1), 75(9 bis), 75(20) or 114(2 bis); or”;

- (c) adding after subsection (2) the following subsection (3) -

“(3) When any person is charged with a contravention of subsection (1)(j) he shall, until the contrary is proved, be presumed to have known that he was not entitled to the rebate, drawback, refund or payment concerned.”.

Deletion of section 82.

39. The principal Act is amended in part XI by deleting section 82.

Amendment of section 85.

“Beer of higher or lower density than indicated by label or container

85. Any manufacturer of beer in whose duty warehouse or on whose delivery vehicle beer packed for sale is found of a relative density before fermentation higher or lower than such density specified in the sub-item of tariff item 104.10 registered in terms of section 34(4) in relation to beer of the name indicated on the container of beer so found

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand emalangeni or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or imprisonment not exceeding two years, or both, and the goods in respect of which the offence was committed shall be liable to forfeiture.”.

Amendment of section 88.

41. Section 88 of the principal Act is amended by replacing -

(a) subsection (1) with the following -

“(1) (a) An officer, magistrate or member of the police force may detain any vehicle, plant, material or goods at any place for the purpose of establishing whether that vehicle, plant, material or goods are liable to forfeiture under this Act.

(b) Such vehicle, plant, material or goods may be so detained where they are found or shall be removed to and stored at a place of security determined by such officer, magistrate or member of the police force, at the cost, risk and expense of the owner, importer, exporter, manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(c) If such vehicle, plant, material or goods are liable to forfeiture under this Act the Commissioner may in his discretion seize the vehicle, plant, material or goods.

(d) The Commissioner may in his discretion seize any other vehicle, plant, material or goods liable to forfeiture under this Act.”; and

(b) subsection 2(a) with the following -

“(2) (a) (i) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act, demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to the provisions of this Act or committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods plus any unpaid duty thereon, as the case may be.

(ii) For the purposes of subparagraph (i) the value for duty purposes shall be calculated in terms of the provisions of this Act relating to such value where or not the goods in question are subject to ad valorem duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be.”.

Amendment of section 91.

42. Section 91 of the principal Act is amended in subsection (3) by replacing the words “five hundred emalangeni” with the words “one thousand emalangeni”.

Amendment of section 92.

43. Section 92 of the principal Act is amended by replacing the full stop at the end of the section with a colon and adding the following proviso -

“Provided that the Commissioner may in his discretion withhold a sum not exceeding one-third of any such fine, penalty or proceeds which he may then award to any person (including any officer) by whose means or information the fine or penalty or forfeiture was imposed or the seizure made.”.

Amendment of section 102.

44. Section 102 of the principal Act is amended by replacing -

(a) subsection (1) with the following -

“(1) Any person selling, offering for sale or dealing in imported, excisable or sales duty goods or any person removing the same, or any person having such goods entered in his books or mentioned in any documents referred to in section 75 (4 bis) or 101, shall, when requested by an officer, produce proof as to the person from whom the goods were obtained and, if he is the importer or manufacturer or owner, as to the place where the duty due thereon was paid, the date of payment, the particulars of the entry for home consumption and the marks and numbers of the cases, packages, bales and other articles concerned, which marks and numbers shall correspond to the documents produced in proof of the payment of the duty.”; and

(b) subsection (4) with the following -

“(4) If in any prosecution under this Act or in any dispute in which the government, the Minister or the Commissioner or any officer is a party, the question arises whether the proper duty has been paid or whether any goods or plant have been lawfully used, imported, exported, manufactured, removed, or otherwise dealt with or in, or that such books, accounts, documents, forms or invoices do not exist or have not been duly completed and kept or have not been so furnished as the case may be, unless the contrary is proved.”.

Replacement of section 103.

45. Section 103 of the principal Act is replaced with the following -

“103. For the purposes of this Act any reference to a person shall be deemed to include a reference to a company, close corporation, co-operative society, firm, partnership, statutory body or club, and in the event of a contravention of or non-compliance with this Act or the incurring of any liability under this Act by any company, close corporation, co-operative society, firm, partnership, statutory body or club any person having the management of any premises or business in or in connection with which the contravention or non-compliance took place or the liability was incurred may be charged with the relevant offence and shall be liable to any penalties provided therefore and shall be liable in respect of any liability so incurred.”.

Amendment of section 110.

46. Section 110 of the principal Act is amended by replacing subsection (1) with the following -

“(1) Except as elsewhere provided in this Act, the Minister may prescribe the instruments, metres, gauges and other appliances and the tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristic of any goods for the purposes of this Act.”.

Amendment of section 113.

47. Section 113 of the principal Act is amended -

(a) in subsection (1) by -

(i) replacing paragraph (a) with the following -

“(a) cigarettes with a mass of more than 2 kilograms per 1 000 cigarettes;”;

(ii) deleting paragraph (b);

(b) by renumbering subsection (7) as “(7)(a)” and adding thereafter the following paragraphs -

“(b) Any officer, magistrate or member of the police force may detain any goods for the purpose of establishing whether those goods are liable to forfeiture under paragraph (a).

(c) Any goods so detained may be released by the Commissioner to the Government department or person concerned.”; and

(c) by replacing subsection (8) with the following -

“(8) No person shall manufacture cigarettes the mass of the tobacco of which exceeds 2 kilograms per 1 000 cigarettes.”.

Amendment of section 114.

48. Section 114 of the principal Act is amended by replacing subsection (1) with the following -

“(1) (a) The correct amount of duty for which any person is liable in respect of any goods imported into or exported from Swaziland or any goods manufactured in Swaziland shall from the date on which liability for such duty commences; and

(b) any interest payable under this Act and any fine, penalty or forfeiture incurred under this Act shall, from the time when it should have been paid.

constitute a debt to the Government by the person concerned, and any goods in a duty warehouse or in the custody of any officer (including goods in a rebate storeroom) and belonging to that person, and any goods afterwards imported or exported by the person by whom the debt is due, and any imported goods in the possession or under the control of such person or on any premises in the possession or under the control of such person, and any goods in respect of which an excise or sales duty is prescribed (whether or not such duty has been paid) and any materials for the manufacture of such goods in the possession or under the control of such person or on any premises in the possession or under the control of such person and any vehicles, machinery, plant or equipment in the possession or under the control of such person in which fuel in respect of which any duty is prescribed (whether or not such duty has been paid), is used, transported or stored, may be detained in accordance with subsection (4) and shall be subject to a lien until such debt is paid.”

Deletion of section 117.

49. The principal Act is amended in Part XII by deleting section 117.

THE INCOME TAX (AMENDMENT) ACT, 1991

(Act No. 6 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

3 January, 1991

AN ACT

entitled

An Act to amend the Income Tax Order, 1975 and to provide for other incidental matters.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Income Tax (Amendment) Act, 1990 and shall be read as one with the Income Tax Order, 1975 (referred to in this Act as the "Order") and shall be deemed to have come into force on 1st July, 1990.

Amendment of section 7.

2. Section 7 of the Order is amended by replacing the Proviso to paragraph (f) with the following:

"Provided that in calculating the gross income of any person:

- (i) the value of any free medical attention or cash allowances for medical expenses provided for or paid to any employee or the holder of an office or appointment shall not be included;
- (ii) any free passage by rail, steamer or air provided for an employee or the holder of an office or appointment at the commencement and termination of such employment, office or appointment shall not be included if the duration of such employment, office or appointment is two years or more or where it is less than two years, if such employment, office or appointment is not subject to renewal.

Amendment of section 8.

3. Section 8 of the Order is amended as follows:

- (a) by replacing the words "one hundred and thirty-five" and "one hundred and five" occurring in paragraph (a) of subsection (1) with the words "four hundred and fifty" and "four hundred and twenty" respectively;
- (b) by the repeal of paragraph (b) of subsection (1);
- (c) by replacing the words "Children referred to in subparagraph (b)" occurring in paragraph (c)(i) with the word "child";
- (d) by the repeal of paragraph (d) of subsection (1) and subsection (2);
- (e) by the deletion of the comma and the words "(b) and (d)" occurring in subsection (3).

Amendment of section 11.

4. Section 11(2)(bis) of the Order is amended by deleting the Proviso thereto.

Amendment of section 12.

5. Section 12 of the Order is amended as follows:

- (a) by the insertion after subsection (1)(e) of the following new paragraph;

“(ee) so much of any amount of dividends as does not exceed two thousand Emalangeni received by or accrued to or in favour of an individual in any year of assessment from a company listed with the Swaziland Stock Exchange or from a company other than a company listed with the Swaziland Stock Exchange:

Provided that any amount of dividends in excess of two thousand Emalangeni shall be charged to tax under section 6”;
- (b) by the repeal of the Proviso to subsection (1)(p);
- (c) by the insertion after subsection (1)(q) of the following new paragraph;

“(qq) without prejudice to paragraphs (p) and (q), so much of any amount of annual interest as does not exceed two thousand Emalangeni received by or accrued to an individual in any year of assessment from deposits in a financial institution licensed under the Financial Institutions (Consolidation) Order, 1975 or in a building society registered under the Building Societies Act and carrying on business in Swaziland”.
- (d) by replacing the words “three thousand and three hundred” occurring in subsection (3)(a), with the words “five thousand and two hundred and fifty”;
- (e) by replacing the words “two thousand and eight hundred” occurring in subsection (3)(b), with the words “five thousand”;
- (f) by replacing the words “one thousand two hundred and fifty” occurring in subsection (4) with the words “one thousand five hundred”.

Amendment of section 14.

6. Section 14 of the Order is amended in subsection (l)(k) -

(a) by replacing the opening words "any sum contributed by a taxpayer to any pension fund, provident fund or benefit fund established for the benefit of the employees of such taxpayer." with the words "any sum contributed by the employer less the employees contribution during the year of assessment to any pension fund, provided fund or benefit fund established for the benefit of the employees of that employer as does not exceed twenty per centum:"

(b) in the proviso, by replacing paragraph (i) thereof with the following -

"(i) if the contributions including any lump sum payments made by the employer in respect of an employee during the year of assessment to such funds exceeds twenty per centum and the Commissioner is satisfied that the aggregate of such contributions and the total remunerations accruing to that employee during the year of assessment in respect of his employment by such employer is excessive or unjustifiable in relation to the value of the services rendered by him, and having regard to other benefits, if any, derived by him from his employment by the employer only so much of such contributions as appear to the Commissioner to be reasonable, but not less than an amount equal to twenty per centum of the total remuneration accruing to that employee during the year of assessment in respect of his employment as the Commissioner considers to be fair and reasonable in relation to the value of the services rendered by him and having regard to other benefits, if any, derived by him from his employment by the employer shall be allowed to be deducted under this paragraph;"

(c) by replacing subsection (6) with the following:

"(6) In respect of listing fees payable in the year of assessment by a company in connection with the floatation of its shares on the Swaziland Stock Exchange to a Stock Broking Company licensed under the Financial Institutions (Consolidation) Order 1975, so much of the total amount of such listing fees does not exceed one-third of the total fees in the year in which such listing fees become payable and the balance over the next two years succeeding the year in which such listing fees become payable".

Amendment of Second Schedule.

7. Part II of the Second Schedule to the Order is amended by replacing the words "Six hundred Emalangeni per annum, occurring in paragraph 2(4) with the words "the sum specified in section 14(1)(i)".

Replacement of Third Schedule.

8. The Third Schedule to the Order is hereby replaced with the following:

"THIRD SCHEDULE
RATES OF NORMAL TAX

PART I

For purposes of section 6(2), the rates of tax to be levied in the year of assessment are as follows:

- (a) in the case of companies the sole or principal business of which in Swaziland is that of mining, for each Lilangeni of taxable income not exceeding twenty thousand Emalangeni, twenty seven cents, and for each Lilangeni of taxable income exceeding twenty thousand Emalangeni, thirty seven and half cents;
twenty thousand Emalangeni, thirty seven and half cents;
- (b) in the case of all other companies for each lilangeni of taxable income, thirty-seven and half cents;
- (c) in the case of persons (other than companies) as prescribed in Part II;
- (d) in the case of a person (other than a company) who, during the year of assessment, was not ordinarily resident in Swaziland, the rate of tax to be levied shall not reduce the total tax payable below an amount equal -
 - (i) to ten cents of each lilangeni of his taxable income, but,
 - (ii) if any part of his taxable income consists of pension, three cents of each lilangeni of such part;
- (e) in the case of dividends in excess of two thousand Emalangeni received by or accrued to or in favour of an individual from a company listed with the Swaziland Stock Exchange or from a company other than such company, as prescribed in Part III".

PART II

RATES OF NORMAL TAX IN THE CASE OF PERSONS OTHER THAN COMPANIES

Taxable Income	E	E	Rate of Tax
Where taxable income does not exceed		2,000	0 per centum of E1 of taxable income
Exceeds but does not exceed	2,000	3,500	0 plus 3 percent of the amount by which taxable income exceeds 2,000
Exceeds but does not exceed	3,500	5,000	45.00 plus six percent of amount by which taxable income exceeds 3,500
Exceeds but does not exceed	5,000	6,500	135.00 plus eight percent of amount by which taxable income exceeds 5,000
Exceeds but does not exceed	6,500	8,000	255.00 plus ten per cent of amount by which taxable income exceeds 6,500

Exceeds but does not exceed	8,000	9,500	405.00 plus 12 per cent of amount by which taxable income exceeds 8,000
Exceeds but does not exceed	9,500	11,000	585.00 plus 14 per cent of amount by which taxable income exceeds 9,500
Exceeds but does not exceed	11,000	12,500	795.00 plus 15 per cent of amount by which taxable income exceeds 11,000
Exceeds but does not exceed	12,500	14,000	1,035.00 plus 18 per cent of amount by which taxable income exceeds 12,500
Exceeds but does not exceed	14,000	15,500	1305.00 plus 20 per cent of amount by which taxable income exceeds 14,000
Exceeds but does not exceed	15,500	17,000	1605.00 plus 22 per cent of amount by which taxable income exceeds 15,500
Exceeds but does not exceed	17,000	18,500	1935.00 plus 24 per cent of amount by which taxable income exceeds 17,000
Exceeds but does not exceed	18,500	20,000	2295.00 plus 26 percent of amount by which taxable income exceeds 18,500
Exceeds but does not exceed	20,000	21,500	2685.00 plus 28 percent of amount by which taxable income exceeds 20,000
Exceeds but does not exceed	21,500	23,000	3105.00 plus 30 percent of amount by which taxable income exceeds 21,500
Exceeds but does not exceed	23,000	24,500	3555.00 plus 32 percent of amount by which taxable income exceeds 23,000
Exceeds but does not exceed	24,500	26,000	4035.00 plus 34 percent of amount by which taxable income exceeds 24,500
Exceeds but does not exceed	26,000	27,500	4545.00 plus 36 percent of amount by which taxable income exceeds 26,000

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Exceeds but does not exceed	27,500	29,000	5085.00 plus 38 percent of amount by which taxable income exceeds 27,500
Exceeds	29,000		5655.00 plus 40 percent of amount by which taxable income exceeds 29,000

PART III

RATES OF NORMAL TAX ON DIVIDENDS EXCEEDING TWO THOUSAND EMALANGENI

Amount of Dividends	Rate of Tax
A. Dividends in excess of E2,000 received by or accrued to or in favour of an individual from a company listed with the Swaziland Stock Exchange.	10%
B. Dividends in excess of E2,000 received by or accrued to or in favour of an individual from a company other than a company referred to in Item A above.	20%

THE STAMP DUTIES (AMENDMENT) ACT, 1991

(Act No. 7 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

20th December, 1990

AN ACT
entitled

An Act to amend the Stamp Duties Act, 1970.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Stamp Duties (Amendment) Act, 1991.

Sections 2 and 25 of Act 37 of 1970 amended.

2. The Stamp Duties Act, 1970 is hereby amended as follows:
 - (a) by replacing the definition of "receipt" appearing in Section 2 thereof with the following:

"receipt" means any instrument whereby money or any bill of exchange or promissory note for money is acknowledged or expressed to have been received or deposited or paid or which signifies or imports any such acknowledgement and whether it is signed or not;"
 - (b) by deleting paragraph (c) of section 25 thereof and renumbering paragraph (d) as paragraph (c).
-

THE ACCOUNTANTS (AMENDMENT) ACT, 1991

(Act No. 8 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

3 January, 1991

AN ACT
entitled

An Act to amend the Accountants Act, 1985.
ENACTED by the King and the Parliament of Swaziland.

Short title. e.

1. This Act may be cited as the Accountants (Amendment) Act, 1991 and shall be read as one with the Accountants Act, 1985 (hereinafter referred to as the "principal Act").

Amendment of section 2.

2. Section 2 of the principal Act is amended by inserting after the definition of "Student Clerk" the following new definition -

““trainee accountant” means a person other than an articulated clerk who has entered into a training contract registered with the Institute in order to study for the examination of the Institute.”

Amendment of section 4.

3. Section 4(1) of the principal Act is amended by inserting paragraph (e) the following new paragraph -

“(f) trainee accountants.”

Amendment of section 8.

4. Section 8 of the principal Act is amended as follows:

(a) by replacing subsection (3) with the following -

“(3) Six members of the Council, three of whom shall be members in public practice, two of whom shall be members not in public practice and one of whom shall be a member registered in terms of section 9(2), all of whom shall be resident in Swaziland in accordance with the bye-laws, and such members together with two members appointed by the Minister to hold office for such period as the Minister may determine and who may be removed at his discretion, shall elect a Chairman who shall be a member registered under section 9(1) of this Act.”

(b) in subsection (4), by inserting between the words “and” “approval” the words “shall submit this to members for their”,

(c) in subsection (5), by inserting between the words “report” “shall” the words “together with the audited balance sheet income and expenditure account”.

Amendment of section 9.

5. Section 9 of the principal Act is amended as follows -

(a) in subsection (1)(d), by deleting the words “he has an adequate knowledge of the laws of Swaziland relating to taxation, companies, insolvency and administration of estates and that”;

(b) in subsection (3), by replacing the words “section 9(1); or” in paragraph (a) with the words “section 9(1)(a) or (b)” and by inserting after paragraph (b) the following new paragraph -

“(c) registered in terms of section 9(1)(d) and who has satisfied the Council that he has adequate knowledge of the laws of Swaziland relating to taxation, companies, insolvency and administration of estates.”

Amendment of section 24.

6. Section 24 of the principal Act is amended in subsection (3) by inserting in line 8 between the words “control” and “of” the words, “or under the supervision and control”.

Amendment of section 25.

7. Section 25 of the principal Act is amended by replacing paragraph (f) with the following

“(f) regulating the service under articles of clerkship or training contracts of members of the Institute, and the cancellation of such articles or training contracts for misconduct or other sufficient causes;”

THE SALES TAX (AMENDMENT) ACT, 1991

(Act No. 9 of 1991)



I ASSENT

MSWATI III

KING OF SWAZILAND

3rd January, 1990

AN ACT
entitled

An Act to amend the Sales Tax Act, 1983.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Sales Tax (Amendment) Act, 1991 and shall be read as one with the Sales Tax Act, 1983 (hereinafter called the "principal Act").

Amendment of principal Act.

2. The principal Act is amended by replacing the word "Secretary" wherever it occurs with the word "Commissioner".

Amendment of section 5.

3. Section 5 of the principal act is amended after the proviso to subsection (1)(b) by adding the following new proviso -

"Provided further that the Commissioner of Taxes shall, for purposes of rendering the Income Tax Consolidation Order, 1975 more effective, have access to any information, records and documents in the possession or custody of the Commissioner under this Act."

Amendment of section 8.

4. Section 8 of the principal Act is amended by replacing paragraph (d) with the following

"(d) such service provided to persons and organisations as specified in the Fourth Schedule."

Amendment of section 10.

5. Section 10 of the principal Act is amended -

(a) by replacing the colon at the end of paragraph (a) with a semi colon and by deleting the proviso thereafter;

(b) by replacing paragraph (b) with the following -

“(b) in the case of good transferred to Swaziland from places within the common customs area, the full and final price paid for the goods by the transferee, including all charges in respect of freight and insurance and any taxes and duties paid in respect of such goods in the country of despatch;”

(c) after paragraph (b) by adding the following proviso -

“Provided that where there is any dispute or doubt as to the taxable value declared in the case of the sale of any goods or of goods transferred to Swaziland from places within the common customs area, the price which in the opinion of the Commissioner the goods would fetch on a sale made at the time when the tax in respect of the goods becomes due by a person selling such goods in the open market in Swaziland to a retail trader carrying on business in Swaziland shall be the taxable value;”

(d) by replacing paragraph (a) with the following -

“(c) in the case of imported goods and goods removed from a bonded warehouse which require to be entered in terms of the Customs Act and are cleared for home consumption in Swaziland, the value thereof for customs or excise duty purposes, as appropriate, plus any duties levied under the said Act in respect of the importation or removal from bond of such goods, plus 10 per cent of the sum of the said value and duties;”

Amendments of section 13.

6. Section 13 of the principal Act is amended -

(a) in subsection (3)(a) after the semi colon by adding the word “and”;

(b) in subsection (3)(b) by replacing the semi colon with a full stop and by deleting the word “and”;

(c) by deleting subsection (3)(c); and

(d) by inserting the following new subsection -

“(4) In the case of any tax due and payable by any person not registered in terms of section 14 such tax shall be paid at the time of importation of goods and for other transactions, not later than ten days after the date on which such tax has become payable.”

Amendment of section 14.

7. Section 14 of the principal Act is replaced with the following -

“Registration of persons liable to pay sales tax.

(1) Any vendor engaged in -

(a) the manufacture or production of taxable goods; or

(b) the rendering of taxable services; or

(c) the operation of a hotel or restaurant;

shall apply to the Commissioner for registration within one month of commencement of the enterprise.

(2) Where the Commissioner decides any person, other than a vendor covered by subsection (1), should be registered in respect of any enterprise carried on by him, that person shall apply to the Commissioner for registration immediately the Commissioner notifies him in writing of this requirement.

(3) Any person, not covered by subsections (1) and (2) may apply to the Commissioner for registration.

(4) Applications for registration shall be accompanied by -

- (a) a declaration by the person or vendor in such form and containing such information relating to the enterprise concerned as the Commissioner may require for the purposes of this Act; and
- (b) an application fee of E10.00.

(5) On registration of a person under this section the Commissioner shall issue to that person a certificate of registration after such security as the Commissioner may require under section 13(3) has been lodged with him.

(6) Notwithstanding subsections (1) and (3), if the Commissioner has reason to believe that any person who has furnished a declaration in terms of subsection (4) -

- (a) has no fixed abode or business; or
- (b) does not keep proper accounting records relating to any enterprise carried on by him; or
- (c) has not opened a banking account with any bank, building society or similar institution for the purposes of such enterprise;

he may refuse to register such person and shall give such person notice of such refusal:

Provided that in the case of persons complying for registration under subsection (3) the Commissioner may refuse to register such person at his discretion."

Amendment of section 16.

8. Section 16 of the principal Act is amended -

- (a) in subsection (1) in the third line after the words "section 13(3)" by adding the words "or 13(4), as appropriate,";
- (b) in subsection (1)(a) by replacing the words "the previous month" with the words "the previous period";
- (c) in subsection (1)(b) after the words "section 13(3)", by adding the words "or 13(4), as appropriate,"; and
- (d) in subsection (3) by deleting the full-stop and adding the words "or such other period as the Commissioner may authorise".

Amendment of section 27.

9. Section 27 of the principal Act is amended in subsection (3)(b) by replacing the words "two hundred Emalangeni" with the words "one thousand Emalangeni".

Amendment of section 29.

10. Section 29 of the principal Act is amended by replacing the words "the Director of Posts and Telecommunications" with the words "the Managing Director of the Posts and Telecommunications Corporation".

Amendment of section 30.

11. Section 30 of the principal Act is amended in paragraph (a) after the semi colon by replacing the word "and" with the word "or".

Repeal of section 31.

12. Section 31 of the principal Act is repealed.
