



# SWAZILAND GOVERNMENT GAZETTE

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VOL. XXXII] MBABANE, Friday, October 28th, 1994 [No. 53

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PUBLISHED BY AUTHORITY

**GENERAL NOTICE NO. 88 OF 1994**  
**THE CHANGE OF NAME ACT 1962**  
 (Act No. 67 of 1962)

**AUTHORISATION FOR CHANGE OF SURNAME**

In exercise of the powers conferred upon him by Section 3 of the Change of Name Act, 1962, the Minister for Justice having satisfied himself that the provisions of the said Act have been complied with hereby authorises:-

**PRIMROSE DLAMINI**

A Resident of Ezulwini Area in the Hhohho Region to assume the Surname NXUMALO.

**TARS D. MAKAMA**

*Acting Principal Secretary*

Mbabane

12th October, 1994

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**GENERAL NOTICE NO. 89 OF 1994**  
**THE HIGH COURT ACT, 1954**  
 (Act No. 20 of 1954)

**THE HIGH COURT CALENDAR FOR 1995**  
 (Under Section 7)

It is notified for general information that in accordance with section 7 of the High Court Act 1954 and Rule 3 of The High Court Rules, the Chief Justice has determined the following to be the commencement and termination dates of the sessions of the High Court for 1995:

First Session	:	24th January 1995 to 13th April, 1995
Second Session	:	24th April 1995 to 7th July 1995;
Third Session	:	24th July 1995 to 29th September 1995;
Fourth Session	:	16th October 1995 to 15th December 1995.

**J.P. ANNANDALE**

*Acting Registrar of the High Court*

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 699/92

In the matter between

STANDARD CHARTERED BANK LIMITED

Judgement Creditor

and

THABSILE ANNASTASIA VILAKATI

Judgement Debtor

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NOTICE OF SALE

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Notice is hereby given that pursuant to a Writ of Execution issued in the above matter, the undermentioned property will be sold by Public Auction by the Deputy Sheriff for the District of Hhohho outside the High Court building, at 2.30 p.m. on the 25th day of November, 1994

CERTAIN: Lot No. 2367 Mbabane, Extension No. 21 (Embangweni Township), situate in the District of Hhohho, Swaziland.

MEASURING: 400 (Four Zero Zero) Square metres

HELD: Under Deed of Transfer No. 84/1991, dated the 4th March, 1991

The Conditions of Sale are available for inspection at the office of the Sheriff in the High Court Building in Mbabane.

Further particulars may be obtained from the undersigned.

DATED at MBABANE this day of 1994.

J.P. ANNANDALE  
Sheriff of Swaziland  
c/o The Registrar of the High Court  
Mbabane

F1129 28-10-94

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**NOTICE**

Notice is hereby given that I, Jeremiah Lobovu Mhlanga of Lobamba Lomdzala area in the Manzini Region intend to apply to the Honourable Minister for Justice of the Kingdom of Swaziland for authorisation to assume the surname Mahlinza after the fourth publication of this Notice in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer newspapers, being two newspapers circulating in the region where I reside and designated for this purpose by the Regional Secretary for the Manzini Region and in the Government Gazette.

The reason I want to assume the surname Mahlinza is because it is my natural surname.

Any person or persons likely to object to my assuming the surname Mahlinza should lodge their objections in writing with me at the address given below and with the Regional Secretary for Manzini Region.

P.O. Box 29  
MALKERNS

E1090 4x11-11-94

**NOTICE**

Notice is hereby given that an application by ZWANGENDABA AND ASSOCIATES (PROPRIETARY) LIMITED for a grant of a Motor Garage Licence to operate on Farm No. 970 situate in the Mankayane District under the style Zwangendaba Gage will be heard in the Regional Secretary's Conference Room on the 29th November, 1994 at 10.00 am.

Objections thereto if any must be lodged with the Licensing Officer, P.O. Box 44, Mankayane as well as the undersigned Applicant's attorneys on or before the 24th November, 1994.

SHILUBANE, NTIWANE AND PARTNERS  
Applicant's Attorneys  
Fourth Floor, Mbandzeni House  
Smuts/Church Streets  
P.O. Box A93  
Swazi Plaza  
Mbabane

F1128 28-10-94

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**NOTICE**

**CANCELLATION OF LOST MORTGAGE BOND**

Notice is hereby given that SWAZILAND DEVELOPMENT and SAVINGS BANK intends applying for the cancellation of mortgage bond No. 262/78 dated 9th October 1978 passed by Michael Mathebula (born on 14th August 1927), Joseph Mathebula (born in the month of June 1936) and Samuel Mathebula (born on 7th July 1929) for the sum of E262,375.00 (Two Hundred and Sixty Two Thousand Three Hundred and Seventy Five Emalangeneni) plus E26,238.00 (Twenty Six Thousand Two Hundred and Thirty Eight Emalangeneni) costs in favour of Swaziland Development and Savings Bank mortgaging as a first mortgage.

CERTAIN : Stand No. 36 in the Township of Manzini District Manzini Swaziland;

MEASURING : 1983 (One Nine Eight Three) square metres

HELD : under Deed of Transfer No. 349/1977 dated 17th November 1977

All persons having objection to the cancellation of the aforesaid bond are hereby required to lodge same in writing with the Registrar of Deeds at Mbabane within three (3) weeks from the last publication of this notice.

DATED at MBABANE this 21 day of October, 1994.

SHILUBANE, NTIWANE & PARTNERS  
Attorneys for Applicant  
P.O. Box A93  
Swazi Plaza  
Mbabane

F1127 2 x 4-10-94

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**NOTICE**

**ESTATE LATE JOHN MASHAYANISA LUKHELE E278/94**

Debtors and Creditors in the above estate are hereby required to lodge their claims with and pay their debts to the undersigned within (30) thirty days from date of publication hereof.

PHUTFUMA MATHEW LUKHELE  
Sibovu Secondary School  
P.O. Box 121  
Mankayane

F1125 28-10-94

**NOTICE**

**ESTATE LATE PATRICK DIALE MOKEBE**

**ESTATE NO. 106/92**

Notice is hereby given in terms of Section 51 bis of the Administration of Estates Act No. 28 of 1902 that the first and final Liquidation and Distribution Account will lie open for inspection at the office of the Master of the High Court of Swaziland at Mbabane and at the office of the District Commissioner Hhohho district for a period of Twenty One (21) days from the date of appearance of this notice.

Any person objecting to the account may lodge his objection in writing in duplicate with the Master of the High Court at any time before expiry of the said period.

ROBINSON, BERTRAM & CO.  
for the Executor/s  
P.O. Box 24,  
MBABANE

F1123 28-10-94

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**NOTICE**

Notice is hereby given that we intend applying for a Certified Copy of: Deed of Transfer No. 271/1978 dated 22nd November 1978 in favour of:- Charles Mashicana Zikalala (born on the 19th day of November 1941) in respect of :-

**CERTAIN** : Lot No. 104 situate in Pleasing Prospect in the Township of Fairview, Manzini urban area District of Manzini, Swaziland;

**MEASURING** : 1340 (One Three Four Zero) square metres

Any person having objection to the issue of such copy is hereby requested to lodge it in writing with the Registrar of Deeds within Three (3) weeks of the last publication of this Notice.

DATED at MBABANE this day of OCTOBER 1994.

ROBINSON, BERTRAM & CO.  
WITH P.W. KEYTER,  
Attorneys for/ Applicant,  
P.O. Box 24,  
MBABANE

F1121 2 x 4-11-94

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**NOTICE**

**ESTATE LATE MPHUKWA MYENI E314/94**

Debtors and Creditors in the above estate are hereby required to lodge their claims with and pay their debts to the undersigned within (30) thirty days from date of publication hereof.

KEYEYE MYENI  
P.O. Box 48  
Nhlangano

F1120 28-10-94

**NOTICE**

**ESTATE LATE LAWRENCE ALBERT ABRAHAMS E41/92**

Notice is hereby given that the first and final Liquidation and Distribution Account will lie open for inspection at the office of the Master of the High Court of Swaziland at Mbabane for a period of Twenty One (21) days from the date of appearance of this Notice.

Any person objecting to the account may lodge his objection in writing in duplicate with the Master of the High Court at any time before expiry of the said period.

ROBINSON, BERTRAM & KEYTER  
Attorneys for the Executor/trix  
Sokhamlilo Building  
P.O. Box 24  
Mbabane

F1119 28-10-94

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**NOTICE**

**ESTATE LATE VIOLET ZUCCOLO E183/91**

Notice is hereby given that in terms of Section 51 bis of the Administration of Estates Act No. 28 of 1902 the First and Final Liquidation and Distribution Account will lie open for inspection at the office of the Master of the High Court of Swaziland, Mbabane for a period of twenty-one (21) days from date of appearance of this notice.

Any person objecting to the account may lodge his objection in writing, in duplicate, with the Master of the High Court at any time before expiry of the said period.

DATED at MBABANE this 20th day of October 1994

SHILUBANE, NTIWANE & PARTNERS  
Attorneys for Executrix/Executor  
Fourth Floor Mbandzeni Building  
Smuts/Church Streets  
Mbabane

F1118 28-10-94

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**NOTICE**

**ESTATE LATE THOMAS S. KHATHIWANE E270/94**

Notice is hereby given that Creditors and Debtors in the above estate should submit their claims and pay their debts to the undersigned within 30 days from the date of the Publication hereof.

D. LUKELE & COMPANY  
Executors Attorneys  
P.O. Box 336  
Manzini

F1117 28-10-94

**NOTICE**

**ESTATE LATE ALBERT MABILISA - E127/92**

Notice is hereby given in terms of Section 51 bis of the Administration of Estates Act No. 28 of 1902 that the first and final liquidation and distribution account will lie open for inspection at the offices of the Master of the High Court of Swaziland at Mbabane and at the Offices of the Regional Administrator's Office, Mbabane for a period of twenty-one (21) days from the date of appearance of this notice.

Any person objecting to the account may lodge his objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

BHEKI G. SIMELANE AND COMPANY  
Attorneys for the Executrix Dative  
Second Floor Mbandzeni Building  
P.O. Box 4505  
MBABANE

F1115 28-10-94

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**NOTICE**

**IN THE HIGH COURT OF SWAZILAND**

HELDAT MBABANE

Case No. 512/90

In the matter between:

TRADOR CASH & CARRY (PTY) LIMITED

Plaintiff

and

JOHN M. SHONGWE

Defendant

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**NOTICE OF SALE**

Notice is hereby given that pursuant to a writ of execution issued in the above matter, the undermentioned properties will be sold by Public Auction by the Deputy Sheriff for the District of Hhohho outside the Pigg's Peak Magistrate's Court building/premises at 10.30 a.m. on Wednesday the 30th of November, 1994.

CERTAIN : Lots 363 and 371 situate in Pigg's Peak, District of Hhohho, Swaziland;

MEASURING : 990 (nine nine zero) and 451 (four five one) square metres respectively;

HELD UNDER : Deed of Transfers No. 484/92 and 485/92 respectively;

The conditions of sale are available for inspection at the office of the Sheriff in the High Court Building, Mbabane, outside the Magistrate's Court Building, Pigg's Peak and the offices of J.M. Matsebula & Associates, 2nd Floor Dhlal'ubeka House, Mbabane.

Further particulars may be obtained from the undersigned,

DATED at MBABANE on this the 21st Day of October, 1994

J.P. ANNANDALE  
Sheriff of Swaziland  
c/o The Registrar of the High Court  
P.O. Box 19  
Mbabane

F1126 28-10-94

**NOTICE**

**APPLICATION FOR LOST TITLE DEED**

Notice is hereby given that we intend to apply for a certified copy of Deed of Transfer No. 220/1988 and registered on the 5th day of May, 1988 held by Jackson Fanie Hlatshwayo in respect of:

**CERTAIN** : Lot No. 731 situate in Ngwane Park Extension No. 1 Township District of Manzini, Swaziland;

**MEASURING** : 1231 (One Two Three One) square metres;

Any person having objection to the issue of such copy is hereby required to lodge it in writing with the Registrar of Deeds within three (3) weeks from the date of the last publication of this notice.

DATED at MANZINI on this 24th Day of October, 1994

MTHEMBU SIMELANE ZWANE & KUBHEKA  
Applicant's Attorneys  
2nd Floor Mandlenkosi Ecumenical House,  
Esser Street  
P.O. Box 1301  
Manzini

F1135 2 x 4 - 11- 94

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**NOTICE**

**ESTATE LATE TROWBRUDGE NDZIMA NOKWE - E146/93**

Notice is hereby given that the first and final Liquidation and Distribution Account will lie open for inspection at the office of the Master of the High Court of Swaziland at Mbabane for a period of Twenty One (21) days from the date of appearance of this Notice.

Any person objecting to the account may lodge his objection in writing in duplicate with the Master of the High Court at any time before expiry of the said period.

ROBINSON BERTRAM & KEYTER  
Attorneys for the Executor/trix  
Sokhamlilo Building  
Mbabane

F1137 28-10-94

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**NOTICE**

**ESTATE LATE MARTHA ABNER - E2941/78**

Notice is hereby given that the first and final Liquidation and Distribution Account will lie open for inspection at the office of the Master of the High Court of Swaziland at Mbabane for a period of Twenty One (21) days from the date of appearance of this Notice.

Any person objecting to the account may lodge his objection in writing in duplicate with the Master of the High Court at any time before expiry of the said period.

ROBINSON BERTRAM & KEYTER  
Attorneys for the Executor/trix  
Sokhamlilo Building  
P.O. Box 24  
Mbabane

F1138 28-10-94

**NOTICE**

**NOTICE IN TERMS OF REGULATION 40(b) of ACT NO. 37 of 1968 -  
APPLICATION FOR LOST TITLE DEED**

Notice is hereby given that we intend to apply for a certified copy of Deed of Transfer No. 22/1968 dated 5th February 1968 in favour of Antonio Cobianchi in respect of:-

- CERTAIN : Erf No. 219 situate on Fairview Road, in the Township of Fairview, District of Manzini Swaziland.
- MEASURING : 17,593 (Seventeen thousand five hundred and ninety three) square feet as will more fully appear from General Plan S.G. No. S.53/64 approved by the Surveyor - General on the 1st February 1965.

Any person having objection to the issue of such copy is hereby required to lodge it in writing with the Registrar of Deeds within 3 (three) weeks from the date of the last publication of this notice.

DATED at MANZINI this 21st day of October 1994

VILAKAZI AND COMPANY  
Applicant's Attorneys  
Conway Nyman Building  
Tenbergen Street  
P.O. Box 4156  
MANZINI

F1136 28-10-94

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**NOTICE**

Notice is hereby given that I, Bernard Mfanasibili Dlamini of Khubuta in the Shiselweni Region intend to apply to the Honourable Minister for Justice of the Kingdom of Swaziland for authorisation to assume the Surname Ndabandaba after the fourth publication of this notice in each of four consecutive weeks in the Times of Swaziland and Swazi Observer Newspapers, being two newspapers circulating in the region where I reside and designated for this purpose by the Regional Secretary for the Shiselweni Region and in the Government Gazette.

The reason I want to assume the Surname Ndabandaba is because it is my natural surname.

Any person or persons likely to object to my assuming the surname Ndabandaba should lodge their objections in writing to me at the address given below and the Regional Secretary for the Shiselweni Region.

REGIONAL SECRETARY  
P.O. Box 8  
Nhlangano

F1139 4x18-11-94

**NOTICE**

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 444/94

In the matter between

SWAZILAND BUILDING SOCIETY

Plaintiff

and

RICHARD MBONANI MASINA

Defendant

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NOTICE OF SALE

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Notice is hereby given that pursuant to a Writ of Execution issued in the above matter, the undermentioned property will be sold by Public Auction by the Deputy Sheriff for the District of Hhohho, outside the High Court of Swaziland building, Mbabane at 11.30 a.m. on the 11th November 1994.

**CERTAIN:** Lot No. 43 situate in Shezi Street in Sandla Township, District of Hhohho, Swaziland;

**MEASURING:** 806 (Eight Zero Six) Square Metres

Conditions of Sale are available for inspection at the office of the Sheriff in the High Court building in Mbabane and at the offices of the Regional Administrator, Hhohho.

A substantial bond will be granted to an approved buyer on application to the Swaziland Building Society.

Further particulars may be obtained from the undersigned.

DATED at MBABANE on this the 21st day of October 1994.

SHERIFF OF SWAZILAND

c/o The Registrar of the High Court

Mbabane

F1140 28-10-94

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**NOTICE**

Notice is hereby given that we intend applying for a certified copy of

Crown Grant No. 84/1963 dated the 4th December 1963 and registered on the 18th December 1963

in favour of Mbulwane Limited

in respect of:

**CERTAIN** Portion 142 of Farm No. 2 situate in the Mbabane urban area. District of Hhohho. Swaziland;

**MEASURING** 1672 (One Six Seven Two) square metres;

Any person having objections to the issue of such copy is hereby requested to lodge it in writing with the Registrar of Deeds within three (3) weeks of the last publication of this notice.

DATED at MBABANE this 17th day of October 1994.

ROBINSON BERTRAM & KEYTER

Attorneys for Applicant

P.O. Box 24

MBABANE

F1107 2x28-10-94

**NOTICE**

**RE : POUND SALE**

Notice is hereby given that unless previously claimed the following impounded animals will be sold by Public Auction on 9th November 1994 at the Mbabane City Council Pound at 13:00 hours.

- (1) One Male White Horse
- (2) One Black Cow
- (3) One Red Cow
- (4) One Red Calf
- (5) One Red Bull
- (6) One Brown Bull
- (7) One Red Cow
- (8) One Red Bull
- (9) One Red Heifer
- (10) One Red & White Heifer
- (11) One Brown & White Cow

E.M. MAMBA  
Pound Master

F1078 3x4-11-94

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**NOTICE**

Notice is hereby given that we intend applying for a certified copy of Deed of Transfer No. 213/1976 in respect of:

**CERTAIN:** Portion 6 of Farm NOTCLIFFE No. 674, District of Lubombo, Swaziland;

**MEASURING:** 2,1371 hectares,

made in favour of RITA BOTHMA, Major Spinster (born on the 20th December 1945) on the 19th August 1976.

All persons having objections to the issue of the aforesaid copy are hereby requested to lodge same with the Registrar of Deeds for Swaziland at Mbabane within three (3) weeks of the last publication of this Notice.

DATED at MBABANE on the 14th day of October 1994.

SAMUEL S. EARNSHAW & CO.  
Attorneys for Applicant  
P.O. Box 1134  
MANZINI

F1091 2x28-10-94

**NOTICE**

**CHANGE OF NAME ACT NO. 67 OF 1962**

(In terms of Section 5)

Notice is hereby given that I, David Sipho Mabuza of Kabhudla Area in the Manzini Region intend to apply to the Honourable Minister for Justice of the Kingdom of Swaziland for authorisation to assume the Surname Skwambane after the fourth publication of this notice in each of four consecutive weeks in the Swazi Observer and Times of Swaziland Newspapers, being two newspapers circulating in the region where I reside and designated for this purpose by the Regional Secretary for the Manzini Region and in the Government Gazette.

The reason I want to assume the Surname Skwambane is because it is my natural surname.

Any person or persons likely to object to my assuming the surname Skwambane should lodge their objections in writing to me at the address given below and the Regional Secretary for the Manzini Region,

P.O. Box 282, Manzini.

F1031 4 x 28 -10-94

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**NOTICE**

**CHANGE OF NAME ACT NO. 67 OF 1962**

(In terms of Section 5)

Notice is hereby given that I, Hlobisile Tholakole Masilela Hhohho Region intend to apply to the Honourable Minister of Justice of the Kingdom of Swaziland for authorisation to assume the surname Nxumalo after the fourth publication of this Notice in each of four consecutive weeks in the Government Gazette, Times of Swaziland and Swazi Observer Newspapers, being two newspapers circulating in the region where I reside and designated for this purpose by the Regional Secretary for the Hhohho Region and in the Government Gazette.

The reason I want to assume the surname Nxumalo is because I presently use my step-father surname. Because I was staying with my mother Tobhi Masilela (Born Dlamini).

Any person or persons likely to object to my assuming the surname Nxumalo should lodge their objections in writing with me at the address given below and with the Regional Secretary for Hhohho Region.

P.O. Box 45  
Mbabane  
Swaziland

F1042 4x4-11-94

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**NOTICE**

**CHANGE OF NAME ACT NO. 67 OF 1962**

(In terms of Section 5)

Notice is hereby given that I, Eric Zwelibanzi Mabuza of Ka-Bhudla Area in the Manzini Region intend to apply to the Honourable Minister for Justice of the Kingdom of Swaziland for authorisation to assume the Surname Skwambane after the fourth publication of this notice in each of four consecutive weeks in the Swazi Observer and The Times of Swaziland Newspapers, being two newspapers circulating in the region where I reside and designated for this purpose by the Regional Secretary for the Manzini Region and in the Government Gazette.

The reason I want to assume the Surname Skwambane is because it is my natural surname.

Any person or persons likely to object to my assuming the surname Skwambane should lodge their objections in writing to me at the address given below and the Regional Secretary for the Manzini Region,

Box 282, Manzini.

F1030 4 x 28.10.94

The Government Printer Mbabane.

SUPPLEMENT TO  
THE  
SWAZILAND GOVERNMENT  
GAZETTE

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VOL. XXXII]

MBABANE, Friday, October 28th, 1994

[No. 53

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PUBLISHED BY AUTHORITY

**THE FUEL OIL LEVY BILL, 1994**

(Bill No. 11 of 1994)

(To be presented by the Minister for Natural Resources and Energy)

**MEMORANDUM OF OBJECTS AND REASONS**

The object of this Bill is to -

- (a) to empower the Minister for Natural Resources and Energy with the concurrence of the Minister for Finance to impose a levy on fuel oil;
- (b) to empower the Minister for Finance to impose a tax on fuel oil with the concurrence of the Minister for Natural Resources and Energy;
- (c) to provide for the transfer of a specified amount from the Strategic Oil Reserve Fund to the Consolidated Fund for the refund of levies;
- (d) to repeal the Fuel Oil Levy Act, 1980; and
- (e) to provide for other incidental matters.

S.H. ZWANE

*Attorney General*

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**A BILL**

entitled

An Act to repeal and replace of the Fuel Oil Levy Act 1980.

ENACTED by the King and the Parliament of Swaziland.

*Short title and commencement.*

1. This Act may be cited as the Fuel Oil Levy Act 1994 and shall come into force on such day as the Minister may, by Notice in the Gazette appoint.

*Interpretation.*

2. In this Act unless the context otherwise requires:

"authorised officer" means any person authorised by the Minister to perform any of the functions of carrying out the purpose of this Act;

"fuel oil" includes petrol, diesel oil, aviation gasoline, kerosene, residual fuel oil, naphta, base oil, products of base oil, grease or petroleum gas;

"levy" means a levy imposed under section 3 (1) of this Act;

"Minister" means the Minister responsible for Natural Resources and Energy;

"prescribed" means prescribed by regulations under section 12 of this Act;

"repealed Act" means the Fuel Oil Levy Act, 1980;

"supplier" means any company specified in the Schedule to this Act;

"tax" means the tax charged under section 3(2) of this Act.

*Power of Minister to impose levy.*

3. (1) The Minister may, in consultation with the Minister for Finance, by Notice published in the Gazette impose a levy on any fuel oil at such rate as may be specified in that Notice.

(2) The Minister for Finance may, in consultation with the Minister by Notice published in the Gazette, charge on any fuel oil a tax at such rate as may be specified in that Notice.

(3) The levy and tax shall be charged or levied, paid and collected from the date of imposition in respect of every amount and in relation to the type of fuel oil specified in the Notice under subsection (1) and (2) of this section.

*Purpose of the levy and tax.*

4. (1) The levy shall be used for the purposes specified in section 9 in relation to the Strategic Oil Reserve Fund.

(2) The tax shall be used for purposes of earning revenue for the Swaziland Government and it shall be deposited into the Consolidated Fund.

(3) The moneys raised from any levy or tax as well as interest payable there on by virtue of section 6 shall be invested in the Strategic Oil Reserve Fund and the Consolidated Fund respectively in such manner and in such amount as the Minister and the Minister for Finance may determine.

*Method of collection and payment of levies.*

5. Every levy or tax collected by a supplier shall be paid to the Government of Swaziland in accordance with regulations made under section 12 of this Act.

*Interest on unpaid levies.*

6. Any person who fails to pay to the Government of Swaziland within the time prescribed any levy or tax collected by him shall be liable to pay interest on the amount of any payment or part thereof, not made on the due date, calculated at such rate as may be prescribed and any such amount together with the interest payable thereon shall be treated as debt owed to the Government.

*Refund of Levies.*

7. Any levy which is paid on fuel oil obtained for the exclusive use of:

(a) diplomatic missions, international organisations or institutions and members of the diplomatic staff entitled to exemption from dues and taxes under the Diplomatic Privileges Act, 1986; or

(b) such other class of persons as the Minister may, by Notice published in the Gazette, specify;

shall be refunded on application made under section 8 of this Act.

*Method of Refund on Levies.*

8. Any person who is entitled to a refund of any levy under section 7 may submit such claim to the Minister in accordance with such regulations as may be prescribed.

*Establishment of the Strategic Oil Reserve Fund.*

9. (1) There is hereby established a Fund to be known as the Strategic Oil Reserve Fund, referred to in this Act as the "Oil Fund"

(2) The amount of money accruing from the levy and which is invested in the Strategic Oil Reserve Fund under Section 4 shall be used:

- (a) for the financing of any increase in cost of purchasing fuel oil;
- (b) for or in connection with the purchase, acquisition, distribution, sale, saving, conservation, storage, utilisation of fuel oil or the carrying out of studies intended to facilitate the supply of fuel oil products to Swaziland.

*Transfer of part of the moneys invested in Strategic Oil Reserve Fund to the Consolidated Fund.*

10. Without prejudice to section 4 the moneys raised by virtue of the increase in the levy by 4 c/l imposed on the fuel oil under section 3 of the repealed Act with effect from 1st April, 1986 until commencement of this Act shall, on coming into force of this Act, revert to the Consolidated Fund.

*Offences and Penalties.*

11. (1) Any person who -

- (a) fails to pay any levy or tax within the time prescribed;
- (b) fails to provide any information or return required under this Act;
- (c) knowingly makes a false statement in relation to such information or return;
- (d) fails to record or perform any function prescribed by this Act;
- (e) obstructs any authorised officer in the performance of his duty under this Act;

commits an offence.

(2) Any person convicted of any offence under this section shall be liable to a fine not exceeding five thousand Emalangeni or to imprisonment not exceeding six months or to both.

*Regulations.*

12. The Minister may by Notice published in the Gazette make such regulations as he deems necessary for carrying out the purpose of this Act including regulations for the proper management of the Strategic Oil Reserve Fund.

*Amendment of Schedule.*

13. The Minister may by Notice published in the Gazette amend the Schedule to this Act.

*Repeal.*

14. The Fuel Oil Levy Act, 1980 is repealed.

SCHEDULE

SUPPLIERS

CALTEX OIL SWAZILAND (PTY) LIMITED

BP SWAZILAND (PTY) LIMITED

ENGEN SWAZILAND (PTY) LIMITED  
SHELL OIL SWAZILAND (PTY) LIMITED  
TOTAL SWAZILAND (PTY) LIMITED  
TREK PETROLEUM (PTY) LIMITED

THE INSURANCE AND PENSION FUNDS BILL, 1994

(Bill No. 12 of 1994)

(To be presented by the Minister for Finance)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are

- (a) to bring about the demonopolisation of the insurance business so as to foster an efficient and competitive insurance industry in Swaziland;
- (b) to make provision relating to the carrying on of insurance business;
- (c) to provide for the registration and regulation of pension funds; and
- (d) to provide for matters incidental thereto.

S.H. ZWANE  
*Attorney-General*

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A BILL

entitled

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## PART I

### INTRODUCTORY PROVISIONS

#### *Short title.*

1. This Act may be cited as the Insurance and Pension Funds Act, 1994.

#### *Commencement.*

2. This Act shall come into force on such date as the Minister may appoint by notice in the Gazette.

#### *Interpretation.*

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

"actuary" means an individual who is a Fellow of the Institute of Actuaries of England, the Faculty of Actuaries in Scotland, the Society of Actuaries of America, or of any other institute, faculty, society or chapter of actuaries approved by the Registrar from time to time.

"auditor" means an individual who is a registered as an accountant in terms of the Accountants Act or who is a member of any institute or professional organization of accountants approved by the Registrar, or a partnership all of whose partners are such individuals.

"controller of a person" means -

- (a) a managing director of, chief executive of or comparable position of authority in a juristic person;
- (b) a person that directs or has the power to direct the actions of a person; or
- (c) a person who either alone or together with one or more associates is entitled to exercise, or control the exercise of, fifteen (15) percent or more of the votes at any general meeting of the person.

"Corporation" means the Swaziland Royal Insurance Corporation established under Order No. 32 of 1973 or its successor corporation as provided in section 88 of this Act;

"Council" means the Advisory Council for Insurance and Pension Funds;

"defined-benefit pension fund" means any pension fund that is not a defined-contribution pension fund;

"defined-contribution pension fund" means any pension fund where the contributions are (1) stipulated in the rules of the pension fund without reference to the cost of the benefits to be provided, and (2) allocated to the account of the participant, and where the benefits payable are limited to those resulting from the accumulation of the contributions and all earnings and gains attributable to such contributions;

"foreign pension fund" means any pension fund for which the head office of the pension fund, or the head office of every participating employer, is outside the Kingdom of Swaziland;

"friendly society" means an association of individuals with no share capital established for the purpose of rendering aid to its members or their dependents, and which does not at any time after the commencement of this Act employ or remunerate any person for the purpose of inducing other persons to become members of such association or for collecting contributions or subscriptions from members thereof;

"Governor" means the Governor of the Central Bank of Swaziland appointed in terms of Central Bank of Swaziland Order (Order No. 2 of 1979);

"group of related persons" means a group of persons that through common ownership or control are linked in a manner that the risk of lending to one member of the group would approximate the risk of lending to any or all members of the group;

"insurance agent" means a person who not being an employee of an insurance company or underwriter and not being an insurance broker undertakes the selling or servicing of any kind of insurance business on behalf of such insurance company or underwriter;

"insurance business" means the business of, or in relation to, the issue of, or the undertaking liability under, life policies, or to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event;

"insurance broker" means a person who on behalf of any other person negotiates insurance business, including reinsurance, with insurers as his principal business but does not include an employee of a licensed insurer who receives a salary;

"insurer" means any person carrying on any class of insurance business in Swaziland;

"life policy" means a policy of insurance on human life or a contract to pay annuities on human life;

"line of insurance" means an identifiable insurance product offered or intended to be offered by an insurer that falls within one or more classes of insurance;

"long-term insurance business" means business of any of the following classes, including any insurance activity that is incidental to any such class -

- (a) effecting, carrying out, and issuing policies on human life or contracts to pay annuities on human life;
- (b) effecting, carrying out, and issuing contracts of insurance against risks of the persons insured sustaining injury or dying as the result of an accident or of an accident of a specific class or becoming incapacitated in consequence of disease or of diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from the taking effect thereof or are expressed to be so terminable before the expiry of such period only in special circumstances therein mentioned; and
- (c) effecting, carrying out, and issuing of insurance whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future, not being such contracts as fall within paragraph (1) or (b) hereof;

but does not include medical expense insurance;

"medical expense insurance" means effecting, carrying out, and issuing of policies whereby, in return for premiums paid to the insurer, a sum or a series of sums is to become payable to the insured based on the development of some specified medical condition by the insured;

"member" in relation to a pension fund means a person who belongs or belonged to a class of persons for whose benefit that fund has been established and whose membership has not been terminated in accordance with the rules of the fund.

"Minister" means the Minister for Finance of Swaziland;

"party in interest" with respect to a pension fund means -

- (d) any trustee, administrator, officer, or employee of the pension fund;
- (e) any person providing services to the pension fund;
- (f) an employer any of whose employees are covered by the pension fund;
- (g) an employee organization any of whose members are covered by such plan;
- (h) any person having a substantial interest, as determined by the Registrar, in an employer or employee organization;
- (i) a corporate entity, partnership, trust or estate controlled, as determined by the Registrar, by persons described above;
- (j) an employee, officer or director of any legal entity mentioned above; and
- (k) the spouse or the child of any beneficiary.

"pension fund" means any plan, fund, or programme established for the purpose of providing retirement benefits to individuals. The term includes but is not limited to any pension fund, provident fund, or retirement annuity fund, as defined in the Income Tax (Consolidation) Order, 1976.

"pension fund rules" means the rules of a pension fund covering the items listed in section 53 and includes the documents under which the fund is established and those provisions which relate to the conduct of the activities of the fund, including its investment policies.

"person" includes any committee appointed to manage a pension fund.

"policy" means any written contract of insurance whether contained in one or more documents;

"qualified security" means a security issued by the Government or supported by a guarantee of the Government and such other securities as the Minister may by notice in the Gazette approve; and

"Registrar" means the Registrar of Insurance Companies and Pension Funds established under this Act;

"resident in Swaziland" means residing in Swaziland as defined in the Immigration Act No. 17 of 1982;

"senior management" means the top level of decisionmakers in a juristic person, including the chief executive officer, chief operating officer, chief financial officer, chief legal advisor, or any other officer performing similar functions;

"short-term insurance business" means any insurance business other than long-term insurance business and medical expense insurance; and

"substantial investment" means ownership or control of 15% or more of the total stock of a corporation, or similar ownership interest in any other form of a juristic person, or any such greater interest in an entity as the Registrar approves on a case-by-case basis;

"sponsor" with respect to a pension fund means the employer, association of employers or trade union that initiates establishment of the pension fund, or any other entity approved by the Registrar that initiates establishment of a pension fund.

*Prohibitions on unauthorized insurers and insurance.*

4. (1) No person other than an insurer licensed under section 13, the Corporation, or an insurer authorized under Part V of this Act, may, after a day appointed by the Registrar by a notice or notices published in the Gazette, carry on an insurance business in Swaziland.

(2) (a) No person resident in or carrying on business in Swaziland shall, without the written consent of the Minister, enter into any contract of insurance for a risk within Swaziland with any person whether resident or carrying on business in or outside Swaziland other than an insurer licensed under Section 14, the Corporation or an insurer authorised under Part V of this act.

(b) Each audit of a company required to be performed under the Companies Act shall include a statement by the auditor that the audited company is in compliance with this subsection.

(3) For the purpose of subsection (1) "carrying on insurance business" includes the receipt of proposals for, or issuing of policies of insurance, in respect of a person resident in Swaziland by an insurer or through an agent or as agent, whether resident in Swaziland or not, but does not include -

(a) the collection, receipt, or paying of premiums in Swaziland under a policy issued outside of Swaziland to a person resident outside Swaziland on the date of issuance of that policy who is not a resident in Swaziland;

(b) reinsurance of risks carried by an insurer licensed under section 14 in accordance with this Act; and

(c) the collection of premiums, any adjustments and satisfaction of claims and other servicing of policies subsisting on the date of commencement of this Act.

(4) An insurance policy entered into prior to the date of enactment of this Act, other than a life policy or a policy issued by the Corporation, shall for the purpose of this Act be assumed to have terminated on its first renewal date after the date of enactment of this Act or one year after the date of enactment of this Act, whichever is earlier and any such renewal shall be regarded as the issue of a new policy.

(5) The provisions of section 8 (1) (c) (i) of the Income Tax (Consolidation) Act, No. 84 of 1959 shall not apply to any premiums paid in respect of any life policy issued after the 1st day of January, 1974 by any insurer other than the Corporation.

(6) The Registrar may appoint different dates under subsection (1) for different classes of insurance.

*Prohibition on unregistered pension funds.*

5. (1) No person shall operate or conduct activities of a pension fund, or induce or attempt to induce any person to become a member of, or to contribute to, a pension fund, unless the pension

fund is registered under this Act or has been exempted from the registration requirements pursuant to section 65 (2).

(2) With respect to a pension fund established prior to the date of commencement of this Act, subsection (1) shall become effective six months after the date of commencement. If the Registrar determines it to be necessary or appropriate in the interests of pension fund members, the Registrar may set a later effective date which may not be later than twelve months after the date of commencement.

## PART II ADMINISTRATION

### *Registrar of Insurance and Pension Funds.*

6. (1) The Office of the Registrar is hereby established and shall be headed by the Registrar, housed in the Central Bank of Swaziland and subject to the supervision of the Governor.

(2) The Registrar shall perform its functions in a manner consistent with the purposes of this Act.

(3) The Registrar may:

- (a) appoint, with the approval of the Governor, Assistant Registrars and such other staff as may be necessary to perform the functions of the Office; and
- (b) delegate particular functions under this Act to any employee of the Office of the Registrar, provided that such delegation shall not prevent the exercise of such function by the Registrar and shall be revocable at will.

### *Appointment and qualifications of the Registrar.*

7. (1) The Registrar shall:

- (a) be appointed by the Governor with the concurrence of the Minister;
- (b) have significant expertise in insurance, finance, administration or law.

(2) No person may hold the office of Registrar if:

- (a) he, or his spouse, or dependent child is a director, officer, employee or shareholder in an insurance company duly operating in Swaziland or a broker or agent;
- (b) he has been convicted of a crime or found liable for any offence involving dishonesty or fraud;
- (c) he has been declared insolvent or bankrupt in Swaziland or any other country, unless later rehabilitated by an order of a court; or
- (d) he has been a director, senior manager or controller of any financial institution that has been wound-up in Swaziland or any other country, unless approved by the Governor.

### *The Advisory Council for Insurance and Pension Funds.*

8. (1) The Council is hereby established and shall be chaired by the Registrar.

(2) The Council shall advise the Registrar on the performance of his functions under this Act and such other issues as may from time to time be requested by the Registrar, the Governor or the Minister.

(3) The administration of the Council shall be the responsibility of the Registrar.

(4) The Council shall comprise of five members, other than the chairperson, who shall:

- (a) be appointed by the Registrar with the concurrence of the Minister for terms of two years;
- (b) meet the same qualifications set out for the Registrar in sections 7 (1) (b) and 7 (2) (b to d); and
- (c) comprise representatives of insurers, intermediaries, actuaries, accountants, lawyers, financial institutions, and insurance customers from both business and the general public.

(5) Members of the Council shall serve without remuneration, other than travelling costs and hotel fees to such extent as approved by the Minister after consultation with the Registrar.

(6) The Council may appoint such ad hoc or standing committees as deemed necessary.

(7) No member of the Council may be removed except by order of the Registrar, with the concurrence of the Governor and the Minister, for cause relating to the competence, suitability or integrity of that member to serve on the Council.

*Assessment for regulatory costs.*

9. (1) The costs of regulating the business of insurance in Swaziland shall be borne by the persons conducting the business of insurance in Swaziland through any combination of the following assessments imposed by the Registrar:

- (a) an annual fee paid by each insurance company and insurance broker that is licensed under this Act in proportion to each entity's total assets, annual revenue, or other quantitative measure of business selected by the Registrar;
- (b) a fee paid by any applicant for a licence, exemption or other grant of permission under this Act; or
- (c) fines imposed under this Act.

(2) The costs of regulating pension funds under this Act shall be borne by the pension funds through any combination of the following assessment imposed by the Registrar:

- (a) an annual fee paid by each pension fund that is registered under this Act in proportion to its total assets, annual revenue, or other quantitative measure of its operations selected by the Registrar;
- (b) a fee paid by any applicant for registration, exemption or other grant of permission under this Act; or
- (c) fines imposed under this Act.

(3) The Registrar shall annually publish a proposed budget for the Office of the Registrar and submit such budget to the Council for consultation and the Minister for approval.

(4) The Registrar shall publish in the Gazette a schedule of the assessments required under subsections (1) and (2) and may revise such schedule as appropriate to meet the costs of annual budgets prepared under subsection (3).

(5) In the event the Registrar:

- (a) runs a surplus in any given year, the surplus shall be retained to cover future deficits or reduce assessments in future years, provided that reductions in assessments shall

be calculated in such a manner so as to reduce the assessments in proportion to the relative level of their existing assessments; or

(b) runs into a deficit in any given year, the deficit shall be covered either through increased assessments in subsequent year or retained surpluses.

(6) The commencement date of this section may be delayed by order of the Minister, during which time the Minister shall be responsible for the funding of the costs of regulation under this Act.

*Removal of Registrar.*

10. (1) The Registrar may be removed from office if he contravenes the provisions of section 7 (2) of this Act.

(2) In such cases an investigation should be held by the Committee held under the chairmanship of a person appointed by the Minister who has sufficient expertise in regulation, insurance and pension fund matters who will report his findings to the Minister of Finance.

*Protection of information.*

11. (1) The Minister, Governor, Registrar, or the delegates shall not reveal non-public information pertaining to any person obtained in the performance of their duties under this Act to another person, except:

- (a) as authorized by this Act or by regulation promulgated by the Minister;
- (b) in aggregate with other information for the purposes of reporting or public information in a statistical form;
- (c) with the authorization of the person to which the information pertains; or
- (d) as necessary to enforce the provisions of this Act in a court of law.

(2) Any person violating this section shall be subject to a fine not exceeding E5000 or sentenced to a term of imprisonment not exceeding one year, and shall be individually liable to the person to which the disclosed information pertained for civil damages arising from the public disclosure.

*Enforcement authority.*

12. (1) The Registrar shall have the power to investigate any possible violation of this Act, including through the examination or investigation of persons not regulated under this Act.

(2) A false statement in any report, application, or other filing with the Registrar shall be considered to be a violation of this Act.

(3) Upon determination of the Registrar that a person is acting in a manner inconsistent with a provision of this Act and in addition to any penalty that may be imposed, the Registrar may order that person to cease and desist from such action and may seek enforcement of such order in any court of competent jurisdiction.

PART III

REGULATION OF INSURERS

*Application for licence.*

13. (1) A company established under the laws of Swaziland may apply in writing to be an insurer

in Swaziland by submitting the prescribed application form and the following documents signed by the chief executive officer of the applicant:

- (a) an authenticated copy of its memorandum and articles of association and, in the case of a public company, a copy of its prospectus or similar document required under the laws of Swaziland and the name, nationality and address of any promoter;
- (b) a statement of the address of the applicant's head office and the name, nationality and address of its chairman and directors;
- (c) a copy of its balance sheet as of a date within ninety (90) days prior to the date of its application;
- (d) full particulars of the business including a specific business plan for the first three years of business including the specific lines of insurance it intends to offer;
- (e) the location of the principal place of business in Swaziland and any place where it proposes to carry on its activities outside of Swaziland; and
- (f) the name and addresses of any person holding or controlling more than fifteen (15) percent of the voting stock of the applicant;

as well as such other information or documents the Registrar may require and the deposit of the fee required for the first year of the insurer's operation under section 9, which shall be refunded if the application is declined.

*Approval of licence.*

14. (1) The Registrar may licence an insurer to operate under this Act for the lines of business requested in the application and according to such additional conditions as the Registrar deems appropriate.

(2) A licence shall be issued where, after submission of a completed application and an investigation, the Registrar determines that:

- (a) the applicant's business in Swaziland will be conducted in a safe and sound manner consistent with the requirements of this Act as demonstrated by the business plan set out in the application, the financial status and history of the applicant, the character and experience of its management, and the adequacy of its capital structure;
- (b) the insurer will not impair the integrity or stability of the Swaziland financial system;
- (c) the convenience and needs of the public will be furthered by the granting of the licence through enhanced consumer choice and efficiency in respect of insurance products in Swaziland; and
- (d) local expertise or ownership in the insurance sector will be demonstrably increased.

(3) The Registrar may not grant an application for a new licence if:

- (a) the share capital of the institution, or other satisfactory guarantee, has not met with the approval of the Registrar in consultation with the Governor;
- (b) if the name under which the applicant has requested to be licenced -
  - (i) closely resembles or is identical to the name of an insurer already registered under this Act, or would otherwise be likely to mislead the public;
  - (ii) except with the written consent of the King, contains the words "Royal" or "King"

or any other word suggesting Royal patronage or support; or

(iii) except with the written approval of the Minister, contains the word "Government" or "National" or any other word suggesting governmental patronage or support;

(d) the applicant is a foreign insurance company and the home country regulator of the company fails to provide an indication to the Registrar that the applicant is a company in good standing in its home market.

(4) In any legal proceedings a certificate issued by the Registrar will be sufficient proof that the Insurer is registered.

*Other actions requiring regulatory approval.*

15. No insurer may undertake the following activities without the prior approval of the Registrar, using such form and subject to such conditions as may be prescribed by the Registrar:

(1) the transference, creation or substantial increase of an ownership interest equal to fifteen percent of the capital stock of the insurer;

(2) the change of control of an insurer other than through the circumstances specified in subsection (1);

(3) the dissolution of the insurer;

(4) the sale or other transference of assets of an insurer outside the ordinary course of business;

(5) the amendment of its articles of association;

(6) the increase or reduction of its paid-in capital;

(7) the change of its name as set out in its licence; or

(8) the offering of medical expense insurance;

provided that a particular transaction or class of transactions may be exempt from the requirements of this section where such exemption would be consistent with safe and sound operation of insurers licensed under this Act and the integrity and stability of the financial system in Swaziland. Such exemption may be granted by:

(a) notice by the Registrar to each individual insurer, subject to such terms and conditions as the Registrar deems appropriate; or

(b) regulations promulgated by the Minister upon the advice of the Registrar.

*Procedure for applications.*

16. (1) Within 90 days on receipt of a completed application under sections 13 or 15, the Registrar shall inform the applicant on the status of the application.

(2) If the Registrar refuses to grant an application or intends to impose conditions on the granting of an application, the Registrar shall furnish the applicant a written statement of the reasons for his decision.

(3) A decision refusing or imposing conditions on an application may be appealed to a court of competent jurisdiction on the basis that the decision was not based on substantial evidence in record within thirty (30) days of the notification under subsection (2).

*Suitability of senior management, directors and controllers.*

17. (1) Each insurer licensed under this Act or applicant for a licence under this Act shall notify the Registrar of the names of candidates for senior management, directors and controllers prior to their appointment or their exercise of control.

(2) Each candidate shall have significant expertise in insurance, finance, administration or law and may not have been:

- (a) convicted of a crime or found liable for any offence involving dishonesty or fraud;
- (b) declared insolvent or bankrupt in Swaziland or any other country, unless later rehabilitated by an order of a court; or
- (c) a director, senior manager or controller of any financial institution that has been wound-up in Swaziland or any other country, unless approved by the Governor.

(3) The notification under subsection (1) shall be accompanied by a sworn statement by the candidate that he is not disqualified by reason of paragraphs (a) through (c) of subsection (2).

(4) The Registrar shall investigate the backgrounds of proposed candidates for chief executive officer, chief financial officer, directors and controllers and may request additional information regarding their expertise and suitability.

(5) The Registrar shall disapprove any candidate investigated under subsection (4) who does not meet the qualification set out in this section or that is otherwise unfit to be a director, controller, chief executive officer or chief financial officer of an insurer within thirty days after receiving a notification and any additional information requested under subsection (4).

*Operations of insurers.*

18. (1) Subject to this Act and any conditions imposed by the Registrar under section 14 each insurer licensed under this Act shall at all times operate in a safe and sound manner and in accordance with the laws of Swaziland provided that the Minister, upon the advice of the Registrar, may promulgate regulations under this provision.

(2) Except for the Corporation, no insurer in Swaziland may conduct both a long-term and short-term business, provided that -

- (a) an insurer licensed to conduct long-term business may offer an insurance policy that has as its principal object a class of insurance within the long-term business but which contains subsidiary provisions within the short-term business; and
- (b) an insurer licensed to conduct short-term business may offer an insurance policy that has as its principal object a class of insurance within the short-term business but which contains subsidiary provisions within another class of the long-term business.

(3) A certified copy of the licence of each insurer shall be displayed prominently to the public at each office of the insurer and the original licence shall be maintained at the head office of the insurer.

(4) No insurer may provide insurance to a member of its board of directors, its management or its staff on less than commercial terms except pursuant to a general policy of remuneration approved by the board of directors of the insurer and notified to the Registrar.

(5) Except with the prior approval of the Registrar, no insurer may provide insurance to a person or any group of related persons if the aggregate level of insured risks to such persons net of qualified reinsurance exceeds the capital and surplus of the insurer.

*Rates, policy forms and reinsurance arrangements.*

19. (1) Each insurer shall notify and provide to the Registrar with respect to a particular line of insurance, at least thirty days prior to offering that line to the public, the following information and materials -

- (a) the table of standard rates of premiums to be charged to policy-holders;
- (b) a distribution plan for the line and commission rates to be paid to agents and brokers for the placement of those lines;
- (c) the proposal forms, standard policy forms and other publications intended for use by the public in selling and delivering the line;
- (d) the reinsurance and retention policies of the insurer and proposed arrangements with reinsurers; and
- (e) the actuarial bases for the premiums.

(2) The Registrar may require an insurer to modify any distribution plan, premium, commissions, policy form or reinsurance arrangement that the Registrar determines is:

- (a) insufficient to support the long-term financial viability of the insurer;
- (b) excessive or unreasonable; or
- (c) unfairly discriminatory with respect to a particular class of persons;

provided that if the Registrar is unable to order such modification within thirty days of receiving the notification of an insurer under subsection (1), the modification may only be ordered with the consent of the Governor.

(3) The Registrar may by order to an individual insurer set limits within which a licensed insurer may accept insurance of any or all classes by -

- (a) restricting the gross premiums received by an insurer to a specified maximum in any one financial year; or
- (b) restricting the gross premiums less gross reinsurance payable by an insurer to a specified maximum.

(4) Regulations may also be promulgated to prescribe the limits referred to in subsection (3).

(5) Any insurer, class of insurers or line of insurance, may be exempted from this section where the exemption would be consistent with safe and sound operations of insurers licensed under this Act and the integrity and stability of the financial system of Swaziland.

*Financial requirements.*

20. (1) (a) Each insurer licensed under this Act shall maintain a margin of solvency of 25 percent, which margin may be modified by separate regulations for long-term insurance, short-term insurance and medical expense insurance.

- (b) (i) In the event an insurer fails at any time to comply with a regulation prescribed under subsection (1) (a), the insurer shall submit a plan for restoration of the margin for approval by the Registrar within sixty (60) days of discovery of the shortfall or such longer period as the Registrar may in writing approve.
- (ii) The Registrar may modify the plan as he deems appropriate to restore the insurer to a safe and sound condition, including through the imposition of restrictions on

operation, distribution of profits, or disposition of assets of the insurer as the Registrar deems appropriate.

(2) In addition to the requirements of subsection (1), the Registrar may require each insurer licensed after the commencement date of this Act to establish an organizational fund subject to such conditions as the Registrar may impose under section 14.

- (3) (a) Each insurer licensed under this Act shall maintain such separate technical reserve funds as are prescribed through regulations for long-term insurance, short-term insurance and medical expense insurance.
- (b) The regulations promulgated under subsection (3) (a) may permit insurers to meet the requirements of that subsection through annual payments of a prescribed proportion of gross profits before dividends are paid, provided that the technical reserve funds of each insurer are at all times sufficient to meet any liabilities arising out of insurance contracts as far as can reasonably be foreseen.
- (c) In the case of long-term insurance business, regulations prescribed by the Minister upon the advice of the Registrar.
- (i) that segregated technical reserve funds be established and maintained in respect of a particular class or classes of long-term business, or particular products; and
- (ii) special rules governing the valuation, transfer, payment, redemption, investment, allocation or other disposition of the assets or liabilities of such funds.
- (d) (i) A technical reserve fund shall neither be reduced nor encumbered except as specified in writing by the Registrar for a particular insurer.
- (ii) No insurer may declare credit or pay any dividend or make any other transfer from profits other than a transfer to a technical reserve fund until all encumbrances or reductions allowed by the Registrar under subsection (d) (1) have been removed.
- (4) Regulations promulgated under this section -
- (e) shall provide appropriate credit to risks reinsured by an insurer; and
- (f) may specify levels of retention for particular classes or lines of insurance.

*Investments.*

21. (1) The directors of each insurer shall establish investment and lending policies, standards and procedures to be adhered to by an insurer that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk, maintain sufficient liquidity and obtain a reasonable return.

(2) Except as is necessary to resolve debt previously contracted by the insurer that becomes unpayable, no insurer may acquire or increase a substantial investment in any entity other than an entity engaged in a business incidental to the authorized insurance business of the insurer.

(3) Except with the written authorization of the Registrar, no insurer may extend loans or credits to a person or group of related persons in excess of the capital and surplus of the insurer.

(4) Regulations may be prescribed that:

- (a) prohibit an insurer from making investments in a specified class of assets;

- (b) require an insurer to realise in whole or in part a particular investment within a specified period;
  - (c) prescribe maximum percentages of insurers' funds to be invested in qualified securities; and
  - (d) prescribe maximum percentages of insurers' funds that may be invested in defined classes of assets, including real estate, equity, tangible assets and foreign currency-denominated instruments.
- (5) No insurer may invest or lend assets outside Swaziland except as the Registrar, with the concurrence of the Minister, may permit by order or as may be permitted by regulation.
- (6) The Registrar may by order direct a company to -
- (a) dispose of any investment or loan made in contravention of this section within a period of time the Registrar considers reasonable; or
  - (b) maintain specified investments or take other action, including the deposit of assets with the Central Bank or a financial institution, as the Registrar considers appropriate for the protection of the policy-holders of the insurer.

*Recordkeeping requirements.*

22. (1) Each insurer shall maintain in Swaziland such records, or accurate transcription of such records, as are necessary to -
- (a) exhibit clearly and correctly the state of the insurer's affairs;
  - (b) explain its transactions and financial position; and
  - (c) enable the Registrar to determine whether the insurer has complied with the provisions of this Act.
- (2) Any record or transcription specified in subsection (1) shall be maintained for a period of at least six years from the date of last entry to or adjustment of such record.
- (3) Each insurer shall maintain in Swaziland all records, or accurate transcriptions of all records, relating to insurance transactions undertaken by it for a period of at least six years -
- (a) in the case of a life policy, after the maturity, cancellation, surrender or realisation of the policy or after the death of the insured; or
  - (b) in all other cases after the maturity, cancellation or realisation of the policy or date of loss.

*Audits.*

23. (1) Each licensed insurer shall be audited annually by an auditor that is satisfactory to the registrar in accordance with the Companies Act and such other conditions relating to information and declaration as may be prescribed by regulation.
- (2) If the appointed auditor recommends any remedial steps to the insurer and such remedial steps are not followed by the insurer, the auditor shall bring this fact under the attention of the Registrar within a period of 60 days.

*Actuarial review.*

24. (1) Each insurer licensed under this Act shall appoint a qualified actuary satisfactory to the Registrar to perform an actuarial review of the insurer.

(2) Any insurance company may discharge an actuary, provided that the directors notify the Registrar of the reasons for discharge and provide a copy of such statement to the discharged actuary.

(3) The actuary of an insurance company shall value -

(a) the actuarial and other policy liabilities of the company as of the end of each financial year; and

(b) any other matter prescribed by order or regulation of the Registrar;

provided that the actuary's valuation shall be in accordance with generally accepted actuarial practice as modified or supplemented by the Registrar.

(4) Each actuary shall have access to the present or former directors, officers, employees or representatives of the company to the extent they are reasonably able to do so, and to records maintained by the company or such persons.

(5) Each actuary shall, not less than 21 days before the date of the annual meeting of the shareholders and policyholders of the company, make a report in the prescribed form to them on the valuation made under subsection (3) and on any other matter prescribed.

(6) Each report of an actuary under this section shall state whether, in the actuary's opinion, the annual statement represents fairly the results of the valuation.

(7) Each report shall be provided to the directors and senior management of the insurer and, in the event the actuary determines that remedial measures should be taken, a recommendation as to such measures.

(8) In the event the actuary determines that an insurer has not implemented the recommended remedial measures set out in the report under subsection (7), the actuary shall report such recommendations to the Registrar.

*Reporting requirements.*

25. (1) Not later than four months after the expiration of its financial year, each licensed insurer shall furnish to the Registrar in the prescribed form -

(a) an audited financial statement, including a balance sheet, income and expenditure statement, for each class of insurance underwritten;

(b) an audited statement of solvency;

(c) an audited statement of all admissible and inadmissible assets; and

(d) any other information that may be required by the Registrar.

(2) Each licensed insurer shall provide to the Registrar a periodic statement in the form prescribed by the Registrar showing the assets and liabilities of its business at the close of business on the last business day of the preceding month according to the following schedule -

(a) for the first three years of such insurer's operation under this Act, not later than twenty-one days after the end of each financial quarter; or

(b) after the first three years of such insurer's operation under this Act, not later than twenty-one days after the end of each six months of its financial year.

(3) (a) The Registrar may, by written notice, require any insurer to amend financial statements, statements of solvency or other statement of accounts furnished to the Registrar in

order to correct or conform such accounts.

(b) If a registered insurer fails to comply with a notice referred to in subsection (1) (a) to the satisfaction of the Registrar, the Registrar may amend or reject the statement.

(c) The Registrar shall accept a statement amended pursuant to this sub-section as if it had been regionally submitted in this amended form.

(4) The Registrar may extend the time period for submission of the accounts under this section for up to three months upon request of an insurer.

(5) The Registrar may from time to time require any additional information from any insurer licensed under this Act.

*Examination of insurers.*

26 (1) The Registrar may from time to time, after consultation with the Governor, cause an examination to be made of any insurer in order to determine that it is a sound financial condition and that the requirements of this Act are being met.

(2) The examination under subsection (1) may include examination of any of the insurer's affiliates in Swaziland.

*Revocation of licence.*

27. (1) The Registrar may revoke the licence of any insurer if it determines that the insurer -

- (a) is not conducting its insurance business in accordance with safe and sound insurance principles;
- (b) has ceased to carry on an insurance business in Swaziland;
- (c) has requested in writing the cancellation of the registration;
- (d) fails to commence operations within one year following the grant of a licence;
- (e) exceeds the terms of its licence or fails to comply with conditions imposed under section 14; or
- (f) has acted in contravention of any of the provisions of this Act or other applicable law.

(2) Before revocation of the licence of any insurer, the Registrar shall provide the insurer prior notice and a reasonable opportunity to show cause why the licence should not be revoked, provided that -

- (a) in no event shall a licence be revoked earlier than twenty-eight days after the notice of revocation is served on the insurer; and
- (b) the Registrar may obtain a temporary injunction upon application to the High Court for suspension of any part or all of the business being conducted by such insurer after the notice of revocation has been served upon it.

(3) As soon as practicable after deciding to revoke a licence, it shall publish notice of the revocation in the Gazette and a newspaper of general circulation in Swaziland in order to inform the public of the revocation.

(4) No insurer shall effect any new insurance policy or renew any expiring insurance policy after three months from the date of notification under subsection (3) or for such extended time up to an additional six months as the Registrar may in writing approve.

(5) The Registrar shall wind-up the affairs of an insurer subject to revocation of licence in a manner that minimizes disruption to the public.

#### Part IV

#### REGULATION OF INSURANCE BROKERS AND INSURANCE AGENTS

##### *Conducting the business of an insurance broker.*

28. No person other than an insurance broker authorized under this Act may conduct the business of an insurance broker or agent unless that person is licensed as a broker or agent under the terms of this Part in the class or classes in which that broker or agent conducts business.

##### *Licensing of brokers.*

29. A person may apply in writing to be an insurance broker in Swaziland by submitting the prescribed application form and the following documents signed by the applicant or the senior officer responsible for operations in the case of a juristic person:

- (a) a statement of the address of the applicant's head office and, where appropriate, the name, nationality and address of its chairman and directors;
- (b) a copy of its balance sheet as of a date within ninety days prior to the date of its application;
- (c) proof of ability to meet the indemnification requirements of section 31;
- (d) a business plan for the first year of business and the class or classes of insurance which the broker intends to negotiate;
- (e) the location of the principal place of business in Swaziland and any place where it proposes to carry on its activities outside of Swaziland;
- (f) the name and addresses of any person holding or controlling more than 15 percent of the voting stock of the applicant, if the applicant is a juristic person, and
- (g) any contract or other agreement pursuant to which the applicant is obligated to conduct its business;
- (h) Each candidate, or chief executive and directors and senior management in the case of a juristic person shall show significant experience in insurance, finance, administration.

as well as such other information or documents the Registrar may require and the deposit of the fee required for the first year of the broker's operations under section 9, which shall be refunded if the application is declined.

##### *Issue of licence.*

30. (1) A licence shall be issued for the broking of the class or classes of insurance applied for where, after submission of a completed application and an investigation, the Registrar determines that -

- (a) the applicant's business in Swaziland will be conducted in a safe and sound manner consistent with the requirements of this Act as demonstrated by the business plan set out in the application, the financial status and history of the applicant, and the character and experience of the applicant or, if a juristic person, that of the applicant's management;
- (b) the applicant will not impair the integrity or stability of the Swaziland financial system;

- (c) that name under which the applicant has requested to be licensed is not -
  - (i) identical or a close resemblance to the name of a person already licensed under this Act;
  - (ii) a name containing the words "Royal" or "King", or any other word suggesting Royal patronage or support, except with the written consent of the King;
  - (iii) a name containing the word "Government" or "National" or any other word suggesting governmental patronage or support, except with the written approval of the Minister; or
  - (iv) otherwise likely to mislead the public.
- (d) the applicant has not, or the senior managers and directors have not been -
  - (i) convicted of an crime or found liable for any offence involving dishonesty or fraud;
  - (ii) declared insolvent or bankrupt in Swaziland or any other country, unless later rehabilitated by an order of a court; or
  - (iii) a director, senior manager or controller of any financial institution that has been wound-up in Swaziland or any other country, unless approved by the Governor; and
- (e) has not entered into an agreement relating to the preferential offer of insurance business with any person conducting an insurance business such as to impair the impartiality of the applicant in placing insurance business.

(2) The Registrar may impose such conditions upon a licence issued under subsection (1) as the Registrar deems appropriate.

(3) In any legal proceedings a certificate issued by the Registrar will be sufficient proof that the Insurance Broker is registered.

*Rules of operation for brokers.*

31. (1) Each licensed broker shall -

- (a) maintain professional indemnity insurance amount and fidelity guarantees as the Registrar may by regulation prescribe;
- (b) have appropriate expertise in the insurance business in the class or classes of business for which the broker has been licensed;
- (c) if a natural person, be resident in Swaziland; and
- (d) if a juristic person, be incorporated or otherwise constituted under the laws of Swaziland and have senior management resident in Swaziland; and
- (e) operate in a manner that is consistent with the standards and conditions for approval imposed under section 30.

(2) Nothing in paragraphs (a) and (b) of subsection (1) shall be construed to prevent a broker from maintaining additional insurance and guarantees issued outside of Swaziland and denominated in foreign currency.

- (3) (a) The Registrar may by regulation set out a code of conduct and guide for insurance brokers in the conduct of their business in matters not otherwise prescribed in this

Act, provided that a broker may in an extraordinary case undertake practices discouraged by the code if the broker notifies the Registrar and submits its reasons for doing so in writing to the Registrar as soon as practicable after undertaking such practices.

- (b) The code of conduct specified in subsection (3) (a) shall be formulated with due consideration of the Code of the Insurance Brokers Association of Swaziland by the Registrar and may incorporate any or all provisions of the Code in its terms.
- (c) The Registrar may order a broker to cease and desist any practice discouraged by the code and notified under subsection (3) (a) if the Registrar finds the practice is not consistent with the safety and soundness of a broker or insurer, the integrity or stability of the financial system, or fair treatment of insurance consumers.
- (d) The principal officer of each broker shall ensure that all directors, managers, agents and employees of the broker are made aware of and comply with the provisions of the code of conduct specified in subsection (3) (a).
- (e) A copy of the code of conduct specified in subsection (3) (a) shall be prominently displayed in areas of access to the public at each office of the broker.

*Change of control of a broker.*

32. (1) No change of control in a broker licensed under this Act may occur without the prior written consent of the Registrar.

(2) The Registrar shall consent to a change in control under paragraph (1) where such change in control would not adversely affect the safety and soundness of the broker, tend to impair the integrity or stability of the financial system of Swaziland, or harm the interests of the clients of the broker.

(3) The Registrar may attach such conditions as the Registrar deems appropriate on the consent granted under paragraph (1) consistent with the purposes of the Act.

*Recordkeeping requirements.*

33. (1) (a) Each broker shall maintain in Swaziland such records, or accurate transcription of such records, as are necessary to -

- (i) exhibit clearly and correctly the state of the broker's affairs;
- (ii) explain its transactions and financial position; and
- (iii) enable the Registrar to determine whether the broker has complied with the provisions of this Act.

(b) Any record or transcription specified under subsection (1) shall be maintained for a period of at least six years from the date of last entry to or adjustment of such record.

(2) (a) Each broker shall maintain in Swaziland all records, or accurate transcription of all records, relating to insurance transactions negotiated by it for a period of at least six years -

- (i) in the case of a life policy, after the maturity, cancellation, surrender or realisation of the policy or after the death of the insured; or
- (ii) in all other cases after the maturity, cancellation or realisation of the policy or date of loss.

- (b) Each broker shall provide access to any client of the broker, or the authorised legal representative of such client, to the records maintained under subsection (2) (a) with respect to transactions undertaken on behalf of that client, provided that no person shall be entitled, other than upon the order of a court of law, to take copies of any such documents or correspondence without the consent of the broker.

*Auditing and reporting requirements for brokers.*

34. (1) Each broker shall be audited annually by an auditor that is satisfactory to the Registrar in accordance with the Companies Act and such other conditions relating to information and declaration as the Minister may by regulation prescribe after consultation with the Registrar.

(2) Not later than four months after the expiration of its financial year, or such later time as the Registrar may grant to a particular broker, each broker shall furnish to the Registrar the audited statements required under subsection (1).

*Examination of brokers.*

35. The Registrar may from time to time, after consultation with the Governor, cause an examination to be made of any insurance broker in order to determine that it is in a sound financial condition and that the requirements of this Act are being met.

*Broker responsibility for premiums.*

36. (1) Each broker shall be liable to an insurer for any premiums collected by the broker or due to the insurer by virtue of insurance negotiated by the broker.

(2) Each broker shall remit to the insurer the premiums due under subsection (1) within the time specified by regulations promulgated by the Registrar.

(3) (a) All premiums and other monies received by a broker from or on behalf of a client shall be deposited in a separate trust account, subject to such conditions as the Registrar may by regulation specify.

(b) Interest earned on sums deposited in any trust account required under subsection (3) (a) shall accrue to the benefit of the broker.

(c) The Registrar shall promulgate regulations permitting the trust requirement under subsection (3) (a) to be waived where an appropriate guarantee has been obtained from a financial institution licensed under the Financial Institutions Order.

*Responsibility for agents.*

37. (1) Each broker shall be liable for the acts or omissions of his agents and staff of such agents where the act of omission complained of falls within the area of authority of the agent as explicitly stated in his agency certificate or might reasonably be implied from it by a person seeking insurance.

(2) All premiums paid to an agent or an employee of an agent shall be deemed to have been paid to the insurer or broker that is the principal of that agent.

(3) Nothing in this section shall be construed to prevent:

(a) An insurer or broker from seeking redress against an agent or employee of an agent as a result of the liability arising under subsection (1) or (2); or

(b) An agent from seeking redress against an employee of such agent as a result of the liability arising under subsection (3) (a).

(4) The insurance and guarantees maintained by a broker under section 31 shall cover the

potential liability arising under subsections (1) and (2) unless the broker maintains deposits that are sufficient to cover such liability.

*Revocation of licence of a broker:*

38 (1) The Registrar may revoke the licence of any broker if it determines that the broker:

- (a) is not conducting its business in accordance with safe and sound insurance principles;
- (b) has ceased to carry on an insurance business in Swaziland;
- (c) has requested in writing the cancellation of the registration;
- (d) fails to commence operations within one year following the grant of a licence;
- (e) exceeds the terms of its licence or fails to comply with conditions imposed under section 30; or
- (f) has acted in contravention of any of the provisions of this Act or other applicable law.

(2) Before revocation of the licence of any insurance broker, the Registrar shall provide the broker prior notice and a reasonable opportunity to show cause why the licence should not be revoked, provided that -

- (a) in no event shall a licence be revoked earlier than twenty-eight days after the notice of revocation is served on the broker; and
- (b) the Registrar may obtain a temporary injunction upon application to the High Court for suspension of any part or all of the business being conducted by such broker after the notice of revocation has been served upon it.

(3) As soon as practicable after deciding to revoke a licence, it shall publish notice of the revocation in the Gazette and a newspaper of general circulation in Swaziland in order to inform the public of the revocation.

(4) No broker shall negotiate any new insurance policy or renew any expiring insurance policy after three months from the date of notification under subsection (3) or for such extended time up to an additional six months as the Registrar may in writing approve.

(5) The Registrar shall wind-up the affairs of a broker subject to revocation of licence in a manner that minimizes disruption to the public having particular regard to the interests of clients of the broker.

*Registration and operation of insurance agents.*

39. (1) The Registrar shall promulgate regulations setting down minimum qualifications required of any person to whom an agency agreement and certificate may be issued by an insurer, including standards for particular classes of insurance (types of insurance) or limitations on the marketing of insurance by financial institutions.

(2) An insurer or insurance broker employing an agent shall issue to that agent a form of agency agreement and shall submit such agreement to the Registrar.

(3) The Registrar may refuse to register and may cancel the registration of any agent.

*Licensing of existing brokers.*

40. (1) Notwithstanding section 28, any person operating as an insurance broker in Swaziland on October 1, 1993 through the commencement date of this Act may continue to operate in Swaziland

after the commencement date of this Act and pending issuance of licence according to the terms of this section, provided that the person complies with the provisions of sections 31 through 39 of this Part pending issuance or rejection of the application for license under this section as if that person were licensed under this Act.

(2) An insurance broker described in subsection (1) may apply for a licence under this Section within one year after the commencement date of this Act, provided that the Registrar may grant two consecutive six-month extensions of the application period where such extensions will not -

- (a) impair the integrity or stability of the financial system of Swaziland; or
- (b) contravene the purposes of this Act.

(3) An application under this section shall consist of the prescribed application form and the following documents signed by the applicant or the principal officer of the applicant in the case of a juristic person:

- (a) a statement of the address of the applicant's head office and, where appropriate, the name, nationality and address of its chairman and directors;
- (b) a copy of its balance sheet as of a date three years prior to the date of its application or as of the date of its commencement of operations, whichever is lesser;
- (c) proof that the requirements of section 31 will be met and of the continued ability of the applicant to meet such requirements;
- (d) proof that the person was conducting a brokerage business continuously from October 1, 1993 through the commencement date of this Act;
- (e) a description of its business operations for the year prior to the date of its application including the class or classes of insurance which the broker negotiated;
- (f) the location of the principal place of business in Swaziland and any places where it carried on activities outside of Swaziland;
- (g) the name and addresses of any person holding or controlling more than 15 percent of the voting stock of the applicant, if the applicant is a juristic person;
- (h) any contract or other agreement pursuant to which the applicant is obligated to conduct its business; and
- (i) such other information or documents the Registrar may require.

#### Part V

#### UNLICENSED INSURERS

##### *Reinsurers.*

41. No insurer licensed under this Act shall receive credit under section 20 of this Act for reinsurance provided by a particular reinsurer where the Registrar finds that the reinsurer is financially unfit or irresponsible, as determined by -

- (1) the financial history of the reinsurer with respect to claims in Swaziland; or
- (2) information provided to the Registrar by the home country regulator of the reinsurer, or other competent official body; or
- (3) any substantial evidence of malfeasance or misfeasance by the reinsurer.

*Associations of underwriters.*

42. (1) This Section shall apply only to associations of underwriters registered as insurers and the members of such associations.

(2) The Registrar may determine the conditions of registration of an association of underwriters.

(3) Notwithstanding the generality of subsection (1), the authority of the Registrar under that subsection shall include the determination of the necessity and amount of -

- (a) classes of business underwritten;
- (b) capital requirements;
- (c) margins of solvency;
- (d) retention of premiums;
- (e) deposits and investments in Swaziland, including the deposit of money or qualified securities in trust with the Central Bank of Swaziland as a condition of operation in Swaziland; and
- (f) any such additional requirements and conditions as are considered necessary by the Registrar.

(4) An association registered under this section shall deposit in trust with a trustee in Swaziland a proportion of all premiums received by such association from insurance business in Swaziland for the payment of the underwriting expense of the association's business in Swaziland.

(5) (a) An association of underwriters shall furnish evidence to the satisfaction of the Registrar that the accounts of each member of the association are subject to annual audit by an independent auditor.

(b) The auditor of an association of underwriters shall certify to the committee of the association that the underwriting assets held by the members at the end of each financial year are sufficient to cover the underwriting liabilities of the association.

- (c) An association registered under this section shall annually furnish to the Registrar -
- (i) a certified copy of the returns of insurance business carried on by the association and furnished in each year to the home country regulator of the association;
  - (ii) a certificate of good standing from the home country regulator of the association; and
  - (iii) such other information as the Registrar may require.

*Exemptions.*

43. The Registrar may grant any person an exemption from the prohibition of section 4 after application by that person in the form prescribed by the Registrar and subject to such conditions as the Registrar may impose where such exemption is consistent with the maintenance of the integrity and stability of the financial system.

*Friendly societies and other limited purpose insurers.*

44. (1) All friendly Societies and limited purposes Insurers shall apply for registration under this Act.

(2) On registration of such a friendly society or limited purpose insurer the Registrar may

exempt the applicant from certain of the provisions of the Act on the conditions he may deem fit.

(3) A friendly Society, or Limited Insurer may only provide benefits to the extent as prescribed by Regulation.

(4) In the event of a voluntary dissolution or a winding up by order of the Court the provisions of sections 81 and 82 of this Act will mutatis mutandis be applicable.

#### Part VI

#### MISCELLANEOUS RULES PERTAINING TO INSURANCE

##### *Conflicts of interest.*

45. Each auditor or actuary of a licensed insurer, licensed broker or registered agent shall be independent of that person, as determined by the Registrar pursuant to regulations promulgated by the Minister upon the advice of the Registrar.

##### *Regulation of services auxiliary to insurance.*

46. (1) The Registrar may exercise regulatory authority over any service that is auxiliary to an insurance service regulated under this Act when offered by a licensed or registered person.

(2) The Registrar may exercise regulatory authority over any service that is auxiliary to an insurance service regulated under this Act that is offered by any other person after making a determination that the regulation of such service is necessary to ensure the safety and soundness of insurers licensed under this Act or the integrity and stability of the financial system, provided that the Registrar shall provide a report to the Council specifying the reasons for such finding.

##### *Recognition of associations and other standard-setting bodies.*

47. In promulgating any standard or making any determination under this Act, the Registrar may recognize the standards imposed by any association or other standard-setting body as the appropriate standard or determination.

##### *Rules of contract.*

48. The Registrar may prescribe rules regarding contractual liability and capacity of insurers, insured persons, beneficiaries, claimants, or other persons under any insurance policy.

##### *Adjustment of figures specified in this Act.*

49. Regulations promulgated by the Minister upon the advice of the Registrar may be prescribed to modify any of the figures specified in this Act to take account of the rate of inflation, other changes in circumstances, or to improve the functioning of this Act.

#### Part VII

#### REGULATION OF PENSION FUNDS

##### *Application for registration of pension funds.*

50. (1) An application for registration of a pension fund shall be submitted in writing to the Registrar and shall contain the following documents:

- (a) two copies of the rules which will be in effect on the date of registration of the fund;
- (b) for a defined-benefit pension fund, a certificate by an actuary as to the financial soundness of the basis on which the fund is to operate;

- (c) a copy of the document that represents the decision of the sponsor to establish the pension fund;
- (d) the name of the person responsible for the management of the fund subject to the appointment and approval of the trustees; and
- (e) such other information and documents as required by the Registrar;

(2) The Registrar may prescribe by regulation the form in which an application shall be made and may specify requirements for authenticating or certifying the accuracy and validity of any documents required.

*Grant of registration.*

51. (1) A registration certificate shall be issued where, after consideration of a completed application, the Registrar is satisfied that:

- (a) the rules of the pension fund are not inconsistent with the provisions of this Act;
- (b) the basis on which the fund is to operate is financially sound; and
- (c) the organization and management of the fund are, or will be, such as are necessary and adequate for the operation of the fund in accordance with its rules and this Act.

(2) If the Registrar has not provided notice of approval or rejection within sixty days of the filing of a completed application for registration:

- (a) the pension fund may file with the Registrar a Notice of Operation Pending Approval, stating the date on which the pension fund rules shall become effective and the pension fund will commence operations.
- (b) The date on which the pension fund may commence operations may not be earlier than thirty days after date the Notice of Operation Pending Approval is filed with the Registrar. This provision shall not apply to a pension fund to which section 5 (2) applies.
- (c) If the Registrar rejects the application for registration, amendments or other actions necessary to obtain approval of the application for registration shall be taken within ninety days of the notification of rejection.
- (d) A pension fund may be operated pending approval during the period described in subsection (b) and (c) without contravening section 5, but the pension fund is subject to all other provisions of this Act and other applicable laws and regulations.

(3) The Registrar shall return to the pension fund one certified copy of the pension fund rules that were submitted with the application for registration. The Registrar shall retain another certified copy, which shall be considered the correct copy of the rules in the event of any differences.

(4) The Registrar shall maintain a register available to the public of all pension funds to which a registration certificate has been issued, which shall indicate the name of the fund, the location of its registered office, and the name of its registered agent.

(5) In any legal proceedings a certificate issued by the Registrar will be sufficient proof as to the registration of the fund.

*Pension fund rules.*

52. (1) The rules of a pension fund shall contain provisions, in accordance with such requirements as the Registrar may prescribe, covering the following matters:

- (a) the name of the fund and the location of its registered office;
- (b) the requirements for admission to membership and the circumstances under which membership is to cease;
- (c) the conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit;
- (d) the contributions to be made to the fund by and on behalf of members;
- (e) the appointment of the trustees, who shall be responsible for controlling and managing the operation and administration of the fund;
- (f) the appointment, if any, of an administrator, investment manager and custodian;
- (g) the appointment of the registered agent, the auditor, and the actuary where one is required;
- (h) the procedure for modification of the rules by amendment, repeal, replacement or addition;
- (i) the procedure for settlement of any dispute between the fund and any person upon whom the rules of the fund are binding;
- (j) the arrangements for custody of assets of the fund;
- (k) the voluntary dissolution of the fund;
- (l) the arrangements to be made for the indemnification of the fund against any loss that it may suffer as a result of the dishonesty of any person concerned with its management and operations; and
- (m) such other matters as the Registrar may prescribe.

(2) The rules of a pension fund shall not be required to contain a provision covering the appointment of trustees if the pension fund is established by a statute which specifically provides for the appointment of the individuals responsible for controlling and managing the operation and administration of the fund.

(3) Subject to the provisions of this Act, the rules of a fund are binding on the fund; the sponsor or sponsors; every participating employer; all members, trustees and officers of the fund; and any person who is entitled to claim benefits under the rules or whose claim to benefits is derived from such person.

(4) A pension fund may, in the manner provided in its rules, modify its rules, but no modification shall be valid until it has been registered by the Registrar. A modification shall be registered based upon the considerations set forth in section 51 (1) with respect to initial registration of a pension fund.

(5) A pension fund shall be capable of suing and of being sued, of acquiring, holding and alienating property, movable and immovable, and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules.

(6) All assets, rights, liabilities, and obligations pertaining to the pension fund shall, notwithstanding anything to the contrary contained in any law or in any document constituting or governing the fund or any body, corporate or unincorporated, having control of the management and operations of the fund, be assets, rights, liabilities and obligations of the fund to the exclusion

of any other person, and no person shall have any claim on the assets or rights, or be responsible for any liabilities or obligations of the fund, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the management and operations of the fund.

*Recordkeeping requirements.*

53. (1) Each pension fund shall maintain in Swaziland such records, or accurate transcription of such records, as are necessary to -

- (a) exhibit clearly and correctly the pensions fund's affairs;
- (b) explain its transactions and financial position; and
- (c) enable the Registrar to determine whether the pension fund is in compliance with the provisions of this Act and the regulations thereunder.

*Audits.*

54. (1) Except as provided in subsection (4), every pension fund shall be audited annually by a qualified auditor approved by the Registrar. At the conclusion of the audit, the auditor shall submit to the fund a report on the financial condition of the fund, which shall take into account the most recent actuarial report under section 55. In the event the auditor cannot provide an unqualified opinion that the financial statements fairly present the financial condition of the pension fund, the report shall state the reasons.

(2) The pension fund shall notify the Registrar of the appointment of its auditor within 30 days of the appointment. In the event the pension fund changes auditors, the pension fund shall notify the Registrar of the reasons for such change and the appointment of a new auditor. All such notifications shall be in writing.

(3) No trustee, administrator, or officer of a pension fund may be appointed as the auditor of that fund.

(4) If the Registrar is satisfied that a pension fund operates exclusively by means of policies of insurance issued by a person lawfully carrying on the business of insurance, the Registrar may permit that fund to submit, in lieu of the annual audit and report to the Registrar required by subsection (1), a certified copy of the annual audit of the person or persons issuing such policies of insurance. Such annual audit must contain a statement of the auditor that the internal controls operated by the insurer are adequate to ensure compliance with this Part.

(5) If the appointed auditor recommends any remedial steps to the pension fund and that such remedial steps are not followed by the insurer, the auditor shall bring this fact under the attention of the Registrar within a period of 60 days.

*Actuarial review.*

55. (1) Each defined-benefit pension fund shall appoint an actuary satisfactory to the Registrar to perform actuarial reviews of the pension fund.

(2) Each defined-benefit pension fund shall, at least once in every three financial years, cause its financial condition to be investigated by the actuary appointed in accordance with subsection (1). At the conclusion of the investigation, the actuary shall submit to the fund a report on the financial condition of the fund. In the event the actuary determines that remedial measures should be taken, the report shall include recommendations of the actuary as to such measures.

(3) The pension fund shall notify the Registrar in writing of the appointment of its actuary

within 30 days of the appointment. In the event the pension fund changes actuaries, the pension fund shall notify the Registrar of the reasons for such change and the appointment of a new actuary. All such notifications shall be in writing.

(4) No trustee, administrator, or officer of a pension fund may be appointed as the actuary of that fund.

(5) Each defined-contribution fund shall submit every three years a certificate from an actuary stating that the rules of the fund still comply with the definition of a defined-contribution pension fund, and that a full valuation as per section 55 (2) is not necessary.

*Reporting requirements*

56. (1) (a) Every pension fund shall, within 4 months of the expiration of the financial year of the fund, furnish to the Registrar in the prescribed form an audited financial statement, including a balance sheet, income and expenditure statement, and such other information or statements as may be required by the Registrar. If the report of the auditor does not contain an unqualified opinion that the financial statements fairly present the financial condition of the pension fund, the fund shall also furnish to the Registrar a statement of actions it has taken or will take to address the reasons given by the auditor for not providing an unqualified opinion.

(b) (i) The Registrar may, by written notice, require any pension fund to amend financial statements, or other statement of accounts furnished to the Registrar in order to correct or conform such accounts.

(ii) If a pension fund fails to comply with a notice referred to in subsection (b) (i) to the satisfaction of the Registrar, the Registrar may amend or reject this statement.

(iii) A statement amended pursuant to this subsection shall be treated as if it had been originally submitted in its amended form:

(2) Every defined-benefit pension fund shall, with 6 months of the end of the financial year on which an actuarial review is based, furnish to the Registrar a copy of the report of the actuary described in section 55 (2). If the report contains recommended remedial measures, the fund shall also furnish a statement of actions it has taken or will take in response to such recommended remedial measures.

(3) Every pension fund shall, within thirty days of completion, furnish to the Registrar a copy of any special report by an auditor or actuary. If any special report of an auditor or actuary contains recommended remedial measures, the fund shall also furnish to the Registrar a statement of actions it has taken or will take in response to such recommended remedial measures.

(4) The Registrar may extend the time period for submission of the reports under this section.

(5) The Registrar may require additional information or more frequent reports whenever the Registrar determines it to be necessary or appropriate to monitor the financial condition of a pension fund.

*Trustees.*

57. No person in any of the following categories shall be eligible for appointment as a trustee and if an appointed trustee at any time falls in any such category he shall cease to hold office -

(1) a minor or any person who is insane or otherwise incapable of acting;

(2) any person who is disqualified from being a director in terms of an order of a court of law;

- (3) an unrehabilitated insolvent;
- (4) any person removed from an office of trust on account of misconduct;
- (5) a director, senior manager or controller of any financial institution that has been wound-up in Swaziland or any other country, unless approved by the Governor;
- (6) any person who has been convicted of any crime or found liable for any offence involving dishonesty or fraud.

*Obligations of Trustees.*

58. (1) The trustees of a pension fund shall ensure that it is administered solely in the interest of the members and beneficiaries and for the exclusive purpose of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the fund.

(2) The trustees shall exercise the utmost good faith and the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(3) The trustees shall ensure that the pension fund is operated in accordance with its rules, and in compliance with this Act, any regulations thereunder, and any other applicable law.

(4) The obligations and duties specified in this section are in addition to any other obligations or duties that may arise with respect to a pension fund under other law.

*Administrators, custodians, and investment managers.*

59. (1) The trustees may, appoint an administrator for the fund. An administrator may not make any investment decisions for the fund, unless the administrator is also appointed as an investment manager by the trustees. Any administrator shall maintain professional indemnity insurance and a fidelity guarantee in such amounts as the Registrar determines appropriate. An administrator shall be one of the following:

- (a) an insurance company,
- (b) an insurance broker,
- (c) any other entity approved by the Registrar.

(2) The Trustees may, in the manner provided in the pension fund rules appoint one or more investment managers for the fund. An investment manager shall maintain professional indemnity insurance and a fidelity guarantee in such amounts as the Registrar determines appropriate. An investment manager shall be one of the following:

- (a) a insurance broker
- (b) an insurance company
- (c) any other entity approved by the Registrar.

(3) The trustees may, in the manner provided in the pension fund rules appoint any entity listed in subsection (2) as custodian for the assets of the pension fund.

(4) Any administrator, custodian or investment manager shall exercise the utmost good faith and the care, skill and prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. This obligation shall be in addition to any other obligations or duties or pension fund administrators, custodians, or investment managers that may arise under other law.

(5) The pension fund shall notify the Registrar in writing of the appointment of the administrator and any custodian or investment manager and shall also notify the Registrar of any change in administrator, custodians or investment managers.

*Registered office and principal officer.*

60. (1) Every pension fund shall have a registered office located in Swaziland.

(2) (a) Every pension fund shall have a registered agent who is resident in Swaziland and who is appointed in the manner set forth in the rules of the fund.

(b) If the individual appointed as the registered agent becomes unable for any reason to act as a registered agent, the fund shall appoint another person to serve.

(3) Whenever a pension fund designates a new registered office or appoints a new registered agent, the pension fund shall notify the Registrar in writing within 10 days of the new designation or appointment.

(4) Process in any legal proceeding against any person may be served by leaving it at the registered office of the fund or by service upon the registered agent as shown in the records of the Registrar.

*Investments.*

61. (1) (a) Beginning on the date which is two years after the date of commencement of this Act, each pension fund shall maintain at least 15 percent of the amount of its total assets, as defined by the Minister upon the advice of the Registrar, in domestic investments. The Minister, upon the advice of the Registrar, shall prescribe by regulation investments that shall constitute domestic investments for purposes of this requirement.

(b) The Minister, in consultation with the Governor and with the approval of the Cabinet, may increase the percentage referred to in subsection (1) if the Minister determines that such an increase is in the public interest and will not adversely affect the interests of members and their beneficiaries. Prior to making a recommendation to the Cabinet to increase the percentage, the Minister shall provide notice of the proposed recommendation in the Gazette and invite comments from interested parties on the proposed recommendation.

(2) No pension fund shall invest any of its assets in any business of an employer who is a sponsor or who is a member of an association of employers that is a sponsor of the pension fund, or in one or more members of a group of related persons that includes such an employer, to the extent that the aggregate fair market value of such investment exceeds 5 percent of the fair market value of the assets of the fund.

(3) No pension fund shall invest any of its assets in any person or group of related persons to the extent that the fair market value of such investment exceeds 10 percent of the fair market value of the assets of the fund.

(4) A registered fund may, if its rules so permit and subject to such conditions and limitations as the Registrar may prescribe, grant a loan to a member in respect of the financing of his personal residential property. The amount of the loan may not exceed the value of the member's contributions to the fund. Except as permitted under this subsection, any transaction that purports to assign, attach, or give as security benefits payable under pension fund rules is void.

*Conflicts of interest.*

62. Except to the extent specifically permitted under section 61 (2), (3) and (4), no assets of a pension fund shall be lent to any party in interest nor invested in any securities issued by a party in interest nor in any real estate used by a party in interest.

*Right to inspect documents.*

63. Any member may inspect at the office of the Registrar the rules of any registered pension fund or exempt foreign pension fund and any document provided under section 56 (1) (a) and 56 (2).

*Exemptions.*

64. (1) The Registrar may exempt a foreign pension fund from any or all of the provisions of this Act, other than the provisions of sections 5 and 60, if the Registrar is satisfied that

- (a) the number of members who are ordinarily resident in Swaziland is not a significant proportion of the total membership;
- (b) the rules of the pension fund are not less favourable to members ordinarily resident in Swaziland than to other members, taking into consideration differences in the conditions of service;
- (c) suitable arrangements exist for ensuring the financial soundness of the fund; and
- (d) through the furnishing of adequate security by the pension fund or otherwise, the fund will pay in accordance with its rules the benefits promised to members ordinarily resident in Swaziland.

A foreign pension fund seeking exemption under this subsection shall submit an application for exemption as part of its application for registration under section 51. In addition to the information required under section 51, the pension fund shall submit a certificate of registration or other evidence that the pension fund has been authorized to operate or conduct activities by the entity responsible for regulation or supervision of pension funds in the jurisdiction in which the pension fund primarily operates or conducts its activities. A foreign pension fund that is granted an exemption under this subsection shall provide to the Registrar copies of all reports and other documents that are required to be deposited with the entity responsible for its regulation or supervision.

(2) The Registrar may exempt a pension fund from any or all provisions of this Act, if the pension fund is established by statute.

(3) An exemption granted under this section may be subject to any conditions the Registrar deems appropriate, taking into account the purposes of the Act.

(4) The Registrar may at any time by notice in writing to the fund withdraw in whole or in part any exemption granted under this section.

*Examinations of pension funds.*

65. The Registrar may from time to time, after consultation with the Governor, cause an examination to be made of any pension fund in order to determine that it is in a sound financial condition and that the requirements of this Act are being met. As part of an examination under this section, the Registrar may cause to be made an audit by an independent auditor selected by the Registrar or a valuation of any or all assets of a pension fund by a valuator selected by the Registrar.

*Requirement of additional information.*

66. (1) For the purposes of this Act, the Registrar may require any pension fund to provide him, verbally or in writing, with any information, or to furnish him with any document, relating to the conduct of the business of that fund and it shall be the duty of the fund to comply with such requirement by such date as the Registrar may specify.

(2) The Registrar may by notice in writing require any person whom he has reason to suspect is carrying on the business of a pension fund which is not registered under this Act, to transmit to him within a period stated in such notice a copy of the rules, if any, under which such person is operating, together with a copy of the last annual accounts recorded by such person, and such further information as the Registrar may require.

(3) The Registrar may require a foreign pension fund that has been granted an exemption under section 64 to submit such statements and other information as the Registrar may specify.

*Requirements for a financial plan.*

67. (1) In the event the Registrar determines that a pension fund is not in sound financial condition, the Registrar shall provide the fund with written notice of the determination.

(2) Within sixty (60) days of such notice or such longer period as the Registrar may in writing approve, the pension fund shall submit a financial plan for restoring the fund to a sound financial condition.

(3) The Registrar may modify the plan as he deems appropriate to restore the pension fund to a safe and sound condition.

(4) If the Registrar determines that the pension fund cannot or will not submit a viable plan to restore it to sound financial condition within a reasonable period of time, the pension fund may be wound up by the Registrar in accordance with the provisions of Part VIII.

*Revocation of registration.*

68. The Registrar may revoke the registration of any pension fund if he determines that the pension fund has acted in contravention of the pension fund rules or any of the provisions of this Act or other applicable law, including any regulations thereunder. The Registrar shall grant the pension fund 14 calendar days to show good cause why the licence shall not be revoked.

*Denial of tax benefits for unregistered fund.*

69. If the Registrar, after investigation, finds that a pension fund has been operated in violation of section 5, notwithstanding any other provision of law no deduction shall be allowed to an employer for contributions made to such pension fund prior to its registration.

*Undesirable practices.*

70. The Registrar may by regulation declare a specific practice or method of conducting business to be an irregular or undesirable practice or an undesirable method of conducting business for pension funds or any specified class of pension funds.

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Part VIII  
SEIZURE AND WINDING UP OF REGULATED PERSONS  
Subpart A

*Seizure of a regulated person.*

71. The Registrar may, acting with the prior written approval of the Minister, apply to a judge of the High Court for an order authorising the Registrar to take possession of any juristic person regulated under Part III, IV or VII of this Act (hereinafter "regulated person") and located in Swaziland -

- (1) whose paid-in capital is impaired or whose condition is otherwise unsafe and unsound;
- (2) whose business is being conducted in an unlawful or unsafe and unsound manner;
- (3) if the continuation of the person's activities is detrimental to the interests of policyholders;
- (4) if the registrar determines that an insurer subject to section 20 (1) (b) (i) cannot or will not submit a viable plan to restore the insurer to financially sound operations under section 20;
- (5) that refuses to permit an examination to be made as provided in section 26 or section 35, or has otherwise obstructed such examination;
- (6) upon which a notice of intention to revoke its licence has been served under section 27 or 38; or
- (7) if such person is in voluntary winding up proceedings and the Registrar finds that the property of the person will not be sufficient for the prompt and full discharge of its obligations, or that the winding-up is unduly delayed.

For purposes of this section, a regulated person shall include a person conducting an insurance business in Swaziland without a license.

*Notice of seizure.*

72. (1) On taking possession in terms of section 71, the Registrar shall post at each place of business of the regulated person a notice announcing the Registrar's action and specifying the time when such possession shall take effect.

(2) A copy of the notice shall be published in the Gazette and a newspaper of general circulation in Swaziland.

*Appeal for termination of seizure.*

72. At any time after the Registrar has taken possession of a regulated person in terms of section 71, such person, or any shareholder, owner or creditor of such person, may institute proceedings in the High Court to void the seizure.

*Powers and duties of Registrar upon seizure.*

74. (1) As soon as the Registrar has taken possession of a regulated person, it shall be vested with the full and exclusive powers of management, administration and control of the person, including, without limiting the generality of the foregoing, the power to continue or discontinue the person's operations, to stop or limit the payment of its obligations, to employ any necessary officers or employees, to execute any instrument in the name of the person and to initiate, defend and conduct in its name any action or proceedings to which the person may be part.

(2) As soon as possible after taking possession of a regulated person, the Registrar shall make an inventory at the office of the Registrar of the High Court of the property vested in, belonging

to or held by the person, as well as any claim by interested parties upon the person.

*Effects of seizure.*

75. Upon the seizure of a regulated person pursuant to section 71, any statutory, contractual or other right or action due to expire within six months of the seizure shall be extended by six months.

*Restriction of rights of creditor as to execution in seizure.*

76. No execution shall be returned against the property of a seized regulated person except, in the discretion of the High Court, an execution effected pursuant to a judgment rendered prior to the date of the seizure for an amount not exceeding E500.

*Limitation on duration of seizure*

77. If the Registrar has taken possession of a regulated person, it shall, within a maximum period of sixty days from the effective date of the seizure pursuant to section 71 or within such longer period as may be from time to time extended by the High Court -

(1) terminate the seizure by restoring the person to its board of management or owners, as the case may be; or

(2) petition the court for a winding-up order under the Companies Act No. 7 of 1912 as modified by this Act.

*Winding-up of regulated persons; in general.*

78. The applicable provisions of the Companies Act No. 7 of 1912 and Insolvency Act No. 81 of 1955 shall apply to a winding-up of a regulated person, provided that the provisions of such acts shall be modified as set out in section 79 and 80 with respect to the winding-up of an insurer licensed under this Act or a person that has been seized under section 71 because it was engaged in an unauthorized insurance business in Swaziland.

*Authority of Registrar to wind-up or approve a wind-up.*

79. (1) No insurer shall be voluntarily wound-up without the prior consent of the Registrar, and subject to such terms and conditions as he deems appropriate, after a determination by the Registrar that the insurer is solvent and has sufficient property with which to repay policy holders and other creditors and discharge its duties without delay.

(2) There shall be no judicial winding-up of a regulated person without a prior report by the Registrar to the Court on the situation of such institution.

(3) Within fourteen days from the granting of consent by the Registrar under subsection (1) for voluntary wind-up, a notice setting forth such information as the Registrar prescribes shall be

(a) sent by mail to all policyholders and creditors;

(b) posted conspicuously on the premises of each place of business of the person; and

(c) published by the person in the Gazette and a newspaper of general circulation in Swaziland.

*Proof of claims, priorities and unclaimed property.*

80. (1) When the Registrar has taken possession of a person under section 71, a policyholder with

a claim that appears, to the satisfaction of the liquidator, in the books, accounts or other records of such person, shall be deemed to have proved such claim for the purpose of section 146 of the Companies Act and the relevant provisions of the Insolvency Act.

(2) For purposes of section 182 of the Companies Act, when the Registrar has taken possession under section 71 of a regulated person which is subsequently wound-up and found insolvent, the date of the order of seizure shall be deemed to correspond with the date of the sequestration order under the Insolvency Act.

- (3) (a) The liquidator shall, so far as it may be possible and unless the court otherwise orders, carry on the insurance business of an insurer with a view to being transferred as a going concern to another insurer, whether an existing company or a company formed for this purpose; and in carrying on the business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.
- (b) If the liquidator is satisfied the interests of the creditors in respect of liabilities of the insurer attributable to its business require the appointment of a special manager of the business, he may apply to the court, and the court may on the application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- (c) The court may require the special manager to give such security as its consider necessary.
- (d) The court may, subject to such conditions as it may determine, reduce the amount of the contracts made by an insurer in the course of carrying on his business as an alternative to winding up or otherwise.

(4) Notwithstanding section 182 of the Companies Act and section 103 of the Insolvency Act, in the winding-up of a person unable to pay its debts, any balance of the free residue after making provision for the payment of the secured and otherwise preferred claims shall be applied in payment of the remaining claims in the following order -

- (a) claims arising from a policy and interest accrued up to an amount not exceeding E500;
- (b) other claims arising from a policy and interest accrued; and
- (c) all other claims.

(5) Any sums of money or other assets remaining unclaimed two years after the winding-up of a regulated person shall be deposited in an account with the Central Bank for the satisfaction of claims arising in the future.

#### Subpart B

#### Termination of Pension Funds

##### *Winding up by the court.*

81. (1) Application to the High Court for an order for the winding-up of the whole or any part of the business of a fund may be made by the Registrar, in the case of -

- (a) a pension fund that has failed to register and has not been exempted from the registration requirements;

(b) a pension fund that the Registrar has determined not to be in sound financial condition and that the Registrar has determined cannot or will not submit a viable plan to restore it to sound financial condition; or

(c) a pension fund which has failed to comply with any provision of this Act and has failed to rectify such failure in accordance with a cease and desist order of the Registrar.

(2) The Court may make an order for the winding-up of the fund concerned or may make such other order as it deems fit, subject to other provisions of this section.

(3) To the extent appropriate to ensure just and equitable results, the Court may apply the provisions of the Companies Act to a winding-up under this section, in so far as such provisions refer to a winding-up by the Court, and in so far as the said provisions are not inconsistent with the provisions of this Act.

(4) The liquidator appointed under this section shall give the Registrar such information as the Registrar may require from time to time and shall, whenever he intends to apply to the court for instructions, report accordingly to the Registrar who shall be entitled to be heard personally or by a representative at any such application.

(5) The Registrar may himself make an application to the court with reference to the winding-up whenever he considers it to be necessary or appropriate to protect the rights and reasonable benefit expectations of the persons concerned.

(6) Where the court has ordered that the entire operations of the fund be wound up, the Registrar shall cancel the registration of the fund when the Registrar is satisfied that the winding-up has been completed. Upon cancellation, the fund shall be deemed dissolved.

*Voluntary dissolution of fund.*

82. (1) With the prior approval of the Registrar a pension fund may be dissolved in such circumstances and manner as may be provided in its rules.

(2) A liquidator shall be appointed in the manner directed by the rules, but such appointment shall be subject to the approval of the Registrar.

(3) The liquidator shall be responsible for the affairs of the pension fund as from the date of his approval by the Registrar, which date shall be the liquidation date.

(4) The liquidator shall provide to the Registrar such information as he may require, showing the assets and liabilities of the fund and the proposed plan for realising the assets and discharging the liabilities of the fund.

(5) The Registrar may direct the liquidator to amend his liquidation and distribution account if the Registrar is of the opinion that the rights and reasonable benefit expectations of members were not given effect to.

(6) The Registrar shall approve the liquidation and distribution account and shall order that such accounts be published, at the expense of the pension fund, in a newspaper circulating in the area where the fund operated. The accounts shall further lie open for inspection at the office of the Registrar.

(7) Any member or beneficiary, shall have 30 days in which to object to the liquidation and distribution accounts. If an objection is received the Registrar shall investigate the complaint and where applicable direct the liquidator to amend the accounts. Any member or beneficiary dissatisfied with the direction of the Registrar shall within 14 days after the decision by the Registrar approach a Court of Law for relief.

(8) If no objections were received, or no appeal noted against the decision by the Registrar the Registrar shall direct the liquidator to finalize the winding up of the pension fund.

(9) The Registrar shall cancel the registration of the fund when the Registrar is satisfied that the winding-up has been completed. Upon cancellation, the fund shall be deemed dissolved.

*Amalgamation and transfer.*

83. No pension fund may enter into any transaction involving the amalgamation of two or more pension funds, or any transaction involving the transfer of part or all of the assets and liabilities of a pension fund to another pension fund, without the prior approval of the Registrar. An application for such approval shall be made in such form and subject to such conditions as may be prescribed.

**FINAL PROVISIONS**

*Regulations.*

84. (1) Upon the advice from the Registrar, which shall include a brief explanation of the consultation process followed, the Minister may promulgate or modify regulations to carry out the provisions and purposes of this Act, including:

- (a) prescribing any matter that is required or authorized by this Act to be prescribed;
- (b) determining any value of assets or amount of liabilities that are required to be determined under this Act; and
- (c) providing greater detail with respect to any matter necessitating a determination of the Registrar or the Minister.

(2) The Registrar may, prior to the promulgation or entry into force of any regulation that is prescribed under this Act, take any reasonable action that is consistent with the provisions and purposes of this Act with respect to a matter that would be governed by the regulation concerned.

*Penalties.*

85. Upon a finding by the Registrar that a person has contravened any provision of this Act, that person shall be liable for the following fines:

- (1) E100 in the event of an unintentional violation;
- (2) E5000 or one year in jail in the event of an intentional violation; or
- (3) E10,000 or three years in prison in the event of an intentional violation for the purpose of defrauding a person.

*General Extension Provisions.*

86. The Registrar may give exemption from any time limits in the Act if a fully motivated application for extension of time is submitted in advance.

*Repeal of the Control of Insurance Order.*

87. The Control of Insurance Order, 1973, is hereby repealed.

*Status of the King's Order-in-Council 32.*

88. (1) The Swaziland Royal Insurance Corporation Order, 1973, is hereby repealed.

(2) Upon the repeal of the Swaziland Royal Insurance Corporation Order, 1973, the Swaziland Royal Insurance Company Limited will take over all the assets of the Swaziland Royal Insurance Corporation and likewise all obligations relating to outstanding claims, salaries and financial commitments to employees of the aforesaid corporation.

LEGAL NOTICE NO. 192 OF 1994  
THE CROWN LAND DISPOSAL ACT 1911  
(Act No. 13 of 1911)  
DECLARATION OF SIFUNDZANI TOWNSHIP  
REGULATIONS 1994  
(Under Section 12)

In exercise of the powers conferred by Section 12 of the Crown Lands Disposal Act 1911, the Minister for Housing and Urban Development hereby makes the following Regulations :-

*Citation and Commencement*

1. The Regulation may be cited as the Sifundzani Township Regulations 1994, and shall be deemed to have come into force on the 29th April 1994.

*Establishment of Township and Alteration of General Plan.*

2. The following land is hereby proclaimed and established as a Township :-

CERTAIN : Lot No. 2185 situate in Mbabane in the Hhohho District Swaziland.  
MEASURING : 9,5845 (nine comma five eight four five) hectares.  
HELD : under certificate of Registered Title No. 188 of 1994 dated 20th April 1994 comprising of twenty (20) lots numbered 2570 to 2589 and roads as will more fully appear from the Supplementary General Plan S.G. No. S.15/88 approved by the Surveyor General on the 1st March 1988.

(b) The Surveyor General shall alter the diagram so as to indicate the name and lot numbers assigned by these regulations to the township and endorse the Supplementary General Plan S.G. No. S 15/88 accordingly.

*Endorsement of Title Deeds and opening of Register.*

3. The Registrar of Deeds shall :-

- (a) Make necessary endorsement on the relevant title deeds; and
- (b) Open the necessary register in connection with the township.

N.M. NTEZINDE  
*Acting Principal Secretary*

Mbabane

24th October, 1994

LEGAL NOTICE NO. 193 OF 1994

THE DAIRY ACT, 1968

(Act No. 28 of 1968)

THE PRICES OF LIQUID MILK AND EMASI NOTICE OF 1994

In exercise of the power conferred upon him by Section 24 of the Dairy Act, No. 28 of 1968, the Minister for Agriculture and Cooperatives, after consultation with the Swaziland Dairy Board hereby issues the following Notice.

*Citation and Commencement.*

1. This Notice may be cited as the Prices of Liquid Milk and Emasi Notice of 1994 and shall come into force on the 1st November 1994.

2. The price to be paid by a milk processor to a milk producer for fresh cow's milk delivered by him to such processor shall not be less than 80 cents per litre.

*Maximum price to be paid to a milk Processor for Fresh Cow's Milk Purveyor.*

3. The price to be paid by a milk purveyor of liquid milk for fresh pasteurised cow's milk delivered to him by a processor shall be E2.30 per litre for packaged milk or E2.25 per litre for bulk milk.

*Maximum selling prices of fresh Cow's milk.*

4. The maximum selling price of fresh cow's milk by dairies, milk shops, milk Purveyors to the public shall be E2.50 per litre for cartoned milk or E1.25 for 500ml carton.

*Maximum price to be paid to a milk processor of Full Cream Emasi (Cultured Milk).*

5. The price to be paid by a Purveyor of Full Cream Emasi (Cultured Milk) delivered to him by a processor shall be E2.30 per litre for packaged cultured milk or E2.25 / litre bulk cultured milk.

*Maximum selling price for full cream emasi (Cultured Milk).*

6. The maximum selling price of cartoned Full Cream Emasi (Cultured Milk) by dairies, milk shops and milk purveyors to the public shall be E2.50 per litre or E1.25 per 500ml carton.

*Revocation of Legal Notice No. 133 of 1993.*

7. The prices of Liquid Milk and full cream Emasi (Cultured Milk) Notice of 1993 is revoked.

N.M. NKAMBULE

*Principal Secretary*

Mbabane

24th October, 1994