SWAZILAND GOVERNMENT GAZETTE

VOL. XLIX] MBABANE, Friday SEPTEMBER 9th 2011 [No. 97

CONTENTS

PUBLISHED BY AUTHORITY

NOTICE

Notice is hereby given that **I, Nozipho Lorraine Nxumalo** of **Hhohho Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Simelane** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the 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 **Simelane** is because it is my natural surname.

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

P. O. Box 657
Mbabane

M1304 4x16-09-2011

NOTICE

Notice is hereby given that **I, Dlamini Jabulani Vusie Boyboy** of **Esitjeni, Lobamba - Hhohho Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Tsabedze** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the 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 **Tsabedze** is because it is my natural surname.

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

P. O. Box 195
Malkerns

M1325 4x16-09-2011

NOTICE

ESTATE LATE: LOGWAZELA PATRICK KUNENE ESTATE NO. EM496/2005

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

MPENDULO KUNENE
P. O. Box 4122
Manzini

M1372 09-09-2011

NOTICE

Notice is hereby given that we intend applying for a certified copy of: Deed of Transfer No. 884/2005 dated the 7th day of November, 2005; in favour of: **ARA MONADJEM**, (born on the 19th day of December, 1968), I. D. No. 6812196200184; in respect of:-

CERTAIN : Portion 64 (a portion of portion 54) of Farm No. 65 situate in the District of Manzini, Swaziland;

MEASURING : 2580 (Two Five Eight 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 26th DAY OF AUGUST, 2011.

ROBINSON BERTRAM
Attorneys for Applicant
Ingcongwane Building
P. O. Box 24
Mbabane

M1358 2x09-09-2011

NOTICE

ESTATE LATE: BONIFILOUS SIKHONYANE VILANE ESTATE NO. E77/86

Notice is hereby given in terms of **Section 51 (2) of the Administration of Estates Act No. 28/1902** 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, **Mbabane** for a period of **Twenty One (21) days** from the date of publication of this notice.

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

BUSISIWE VILANE
P. O. Box 723
Siteki

M1376 09-09-2011

NOTICE

ESTATE LATE: NKONJANE PHINEAS DLAMINI ESTATE NO. EM229/2011

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

ZODWA JEANETH MTHUPHA
P. O. Box 3798
Manzini

M1373 09-09-2011

NOTICE

Notice is hereby given that **I, Musa David Mnisi** of **Lubombo Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Fakudze** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the newspapers circulating in the region, where I reside and designated for this purpose by the Regional Secretary for the **Lubombo Region** and in the Government Gazette.

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

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

P. O. Box 248
Simunye

M1347 4x23-09-2011

NOTICE

Notice is hereby given that **I, Mfanzile Magagula** of **Manzini Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Motsa** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the 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 **Motsa** is because it is my natural surname.

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

P. O. Box 55
Luve

M1367 4x23-09-2011

NOTICE

ESTATE LATE: MAXWELL VELI VILAKATI ESTATE NO. EM199/2011

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

JOHN VILAKATI
P. O. Box 1228
Manzini

M1374 09-09-2011

NOTICE

Notice is hereby given that **I, Mcolisi Edwin Sikhondze** of **KaMkhweli - Lubombo Region** intend to apply to the Honourable Minister of Home Affairs of the Kingdom of Swaziland for authorisation to assume the surname **Bhembe** after the fourth publication of this notice, in each of four consecutive weeks in the Times of Swaziland and The Swazi Observer, being the newspapers circulating in the region, where I reside and designated for this purpose by the Regional Secretary for the **Lubombo Region** and in the Government Gazette.

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

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

P. O. Box 20
Siteki

M1378 4x30-09-2011

NOTICE

ESTATE LATE: LANCELOT ACHUAL MHAMBUMA GAMA
ESTATE NO. EH293/2006

Debtors and Creditors in the above mentioned estate are hereby invited to lodge their claims and pay their debts with the undersigned within **thirty (30) days** of date of publication of this notice.

THE MASTER OF THE HIGH COURT OF SWAZILAND

HOWE MASUKU NSIBANDE
Lot 429, Mbabane Township
Cnr. Ben Dunn & Lomadvokola Street
P. O. Box 1298
Mbabane

M1381 09-09-2011

NOTICE

ESTATE LATE: JABULILE SIDANDANE MKHONTA NEE FAKUDZE
ESTATE NO. EH196/2011

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

MUSA NDUKU MKHONTA
P. O. Box 709
Mbabane

M1377 09-09-2011

NOTICE

ESTATE LATE: MELUSI MXOLISI SHANDU ESTATE NO. EM139/2011

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

MDUDUZI SHANDU
P. O. Box 41
Manzini

M1379 09-09-2011

NOTICE

ESTATE LATE: JOHN MATHOLE DLAMINI ESTATE NO. EM236/2011

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

ANNASTACIA NOMSA SIMELANE
P. O. Box 5070
Manzini

M1382 09-09-2011

NOTICE

ESTATE LATE: ELIZABETH DLAMINI NEE MAVUSO ESTATE NO. EP47/2011

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

JONATHAN MFANASIBILI DLAMINI
P. O. Box 687
Piggs Peak

M1383 09-09-2011

NOTICE

ESTATE LATE: MADODA REUBEN SIMELANE ESTATE NO. ES104/2011

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

THOLAKELE LETTY DLAMINI
P. O. Box 918
Manzini

M1385 09-09-2011

NOTICE

ESTATE LATE: NCAMSILE TERESA MDLULI (NEE SUKATI)
ESTATE NO. EM234/2011

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

PETROS NGANE NDODEMNYAMA SUKATI
P. O. Box 118
Luve

M1386 09-09-2011

NOTICE

ESTATE LATE: THEMBI ELSIE MAMBA ESTATE NO. EH51/2011

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

WISEMAN PETERSON MAPHANGA
P. O. Box 4148
Mbabane

M1387 09-09-2011

NOTICE

ESTATE LATE: ANDRIAS PAULOS LOFANA MASIMULA ESTATE NO. EP48/2011

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

THAMSANQA SICELO MASIMULA
P. O. Box 93
Piggs Peak

M1388 09-09-2011

NOTICE

ESTATE LATE: JULIUS SIQWAYI DLAMINI ESTATE NO. EM191/2011

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

NOMCEBO DLAMINI
P. O. Box 758
Mbabane

M1389 09-09-2011

NOTICE

NOTICE OF CHANGE OF COMPANY NAME

Notice is hereby given in terms of Section 38 of the Companies Act No. 8 of 2009 that: **SIR OBERT MANYANYE (PROPRIETARY) LIMITED** has applied to change its company name to: **OBERT MANYANYE (PROPRIETARY) LIMITED.**

G. D. NDLOVU
REGISTRAR OF COMPANIES

M1375 09-09-2011

NOTICE

ESTATE LATE: NANA NOMCEBO GAMA (DLAMINI)
ESTATE NO. EP42/2011

Notice is hereby given in terms of **Section 51 (2) of the Administration of Estates Act No. 28/1902** 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, **Mbabane** for a period of **Twenty One (21) days** from the date of publication of this notice.

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

ZODWA NTFOMBI DLAMINI
P. O. Box 8
Ntfonjeni

M1380 09-09-2011

NOTICE

ESTATE LATE: GRAHAM MANDENTABENI MNGOMETULU
ESTATE NO. EH273/2008

Notice is hereby given in terms of **Section 51 (2) of the Administration of Estates Act No. 28/1902** 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, **Mbabane** for a period of **Twenty One (21) days** from the date of publication of this notice.

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

VERONICA N. MNGOMETULU
P. O. Box 2150
Mbabane

M1384 09-09-2011

NOTICE

ESTATE LATE: SAMUEL MALOBELA LUKHELE ESTATE NO. EH145/2011

Debtors and Creditors in the above-mentioned estate are hereby required to lodge their claims and pay their debts with the undersigned within **twenty one (21) days** from date of publication of this notice.

LINDIWE DLAMINI
P. O. Box 6327
Manzini

M1392 09-09-2011

NOTICE

ESTATE LATE: THEMBA NDLANGAMANDLA ESTATE NO. ES102/2011

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

MARGARET B. MATSEBULA
P. O. Box 133
Nhlangano

M1397 09-09-2011

NOTICE

ESTATE LATE: SIMON PARNWEL MALINGA ESTATE NO. EH273/2010

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

GUGU SUKATI - MALINGA
P. O. Box 277
Mahlanya

M1399 09-09-2011

NOTICE

ESTATE LATE: LEO WILSON MCABANGO MAZIYA ESTATE NO. EH303/2010

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

ELVIS M. MAZIYA / VERONICA MAZIYA
THULILE MAZIYA
C / O P. O. Box 2427 Mbabane /
P. O. Box 3798
Mbabane

M1400 09-09-2011

NOTICE

ESTATE LATE: SIPHO MARTIN SHONGWE ESTATE NO. EH10/2011

Notice is hereby given in terms of **Section 51 (2) of the Administration of Estates Act No. 28/1902** 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, **Mbabane** for a period of **Twenty One (21) days** from the date of publication of this notice.

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

LUNGILE SHONGWE
P. O. Box 330
Ezulwini

M1396 09-09-2011

NOTICE

ESTATE LATE: SAMUEL SONDO TSABEDZE ESTATE NO. EP6/2001

Notice is hereby given in terms of **Section 51 (2) of the Administration of Estates Act No. 28/1902** 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, **Mbabane** for a period of **Twenty One (21) days** from the date of publication of this notice.

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

ZANDILE TSABEDZE
P. O. Box 173
Vuvulane

M1398 09-09-2011

SUPPLEMENT TO THE SWAZILAND GOVERNMENT GAZETTE

VOL. XLIX] MBABANE, Friday, SEPTEMBER 9th 2011 [No. 97

CONTENTS

PUBLISHED BY AUTHORITY

PART B

THE MONEY LAUNDERING AND FINANCING OF TERRORISM (PREVENTION) ACT, 2011

(Act No. 6 of 2011)

I ASSENT

MSWATI III
King of Swaziland

23rd August, 2011

AN ACT
ENTITLED

AN ACT to criminalise money laundering and suppress the financing of terrorism; to establish a financial intelligence unit; to provide for the forfeiture of ill-gotten property and for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

ARRANGEMENT OF SECTIONS

PART 1
PRELIMINARY

PART 2
OFFENCES RELATING TO MONEY LAUNDERING AND FINANCING OF TERRORISM

PART 3
OBLIGATIONS TO VERIFY IDENTITY AND KEEP RECORDS

PART 6
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PART 7
RESTRAINT, SEARCH, SEIZURE AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING AND FINANCING OF TERRORISM

PART 1
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Money Laundering and Financing of Terrorism (Prevention) Act, 2011, and shall come into operation on such date as the Minister may, by Notice published in the Gazette, determine.

(2) The Minister may appoint different dates of coming into operation in respect of different sections or parts of this Act.

Interpretation

2. In this Act unless the context otherwise determines-

"accountable institution" means any person, including, but not limited to, a financial institution licensed under the Financial Institutions Act, 2005, who carries on the business or activity of-

(a) acceptance of deposits and other repayable funds from the public, lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;

(b) financial leasing;

(c) money transmission services;

(d) issuing and administering means of payment (such as credit cards, travellers' cheques and bankers' drafts);

(e) financial guarantees and commitments;

(f) trading for that person's own account or for the account of that person's customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate and index instruments, commodity futures trading and transferable securities;

(g) participation in securities issues and the provision of services related to such issues;

(h) money-broking;

(i) individual and collective investment schemes or trustees of collective investment schemes;

(j) safekeeping and administration of cash or liquid securities on behalf of other persons;

(k) safe custody services;

(l) investing, administering or managing funds or money on behalf of other persons

(m) an insurer, an insurance broker or an insurance underwriter;

(n) trustee administrator or investment manager of a retirement scheme but excluding closed-ended schemes;

(o) bureaux de change or foreign exchange dealer;

(p) operating a gambling house, casino or lottery, including an operator who carries on such operations through the internet;

(q) a trust or company service provider, not otherwise covered by this section, which as a business, provides, to third parties, the services of-

(i) acting as a formation agent of legal persons;

(ii) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

(iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

(iv) acting as, or arranging for another person to act as, a trustee of an express trust; or

(v) acting as, or arranging for another person to act as, a nominee shareholder for another person;

(r) an offshore entity;

(s) a lawyer, notary, conveyancer, other independent legal professional, or an accountant when preparing or carrying out transactions for a client concerning the following activities-

(i) buying and selling of immovable property;

(ii) managing of client money or trust funds, securities or other assets;

(iii) management of bank, savings or securities accounts;

(iv) organisation of contributions for the creation, operation or management of companies; or

(v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

(t) dealing in immovable property when the persons dealing are involved in transactions for their client concerning the buying and selling of real estate;

(u) dealing in precious metals or stones, when the persons dealing engage in any cash transaction with a customer equal to or above the applicable designated threshold; or,

(v) such other business as the Minister may, by Notice published in the Gazette, prescribe.

"act of terrorism" means an act as defined in the Suppression of Terrorism Act, 2008;

"beneficial owner" means a person or persons who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted and includes those persons who exercise effective control over a legal person or arrangement;

"Board" means the board of the SFIU established under section 27;

"business relationship" means any arrangement or proposed arrangement between a person and an accountable institution where-

(a) the purpose or effect of the arrangement is to facilitate an occasional, frequent, habitual or regular course of dealing between the person and the institution; and,

(b) the total amount of any payment to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

"competent authority" means-

(a) the Attorney General;

(b) the Director of Public Prosecutions;

(c) the Governor of the Central Bank of Swaziland;

(d) the Commissioner General;

(e) any law enforcement agency and any person exercising such powers on behalf of the foregoing authorities; or

(f) such other person as the Minister may, by Notice published in the Gazette, designate;

"Court" means the High Court or a Magistrate's Court, as the case may be;

"customer", in relation to a transaction or an account, includes-

(a) the person in whose name a transaction or account is arranged, opened or undertaken;

(b) a signatory to a transaction or account;

(c) any person to whom a transaction has been assigned or transferred;

(d) any person who is authorised to conduct a transaction; or

(e) such other person as the Minister may, by Notice published in the Gazette, prescribe;

"data" means representations, in any form, of information or concepts;

"Director" means the Director of the Swaziland Financial Intelligence Unit appointed by the Minister in terms of section 21.

"forfeiture" means the permanent deprivation of property by order of court;

"law enforcement agency" means-

(a) the Police;

(b) the Immigration Service;

(c) the Anti Corruption Commission; or,

(d) such other person or institution as the Minister may, by Notice published in the Gazette, prescribe;

"Minister" means the Minister responsible for Finance;

"occasional transaction" means any transaction involving cash that is conducted by any person otherwise than through an account in respect of which the person is the customer;

"offence" means the offence of money laundering or the offence of financing of terrorism, or any offence listed in Schedule 1 to this Act;

"payable-through accounts" means correspondent accounts that are used directly by third parties to transact business on their own behalf;

"person" means any natural or legal person and includes a body of persons, whether it has legal personality or not;

"persons, groups and entities involved in acts of terrorism" means-

(a) persons who commit, or attempt to commit, acts of terrorism or who participate in, or facilitate, the commission of acts of terrorism;

(b) groups and entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or under the direction of, such persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons, groups and entities;

"politically exposed person" means a person who holds, or has held, a prominent public position, whether in Swaziland or in a foreign country, including, but not limited to, a Head of State or Government; a politician on the national level; a senior Government, judicial, military or party official on the national level; a senior executive of a State-owned enterprise of national importance; or an individual or undertaking identified as having close family ties or personal or business connections to any of the aforementioned persons;

"proceeds of a crime" means any money or property that is derived, obtained or realised, directly or indirectly, by any person from-

(a) the commission of an offence punishable by imprisonment for life or for a period exceeding 12 months; or,

(b) an act or omission committed or done outside Swaziland, which if it were committed or done in Swaziland, would constitute an offence referred to in paragraph (a);

"production order" means an order requiring a person to produce any document or information in readable form for the purpose of identifying, locating or quantifying the property, or identifying or locating such document or information, of a person who has been convicted of the offence of money laundering;

"property" means currency or any asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and includes legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit , whether situated in Swaziland or elsewhere and includes any legal or equitable interest in any such property;

"registrable property" means property the title to which is passed by registration in accordance with the provisions of the Deeds Registry Act, 1968, or the Road Traffic Act, 2007;

"relevant appeal date" used in relation to a forfeiture order made in consequence of a person's conviction of an unlawful activity means-

(a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the later; or,

(b) where an appeal against a person's conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later;

"restraint" means the temporary prohibition of the transfer, conversion, disposition or movement of property or the temporary assumption of custody or control of property on the basis of an order issued by a Court;

"SFIU" means the Swaziland Financial Intelligence Unit as established in Section 19 of this Act;

"supervisory authority" means any authority having oversight over an accountable institution;

"Task Force" means the National Task Force on Anti Money Laundering appointed in terms of section 38;

"tainted property" means the property intended for use in, or used in or in connection with the commission of an unlawful activity; and the proceeds of crime;

"terrorist group" means a group or organisation as defined in the Suppression of Terrorism Act;

"terrorist property" means property of a terrorist as defined in the Suppression of Terrorism Act;

"unlawful activity" means an act or omission which if committed in Swaziland or elsewhere, would constitute a criminal offence.

Application

3. Notwithstanding anything contained in any other law, an accountable institution shall be compelled to comply with the provisions of this Act.

PART 2
OFFENCES RELATING TO MONEY LAUNDERING AND FINANCING OF TERRORISM

Offence of money laundering

4. (1) A person who-

(a) converts or transfers property knowing or having reason to believe that the property is derived directly or indirectly from those acts or omissions referred to in paragraph (c), with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of those acts or omissions to evade the legal consequences of those acts or omissions;

(b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of the property knowing or having reason to believe that the property is derived directly or indirectly from those acts or omissions referred to in paragraph (c);

(c) acquires, possesses or uses property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions-

(i) in Swaziland which constitutes an offence against any law of Swaziland punishable by imprisonment for not less than 12 months or the imposition of a fine of not less than E15, 000; or,

(ii) outside Swaziland which, had they occurred in Swaziland, would have constituted an offence against the law of Swaziland punishable by imprisonment for not less than 12 months or the imposition of a fine of not less than E15, 000; or,

(d) participates in, associates with, conspires or attempts to commit, or aids, abets or facilitates the commission of any of the acts referred to in paragraphs (a) to (c);

commits the offence of money laundering.

(2) A person who-

(a) organises or directs others to commit;

(b) attempts to commit;

(c) conspires to commit; or,

(d) participates as an accomplice to a person committing, or attempting to commit;

an offence under subsection (1), commits an offence.

(3) Knowledge, intent or purpose required as an element of the activities mentioned in subsection (1) may be inferred from objective factual circumstances.

(4) Where it is necessary for the purpose of an offence of money laundering committed by a body corporate to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case maybe, had that state of mind.

Offence of financing of terrorism

5. (1) A person who, by any means whatsoever, directly or indirectly, provides (whether by giving, lending or otherwise making available) or collects funds or property with the intention that they should be used, or having reasonable grounds to believe that they are to be used, in full or in part, in order to carry out an act of terrorism, commits an offence.

(2) Notwithstanding the provisions of subsection (1), an act is taken not to be an act of terrorism if-

(a) it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsection (1); or,

(b) it occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

(3) A person who-

(a) organises or directs others to commit;

(b) attempts to commit;

(c) conspires to commit; or,

(d) participates as an accomplice to a person committing, or attempting to commit an offence under subsection (1),

commits an offence under this section.

(4) Knowledge, intent or purpose required as an element of the activities mentioned in subsections (1) and (3) maybe inferred from objective factual circumstances.

(5) Where it is necessary for the purpose of an offence of financing of terrorism committed by a body corporate to establish the state of mind of the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, acting in the course of employment or agency as the case maybe, had that state of mind.

PART 3
OBLIGATIONS TO VERIFY IDENTITY AND KEEP RECORDS

Accountable institutions to verify customers' identity and transactions

6. (1) An accountable institution shall, before entering into a business relationship with any person, ascertain the identity of a customer or beneficial owner on the basis of any official identifying document and shall verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer when-

(a) an accountable institution-

(i) enters into a continuing business relationship; or,

(ii) in the absence of such a business relationship, conducts any transaction;

(b) carrying out an electronic funds transfer;

(c) there is a suspicion of a money laundering offence or the financing of terrorism; or,

(d) the accountable institution has doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.

(2) Without limiting the generality of subsection (1), an accountable institution shall-

(a) when establishing a business relationship, obtain information on the purpose and nature of the business relationship;

(b) if the transaction is conducted by a natural person, adequately identify and verify the identity of that person, including information relating to the-

(i) name, physical address and occupation of the person; and,

(ii) national identity card or passport or other applicable official identifying document;

and take reasonable measures to establish the source of wealth and source of property of that person;

(c) if the transaction is conducted by a legal entity, adequately identify and verify its legal existence and structure, including information relating to-

(i) the customer's name, legal form, address and directors;

(ii) the principal owners and beneficiaries and control structure; and,

(iii) provisions regulating the power to bind the entity;

and verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons;

(d) in relation to politically exposed persons, in addition to the requirements in paragraph (b) shall-

(i) have appropriate risk management systems to determine whether the customer is a politically exposed person;

(ii) obtain the approval of senior management before establishing a business relationship with the customer; and,

(iii) conduct regular enhanced monitoring of the business relationship.

(3) An accountable institution shall take reasonable measures to ascertain the purpose of any transaction in excess of twenty thousand Emalangeni (E20,000), or of ten thousand Emalangeni (E10,000) in case of cash transactions, and the origin and ultimate destination of the funds involved in the transaction.

(4) An accountable institution shall, in relation to its cross-border correspondent banking and other similar relationships-

(a) adequately identify and verify the respondent institution with which it conducts such a business relationship;

(b) gather sufficient information about the nature of the business of the respondent institution;

(c) determine from publicly available information the reputation of the person and the quality of supervision to which the respondent institution is subject;

(d) assess the respondent institution's anti-money laundering and terrorist financing controls;

(e) obtain approval from senior management before establishing a new correspondent relationship;

(f) document the responsibilities of the accountable institution and the respondent institution.

(5) Where the relationship is a payable-through account, an accountable institution shall ensure that the institution with whom it has established the relationship-

(a) has verified the identity of and performed on-going due diligence on such of the customers of that institution that have direct access to accounts of the accountable institution; and

(b) is able to provide the relevant customer identification data upon request to the accountable institution.

(6) Where an accountable institution relies on an intermediary or third party to undertake its obligations under subsections (1) and (2) or to introduce business to it, that accountable institution shall-

(a) immediately obtain the information and documents required by subsections (1) and (2);

(b) ensure that copies of identification data and other relevant documentation relating to the requirements in subsections (1), (2) and (3) will be made available to it from the intermediary or the third party upon request without delay;

(c) satisfy itself that the third party or intermediary is regulated and supervised for, and has measures in place to comply with, the requirements set out in sections 7, 8 and 9 of this Act.

(7) Subsection (1), (2) or (3) shall not apply-

(a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identity unless the accountable institution has reason to suspect that the transaction is suspicious or unusual; or,

(b) if the transaction is an occasional transaction not exceeding two thousand, five hundred Emalangeni (E2,500) unless the accountable institution has reason to suspect that the transaction is suspicious or unusual.

(8) The Minister may, by Notice published in the Gazette, prescribe the-

(a) official or identifying documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers; or,

(b) threshold for, or the circumstances in which, the provisions of this section shall apply in relation to any particular customer or class of customers.

(9) In the case of an existing customer, an accountable institution shall verify the identity of the customer within such period as the Minister may, by Notice published in the Gazette prescribe.

Necessity of identification to conduct business

7. If satisfactory evidence of the identity of a customer is not produced to, or obtained by, an accountable institution in accordance with section 6, the accountable institution shall report the attempted transaction to the SFIU and shall not proceed any further with the transaction unless directed to do so by the SFIU.

Accountable institution to maintain records

8. (1) An accountable institution shall establish and maintain records of-

(a) the identity of a person obtained in accordance with section 6;

(b) all transactions carried out by it and correspondence relating to the transactions as is necessary to enable the transaction to be readily reconstructed at any time by the SFIU or competent authority, and shall contain particulars as the Minister may by

(c) all reports made to the SFIU under section 12; and,

(d) enquiries relating to money laundering and financing of terrorism made to it by the SFIU.

(2) The records mentioned in subsection (1) shall be kept for a minimum period of five years from the date-

(a) the evidence of the identity of a person was obtained;

(b) of any transaction or correspondence;

(c) the account is closed or business relationship ceases,

whichever is the later.

(3) The records established and maintained for purposes of subsection (1) shall be-

(a) sufficient to enable the transaction to be readily reconstructed at any time by the SFIU or competent authority to provide, if necessary, evidence for prosecutions of any offence; and,

(b) maintained in a manner and form that will enable the accountable institution to comply immediately with requests for information from the law enforcement or SFIU.

(4) Where any record is required to be kept under this Act, a copy of it, with the appropriate back-up and recovery procedures, shall be kept in a manner as the Minister may by Regulation prescribe.

(5) The records maintained under subsection (1) shall be made available upon request to the SFIU, or a competent authority for purposes of ensuring compliance with this Act and for purposes of an investigation or prosecution of an offence.

Accountable institution to maintain account in true name

9. (1) An accountable institution that maintains accounts, shall maintain them in the true name of the account holder.

(2) An accountable institution shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.

Financial Institutions and money transmission service providers to include originator information

10. (1) An entity or person that is licensed to do business in Swaziland as a financial institution under the Financial Institutions Act, 2005, or a money transmission service provider shall include accurate originator information and other related messages on electronic funds transfers and such information shall remain with the transfer.

(2) Subsection (1) shall not apply to an electronic funds transfer, other than a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card, where the credit or debit card number is included in the information accompanying such a transfer.

(3) Subsection (1) shall not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

Accountable institution to monitor transactions

11. (1) An accountable institution shall pay special attention to-

(a) any complex, unusual or large transactions;

(b) any unusual patterns of transactions;

that have no apparent or visible economic or lawful purpose;

(c) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism; and,

(d) electronic funds transfer that do not contain complete originator information.

(2) In relation to subsection (1), an accountable institution shall-

(a) examine as far as possible the background and purpose of the transactions or business relations and record its findings in writing; and,

(b) upon request, make available such findings to the SFIU or to competent authority, to assist the SFIU or the law enforcement agency in any investigation relating to an unlawful activity, a money laundering offence or an offence of financing of terrorism.

(3) An accountable institution shall monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under section 6 are met and that the transactions conducted are consistent with the information that the accountable institution has of its customer and the profile of the business of the customer.

PART 4
OBLIGATIONS TO REPORT

Accountable institution to report suspicious transactions

12. (1) Where an accountable institution suspects or has reasonable grounds to suspect that-

(a) any transaction or attempted transaction may be related to the commission of an unlawful activity, a money laundering offence or an offence of financing of terrorism;

(b) information that may be-

(i) relevant to an act preparatory to an offence of the financing of terrorism;

(ii) relevant to an investigation or prosecution of a person or persons for an unlawful activity, a money laundering offence or an offence of financing of terrorism or may otherwise be of assistance in the enforcement of this Act;

the accountable institution shall, forthwith, after forming that suspicion or receiving the information, but no later than two working days, report the transaction or attempted transaction

(2) A report made in terms of subsection (1) shall-

(a) be in writing and may be given by way of mail, telephone to be followed up in writing, fax or electronic mail or such other manner as may be prescribed by the SFIU;

(b) be in such form and contain such details as may be prescribed by the SFIU;

(c) contain a statement of the grounds on which the accountable institution holds the suspicion; and,

(d) be signed or otherwise authenticated by the accountable institution.

(3) An accountable institution that has made a report in terms of subsection (1) shall give the SFIU or the competent authority that is carrying out an investigation arising from, or relating to the information contained in the report, any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the SFIU.

(4) If the SFIU, after consulting an accountable institution required to make a report under subsection (1), has reasonable grounds to suspect that a transaction or a proposed transaction may involve an offence of financing of terrorism, the proceeds of an unlawful activity or a money laundering offence, it may direct the accountable institution in writing or by telephone to be followed up in writing within 1 working day, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the SFIU, which may not be more than five working days, in order to allow the SFIU-

(a) to make necessary inquiries concerning the transaction; and,

(b) if the SFIU deems it appropriate, to inform and advise a competent authority

(5) The provisions of this section shall supersede any provision contained in any other law regarding the reporting of suspicious transactions.

Supervisory authority or auditor to report suspicious transactions

13. Where a supervisory authority or an auditor of an accountable institution suspects or has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may be-

(a) related to the commission of a money laundering offence or an offence of financing of terrorism;

(b) of assistance in the enforcement of this Act;

(c) relevant to an act preparatory to the offence of financing of terrorism;

the supervisory authority or the auditor of the accountable institution shall forthwith report the transaction or attempted transaction to the SFIU.

Disclosure of suspicious transaction reports and other information

14. A person or an institution shall not disclose to any person-

(a) that a report to the SFIU under section 12(1) or 13 has been or may be made, or further information has been given under section 12(3);

(b) that the accountable institution has formed a suspicion in relation to a transaction for purposes of section 12(1); or,

(c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.

Protection of identity of persons and information in suspicious transaction reports

15. (1) A person shall not disclose any information that will identify or is likely to identify any-

(a) person who has handled a transaction in respect of which a suspicious transaction report has been made;

(b) person who has prepared a suspicious transaction report;

(c) person who has made a suspicious transaction report; or,

(d) information contained in a suspicious transaction report or information provided pursuant to section 12 (3)

except for the purpose of-

(i) the investigation or prosecution of a person or persons for an unlawful activity, a money laundering offence or an offence of financing of terrorism; or,

(ii) the enforcement of this Act.

(2) Nothing in this section prohibits the disclosure of any information for the purposes of the prosecution of any offence against any of the provisions of section 14 of this Act.

Protection of persons reporting suspicious transactions

16. (1) No civil, criminal or disciplinary proceedings shall be taken against-

(a) an accountable institution, an auditor, the competent authority or supervisory authority of an accountable institution; or,

(b) an officer, employee or agent of the accountable institution, an auditor, the competent authority or supervisory authority of an accountable institution acting in the course of that person's employment or agency;

in relation to any action by the accountable institution, the auditor, the competent authority or the supervisory authority or their officer, employee or agent taken under section 11(2)(b), 12, or 13 carried out in good faith or in compliance with directions given by the SFIU pursuant to section 31 (g) of this Act.

(2) Subsection (1) shall not apply in respect of proceedings for an offence against section 14 of this Act.

Privileged communication

17. (1) Nothing contained in section 12 of this Act requires any lawyer to disclose any privileged communication.

(2) For the purposes of this section, a communication is a privileged communication only if it is-

(a) a confidential communication, whether oral or in writing, passing between a lawyer in his or her professional capacity and another lawyer in such capacity; or,

(b) made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and,

(c) not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.

(3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a specified person (whether a lawyer, his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.

(4) For the purposes of this section, references to a lawyer include a firm in which the person is a partner or is held out to be a partner.

Other preventative measures by accountable institutions

18. (1) An accountable institution shall-

(a) appoint a compliance officer who shall be responsible for ensuring the accountable institutions' compliance with the requirements of this Act;

(b) establish and maintain procedures and systems to-

(i) implement the customer identification requirements under section 6;

(ii) implement record keeping and retention requirements under sections 8 and 9;

(iii) implement the reporting requirements under section 12;

(iv) make its officers and employees aware of the laws and regulations relating to money laundering and financing of terrorism;

(v) make its officers and employees aware of the procedures, policies and audit systems adopted by it to deter money laundering and financing of terrorism; and,

(vi) screen persons before hiring them as employees;

(c) train its officers, employees and agents to recognize suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within accountable institutions' products, services and operations; and,

(d) establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems.

(2) A compliance officer appointed pursuant to this section shall-

(a) be a senior officer with relevant qualifications and experience to enable him or her to respond sufficiently well to enquiries relating to the accountable institution and the conduct of its business;

(b) be responsible for establishing and maintaining such manual of compliance procedures in relation to its business as the supervisory authority or the SFIU may from time to time require;

(c) be responsible for ensuring compliance by staff of the accountable institution with the provisions of this Act and any other law relating to money laundering or financing of terrorism and the provisions of any manual of compliance procedures established pursuant to this section; and,

(d) act as the liaison between the accountable institution and the supervisory authority and the SFIU in matters relating to compliance with the provisions of this Act and any other law or directive with respect to money laundering or financing of terrorism.

(3) Subsection (1)(a) and (d) shall not apply to an accountable institution which, in the course of carrying on its business, does not employ more than 5 persons.

PART 5
SWAZILAND FINANCIAL INTELLIGENCE UNIT AND THE SWAZILAND TASK FORCE

Establishment of the Swaziland Financial Intelligence Unit (SFIU)

19. A financial intelligence unit to be known as the Swaziland Financial Intelligence Unit ("SFIU") is hereby established which shall be an autonomous central national agency responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information as required under this Act in order to counter money laundering and financing of terrorism.

General Powers

20. The SFIU may do all that is necessary or expedient to perform its functions effectively, which includes the power to-

(a) determine its own staff establishment and the terms and conditions for its staff within a policy framework determined by the Board;

(b) appoint employees and seconded personnel to posts on its staff establishment;

(c) obtain the services of any person by agreement, including any government department, functionary or institution, to perform any specific act or function;

(d) acquire or dispose of any right in or to property, but rights in respect of immovable property may be acquired or disposed of only with the consent of the Board; and,

(e) open and operate its own bank account, subject to the Finance Management and Audit Act, 1967.

Appointment of Director

21. (1) The Minister shall, in consultation with the Task Force and on the recommendation of the Board, appoint a Director on such terms and conditions as the Minister may determine.

(2) A person appointed as the Director shall hold office-

(a) for a term not exceeding four years, but which is renewable; and

(b) on terms and conditions set out in a written employment contract as determined by the Minister;

(3) The Director shall exercise all of the powers, duties and functions of the SFIU under this Act;

(4) The Director may, subject to the approval of the Board, authorize any person, subject to any terms and conditions that the Director may specify, to carry out any power, duty or function conferred on the Director under this Act.

Qualification of Director

22. The Director shall be a person of recognised qualification, integrity and experience in financial or legal matters or law enforcement with financial investigative background.

Removal from office

23. (1) The Minister may remove the Director from office only on the grounds of a violation of section 26 or on grounds of misconduct, incapacity or incompetence.

(2) The Minister may suspend the Director from office, pending-

(a) the determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist; or,

(b) an investigation of alleged violation of section 26.

Acting Director

24. (1) When the Director is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Director, the Minister, acting on the advice of the Board, may designate another employee of the SFIU to act as Director.

(2) Notwithstanding the provision in subsection (1), where the Director is absent on leave the Director may appoint a senior officer of the SFIU to act as a Director.

Staff

25. (1) The staff of the SFIU shall consist of-

(a) the Director;

(b) Senior management staff who shall be appointed by the Director, subject to the prior approval of the Board; and,

(c) other employees who may be appointed by the Director.

(2) Staff members referred to in subsection (1) (b) and (c) perform their duties subject to the control and directions of the Director.

Declaration of assets and liabilities and confidentiality

26. (1) The Director, members of the Task Force, members of the Board and every staff member of the SFIU shall-

(a) before they begin to perform any duties under this Act-

(i) declare their assets and liabilities to the Minister and,

(ii) take and subscribe before a Commissioner of Oaths such oath of confidentiality in the form set out in Schedule 2 to this Act; and

(b) maintain during and after their relationship with the SFIU the confidentiality of any matter relating to the relevant enactments.

(2) A person who contravenes this section commits an offence and on conviction, shall be liable to a fine not exceeding five thousand Emalangeni (E5, 000) and to imprisonment for a term not exceeding 2 years.

The Board

27. (1) There is hereby established a Board which shall be the policy making organ of the SFIU and shall oversee the SFIU.

(2) Without limiting the generality of subsection (1) or any other provision of this Act, the Board shall, amongst other things, have the authority to-

(a) give direction to the Director in connection with the management, performance, operational policies and implementation of the policies of the SFIU;

(b) on the recommendation of the Director, approve such organisational structures as the Director may consider necessary for the discharge of the functions of the SFIU;

(c) prescribe such administrative measures as may be required to safeguard all revenue of the SFIU;

(d) approve the budget of the SFIU; and,

(e) approve a code of conduct for the SFIU.

Composition of the Board

28. (1) The Board shall consist of-

(a) a Chairperson, who shall be a person who has-

(i) served as a Judge of the High Court; or,

(ii) served as a law officer or practiced as a lawyer, in Swaziland for at least 10 years;

(b) two members of high repute, of whom one shall be a person with substantial experience in the legal profession and the other, shall be a person with substantial experience in the financial services industry;

(c) a former police intelligence officer; and,

(d) the Director, who shall be an *ex officio* member.

(2) The Chairperson and members of the Board shall be appointed by the Minister.

(3) The appointment of the Chairperson and each member of the Board shall be on such terms as may be specified in the instrument of appointment of the Chairperson and each such member.

(4) Subject to subsection (3), the Board shall determine its own procedure.

Reports to the Board and Parliament

29. (1) The Director shall report to the Board on the exercise of the Director's powers and the performance of his or her duties and functions under this Act and advise the Board on any matter relating to money laundering and financing of terrorism.

(2) The Director shall keep the Board informed of any matter that could materially affect public policy or the strategic direction of the SFIU, and any other matter the Board considers necessary.

(3) The Director shall, within 3 months after the close of each financial year, submit an annual report on the activities of the SFIU for the preceding year to the Board.

(4) The Board shall submit the annual report to the Minister, who shall as soon as possible table a copy of the report before Parliament.

Disclosure of information

30. (1) This section shall apply to a person while that person is or after the person ceases to be a Director, officer, employee or agent of the SFIU.

(2) Except for the purpose of the performance of his or her duties or the exercise of his or her functions under this Act or when lawfully required to do so by any Court, a person referred to in subsection (1) shall not disclose any information or matter which has been obtained by him or her in the performance of his or her duties or the exercise of his or her functions under this Act or which he or she has knowledge except for the purpose of the-

(a) detection, investigation or prosecution of an unlawful activity, a money laundering offence or an offence of financing of terrorism; or

(b) enforcement of this Act.

(3) The Director shall not disclose any information that would directly or indirectly identify an individual who provided a report or information to the SFIU, or a person or an entity about whom a report or information was provided under this Act.

Functions and powers of SFIU

31. The SFIU-

(a) shall receive reports made under sections 12, 13 and 41(7) and information provided to the SFIU by any agency of another country, information provided to the SFIU by a competent authority or a government institution or agency, and any other information voluntarily provided to the SFIU about suspicions of an unlawful activity, a money laundering offence or the offence of financing of terrorism;

(b) shall have the authority to collect any information that the SFIU considers relevant to an unlawful activity, money laundering activities or financing of terrorism and that is publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored in databases maintained by the government;

(c) shall have the authority to request information from accountable institutions, any supervisory agency and any law enforcement agency for purposes of this Act;

(d) shall analyze and assess all reports and information;

(e) shall carry out examinations of accountable institutions as set out in section 35;

(f) shall send any report, any information derived from such report or any other information it receives to the appropriate law enforcement and, supervisory authorities if on the basis of its analysis and assessment, SFIU has determined that there is an element of money laundering or financing of terrorism;

(g) shall have the authority to instruct any accountable institution to take such steps as may be appropriate in relation to any information or report received by the SFIU, to enforce compliance with this Act or to facilitate any investigation anticipated by the SFIU;

(h) shall compile statistics and records and may disseminate information within Swaziland or elsewhere, as well as make recommendations arising out of any information received;

(i) shall issue guidelines to accountable institutions not under the jurisdiction of supervisory authorities in relation to customer identification, record keeping and, reporting obligations and the identification of suspicious transactions;

(j) may obtain further information on parties or transactions referred to in a report made to it under this Act;

(k) may provide training programs for accountable institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions;

(l) may conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorist activities;

(m) may educate the public and create awareness on matters relating to money laundering and financing of terrorism;

(n) may disclose any report, any information derived from such report or any other information it receives to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the SFIU as set out in section 32, if on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that report or information would be relevant to investigating or prosecuting a money laundering offence or a terrorist financing offence;

(o) may enter into any agreements or arrangements with any domestic government institution or agency regarding the exchange of information;

(p) may require police and other investigative or prosecutorial bodies to report progress and outcomes on matters referred to them; and,

(q) may perform such other acts as may be necessary to fulfill the objectives of the SFIU.

Disclosure to foreign institutions and agencies

32. The SFIU may disclose any report or information as set out under section 31 (n) to an institution or agency of a foreign state or of an international organisation or body or other institution or agency established by the governments of foreign states that has powers and duties similar to those of the SFIU-

(a) on such terms and conditions as are set out in the agreement or arrangement between the SFIU and that foreign state or international organisation regarding the exchange of such information; or,

(b) where such an agreement or arrangement has not been entered into between SFIU and that foreign state or international organisation or body, on such terms and conditions as may be agreed upon by SFIU and the institution or agency at the time of disclosure, which terms and conditions shall include the stipulation that the report or information be used for intelligence purposes only and be treated in a confidential manner and not be further disclosed without the express consent of the SFIU.

Audit

33. (1) The accounts of the SFIU shall be audited by the Auditor General.

(2) The Auditor General and every person acting on behalf of or under the direction of the Auditor General shall not use or disclose any information that they have obtained, or to which they have had access, in the course of their audit.

Power to examine

34. (1) The SFIU or Supervisory Authority, with respect to the accountable institutions under their supervision and the SFIU with respect to all other accountable institutions, may during or after business hours, enter any premises to examine the records and inquire into the business and affairs of any accountable institution for the purpose of -

(a) ensuring compliance with Parts 3 and 4;

(b) using or causing to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproducing any record, or causing it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; or,

(d) using or causing to be used any copying equipment in the premises to make copies of any record.

(2) The owner or person responsible for premises referred to in subsection (1) and every person found there shall give the SFIU or a supervisory authority all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to the administration of Parts 3 and 4 or the regulations under this Act.

Powers to Enforce Compliance

35. (1) The enforcement of compliance with and implementation of the provisions of this Act by accountable institutions shall be the responsibility of a supervisory authority with respect to the accountable institutions under their supervision and the SFIU with respect to all other accountable institutions.

(2) All officers and employees of an accountable institution shall take all reasonable steps to ensure the compliance by that accountable institution with its obligations under this Act.
(3) The SFIU or a supervisory authority may direct any accountable institution that has, without reasonable excuse, failed to comply in whole or in part with any obligations in Part 3 or 4 or to implement any action plan to ensure compliance with its obligations under those Parts.

(4) Where an accountable institution fails to comply with a directive issued under subsection (3), the SFIU or the supervisory authority, may, upon application to a Court and satisfying the Court that an accountable institution has failed without reasonable excuse to comply in whole or in part with any obligations under this Act, obtain an interdict against any or all of the officers or employees of that accountable institution in such terms as the Court deems necessary to enforce compliance with such obligation.

(5) In granting an interdict pursuant to subsection (4), the Court may order that should the accountable institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that interdict such accountable institution, officer or employee shall pay a financial penalty in the sum of twenty thousand Emalangeni (E20,000) plus five thousand Emalangeni (E5,000) for each day that the failure to comply continues.

Immunity

36. No action shall lie against the Director, any officer, employee or agent of the SFIU or any person acting under the direction of the Director for anything done in good faith in the administration or discharge of any powers, duties or functions under this Act.

Funds and financial year of SFIU

37. (1) The funds of the SFIU shall consist of-

(a) money appropriated annually by Parliament for the purpose of the SFIU;

(b) any government grants made to the SFIU; and,

(c) any other money legally acquired by the SFIU.

(2) Notwithstanding subsection (1) (c), the SFIU may accept donations only with prior approval of the Minister.

(3) The financial year of the SFIU shall end on March 31 in each year.

The Task Force

38. There is hereby established a Task Force which shall be the policy making organ for anti-money laundering and counter financing of terrorism in Swaziland.

Composition of the Task Force

39. (1) The Task Force shall consist of-

(a) the Principal Secretary in the Ministry of Finance or a duly appointed representative of the Principal Secretary, who shall be Chairperson of the Task Force;

(b) the Commissioner of Police or a representative of the Commissioner of Police;

(c) the Commissioner of General or a representative of the Commissioner of General;

(d) the President of the Swaziland Law Society or a representative of the President of the Law Society;

(e) the Commissioner of the Anti-Corruption Commission or a representative of the Director of the Anti-Corruption Commission;

(f) a representative of the Bankers association;

(g) the Attorney-General or a representative of the Attorney-General;

(h) the Director of Public Prosecutions or a representative of the Director of Public Prosecutions;

(i) the Governor of the Central Bank or a representative of the Governor of the Central Bank;

(j) The Registrar of Insurance and Retirement Funds or a representative of the Registrar of Insurance and Retirement Funds;

(k) The Chairperson of the Board of the SFIU;

(l) three persons who represent accountable institutions, and whose appointments shall not exceed three years; and,

(m) a public officer designated by the Principal Secretary in the Ministry of Finance to perform the functions of Secretary to the Task Force

(2) The Task Force shall determine its own procedure.

(3) Members of the Task Force shall be paid such allowances as are payable to members of statutory boards.

(4) The Minister may, by Notice published in the Gazette, amend the composition of the Task Force.

Functions of the Task Force

40. (1) The Task Force shall-

(a) develop an anti-money laundering and counter financing of terrorism national strategy plan for Swaziland;

(b) facilitate collaboration between the stakeholders in the anti-money laundering and counter financing of terrorism;

(c) act as the point of contact for international agencies in the anti-money laundering and counter financing of terrorism arena, including donor agencies;

(d) advise the Ministry of Finance on legislative and practical initiatives necessary to secure compliance with international and regional standards in anti-money laundering and counter financing of terrorism;

(e) advise the Minister on the appointment of the Director in the manner provided in sections 21 and 22 of this Act;

(f) ensure that Government policy on anti-money laundering and counter financing of terrorism are implemented;

(g) produce quarterly reports on the national strategy plan and the progress; and,

(h) produce an annual report to the Minister on its activities.

(2) The Task Force may delegate any of its functions to a subcommittee consisting of its members

PART 6

CURRENCY REPORTING AT POINT OF ENTRY OR DEPARTURE

Currency Reporting at Point of Entry or departure

41. (1) A person who leaves or arrives in Swaziland with more than fifteen thousand Emalangeni (E15,000) or equivalent in cash or negotiable bearer instruments on his or her person or in his or her luggage shall report the fact to the Customs Office and to the police at the point of entry or departure.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding thirty thousand Emalangeni (E30,000)or imprisonment not exceeding five years.

(3) For the purpose of this section and section 42, the term-

(a) "authorised officer" means a-

(i) police officer; or,

(ii) customs officer.

(b) "negotiable bearer instrument" means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, whether made payable to the bearer or not.

(4) Where a person-

(a) is about to leave Swaziland or has arrived in Swaziland; or,

(b) is about to board or leave, or has boarded or left, any ship or aircraft;

an authorised officer may, with such assistance as is reasonable and necessary, and with use of force as is necessary-

(i) examine any article which a person has with him or her or in his or her luggage; and,

(ii) if the officer has reasonable grounds to suspect that an offence under subsection (1) of this section may have been or is being committed, search the person,

for the purpose of determining whether the person has in his or her possession, any cash or negotiable bearer instruments in respect of which a report under subsection (1) of this section is required.

(4) An authorised officer, and any person assisting such officer, may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsection (3) of this section.

(5) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsection (3), may afford evidence as to the commission of an offence under this section, an unlawful activity, a money laundering offence or an offence of financing of terrorism, the officer may seize the cash or negotiable bearer instruments.

(6) An authorised officer who has seized cash and negotiable bearer instrument under subsection (5) shall report such seizure to the SFIU.

(7) The Customs Office referred to in subsection (1) shall without delay send a copy of the currency report to the SFIU.

Seizure of cash or negotiable instruments

42. An authorised officer may seize and, in accordance with this Part detain, any cash or negotiable bearer instruments which is being imported into, or exported from, Swaziland, in any form or manner if that officer has reasonable grounds for suspecting that it is-

(a) derived from an unlawful activity or a money laundering offence or an offence of financing of terrorism; or,

(b) intended by any person for use in the commission of an unlawful activity or a money laundering offence or an offence of financing of terrorism.

Retention and release of cash or negotiable instruments seized

43. (1) Cash and negotiable bearer instruments seized under section 41 or 42 shall not be detained for more than 72 hours after seizure, unless a Court grants an order of continued

detention for a period not exceeding three months from the date of seizure, upon being satisfied that-

(a) there are reasonable grounds to suspect that it was derived from an unlawful activity, a money laundering offence or an offence of financing of terrorism, or is intended by any person for use in the commission of such an offence; and,

(b) its continued detention is justified while its origin or derivation is further investigated.

(2) The Court may, after hearing, with notice to all parties concerned, subsequently order the continued detention of the cash and negotiable bearer instruments if satisfied of the matters mentioned in subsection (1) but the total period of detention shall not exceed two years from the date of the order.

(3) Subject to subsection (5), cash and negotiable bearer instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to other persons claiming an interest in the cash or negotiable bearer instrument-

(a) by order of a Court that its continued detention is no longer justified, upon application by or on behalf of that person and after considering any views of the Customs Office or the authorized officer to the contrary; or,

(b) by an authorized officer, if satisfied that its continued detention is no longer justified.

(4) Where the cash and negotiable bearer instruments have not been claimed by any person within two years of it being seized or detained, an authorised officer may make an application to the Court that such cash or negotiable instrument be forfeited to the State.

(5) No cash or negotiable bearer instruments detained under this section shall be released where-

(a) an application is made under Part 7 of this Act for the purpose of-

(i) the forfeiture of the whole or any part of the cash or negotiable bearer instruments; or,

(ii) its continued detention pending determination of its liability to forfeiture; or,

(b) proceedings are instituted in Swaziland or elsewhere against any person for an offence with which the currency is connected,

unless and until the proceedings relating to the relevant application or the proceedings for the offence as the case may be have been concluded.

PART 7
RESTRAINT, SEARCH, SEIZURE AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING AND FINANCING OF TERRORISM

Restraint of property

44. (1) Where a police officer investigating an unlawful activity, a money laundering offence or a financing of terrorism offence has reasonable grounds to believe that any money or property relating to an unlawful activity, a money laundering offence or a financing of terrorism offence is held or is under the control of any person, the relevant law enforcement agency may apply to

a Court in accordance with subsection (2) for a restraint order prohibiting the person from disposing or otherwise dealing with that property except in such manner as may be specified in the order.

(2) An application under subsection (1) shall be made *ex parte,* and shall be in writing and be accompanied by an affidavit.

(3) A Court shall make an order under this section if satisfied that there are reasonable grounds for making the order.

(4) A Court may, in granting any order under sub-section (2) and (3), give direction as to the-

(a) effective period of the order;

(b) proper administration of the money or property during the effective period of the order; and,

(c) disposal of that money or property for the purpose of determining any dispute as to the ownership of, or other interest in, the property thereof, payment of debts incurred in good faith to creditors prior to the order, or payment of the costs of the person mentioned in sub-section (2) to defend criminal proceedings against him or her.

(5) The power of administration under subsection 4(b) shall include,in the case of perishable or rapidly depreciating property, the power to sell that property including stocks and bonds.

(6) Before the person restrained under subsections (1), (2) and (3) disposes of any property referred to under this subsection, that person shall apply to a Court for a disposal order.

(7) In making an order under this section in respect of money or property held or under the control of a person, the Court may make provision for the payment out of that money or property of the-

(a) reasonable living expenses of the person in respect of whom the investigation is being made, including that of the dependants of that person; and,

(b) reasonable expenses of that person in defending any criminal charge or any other proceedings under this Act.

(8) Compliance with an order under this section shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, of the person complying with the order.

(9) Any order under sub-section (2) or (3) shall cease to have effect at the end of a period of six months following the hour the order was made if the person against whom such order was made has not been charged with an unlawful activity, a money laundering or financing of terrorism offence within the period.

(10) The Government shall not be liable for any damages or costs arising directly or indirectly from the making of an order under sub-section (2) or (3) unless it can be proved that the application for the order was not made in good faith.

Service of restraining order

45. A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

Registration of restraining order

46. (1) A copy of a restraining order which affects land in Swaziland shall be registered with the Registrar of Deeds.

(2) A restraining order is of no effect with respect to registered land unless it is registered as a charge under the Deeds Registry Act, 1968.

(3) Where particulars of a restraining order are registered under the Deeds Registry Act, 1968, a person who subsequently deals with the property shall, for the purposes of section 45, be deemed to have notice of the order at the time of the dealing.

Contravention of restraining order

47. (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order commits an offence and shall be liable on conviction to-

(a) a fine of twenty-five thousand Emalangeni (E25,000) or imprisonment for a period of 3 years or both, in the case of a natural person; or,

(b) a fine of fifty thousand Emalangeni (E50,000) in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the competent authority may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the competent authority makes an application under subsection (2) in relation to a disposition or dealing, the Court may-

(a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or,

(b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Extension of Restraining Order

48.(1) A competent authority may apply to the Court that made a restraining order for an extension of the period of the operation of the order.

(2) Where the competent authority makes an application under subsection (1), the Court may extend the operation of a restraining order for a specified period, if it is satisfied that a forfeiture order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Seizure of Property subject to restraint order

49. (1) In order to prevent property subject to a restraining order from being disposed of or removed contrary to that order, any police officer may seize any such property if he or she has reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the Court which made the relevant restraining order.

Powers to search for and seize tainted property or terrorist property

50. (1) A police officer may-

(a) search a person for tainted property or terrorist property;

(b) enter upon land or upon or into premises and search the land or premises for tainted property or terrorist property; and,

(c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds, to be tainted property or terrorist property;

provided that the search or seizure is made-

(i) with the consent of the person or the occupier of the land or premises as the case may be;

(ii) under warrant issued under section 52; or,

(iii) under section 53.

(2) Where a police officer is empowered to search a person, he or she may also search-

(a) the clothing that is being worn by the person; and,

(b) any property in, or apparently in, the person's immediate control.

Search warrants in relation to tainted property or terrorist property

51. (1) Where a police officer has reasonable grounds for suspecting that there is, or may be within the next 72 hours, tainted property or terrorist property of a particular kind-

(a) on a person;

(b) in the clothing that is being worn by a person;

(c) otherwise in a person's immediate control; or,

(d) upon land or upon or in any premises,

the police officer may lay before a magistrate information on oath setting out those grounds and apply for the issue of a warrant to search the person, the land or the premises as the case may be, for property of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a person, land or premises, the magistrate may, subject to subsection (4), issue a warrant authorising a police

officer (whether or not named in the warrant) with such assistance and by such force as is necessary and reasonable to-

(a) search the person for property of that kind;

(b) enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and,

(c) seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.

(3) A magistrate shall not issue a warrant under subsection (2) in respect of tainted property or terrorist property unless the magistrate is satisfied that there are reasonable grounds to believe that a forfeiture order may be made under this Act in respect of the property.

(4) A warrant issued under this section shall state-

(a) the purpose for which it is issued including, in respect of tainted property, a reference to the nature of the relevant offence;

(b) a description of the kind of property authorised to be seized;

(c) a time at which the warrant ceases to be in force; and,

(d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a police officer finds-

(a) property that the police officer believes on reasonable grounds to be tainted property or terrorist property of a type not specified in the warrant, or tainted property in relation to an unlawful activity; or,

(b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of an unlawful activity;

the police officer may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Search warrants may be granted by telephone, etc

52. (1) Where by reason of urgency a police officer considers it necessary to do so, that police officer may make application for a search warrant under section 51 by telephone or by other means of communication.

(2) A Magistrate, to whom an application for the issue of a warrant is made by telephone or other means of communication, may sign a warrant if that Magistrate is satisfied that it is necessary to do so, and shall inform the police officer of the terms of the warrant so signed.

(3) The police officer shall complete a form of warrant in the terms furnished by the magistrate.

(4) The police officer to whom a warrant is granted by telephone or other means of communication shall, not later than the next working day following the execution of the warrant,

give the magistrate a duly sworn information and the form of warrant completed by the police officer.

Searches in emergencies

53. (1) Where a police officer suspects on reasonable grounds that-

(a) particular property is tainted property or terrorist property;

(b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of the property; and,

(c) the circumstances are so urgent that they require immediate exercise of the power without the authority of a warrant or the order of a court,

the police officer may-

(i) search a person;

(ii) enter upon land, or upon or into premises and search for the property; and

(iii) if property is found, seize the property.

(2) If, during the course of a search conducted under this section, a police officer finds-

(a) property that the police officer believes on reasonable grounds to be tainted property or terrorist property; or

(b) any thing the police officer believes on reasonable grounds will afford evidence as to the commission of an unlawful activity,

the police officer may seize that property or thing.

Record of property seized

54. A police officer who seizes property under section 49 or section 50 shall detain the property seized, make a written record thereof, and take reasonable care to ensure that the property is preserved.

Return of seized property

55. (1) Where property has been seized under section 51 or section 53 (otherwise than because it may afford evidence of the commission of an offence), a person who claims an interest in the property may apply to the Court for an order that the property be returned to the person.

(2) Where a person makes an application under subsection (1) and the Court is satisfied that-

(a) the person is entitled to possession of the property;

(b) the property is not tainted property or terrorist property; and,

(c) in the case of tainted property, the person in respect of whose conviction, charging or proposed charging the seizure of the property was made has no interest in the property,

the Court shall order the return of the property to the person.

Search for and seizure of property in relation to foreign offences

56. Where a foreign State requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction or property suspected to be terrorist property, the provisions of sections 51, 52 and 53 apply in so far as is applicable, provided that the Minister of Justice and Constitutional Affairs has, under the Criminal Matters (Mutual Assistance) Act, 2001, authorised the giving of assistance to the foreign State.

Forfeiture of property

57. (1) Where a person is convicted of an unlawful activity, an offence of money laundering or financing of terrorism, and the Court is satisfied that the person has derived, obtained or realised, directly or indirectly, property from the commission of any such offence the Court may, unless proved to the contrary, on the application of a competent authority or a person authorised by a competent authority, after the conviction of the person, make an order of forfeiture in respect of that property.

(2) Property subject to forfeiture order under subsection (1) shall include-

(a) the assets laundered or terrorist property, the proceeds, income, and gains from such assets;

(b) the assets intended to be laundered;

(c) assets used to facilitate or commit the unlawful activity; and,

(d) instrumentalities used or intended to be used in the commission of the offence, money laundering or financing of terrorism.

(3) Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of an unlawful activity or instrumentalities used or intended to be used in the commission of the offence, money laundering or financing of terrorism but that the specified property or any part thereof or interest therein cannot, for whatever reason, be made subject to such an order and, in particular-

(a) cannot, on the exercise of due diligence be located;

(b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;

(c) is located outside Swaziland;

(d) has been substantially diminished in value or rendered worthless; or,

(e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part thereof or interest therein to be confiscated, order the person to pay to the State an amount equal to the value of the property,

(4) Where property subject to forfeiture has been commingled with property acquired legitimately or acquired using funds from legitimate sources, the Court shall in the forfeiture order, declare the nature, extent and value of the property which is to be forfeited only in regard of property subject to the unlawful activity or money laundering offence or financing of terrorism offence.

(5) A Court shall not make an order of forfeiture under this section in respect of any property where the Court is satisfied that the person, not being the person who was convicted, who is in possession of the property or purports to be its owner acquired the property-

(a) in good faith and for good cause; and,

(b) without knowing and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of its acquisition, property derived, obtained or realised from the commission of the unlawful activity or money laundering offence or financing of terrorism offence.

(6) A person who under this section claims an interest in any property in respect of which an application for forfeiture has been made may-

(a) before the Court makes an order of forfeiture; or,

(b) when the Court has made an order of forfeiture, within 30 days after the order was made,

apply to the Court against the granting of the order or, where the Court has made an order of forfeiture, for an order declaring the nature, extent and value of the claimant's interest; and-

(i) directing the Government to transfer the property to the claimant; or,

(ii) declaring that there is payable to the claimant by the Government an amount equal in value to the value of the claimant's interest declared under this section.

(7) If a Court is satisfied that a person referred to in subsection (5)-

(a) has an interest in the property which is the subject of the application; and

(b) has exercised reasonable care to ensure that the property is not the proceeds of a crime, or terrorist property, or would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a terrorist group; and,

(c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the order. The order shall declare the nature and extent of the interest in question.

(8) Where-

(a) a Court has made an order of forfeiture under this section; and,

(b) the conviction of the person in relation to whom the order was made is set aside,

the order of forfeiture shall cease to have effect and a person who claims to have an interest in any property in respect of which the order was made may apply to the Court for an order declaring the nature, extent and value of the claimant's interest; and,

(c) directing the Government to transfer the property to the claimant; or,

(d) declaring that there is payable to the claimant by the Government an amount equal in value to the value of the claimant's interest declared under this subsection.

(9) Where-

(a) the Court has made an order of forfeiture under this section; and,

(b) the conviction of the person in relation to whom the order was made is set aside,

the competent authority shall, as soon as is practicable after the quashing of the conviction, give notice to any person the competent authority has reason to believe may have an interest in any money or property in respect of which the order of forfeiture was made immediately before the order was made or to any other person or class of persons whom the Court considers appropriate.

(10) A person who makes an application under subsection (5) or subsection (6) shall give notice to the competent authority and the competent authority shall be a party to a proceeding on the application.

(11) Where an application has been made under subsection (1), the Court may, for the purpose of tracing of the property or preventing the circumventing of an order of forfeiture which the Court may make under this section, make such order or give such direction as the Court thinks necessary and may in particular make-

(a) a prohibition order against any registration under the Deeds Registry Act, 1968, or a restraining order;

(b) a production order; or,

(c) an order that any property be transferred to a named person to be held by the person pending the determination of the application.

(12) For the purpose of an order of forfeiture under this section, it shall be presumed that any money or property which appears-

(a) to have been under the control of the person convicted or held by that person any time after the person committed the offence and before the Court makes an order under subsection (1); or,

(b) to have been transferred to or by, or deposited with or by, the person convicted at any time after that person committed an offence and before the Court makes an order under subsection (1),

is the proceeds of crime or used in or intended to be used in the commission of an unlawful activity, the offence of money laundering or the offence of financing of terrorism.

(13) In determining whether or not any property is derived from an unlawful activity or money laundering or related to financing of terrorism, the Court shall apply the standard of proof required in civil proceedings.

Application of procedure for enforcing fines

58. Where the Court orders a person to pay an amount under section 57(3), that amount shall be treated as if it were a fine imposed upon him or her in respect of a conviction for an unlawful activity or offence, and the Court shall-

(a) notwithstanding anything contained in any other Act, impose in default of the payment of that amount, a term of imprisonment of-

(i) 1 year, where the amount does not exceed twenty thousand Emalangeni (E20, 000);

(ii) 3 years, where the amount exceeds fifty thousand Emalangeni (E50, 000) but does not exceed one hundred thousand Emalangeni (E100, 000);

(iii) 5 years, or more where the amount exceeds one hundred thousand Emalangeni (E100,000) and,

(b) direct that the term of imprisonment imposed pursuant to subsection (a) be served consecutively to any other form of imprisonment imposed on that person, or that the person is then serving;

Effect of forfeiture order

59. (1) Subject to subsection (2), where a Court makes a forfeiture order against any property, the property vests absolutely in the Government by virtue of the order.

(2) Where property ordered to be forfeited is registrable property-

(a) the property does not vest in the Government until the applicable registration requirements have been complied with;

(b) the Government shall be entitled to be registered as owner of the property; and,

(c) the competent authority has power on behalf of the Government to do or authorise the doing of anything necessary or convenient to obtain the registration of the Government as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

(3) Where the Court makes a forfeiture order against property-

(a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the Government before the relevant appeal date; and,

(b) if, after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the competent authority.

Procedure for in rem forfeiture order where person dies or absconds

60. (1) Where-

(a) information has been laid alleging the commission of the offence by a person; and,

(b) a warrant for the arrest of the person has been issued in relation to that information,

the competent authority may apply to the Court for a forfeiture order in respect of any tainted property if the defendant has died or absconded.

(2) For the purposes of subsection (1), a person is deemed to have absconded if reasonable attempts to arrest the person pursuant to the warrant have been unsuccessful during the period

(3) Where the competent authority applies under this section for a forfeiture order against any tainted property the Court shall, before hearing the application-

(a) require notice of the application to be given to any person who, in the opinion of the Court, appears to have an interest in the property; and,

(b) direct that notice of the application to be published in the Gazette and in a newspaper published and circulating in Swaziland containing such particulars and for so long as the Court may require.

Forfeiture where a person dies or absconds

61. Subject to section 60(3), where an application is made to the Court under section 60(1) for a forfeiture order against any tainted property in consequence of a person having died or absconded in connection with an unlawful activity and the Court is satisfied that-

(a) any property is tainted property in respect of the offence;

(b) an information has been laid alleging the commission of the offence by that person and a warrant for the arrest of that person has been issued in relation to that information; and,

(c) the accused charged with the offence referred to in subsection (b) has died or absconded,

the Court may order that the property or such property as is specified by the Court in the order be forfeited.

Voidable Transfers

62. The Court may, before making a forfeiture order, set aside any conveyance or transfer of property that occurred during or after the commission of an unlawful activity or offence, unless the conveyance or transfer was made for good cause to a person acting in good faith and without notice.

PART 8
PECUNIARY PENALTY ORDERS

Pecuniary penalty order on conviction

63.(1) Subject to this section, where the competent authority applies to the Court for a pecuniary penalty order against a person in respect of that person's conviction for an unlawful activity or offence the Court shall, if it is satisfied that the person has benefited from that unlawful activity or offence, order him or her to pay to the Government an amount equal to the value of his or her benefit from the unlawful activity or offence or such lesser amount as the Court certifies in accordance with section 64(3) to be the amount that might be realized at the time the pecuniary penalty order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an unlawful activity or offence in accordance with sections 64, 65, 66 and 67.

(3) The Court shall not make a pecuniary penalty order under this section-

(a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such appeal having been lodged; or,

(b) where an appeal against conviction has been lodged, until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

Rules of determining benefit and assessing value

64. (1) Where a person obtains property as the result of, or in connection with the commission of an unlawful activity or offence, his or her benefit is the value of the property so obtained.

(2) Where a person derives a reward or advantage as a result of or in connection with the commission of an unlawful activity or offence, his or her reward or advantage shall be deemed to be a sum of money equal to the value of the reward or advantage so derived.

(3) The Court, in determining whether a person has benefited from the commission of an unlawful activity or offence or from that offence taken together with other offences shall, unless the contrary is proved, deem-

(a) all property appearing to the Court to be held by that person on the day on which the application is made or at any time-

(i) within the period between the day the unlawful activity or offence, or the earliest unlawful activity or offence was committed and the day on which the application is made; or,

(ii) within the period of 6 years immediately before the day on which the application is made,

whichever is the longer, to be property that came into the possession or under the control of that person by reason of the commission of that unlawful activity or offence or those unlawful activities or offences for which that person was convicted;

(b) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by him or her as a result of, or in connection with, the commission of that unlawful activity or offence or those unlawful activities or offences; and,

(c) any property received or deemed to have been received by the person at any time as a result of, or in connection with the commission by him or her of that unlawful activity or offence or those unlawful activities or offences as property received by him or her free of any interest therein.

(4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by him or her from the commission of the unlawful activity or offence, the Court shall leave out of account any benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the unlawful activity or offence exceeded the value of the person's property before the commission of the unlawful activity or offence, then the Court shall, subject to subsection (6) treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the unlawful activity or offence, subsection (5) does not apply to the excess or, as the case may be, that part.

Statements relating to benefits from commission of unlawful activity or offence

65. (1) Where-

(a) a person has been convicted of an unlawful activity or offence and the competent authority tenders to the Court a statement as to any matters relevant to-

(i) determining whether the person has benefited from the unlawful activity or offence or from any other unlawful activity or offence of which he or she is convicted in the same proceedings or which is taken into account in determining his or her sentence; or,

(ii) an assessment of the value of the person's benefit from the unlawful activity or offence or any other unlawful activity or offence of which he or she is convicted in the same proceedings or which is taken into account; and

(b) the person accepts to any extent an allegation in the statement,

the Court may, for the purposes of so determining or making that assessment, treat his or her acceptance as conclusive of the matters to which it relates.

(2) Where-

(a) a statement is tendered under subsection (1)(a); and,

(b) the Court is satisfied that a copy of that statement has been served on the person;

the Court may require the person to indicate to what extent he or she accepts each allegation in the statement and, so far as the person does not accept any allegation, to indicate any matters he or she proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), that person may be treated for the purposes of this section as having accepted every allegation in the statement other than-

(a) an allegation in respect of which that person complied with the requirement; and,

(b) an allegation that that person has benefited from the unlawful activity or offence or that any property or advantage was obtained by him or her as a result of or in connection with the commission of the unlawful activity or offence.

(4) Where-

(a) the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realized at the time the pecuniary penalty order is made; and,

(b) the competent authority accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the competent authority as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section, either-

(a) orally before the Court; or,

(b) in writing, in accordance with Rules of court.

(6) An acceptance by a person under this section that he or she received any benefits from the commission of an unlawful activity or offence is admissible in any proceedings for any offence.

Amount recovered under pecuniary penalty order

66. (1) Subject to subsection (2), the amount to be recovered under a pecuniary penalty order shall be the amount which the Court assesses to be the value of a person's benefit from the unlawful activity or offence, or if more than one, all the unlawful activities or offences in respect of which the order may be made.

(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realized at the time the pecuniary penalty order is made (whether by acceptance under section 65 or otherwise), the Court may issue a certificate giving the opinion of the Court as to the matters concerned, and shall do so if satisfied that the amount that might be realized at the time the pecuniary penalty order is made is less than the amount that the Court assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

Variation of Pecuniary Penalty Order

67. Where-

(a) the Court makes a pecuniary penalty order against a person in relation to an unlawful activity or offence,

(b) in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture order of the property or a proposed forfeiture order in respect of property; and,

(c) an appeal against forfeiture or a forfeiture order is allowed, or the proceedings from the proposed forfeiture order terminate without the proposed forfeiture order being made,

the relevant competent authority may apply to the Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so forfeited and the Court may, if it considers it appropriate to do so, vary the order accordingly.

Lifting the corporate veil

68. (1) In assessing the value of benefits derived by a person from the commission of an unlawful activity, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person, whether or not he or she has-

(a) any legal interest in the property; or,

(b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the Court may have regard to-

(a) shareholdings in, debentures over or directorships in any company that has an interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;

(b) any trust that has any relationship to the property; or,

(c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in subsection (a) or trust of the kind referred to in subsection (b), and any other persons.

(3) Where the Court, for the purposes of making a pecuniary penalty order against a person, treats particular property as the person's property pursuant to subsection (1), the Court may, on application by the competent authority make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a pecuniary penalty order-

(a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and,

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the competent authority makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person-

(a) the competent authority shall give written notice of the application to the person and to any person who the competent authority has reason to believe may have an interest in the property; and,

(b) the person and any person who claims an interest in the property may appear and produce evidence at the hearing.

Enforcement of Pecuniary Penalty Orders

69. Where the Court orders a person to pay an amount under a pecuniary penalty order, the provisions of section 47 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by that person with a pecuniary penalty order.

Discharge of pecuniary penalty orders

70. A pecuniary penalty order is discharged-

(a) if the conviction of the unlawful activity or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the unlawful activity or offences is substituted;

(b) if the order is set aside; or,

(c) on the satisfaction of the order by payment of the amount due under the order.

PART 9
OTHER MATTERS

Property tracking and monitoring

71. (1) Where a police officer has reasonable grounds for suspecting that a person has committed or is about to commit an unlawful activity or offence of money laundering or a financing of terrorism offence and that person or any other person has possession or control of -

(a) a document relevant to identifying, locating or quantifying money or other property of the person who has committed or is about to commit the offence; or,

(b) a document relevant to identifying or locating a document necessary for the transfer of money or property of the person who has committed or is about to commit the offence,

the police officer may apply to a Court in accordance with subsection (2) for an order requiring that person or that other person to-

(i) produce to the police officer the document; or,

(ii) make available to the police officer for inspection the document.

(2) An application under subsection (1) shall be made *ex parte* and shall be in writing and be accompanied by an affidavit.

(3) A Court shall make an order under this section where the Court is satisfied on the statements of facts in the affidavit that there are reasonable grounds for making the order.

(4) An order made under this section shall specify the time when and the place where the document is to be produced or made available.

(5) Where a document is produced to a police officer pursuant to an order under subsection (3), the police officer may-

(a) inspect the document;

(b) take extracts from the document;

(c) make copies of the document; or,

(d) retain the document if, and for so long as, retention of the document is reasonably necessary for the purposes of this Act.

(6) Where a police officer retains a document under subsection (5)(d), the police officer shall give the person who produced the document a copy of the document certified by the police officer to be a true copy of the document.

(7) A person shall not be excused from producing or making available a document when required to do so by an order under subsection (3) on the ground that-

(a) the production or making available the document might tend to incriminate the person; or,

(b) the production or making available the document would be in breach of an obligation, whether imposed by written law or otherwise, of the person not to disclose the existence or contents of the document.

(8) The production or making available a document in compliance with an order under subsection (3) shall not be treated as a breach of any restriction or obligation, imposed by any written law or otherwise, on the person producing or making available the document.

Overriding of confidentiality

72. An accountable institution shall comply with the requirement of this Act notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by any written law or otherwise.

Account in fictitious, false or incorrect name

73. (1) Where a person is commonly known by two or more different names, the person shall not use one of those names in opening an account with an accountable institution unless the person has previously disclosed the other name or names to the accountable institution.

(2) Where a person using a particular name in his or her dealings with an accountable institution discloses to it a different name or names by which he or she is commonly known, the accountable institution shall make a record of the disclosure and shall, at the request of the SFIU, give the SFIU, a copy of that record.

(3) For purposes of this section-

(a) a person opens an account in a false name if the person, in opening the account, or becoming a signatory to the account, uses a name other than a name by which the person is commonly known;

(b) a person operates an account in a false name if the person does any act or thing in relation to the account (whether by way of making a deposit or withdrawal or by way of communication with the accountable institution concerned or otherwise) and, in doing so, uses a name other than a name by which the person is commonly known; and,

(c) an account is in a false name if it was opened in a false name, whether before or after the commencement date of this Act.

Liability of employers and principals

74. Any act done or omitted by a person as an employee or agent shall, for the purposes of this Act, be treated as done or omitted by that person's employer or principal, if it was done with the knowledge or approval of the employer or principal or without such knowledge or approval if it was the result of lack of supervision, provided, in the case of an agent, that he or she acted within the terms of his or her agency or contract.

Liability of directors, controllers or officers of bodies corporate

75. Where any body corporate is convicted of an offence under this Act every director, controller or officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission, or consent.

PART 10
OFFENCES AND PENALTIES

Offence of money laundering

76. Any person who engages in any act in contravention of Section 4, commits an offence.

Offence of financing of terrorism

77. Any person who engages in any act in contravention of Section 5, commits an offence.

Failure to establish and verify identity of persons and transactions

78. An accountable institution that performs any act to give effect to a business relationship or transaction in contravention of Section 6(1) or (2) or (3) or (4), commits an offence.

Failure to maintain records

79. An accountable institution that fails to-

(a) keep record of information in terms of Section 8(1);

(b) keep such records in accordance with Section 8(2); or,

(c) comply with the provisions of Section 8(3),

commits an offence.

Failure to maintain account in true name

80. An accountable institution that fails to comply with the provisions of Section 9(1) or (2), commits an offence.

Failure to report suspicious transactions

81. (1) An accountable institution that fails, within the prescribed period, to report to the SFIU the prescribed information in respect of a suspicious transaction in accordance with Section 12(1) or (3), commits an offence.

(2) An accountable institution that fails to comply with a direction by the SFIU in terms of Section 12(4), commits an offence.

Providing false or misleading statements

82. A person who in making a report under section 12 or 13 makes any statement that the person knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular, commits an offence.

Unauthorised disclosure of suspicious transaction reports and other information

83. (1) Any person referred to in Section 14 who discloses a fact or information contemplated in that section, otherwise than in the circumstances or for the purposes authorised in that section, commits an offence.

(2) Any person referred to in Section 14, who with intent to prejudice an investigation of an unlawful activity, a money laundering offence or an offence of financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person, commits an offence.

Failure to formulate and implement internal rules

84. An accountable institution that fails to formulate and implement internal rules in accordance with Section 18(1) (b), commits an offence.

Failure to appoint compliance officer or provide training

85. An accountable institution that fails to-

(a) appoint the person referred to in Section 18(1)(a); or,

(b) provide training to its employees in accordance with Section 18(1)(c),

commits an offence.

Obstructing of official in performance of functions

86. Any person who willfully obstructs, hinders or threatens an official or representative of the SFIU in the performance of their duties in exercise of their powers in terms of this Act, commits an offence.

Failure to comply with monitoring and restraint order

87. An accountable institution that fails to comply with an order by a court in accordance with Section 44 or 71, commits an offence.

Opening account in fictitious, false or incorrect name

88. A person who opens, operates or authorizes the opening or the operation of an account with an accountable institution in a fictitious, false or incorrect name commits an offence.

Penalties

89. (1) Notwithstanding anything contained in any other law, a person convicted of an offence mentioned in Section 76 or 77 is liable on conviction-

(a) in the case of an individual, to imprisonment for 10 years or to a fine of not less than one hundred thousand Emalangeni (E100,000) or both; and,

(b) in the case of a body corporate to a fine of not less than two hundred and fifty thousand Emalangeni (E250,000) or loss of authority to do business or both.

(2) A person convicted of an offence mentioned in Section 78, 79, 80, 81, 84, 85 or 88 shall be liable on conviction-

(a) in the case of an individual, to imprisonment for 1 year or to a fine of not less than thirty thousand Emalangeni (E30,000); and,

(b) in the case of a body corporate to a fine of not less than one hundred thoupsand Emalangeni (E100,000).

(3) A person convicted of an offence mentioned in Section 82, 83, 86 or 87 shall be liable on conviction-

(a) in the case of an individual, to imprisonment for 5 years or to a fine of not less than fifty thousand Emalangeni (E50,000); and,

(b) in the case of a body corporate to a fine of not less than one hundred thousand Emalangeni (E100,000).

PART 11
GENERAL PROVISIONS

Money laundering and financing of terrorism offences for extradition purposes

90. For the purpose of any law relating to extradition of fugitive offenders, money laundering and financing of terrorism shall be offences for which extradition or rendition may be granted.

Mutual assistance

91. (1) Where for the investigation or prosecution of an unlawful activity or money laundering offence or financing of terrorism offence or for the making or execution of any orders or directions made under this Act in respect of these offences, any assistance is required from a designated country, the Minister of Justice and Constitutional Affairs, may in accordance with section 5 of the Criminal Matters (Mutual Assistance) Act, 2001, request mutual assistance from that designated country as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

(2) Where a request is made by a designated country in the investigation or prosecution of a money laundering offence in that country or for the making or execution of any order or direction made in that country in respect of such an offence, the Minister of Justice and Constitutional Affairs may, in accordance with section 17 of the Criminal Matters (Mutual Assistance) Act, 2001, provide such assistance as if such investigation, prosecution, making or execution is a criminal matter within the meaning of that Act.

(3) In this section "designated country" has the same meaning as in the Criminal Matters (Mutual Assistance) Act, 2001.

Regulations

92. The Minister may make regulations consistent with this Act-

(a) for or with respect to any matter that by this Act is required or permitted to be prescribed; or,

(b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Savings

93. Notwithstanding the provisions of section 94, the SFIU may deal with a suspicious business transaction report made to the Supervisory Authority in terms of the Money Laundering (Prevention) Act, 2001, as if it had been made under this Act.

Repeal

94. The Money Laundering (Prevention) Act, 2001, is hereby repealed.

SCHEDULE 1
OFFENCES

Blackmail;

Common law offences;

Corruption and bribery;

Counterfeiting currency;

Counterfeiting and piracy of products;

Environmental crime;

Extortion;

False accounting;

Forgery;

Fraud;

Illegal deposit taking;

Illicit arms trafficking;

Illicit trafficking in narcotic drugs and psychotropic substances;

Illicit trafficking in stolen and other goods;

Insider trading and market manipulation;

Kidnapping, illegal restraint and hostage taking;

Murder, grievous bodily harm;

Participation in an organized criminal group and racketeering;

Piracy;

Robbery or theft involving more than E10,000;

Sexual exploitation, including sexual exploitation of children;

Smuggling;

Tax Evasion;

Terrorism, including terrorist financing; and

Trafficking in human beings and migrant smuggling.

SCHEDULE 2

OATH OF CONFIDENTIALITY
(Under Section 26)

I, (here set out the full name), do hereby swear or solemnly affirm, that I in the office of (here set out the capacity) of the Swaziland Financial Intelligence Unit (SFIU) that I shall not disclose to any person any information relating to the affairs of the SFIU or of any accountable institution or other person which I have acquired in the performance of my duties or the exercise of my functions.

I also declare that my attention has been drawn to all the provisions of section 26 of the Money Laundering and Financing of Terrorism (Prevention) Act, 2011.

Thus subscribed by me this day 20

....
(DEPONENT'S SIGNATURE)

Before me:

....
COMMISSIONER OF OATHS

THE PROCUREMENT ACT, 2011

(Act No. 7 of 2011)

I ASSENT

MSWATI III

King of Swaziland

23rd August, 2011

AN ACT
ENTITLED

AN ACT to provide for the regulation and control of practices in respect of public procurement.

ENACTED by the King and the Parliament of Swaziland.

ARRANGEMENT OF SECTIONS

PART 3.
TENDER BOARDS AND PROCUREMENT AUTHORISATIONS

PART 4
TECHNICAL SECRETARIAT AND RESPONSIBILITIES FOR PROCUREMENT

PART 5
PROCUREMENT PRINCIPLES, METHODS AND RULES

PART 6
ADMINISTRATIVE REVIEW AND SUSPENSION OF TENDERERS AND SUPPLIERS

PART 7
CODES OF CONDUCT, OFFENCES AND PENALTIES

PART 8
MISCELLANEOUS

PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Public Procurement Act, 2011, and shall come into force on such date as the Minister may, by Notice published in the Gazette, determine.

(2) The Minister may designate different dates for the coming into force of different parts or provisions of this Act.

Interpretation

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

"Agency" means the Swaziland Public Procurement Regulatory Agency established by section 9;

"approvals authority" means the body or individual with authority to grant prior authorisation of certain key steps in the procurement process in accordance with section 24 and the levels of authority specified in public procurement regulations;

"Board" means the Board of Directors of the Agency established by section 13;

"category A public enterprise" has the meaning ascribed to it in the Public Enterprises (Control and Monitoring) Act, 1989;

"Cabinet" means the Cabinet of Ministers established in terms of section 66 of the Constitution of Swaziland Act, 2005;

"Chief Executive Officer" means the Chief Executive Officer of a public enterprise;

" citizen service provider" means a natural person or incorporated company wholly owned by and controlled by persons who are citizens of Swaziland by descent in terms of section 41 of "close relative" means a parent, a spouse, a child, a sibling, or a parent, child or sibling of a spouse;

"coercive practice" means harming or threatening to harm, directly or indirectly, a person, or the property of that person, so as to influence participation or a decision in a procurement process or affect the execution of a contract;

"collusive practice" means a scheme or arrangement between two or more tenderers, with or without the knowledge of the procuring entity, designed to establish tender prices at an artificial, or non-competitive level;

"conflict of interest" means circumstances in which the personal interest of an officer, or of a close relative or close associate of an officer, might benefit, directly or indirectly, from their official actions;

"consulting services" means services of an intellectual or advisory nature, including the delivery of reports, drawings or designs and includes architectural or engineering design or supervision, accountancy, auditing, financial services, procurement services, training and capacity building services, management advice, policy studies and advice, assistance with institutional reforms and software development;

"contract" means an agreement between a procuring entity and a supplier for the provision of goods, works or services;

"controlling officer" means an officer designated by the Minister in terms of the financial and accounting instructions as the officer responsible for the control of each head of expenditure and each item of revenue in the estimates of revenue and expenditure laid before Parliament;

"corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of a public officer or politician in the procurement process or in contract execution;

"Executive Director" means the Executive Director of the Agency appointed in accordance with section 18;

"fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;

"goods" means objects of every kind and description, including raw materials, products and equipment, objects in solid, liquid or gaseous form, and electricity, and includes works and services incidental to the supply of the goods if the value of those incidental works and services does not exceed that of the goods themselves;

"Government Tender Board" means the Swaziland Government Tender Board established under section 25;

"invitation document" means a tender document, request for proposals, request for quotations or any other document inviting tenderers to submit a tender;

"lead procuring entity" means the procuring entity designated with responsibility for procuring a certain category of items or common use items on behalf of all or a group of requesting entities in accordance with section 31;

"Minister" means the minister responsible for Finance;

"non-consulting services" means services other than consulting services, for the carrying out of work or any kind, with or without the use of vehicles, machinery or equipment or the provision of operators, technicians or drivers;

"politician" means any person who holds a position of-

1. Senator
2. Member of Parliament
3. Member of Bucopho
4. Regional Administrator
5. King's (Advisory) Councillor
6. Chief and Chief's Councillor
7. Municipal Councillor
8. Indvuna YeNkhundla

"procurement" means the acquisition, by purchase, rental, lease, hire purchase, license, franchise or any other contractual means, of any type of goods, works, services or assets or any combination of goods, works, services or assets;

"public procurement" means procurement using public funds, whether wholly or partially, in accordance with this Act;

"public procurement regulations means regulations issued in terms of section 65;

"procuring entity" means any entity designated to conduct public procurement activities, in accordance with section 31, whether on behalf of itself or another requesting entity, and may include the Technical Secretariat and any Ministry, Department, Agency, category A public enterprise or Local Government Authority;

"public funds" means monetary resources appropriated to requesting entities through budgetary processes, including the Consolidated Fund, grants and credits put at the disposal of requesting entities by foreign donors, and revenues generated by requesting entities;

"public officer" means any officer employed in the public service including in procuring entities, requesting entities, the Agency and Tender Boards;

"requesting entity" means any Ministry, Department, Agency, category A public enterprise, Local Government Authority or other body initiating a procurement requirement;

"services" means any object of procurement other than goods or works, which involve the furnishing of labour, time or effort;

"statement of requirements" means the description of the technical and quality characteristics of the goods, works or services being procured;

"supplier" means a natural person or an incorporated body that is party to a contract with a procuring entity for the provision of goods, works or services and includes a contractor, consultant or service provider;

"Swazi company" means a company which is registered in Swaziland and of which at least 60% of the controlling shares are owned by Swaziland citizens;

"tender" means an offer to provide goods, works or services submitted by a tenderer in response to an invitation from a procuring entity and includes tenders, proposals, quotations and, where applicable, applications to pre-qualify;

"Tender Board" means the appropriate Entity Tender Board established in accordance with section 27, and includes, the Swaziland Government Tender Board established under section 25;

"tenderer" means an entity that offers to provide goods, works or services in response to an invitation from a procuring entity and includes, where applicable potential tenderers and applicants to pre-qualify;

"undue influence" includes any form of pressure brought to bear by any official, elected or appointed, who is in a position to either provide a benefit to, or exact punishment against, any person involved in procurement activities or decisions;

"works" means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, road, structure or activities, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the contract, if the value of those services does not exceed that of the works themselves.

Purpose and Objectives

3. (1) The purpose of this Act shall be to establish public procurement institutions and to regulate the procurement of goods, works and services by procuring entities.

(2) The objectives of this Act shall be to establish a system and practices that serve to-

(a) ensure transparency and accountability in public procurement while maintaining appropriate confidentiality of information;

(b) achieve economy, efficiency and maximum competition to ensure value for money in the use of public funds;

(c) promote more diverse private sector participation, through fair and non-discriminatory treatment of tenderers;

(d) develop economic capacity in Swaziland, through the provision of opportunities for Swazi companies to participate in public procurement; and,

(e) promote regional and international trade in accordance with agreements entered into by the Government of Swaziland.

Application

4. (1) This Act shall apply to all public procurement conducted by or for requesting or procuring entities, except as provided in sub-section 4(2) and section 5.

(2) Where procurement is related to defence or national security, the application of the rules and procedures set out in this Act may be modified, but only to the extent necessary for [illegible] and in accordance with procedures agreed with the Agency.

International Obligations

5. (1) Where this Act conflicts with an obligation of the Government of Swaziland arising out of an agreement with one or more States or with an international organisation, the provisions of the agreement shall, to the extent that this Act conflicts with that obligation, prevail over this Act; but in all other respects, the procurement shall be governed by this Act.

(2) Government entities shall seek the opinion of the Agency before entering into any agreement which requires the application of procurement procedures or arrangements other than those in this Act.

Deviations

6. (1) A deviation from the use of a public procurement method, rule, process or document may be permitted by the Agency -

(a) where exceptional requirements make it impossible, impractical or uneconomical to comply with the Act;

(b) where market conditions or behaviour do not allow effective application of the methods, rules, processes or documents;

(c) for specialised or particular requirements that are regulated or governed by harmonised international standards or practices; or,

(d) where national security may be compromised.

(2) The procedure for applying for and issuing deviations shall be as specified in Regulations.

Public Accessibility

7. The text of this Act, public procurement regulations and all administrative rulings and directives of general application in connection with procurement covered by this Act, and all amendments thereof, shall be promptly made accessible to the public and systematically maintained by the Agency.

Introduction of Information and Communication Technology

8. (1) The Agency shall examine and recommend ways of introducing in public procurement, at appropriate stages, the use of information and communications technology, and other technical innovations, where such technology promotes the objectives of this Act.

(2) The Agency may issue circulars and instructions on measures and programmes to introduce the use of information and communications technology in public procurement in accordance with section 66.

(3) The Agency shall identify any required additions or amendments to the legal and regulatory framework for public procurement to support the application of information and communications technology and shall promote their introduction.

PART II
SWAZILAND PUBLIC PROCUREMENT REGULATORY AGENCY

Establishment of Swaziland Public Procurement Regulatory Agency

9. (1) There is hereby established the Swaziland Public Procurement Regulatory Agency.

(2) The Agency shall serve as an independent regulatory body, with responsibility for policy, regulation, oversight, professional development and information management and dissemination in the field of public procurement.

(3) The Agency shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may, by law, do or perform.

Functions of the Agency

10. Without prejudice to the generality of section 9 (2), the functions of the Agency are -

(a) policy formulation, in pursuance of which the Agency shall -

(i) advise the Government and procuring entities on procurement policy and all other matters relating to public procurement; and,

(ii) report on the performance and functioning of the public procurement system and recommend changes;

(b) regulation, in pursuance of which the Agency shall –

(i) formulate regulations governing the procurement of goods, works and services for the Government and recommend these to the Minister;

(ii) issue public procurement manuals, circulars and instructions to provide further guidance on the interpretation and application of this Act and public procurement regulations issued under this Act;

(iii) issue standard tender documents and other standard procurement documents whose use shall be mandatory in all procurement proceedings by procuring entities, unless otherwise specified by the Agency;

(iv) promote measures to facilitate participation by Swazi companies in public procurement; and,

(v) consider applications for deviations to public procurement processes, methods and rules in accordance with section 6;

(c) oversight of public procurement, in pursuance of which the Agency shall -

(i) monitor compliance with this Act and procurement performance by procuring entities;

(ii) conduct audits of any procurement activities governed by this law;

(iii) investigate the conduct of any procurement activities that are suspected to involve violations of this law or public procurement regulations;

(iv) refer breaches of this Act to the relevant budgetary, oversight and law enforcement bodies or initiate prosecution action by the Agency where appropriate;

(v) constitute and provide secretariat services to Independent Review Committees, where required for the purposes of administrative review; and,

(vi) maintain a list of tenderers and suppliers who are suspended from participation in public procurement;

(d) capacity building in, and professionalisation of the public procurement system, in pursuance of which the Agency shall –

(i) coordinate and promote capacity-building and professional development in the public procurement system; and,

(ii) work with the appropriate human resources authorities to set standards and professional qualifications requirements for staff involved in procurement activities; and,

(e) data and information management, in pursuance of which the Agency shall organise and maintain systems for the management and public dissemination of procurement data, statistics and information.

Powers of the Agency

11. (1) The Agency shall have the competence, authority, power and responsibility to enforce this Act and public procurement regulations issued under this Act.

(2) In the exercise of its functions, the Agency shall have the power to-

(a) collect any data or reports from procuring entities, as determined by the Agency;

(b) have access to all information, documents, records and reports belonging to a procuring entity in respect of any public procurement process;

(c) have access, at all reasonable times to the premises of any procuring entity whose procurement is being monitored;

(d) issue an order to any person to provide testimony regarding any matter that the Agency considers, in the exercise of reasonable discretion, relevant to the conduct of its functions;

(e) call for any relevant information from persons responsible for the financial administration of any procuring entity whose procurement is being monitored;

(f) constitute Independent Review Committees in accordance with section 50;

(g) suspend bidders and suppliers from participation in public procurement in accordance with section 55;

(h) subject to section 162 (5) of the Constitution, prosecute breaches of this Act or make recommendations for further action to other budgetary, oversight and law enforcement bodies; and,

(i) authorise deviations in accordance with section 6.

Cooperation with oversight authorities

12. The Agency shall cooperate with other bodies responsible for exercising oversight functions over public procurement in Swaziland and for that purpose may establish mechanisms for sharing information and work jointly with such bodies.

Establishment and Composition of Board of Directors of the Agency

13. (1) There is hereby established a Board of Directors of the Agency, which shall be the governing body of the Agency.

(2) The Board shall be composed of a non-executive Chairperson and four non-executive members, amongst whom at least two shall be from the private sector, civil society or professional bodies, who shall be appointed by the Minister, in consultation with the Cabinet, from among persons of good standing and recognised for their high levels of professional competence and integrity.

(3) The Chairperson and the members shall be appointed from a range of professional backgrounds, which may include, but not be limited to procurement, law, management, accountancy, auditing, engineering, professional development and commerce.

(4) In appointing the Chairperson and the members, the Minister shall seek to create a Board with multi-sectoral skills and experience, which is representative of all key stakeholders in the public procurement system and reflects the range of functions of the Authority.

(5) The Board may co-opt advisers to provide specific advice to assist it in the discharge of its functions. Advisers shall not vote on any submission and shall only attend the part of the meeting on which their advice is required.

(6) The tenure of the Board members shall be three years and they may be appointed for no more than two consecutive terms.

(7) Notwithstanding the provisions of subsection (5), when appointing members of the Board for the first time, on commencement of this Act, the Minister shall appoint three members for a tenure of two years, in order to ensure both continuity and rotation in the membership of the Board.

(8) Upon the expiry of the period for which a member is appointed, they shall continue to hold office until a successor has been appointed, but in no case shall such further period exceed three months.

(9) A member shall be paid such remuneration or allowance as the Minister may from time to time determine.

(10) Members shall have no direct or indirect personal involvement in public procurement functions during the period of their service on the Board.

Termination of Office of Board Members

14. (1) The Minister may, at any time, terminate the appointment of a member of the Board for-

(a) abuse of office;

(b) corruption;

(c) incompetence;

(d) any physical or mental incapacity that renders a person incapable of performing the duties of that office;

(e) failure to attend three consecutive scheduled Board meetings without reasonable grounds;

(f) conviction of an offence involving moral turpitude;

(g) being adjudged or declared bankrupt; or,

(h) any other reasonable ground.

(2) Any member of the Board may resign from the Board by giving not less than one month's prior notice in writing.

Meetings of the Board

15. (1) The Board shall meet as often as is necessary for the proper discharge of its functions but in any event, not less than once every three months. The Chairperson, in consultation with the Secretary, shall determine the times and places for meetings and call meetings.

(2) In the absence of the Chairperson the members present shall elect, from among their number, an acting Chairperson.

(3) Subject to this Act, the Board shall regulate its procedure in the conduct of its business.

(4) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(5) The quorum of the Board shall be three of the members holding office at that time, except that when a member has declared an interest in an agenda item, or in a matter before the Board, the member in question shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.

(6) The decision of the Board shall be by a majority of votes of all members present, and where there is an equality of votes, the Chairperson shall have a casting vote in addition to a deliberative vote.

(7) Notwithstanding the provisions of subsection (6), a decision may be made by the Board on any urgent matter by the circulation of the relevant papers among the members, and by the expression in writing of the views of the majority thereof: provided that any member shall be entitled to require that any decision shall be deferred until the matter is considered at a meeting of the Board.

(8) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board, but such person shall have no vote.

(9) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

Committees of the Board

16. (1) The Board may, for the purpose of carrying out the functions of the Agency under this Act, establish committees and delegate to any such committee such of the Authority's functions as it may think fit.

(2) The Board may appoint as members of a committee established under subsection 16, persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board, any committee established under subsection (1) may regulate its own procedure.

Disclosure of Interest

17. (1) Where a member, or a close relative or close associate of a member, has, or intends to acquire, a direct or indirect personal interest in any agenda item or specific matter requiring the Board's consideration and decision, the member shall-

(a) disclose such interest, as soon as possible after receiving the agenda of the meeting of the Board, or on notification of a matter being brought to the attention of the Board; and,

(b) not be present at or participate in the deliberations or decision-making process of the Board in relation to the agenda item or the matter in question.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made or to which it relates.

Appointment and Functions of Executive Director

18. (1) There shall be an Executive Director, who-

(a) shall be the chief executive officer of the Agency;

(b) be responsible to the Board for the management and operations of the Agency; and,

(c) serve as Secretary of the Board.

(2) The Executive Director shall be an officer in the public service.

(3) The Executive Director shall-

(a) be of high moral character and proven integrity;

(b) have acceptable academic qualification and experience in procurement, law, commerce, audit, investigation, human resources development or any other related profession relevant to the functions of the Agency; and,

(c) possess considerable experience and demonstrated professional competence in the field of procurement and in the development and implementation of policy and strategy.

(4) The Executive Director shall attend all meetings of the Board and shall be entitled to address such meetings, but shall not vote on any matter under discussion. The Board may, for good cause, request the Executive Director to withdraw from any meeting of the Board, but such withdrawal shall be noted in the minutes of the meeting.

Staff of the Agency

19. (1) The Agency shall be staffed by such other staff, in addition to the Executive Director, as are necessary for the efficient and professional performance of the Agency's functions under this Act, including prosecutors to enable the Agency to fulfil its functions and powers in accordance with sections 10(c)(iv) and 11(2)(h).

(2) Public officers may be seconded on such terms and conditions as may be decided in line with government secondment policy.

Funds of the Agency

20. The funds of the Authority shall consist of-

(a) money appropriated by Parliament for the purposes of the Agency;

(b) loans or grants received by the Agency for its activities;

(c) revenues collected from services that are rendered by the Agency; and,

(d) any such other money received or made available to the Agency for the purposes of its functions.

Accounts and Audit

21. (1) The Agency shall keep proper books of account and other records relating thereto and shall prepare in respect of each financial year a statement of account and balance sheet showing, in all necessary detail, the income and expenditure and the assets and liabilities of the Agency.

(2) The accounts of the Agency shall be audited annually by auditors appointed by the Board and a detailed report shall be submitted to the Minister and to the Board.

(3) The Auditor General shall review such audit reports and shall have access at all reasonable times to all books of accounts, records, returns, reports and other documents relating to the Agency's accounts.

Annual Management Plan and Budget

22. (1) The Executive Director shall, not later than three months before the end of each financial year, prepare and submit to the Board for its approval, a Management Plan, including a budget, setting out its objectives and planned activities for the next year.

(2) The Executive Director may, at any time, prepare and submit to the Board for approval any estimates supplementary to the budget of the current financial year.

(3) Expenditure shall not be made out of the funds of the Agency, unless that expenditure is part of the budget or supplementary estimates approved by the Board.

Annual Report

23. (1) The Board shall, as soon as practicable, but not later than four months after the expiry of each financial year, submit to the Minister a report concerning the Agency's activities during that financial year.

(2) The report shall be in such form as the Minister shall approve and shall include-

(a) an evaluation of the Agency's activities during that year, including performance against its plans and budget;

(b) the Agency's audited financial statements;

(c) information on the performance and functioning of the public procurement system; and,

(d) such other information as the Minister may direct or as the Board may consider appropriate.

(3) The Minister shall cause the report to be laid before Parliament within thirty days after receipt of the report, or within fourteen days of the next sitting of Parliament, whichever comes first.

PART III
TENDER BOARDS AND PROCUREMENT AUTHORISATIONS

Approvals Authorities and Procurement Authorisations

24. (1) The function of the approvals authority shall be to ensure that procurement is conducted in accordance with this Act and public procurement regulations by providing prior authorisation of specified stages of the procurement process in accordance with subsection 24(2) and public procurement regulations.

(2) Public procurement regulations shall define the stages of the procurement process which require the prior authorisation of the relevant approvals authority.

(3) The approvals authority shall be the-

(a) controlling officer or Chief Executive Officer, where the value of the procurement does not exceed the level of authority specified in public procurement regulations;

(b) appropriate Entity Tender Board, where so established in accordance with section 27 and where the value of the procurement does not exceed the level of authority granted in accordance with section 27(3); or,

(c) Government Tender Board established under section 25, or any appropriate sub committee established in accordance with section 27(3), where the value of the procurement exceeds the levels of authority of all lower approvals authorities.

Establishment and Composition of Swaziland Government Tender Board

25. (1) There is hereby established the Swaziland Government Tender Board, which shall be the highest approvals authority for the Government of Swaziland.

(2) The Government Tender Board shall have an unlimited level of authority, but shall have no authority over any procurement which falls within the level of authority of any subsidiary Tender Board or officer.

(3) The Government Tender Board shall be composed of-

(a) a Chairperson who shall be a person with a minimum degree qualification and of high repute;

(b) the Principal Secretary, Ministry of Economic Planning and Development or a representative;

(c) the Principal Secretary, Ministry of Public Works and Transport or a representative;

(d) the Principal Secretary, Ministry of Commerce, Industry and Trade or a representative;

(e) the Principal Secretary Ministry of Finance or a representative

(f) a representative of the Attorney General's Office;

(g) two representatives form the private Sector; and,

(h) the Head of the Technical Secretariat, who shall be Secretary, but shall not have a vote.

(4) The two members referred to in subsection 25(3)(g) shall-

(a) be appointed by the Minister, in consultation with the Cabinet, for a period not exceeding two years and shall be entitled to re-appointment; and,

(b) not participate as tenderers in public procurement during the period of their service on the Government Tender Board.

(5) Where the Members have voted upon a matter and the votes are tied, the Chairperson shall have a casting vote.

(6) A member may nominate a alternate to attend a meeting of the Government Tender Board, or any subcommittee established in accordance with section 26, on their behalf.

(7) The Government Tender Board may co-opt advisers to provide specific advice to assist it in the discharge of its functions whom-

(a) shall not vote on any submission; and,

(b) shall only attend the part of the meeting on which their advice is required.

Sub-Committees of the Government Tender Board

26. (1) The Government Tender Board may establish subcommittees to-

(a) conduct particular functions of the Government Tender Board, such as the opening of tenders;

(b) provide prior authorisations under delegated authority from the Government Tender Board up to a level of authority specified by the Government Tender Board; or,

(c) approve sources of supply for common use items.

(2) Notwithstanding subsection (1), the Government Tender Board shall remain responsible and accountable for the activities of any subcommittees.

Establishment of Entity Tender Boards and Levels of Authority

27. (1) The Agency may authorise a procuring entity to establish an Entity Tender Board.

(2) An Entity Tender Board shall act as the approvals authority for all procurement conducted by the entity, whether for itself or on behalf of another requesting entity, which falls within the level of authority granted in accordance with subsection (3) and all procurement with a value above this level of authority shall be submitted to the Government Tender Board for prior authorisation.

(3) The Agency shall grant levels of authority, which shall be determined by the capacity and workload of each entity,. for each Entity Tender Board established by issue of circulars.

(4) The Agency shall assess the procurement capacity and workload of each entity to determine-

(a) the need for an Entity Tender Board, taking into account the procurement workload of the entity;

(b) the procurement capacity of the entity, taking into account the capacity of both the Entity Procurement Unit and the current or proposed members of the Entity Tender Board; and,

(c) the appropriate level of authority for the Entity Tender Board.

(5) The Agency shall also advise the entity of the findings of its capacity assessment and any actions needed to improve procurement capacity.

(6) The Authority shall agree its work programme and methodology for capacity assessments with the Government Tender Board and shall keep the Government Tender Board informed of all assessment findings and levels of authority issued.

(7) A procuring entity which has implemented measures to improve its capacity may request the Agency to review its capacity and level of authority and the Agency shall undertake such review as soon as possible, but in no case later than three months from the date of the request.

Composition and Appointment of Entity Tender Boards

28. (1) An Entity Tender Board shall be composed of-

(a) a chairperson appointed by the controlling officer or Chief Executive Officer, who shall be of a level not below Under Secretary, Director or equivalent level or shall be a member of the procuring entity's senior management team;

(b) between two and four other members appointed by the controlling officer or Chief Executive Officer in accordance with subsection (2); and,

(c) the head of the entity's Procurement Unit, who shall be Secretary, but shall not have a vote.

(2) In appointing members of an Entity Tender Board, the controlling officer or Chief Executive Officer shall ensure that members-

(a) are of an appropriate level of seniority and experience in decision making;

(b) are appointed with due regard to their technical competence and the skills and knowledge required for the discharge of the functions of the Entity Tender Board; and,

(c) provide a balance of skills and experience across the Entity Tender Board.

Meetings of Tender Boards

29. (1) A Tender Board shall meet as often as is necessary for the proper and timely review and authorisation of procurement requirements within it's authority and the Chairperson, in consultation with the Secretary, shall determine the times and places for meetings and call meetings.

(2) In the absence of the Chairperson the members present shall elect, from among their number, an acting Chairperson.

(3) The quorum of a Tender Board shall be one-half of the members holding office at that time; except that when a member has declared an interest in an agenda item, or in a matter before the Tender Board, the member in question shall not be counted for the purpose of forming a quorum in relation to the item or matter in question.

(4) The decision of a Tender Board shall be by a majority of votes, and where there is an equality of votes, the Chairperson shall have a casting vote in addition to a deliberative vote.

(5) A Tender Board shall consider each submission made, based on the information and supporting documents contained in the submission and shall approve or reject each submission, but shall not vary a recommendation submitted, particularly a contract award recommendation.

(6) Where a submission is rejected, a Tender Board shall state its reasons in writing. A rejected submission may be re-submitted, following correction of the reasons for its rejection.

(7) A Tender Board may give a conditional approval to a submission, where there is a minor issue to be resolved.

(8) A Tender Board may co-opt advisers to provide specific advice to assist it in the discharge of its functions, but an adviser shall not vote on any submission and shall only attend the part of the meeting on which their advice is required.

(9) Observers, including representatives of the Agency, may attend a meeting of a Tender Board, where so agreed by the Tender Board but shall not vote on any submission.

(10) A Tender Board shall cause minutes to be kept of the proceedings of every meeting of the Tender Board, which shall record at least-

(a) the members present at the meeting;

(b) any advisers or observers attending the meeting;

(c) any disclosure of interest made in accordance with section 30;

(d) all submissions considered and whether the submission was approved or rejected;

(e) the reasons for rejection of any submission and any conditions to approved submissions; and,

(f) the key issues discussed in relation to each submission, including any advice given or disagreement between the members.

(11) Minutes and decisions of a Tender Board shall be available and distributed within two working days of the Tender Board meeting.

(12) A decision may be made by a Tender Board on any urgent matter by the circulation of the relevant papers among the members, and by the expression in writing of the views of the majority thereof: provided that any member shall be entitled to require that any decision shall be deferred until the matter is considered at a meeting of the Tender Board.

Disclosure of Interest

30. (1) Where a member, or a close relative or close associate of a member, has, or intends to acquire, a direct or indirect personal interest in any agenda item or specific matter requiring a Tender Board's consideration and decision, the member shall-

(a) disclose such interest, as soon as possible after receiving the agenda of the meeting of the Tender Board, or on notification of a matter being brought to the attention of the Tender Board; and,

(b) not be present at or participate in the deliberations or decision-making process of the Tender Board in relation to the agenda item or the matter in question.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made or to which it relates.

PART IV
TECHNICAL SECRETARIAT AND RESPONSIBILITIES FOR PROCUREMENT

Responsibility for Procurement Activities

31. (1) Public procurement regulations shall define the procuring entity responsible for different types and values of procurement, according to the following principles-

(a) certain specialised items or categories of procurement shall be purchased solely by a designated lead procuring entity with technical or sector specific expertise;

(b) common use items shall be purchased centrally on behalf of all procuring entities by one or more designated lead procuring entities;

(c) items other than those in (a) and (b) may be purchased directly by the requesting entity, providing the estimated value does not exceed the monetary threshold for the entity specified in accordance with subsections (3) and (4); and,

(d) all other items shall be purchased by the Technical Secretariat or a procuring entity designated by the Technical Secretariat.

(2) Public procurement regulations may specify alternative responsibilities for central government bodies, public enterprises and local government authorities.

(3) The monetary threshold specified in subsection (c) shall be determined by the procurement capacity of the requesting entity, but shall be no less than the level of authority of the controlling officer or Chief Executive Officer in accordance with section 24(3)(a).

(4) The monetary threshold specified in subsection (c) shall be issued by the Authority.

Establishment of the Technical Secretariat

32. (1) There shall be established within the Ministry of Finance a Technical Secretariat.

(2) The Technical Secretariat shall be responsible for-

(a) the management of designated procurement activities as a lead procurement organisation in accordance with section 31; and,

(b) providing secretarial services for the Government Tender Board.

(3) The Technical Secretariat shall be staffed by professional procurement staff with appropriate training and experience in procurement and may hire such expertise as required from time to time.

(4) The head of the Technical Secretariat shall be secretary to the Government Tender Board, but shall not have a vote.

Functions of the Technical Secretariat

33. The functions of the Technical Secretariat shall include-

(a) all functions of a procuring entity, in accordance with section 34, for procurement for which it is designated as responsible;

(b) providing support to the Government Tender Board in managing the tendering process, including the receipt and opening of tenders;

(c) reviewing all requests for prior authorisation, prior to their submission to the Government Tender Board;

(d) providing secretarial services to the Government Tender Board, including preparation of agendas and minutes, distribution of tender documents and notification of Tender Board decisions to procuring entities;

(e) coordinating Government wide procurement planning; and,

(f) coordinating activities relating to the procurement of common use items in accordance with section 37.

Functions of Procuring Entities

34. (1) The functions of the procuring entity designated as responsible for any procurement in accordance with section 31 shall include-

(a) preparing individual procurement plans where appropriate;

(b) developing statements of requirements where appropriate;

(c) recommending the appropriate method of procurement;

(d) preparing invitation documents, advertisements and shortlists;

(e) providing technical inputs during the procurement process, including to pre-bid meetings and clarifications, or obtaining technical inputs from appropriately qualified persons;

(f) leading the evaluation of tenders and preparation of evaluation reports, including contract award recommendations;

(g) preparing contract documents and amendments;

(h) managing contracts, including supplier performance, where appropriate; and,

(i) providing reports on procurement as may be required.

(2) The procuring entity shall-

(a) liaise with the requesting entity throughout the procurement process;

(b) obtain technical inputs and advice, where required, from the requesting entity; and,

(c) include representatives of the requesting entity and/or end user of the goods, works or services on the evaluation committee.

Entity Procurement Units

35. (1) Where its procurement workload is sufficient, a procuring entity may establish an Entity Procurement Unit, which shall be responsible for managing the procurement activities of the procuring entity in accordance with this Act.

(2) In particular, the functions of an Entity Procurement Unit shall include-

(a) performing the functions of the procuring entity in accordance with section 34; and,

(b) obtaining all required approvals from the appropriate approvals authority.

(3) A procuring entity shall have an Entity Procurement Unit in order to-

(a) act as a lead procuring entity in accordance with section 31(a) or 31(b); or,

(b) establish its own Tender Board in accordance with section 27.

(4) An Entity Procurement Unit shall be staffed by professional procurement staff with appropriate training and experience in procurement and may hire such expertise as required

Functions of Requesting Entities

36. The functions of requesting entities, in relation to public procurement, shall include-

(a) preparing an annual procurement plan and providing information on forecast procurement requirements to the Technical Secretariat;

(b) initiating procurement requirements and obtaining all necessary authorisations for the commitment of funds;

(c) preparing statements of requirements for the goods, works or services required;

(d) participating in the evaluation of tenders and preparation of evaluation reports as members of the evaluation committee in accordance with section 34(2)(c);

(e) managing contracts, including supplier performance;

(f) liaising with and providing all required information to the designated procuring entity or entities throughout the procurement process; and,

(g) providing procurement reports as may be required.

Procurement of Common Use Items

37. (1) Common use items shall be purchased centrally on behalf of all requesting entities, or a group of requesting entities, by one or more lead procuring entities designated in accordance with section 31(b).

(2) Common use items shall be any goods, works or services required by more than one requesting entity, for which the Government can obtain greater efficiency and value for money through centralised purchasing.

(3) The Technical Secretariat shall determine which goods, works or services are common use items and shall regularly distribute a list of items designated as common use items, the designated lead procuring entities and the requesting entities for which they are purchasing.

(4) The lead procuring entity for any common use items -

(a) shall liaise with all requesting entities, as part of the annual procurement planning process and on an ongoing basis, to establish a detailed list of common use items and estimated needs;

(b) may evaluate suppliers for common use items in order to issue a list of approved sources of supply;

(c) may enter into framework contracts or other appropriate contractual arrangements for the purchase of common use items;

(d) may utilise warehouses for cost effective storage and distribution of common use goods; and,

(e) shall issue regularly updated information to all requesting entities on the items available, prices, delivery times and arrangements established for ordering or obtaining such items.

(5) A requesting entity shall utilise approved sources of supply or framework contracts to obtain common use items in accordance with instructions issued by the lead procuring entity.

PART V
PROCUREMENT PRINCIPLES, METHODS AND RULES

Procurement Principles

38. All procurement shall be conducted in a manner which promotes economy, efficiency, transparency, accountability, fairness, competition and value for money.

Non Discrimination and Measures to Promote Swazi Companies

39. (1) A tenderer shall not be excluded from participating in public procurement on the basis of nationality, race, religion, gender or any other criterion not related to its eligibility or qualifications, except to the extent provided for in this Act or public procurement regulations.

(2) Notwithstanding the provisions of sub-section (1), the Government, through Regulations, shall, with a view to promoting economic capacity and the competitiveness of businesses in Swaziland, initiate measures to facilitate participation by Swazi companies in public procurement.

(3) Such measures, including but not limited to preferences in the evaluation of tenders and proposals, may be specified in public procurement regulations.

Supplier Eligibility

40. (1) In order to be eligible to participate in public procurement, a tenderer shall demonstrate to the satisfaction of the procuring entity that –

(a) it has the legal capacity to enter into the contract;

(b) it is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended, and it is are not the subject of legal proceedings for any of the foregoing;

(c) it has fulfilled its obligations to pay taxes and social security contributions;

(d) it adheres to basic labour legislation;

(e) it does not have a conflict of interest in relation to the procurement requirement;

(f) it, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of five years preceding the commencement of procurement proceedings; and,

(g) it is not subject to suspension in accordance with section 55, and none of its directors or officers have been involved in a tenderer or supplier currently subject to suspension.

(2) All invitation documents shall state the eligibility requirements and specify any documentary evidence required as proof of eligibility.

Supplier Qualifications

41. (1) A procuring entity may require bidders to meet such qualification criteria as the procuring entity considers appropriate to a particular procurement requirement, to demonstrate that it has the capability and resources to effectively perform a contract.

(2) Any qualification criteria shall be specified in the invitation document and may relate to-

(a) professional and technical qualifications;

(b) financial resources and condition;

(c) equipment and other physical facilities;

(d) personnel and managerial capability;

(e) record of past performance of similar contracts; or,

(f) registration or licensing with the relevant professional body in Swaziland or in the tenderer's country of origin where so required by law.

(3) Invitation documents shall state any qualification requirements and specify the documentary evidence or information required to demonstrate the tenderer's qualifications.

Procurement Methods and Process

42. (1) A procuring entity shall use one of the methods specified in the public procurement regulations for all procurement.

(2) The preferred methods of procurement shall be-

(a) open tendering for goods, works and non-consulting services; and,

(b) request for proposals for consulting services,

and other methods shall only be used where the procurement meets the conditions for use of an alternative method specified in the public procurement regulations.

(3) All procurement activities shall be conducted in accordance with the detailed rules specified in public procurement regulations.

Procedures for procurement of infrastructure on the basis of private financing and for award of concessions

43. (1) Contracts for the construction and/or operation of public infrastructure and other public goods on the basis of private investment, and contracts for service concessions, shall be awarded in accordance with the principles and objectives of this Act and Government policy.

(2) Special methods and procedures for the implementation of subsection (1) may be specified in regulations.

General Procurement Rules

44. Requesting and procuring entities shall-

(a) maintain records of all procurement proceedings;

(b) ensure that all communications with tenderers and suppliers are in writing;

(c) keep confidential the information that comes into their possession relating to procurement proceedings;

(d) plan their procurement in a rationale manner;

(e) document requirements and obtain authorisation before initiating procurement proceedings;

(f) define their needs in a statement of requirements which gives a correct and complete description of the goods, works or services and use this in invitation documents, evaluation and contracts;

(g) use the appropriate standard documents issued or authorised by the Agency in accordance with section 10(b)(iii);

(h) clearly state the methodology and criteria to be used in the evaluation of tenders and the determination of the best evaluated tender; and,

(i) comply with such other rules as are specified in this Act and public procurement regulations.

Contract Award Procedures

45. (1) The awarding of contract shall be recommended to the best evaluated tenderer, as determined by the evaluation methodology and criteria specified in the invitation document.

(2) The contract award decision shall be taken by the appropriate approvals authority, but the award decision does not constitute a contract.

(3) Following the contract award decision, the procuring entity shall prepare a notice indicating the name of the best evaluated tenderer, the value of the proposed contract and any evaluation scores. The notice shall be-

(a) sent directly to all tenderers who submitted tenders by letter and, where appropriate, by fax or email; and,

(b) published on the Government's public procurement website.

(4) A procuring entity shall allow a period of at least ten working days to elapse from the date of despatch and publication of the notice in accordance with subsection (3) before a contract is awarded.

(5) The provisions of subsections (3) and (4) shall not apply -

(a) where the value of the procurement does not exceed the threshold specified in public procurement regulations; or,

(b) in any other circumstances specified in public procurement regulations.

PART VI
ADMINISTRATIVE REVIEW AND SUSPENSION OF TENDERERS AND SUPPLIERS

Right to Review

46. (1) Any tenderer that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on a procuring entity by this Act or public procurement regulations, may seek review in accordance with section 47.

(2) A tenderer seeking review may be required to pay a fee, in accordance with public procurement regulations.

Review by Procuring Entity

47. (1) An application for review shall, in the first instance, be submitted in writing to the controlling officer or Chief Executive Officer of the procuring entity conducting the procurement.

(2) The controlling officer or Chief Executive Officer of the procuring entity shall not entertain an application for review, unless it was submitted within ten working days of when the tenderer submitting it became aware of the circumstances giving rise to the application for review or of when that tenderer should have become aware of those circumstances, whichever is earlier.

(3) Despatch and publication of a notice indicating the best evaluated tenderer in accordance with section 45(3) shall be deemed to satisfy the requirements of awareness in subsection (2).

(4) Unless the application is dismissed or resolved by mutual agreement of the tenderer that submitted it and the procuring entity, the controlling officer or Chief Executive Officer of the procuring entity shall-

(a) immediately institute an investigation;

(b) ensure that no contract award is made prior to completion of the review process; and,

(c) issue a written decision, within ten working days after the submission of the application.

(5) The decision shall state-

(a) whether the application is upheld, in whole or in part or dismissed;

(b) the reasons for the decision; and,

(c) any corrective measures that are to be taken.

Right to Administrative Review

48. (1) Where-

(a) the controlling officer or Chief Executive Officer does not issue a decision within the period specified in section 47(4)(c); or,

(b) the tenderer is not satisfied with the decision of the controlling officer or Chief Executive Officer;

a tenderer may seek administrative review in accordance with section 49.

(2) A tenderer seeking administrative review may be required to pay a fee, in accordance with public procurement regulations.

Administrative Review Procedures

49. (1) An application for administrative review in accordance with section 48, shall be submitted in writing to the Agency.

(2) The Agency shall not entertain an application for administrative review, unless it was submitted within ten working days of the date of issue of the controlling officer or Chief Executive Officer's decision or the date by which the controlling officer or Chief Executive Officer should have issued a decision.

(3) Upon receipt of an application for administrative review, the Agency shall-

(a) immediately give notice of the application to the procuring entity;

(b) prohibit the procuring entity from awarding a contract prior to completion of the administrative review process; and,

(c) establish an Independent Review Committee in accordance with section 50, which shall investigate and decide on the application in accordance with section 51.

Constitution of an Independent Review Committee

50. (1) For the purposes of hearing applications for administrative review and appeals against suspension, the Authority shall constitute a standing review panel.

(2) The standing review panel shall consist of members of high integrity with experience in public procurement or related fields, but with no direct or indirect personal involvement in public procurement functions during the period of their service on the standing review panel.

(3) For each application for administrative review or appeal against suspension, the Agency shall constitute an Independent Review Committee, composed of three members of the standing review panel.

(4) In selecting members for an Independent Review Committee, the Agency shall seek to establish a balance of relevant knowledge and experience among members to ensure that the Independent Review Committee has both-

(a) knowledge and experience of the applicable public procurement rules; and,

(b) technical knowledge of the subject of the contract.

(5) The Agency shall designate staff to provide secretariat services to the Independent Review Committee, but no Board members or staff of the Agency shall be included on the standing review panel or selected as a member of any Independent Review Committee.

(6) The Independent Review Committee may engage technical specialists to assist in its work if so required.

(7) The members of an Independent Review Committee, technical specialists and staff providing secretariat services shall be required to declare that they have no conflict of interest in relation to the application being heard.

(8) The members of an Independent Review Committee shall be paid sitting allowance and travelling allowances as are paid to the members of the governing body of a category A, Group 1 public enterprise.

Administrative Review by Independent Review Committee

51. (1) Unless the application is dismissed, the Independent Review Committee shall-

(a) immediately institute an investigation; and,

(b) issue a written decision, within fifteen working days after the submission of the application.

(2) In conducting its investigation, the Independent Review Committee shall have the power to-

(a) access any information, documents, records and reports in respect of any aspect of the procurement process subject to the investigation; and,

(b) summon witnesses and examine witnesses and parties concerned.

(3) The decision shall state-

(a) whether the application is upheld, in whole or in part or dismissed;

(b) the reasons for the decision; and,

(c) any corrective measures that are to be taken or remedies ordered in accordance with section 52.

Remedies by Independent Review Committee

52. (1) The Independent Review Committee may grant one or more of the following remedies-

(a) prohibit a procuring entity from acting or deciding unlawfully or from following an unlawful procedure and require the procuring entity to act or to proceed in a lawful manner or to reach a lawful decision;

(b) annul in whole or in part or revise an unlawful act or decision of the procuring entity or substitute its own decision for such a decision, other than any act or decision bringing a contract into force;

(c) require the payment of compensation for any reasonable costs incurred by the tenderer submitting the complaint in connection with the procurement proceedings as a result of an unlawful act or decision of the procuring entity;

(d) order that the procurement proceedings be terminated;

(e) recommend to the procuring entity that a contract be terminated; or,

(f) recommend to the Agency that specific action be taken including prosecution.

Notification to other Bidders

53. (1) Promptly after the submission of an application for administrative review, the Agency shall notify all tenderers who participated in the procurement proceedings to which the application relates of the submission of the application and of its substance.

(2) Any such tenderer or any other party whose interests are or could be affected by the review proceedings has the right to participate in the review proceedings.

(3) A tenderer who fails to participate in the review proceedings is barred from subsequently making the same type of claim.

Prohibition on contract award during review proceedings

54. (1) Where a procurement requirement is subject to -

(a) review in accordance with section 47, no contract shall be awarded until ten working days after completion of the review process; or,

(b) administrative review in accordance with section 49, no contract shall be awarded prior to completion of the administrative review process.

(2) Notwithstanding the provisions of subsection 54, where urgent public interest considerations require goods, works or services to be contracted, the Government Tender Board may authorise an award of contract or an extension to an existing contract prior to completion of the review or administrative review process. Such award shall be limited to the quantity of goods, works or services required to meet urgent needs during the time period for completion of the review or administrative review process.

(3) Where a procuring entity seeks a contract award or extension in accordance with subsection (2), it shall prepare a submission to the Government Tender Board which-

(a) states that urgent public interests require a contract award or extension;

(b) justifies the grounds for claiming urgent public interests;

(c) specifies the quantity of goods, works or services required to meet urgent needs; and,

(d) recommends the tenderer or supplier to whom the contract or extension is to be awarded.

(4) The submission shall be made a part of the record of the procurement proceedings and shall be copied to the controlling officer, Chief Executive Officer or Independent Review Committee responsible for the review or administrative review.

Suspension of Tenderers and Suppliers

55. (1) The Agency may suspend a tenderer or supplier from participation in public procurement on the grounds specified in section 56.

(2) A tenderer or a supplier shall not be suspended prior to-

(a) reasonable notice in writing to the tenderer or supplier involved of the grounds for the proposed suspension and the details of the alleged grounds;

(b) reasonable opportunity for the tenderer or supplier to respond to the alleged grounds and provide information in its defence; and,

(c) a thorough investigation of the facts of the case by the Agency.

(3) Any suspension shall be for a minimum period of one year and a maximum period of five years.

(4) A suspension in accordance with subsection (1) may also apply to named directors, shareholders or staff of a tenderer or supplier, where the investigation demonstrates the involvement of such individuals.

(5) Where an investigation into a tenderer or supplier causes the Agency to suspect misconduct or breach of this Act by a public officer or politician, such suspicions shall be referred to the appropriate authority for further investigation.

(6) Notwithstanding the provisions of subsection (2), any tenderer, supplier or person endorsed on the Register for Tender Defaulters in accordance with the Prevention of Corruption Act, 2006, shall automatically be suspended from participation in procurement.

(7) Notwithstanding the provisions of subsection (3), the suspension shall be for the full duration of the time the tender, supplier or person is endorsed on the Register.

Grounds for Suspension

56. A tenderer or supplier may only be suspended from participation in procurement on the following grounds –

(a) knowing provision of false information in a tender or any other document submitted to a procuring entity in connection with a procurement process or contract;

(b) connivance to interfere with the participation of other tenderers;

(c) misconduct relating to the submission of tenders, including corrupt, fraudulent, collusive or coercive practices, price fixing, a pattern of under-pricing of tenders and breach of confidentiality;

(d) taking an order knowing that the order had not been authorised or was not in a proper format or had been issued by a person not authorised to do so;

(e) making delivery against an order knowing that the order had not been authorised or was not in a proper format or had been issued by a person not authorised to do so;

(f) making a claim for payment against an order knowing that the order had not been authorised or was not in a proper format or had been issued by a person not authorised to do so;

(g) refusal to sign a contract or to furnish a performance security in accordance with the terms of the invitation document and tender if required to do so;

(h) substantial non-performance of contractual obligations, provided that the non-performance was not due to circumstances beyond the control of the supplier;

(i) conviction of a criminal offence relating to obtaining or attempting to obtain a contract or subcontract; or,

(j) conviction of a crime related to business or professional activities.

Appeal against Suspension

57. (1) A tenderer or supplier may appeal against a decision to suspend the tenderer or supplier from participation in public procurement by submitting an appeal in writing to the Agency for review by an Independent Review Committee.

(2) The Agency shall not entertain an appeal unless it was submitted within ten working days of the date of issue of the suspension notice by the Agency.

(3) For the purposes of hearing such appeals the Agency shall constitute an Independent Review Committee composed of three members of the standing review panel selected in accordance with section 50(3).

(4) The Independent Review Committee shall-

(a) immediately review the original investigation and decision by the Agency; and,

(b) issue a written decision, within fifteen working days after the submission of the appeal.

(5) In conducting its review, the Independent Review Committee shall have the power to-

(a) access any information, documents, records and reports in respect of any aspect of the procurement process or contract; and,

(b) summon witnesses and examine witnesses and parties concerned.

(6) The decision of the Independent Review Committee shall state-

(a) whether the suspension is upheld or overturned or the period of the suspension or named individuals revised; and,

(b) the reasons for the decision.

(7) A tenderer or supplier seeking to appeal against suspension may be required to pay a fee, in accordance with public procurement regulations.

(8) Where an investigation into a tenderer or supplier causes the Independent Review Committee to suspect misconduct or breach of this Act by a public officer or politician, such suspicions shall be referred to the appropriate authority for further investigation.

Legal Representation

58. A tenderer or supplier who appeals in terms of this Part, shall have the right to be represented by legal counsel in the appeal proceedings.

PART VII
CODES OF CONDUCT, OFFENCES AND PENALTIES

Codes of Conduct

59. The Agency may promulgate codes of conduct to guide the behaviour of public officers, politicians, tenderers and suppliers involved in public procurement.

Conduct of Public Officers and Politicians involved in Procurement

60. (1) All public officers and politicians who have responsibilities for procurement shall-

(a) always act in the public interest and in accordance with the objectives and procedures set out in this Act and public procurement regulations;

(b) exercise powers and discharge duties for a proper purpose, consistent with their responsibilities, and with the degree of care and diligence that a reasonable person would exercise in similar circumstances;

(c) discharge duties impartially so as to assure fair competitive access to public procurement by tenderers;

(d) not use their position, or information obtained because of their position, improperly to gain an advantage for themselves or someone else or cause a detriment to a procuring entity;

(e) not interfere with or exert undue influence on any person to affect a procurement activity or decision;

(f) at all times avoid conflicts of interest and the appearance of conflicts of interest;

(g) not commit or abet corrupt, fraudulent, collusive or coercive practices; and,

(h) keep confidential the information that comes into their possession relating to procurement, including tenderers' proprietary information.

(2) Public officers and politicians shall not participate as tenderers in public procurement.

Conduct of Tenderers and Suppliers

61. Tenderers or suppliers participating in public procurement shall-

(a) at all times abide by their obligations under this Act and public procurement regulations, contracts and other instruments applicable to their conduct and activities related to public procurement; and,

(b) not commit or abet corrupt, fraudulent, collusive or coercive practices.

Offences

62. A person commits an offence who-

(a) without reasonable excuse fails or refuses to give information, or produce any document, records or reports required under section 11, 51(2)(a) or 57(5)(a);

(b) without reasonable excuse refuses to answer summons as required under section 11, 51(2)(b) or 57(5)(b);

(c) knowingly gives false or misleading information or evidence in purported compliance with a summons under section 11, 51(2)(b) or 57(5)(b);

(d) assaults, resists or obstructs any member of staff of the Authority, or any other authority exercising monitoring and oversight functions over public procurement, in the exercise of their powers of access or power to call for relevant information in accordance with section 11;

(e) connives or colludes to commit a corrupt, fraudulent, collusive or coercive practice;

(f) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Agency or a procuring entity in the performance of their functions or in the exercise of their powers under this Act;

(g) as the result of recklessness or intentional dishonesty fails to exercise their powers as a public officer or politician and to discharge their duties for a proper purpose consistent with their responsibilities;

(h) uses their position as a public officer or politician dishonestly with the intention of directly or indirectly gaining an advantage for himself or someone else or causing a detriment to a procuring entity;

(i) uses their position as a public officer or politician recklessly without regard to whether their conduct may directly or indirectly gain an advantage for himself or someone else or cause a detriment to a procuring entity;

(j) dishonestly uses information obtained because of their position as a public officer or politician to gain an advantage for himself or someone else or cause a detriment to a procuring entity;

(k) publishes or discloses information relating to procurement, other than in the proper and authorised course of their duties as a public officer or politician; or,

(l) contravenes or fails to comply with a provision of this Act or public procurement regulations.

Penalties

63. (1) A person who commits an offence under section 62 is liable on conviction to a fine not exceeding ten million Emalangeni or to a term of imprisonment not exceeding ten years or to both such fine and imprisonment.

(2) A court of competent jurisdiction may order a person to compensate the procuring entity for any damage suffered by the procuring entity, if the damage resulted from the offence. Such compensation amount is a civil debt payable to the procuring entity.

(3) Where a procuring entity or individual consistently contravenes this Act, this shall be-

(a) reported to the relevant budget and oversight authorities and service commissions as appropriate; and,

(b) recorded in the Agency's Annual Report.

Protection from Prosecution

64. No action or other proceedings shall lie or be instituted against any person empowered by this Act to oversee manage or regulate the procurement process for or in respect of any act or omission done in good faith.

PART VIII
MISCELLANEOUS

Public Procurement Regulations

65. (1) The Minister may, on the recommendation of the Agency, issue public procurement regulations to regulate the procurement of goods, works and services by procuring entities.

(2) Where appropriate, different regulations may regulate central government bodies, public enterprises and local government authorities.

Public Procurement Manuals, Circulars and Instructions

66. The Agency may issue public procurement manuals, circulars and instructions to provide further guidance on the interpretation and application of this Act and public procurement regulations issued under this Act.

The Government Printer, Mbabane