

SWAZILAND GOVERNMENT GAZETTE

VOL. XLV]

MBABANE, Friday, JANUARY 19th 2007

[No. 8

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PUBLISHED BY AUTHORITY

032

NOTICE

Notice is hereby given that **I, Nhlanhla Maphikelela Dlamini of Manzini Region** intend to apply to the Honourable Minister of Justice of the Kingdom of Swaziland for authorisation to assume the surname **Zikalala** 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 **Zikalala** is because it is my natural surname.

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

P.O. Box 6051
Manzini
Swaziland

I021 4x26-01-2007

NOTICE

Notice is hereby given that **I, Patrick Bongani (Gwaza) Mavuso of Ka-Lamgabhi Hhohho Region** intend to apply to the Honourable Minister of Justice of the Kingdom of Swaziland for authorisation to assume the surname **Seabra** 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 **Seabra** is because it is my natural surname.

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

Mr Patrick Bongani Mavuso
P.O. Box 399
Ezulwini

H2458 4x19-01-2007

NOTICE

ESTATE LATE: ELIAS TWANA HLETA ESTATE NO. ES183/2006

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

PAULOS HLETA & NKOSINATHI
P.O. Box A49
Swazi Plaza

I078 19-01-2007

033

NOTICE

SALE OF BUSINESS

Notice is hereby given, in terms of Section 5 (1) of the Registration of Businesses Act 42/1933, that United King Pie Co. (Pty) Limited intends to sell and/or transfer the business under the name of KING PIE, trading from Zama Zama Shopping Complex, Nhlangano to Equality Foods Swaziland (Pty) Limited as from 31 January 2007.

DATED AT MBABANE THIS 05TH DAY OF JANUARY 2007.

UNITED KING PIE CO. (PTY) LIMITED
P.O. Box 32
Mbabane

I064 3x26-01-2007

NOTICE

ESTATE LATE: MFANASIBILI HENRY DLAMINI ESTATE NO. ES207/2005

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

MAPHEVU KENNETH DLAMINI
P.O. Box 16
Mbabane

I079 19-01-2007

NOTICE

ESTATE LATE: PHUMZILE HILDA DLAMINI ESTATE NO. EH7/2007

Debtors and Creditors in the above mentioned estate are hereby asked to lodge their claims and pay their debts with the undersigned within twenty one (21) days after the date of publication of this Notice.

MAYSON DLAMINI
P.O. Box 124
Eveni

I072 19-01-2007

034

NOTICE

ESTATE LATE: MBHEKWA JOHN GWEBU ESTATE NO. EM380/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

WINILE M. MABUZA
P.O. Box 4
Mzimpofu

1070 19-01-2007

NOTICE

ESTATE LATE: SAMSON NKHULUMANE MAVUSO NO. EH266/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

ESAW DUMSANI MAVUSO
P.O. Box 2707
Manzini

1071 19-01-2007

NOTICE

ESTATE LATE: MUSA ESAU DLAMINI ESTATE NO. EM367/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

ANNIE DLAMINI
P.O. Box 270
Hluthi

1073 19-01-2007

035

NOTICE

ESTATE LATE: EUNICE ELLEN GUNIA ESTATE NO. EH272/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

SIBUSISO & SIBONGILE SIBANDZE
P.O. Box 92
Ezulwini

I074 19-01-2007

NOTICE

ESTATE LATE: MFANASIBILI JOEL MADLOPHA ESTATE NO. ES246/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

RODGERS MADLOPHA
Esandleni Primary School
P.O. Box 650
Hlathikhulu

I075 19-01-2007

NOTICE

ESTATE LATE: JOSEPH DALADI MLOTSI ESTATE NO. EM353/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

MRS JABULILE BUKIWE MLOTSI
NEE MAVUSO
P.O. Box 297
Piggs Peak

H076 19-01-2007

036

NOTICE

ESTATE LATE: PETROS SILWANE DLAMINI ESTATE NO. ES235/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

DUDU LINDIWE DLAMINI
P.O. Box 4160
Manzini

1077 19-01-2007

NOTICE

ESTATE LATE: BONGINKHOSI JOSEPH MAGAGULA ESTATE NO. EL128/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

VINAH LOMADLOZI MAGAGULA
P.O. Box 248
Simunye

1080 19-01-2007

NOTICE

ESTATE LATE: PHILEMON APOLLO NHLABATSI ESTATE NO. ES228/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

JABULILE NHLABATSI NEE DLAMINI
P.O. Box 378
Mbabane

1081 19-01-2007

037

NOTICE

ESTATE LATE: SWENKY GLENROSE SHABANGU ESTATE NO. EH304/2003

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

SAMUEL M. SHONGWE
P.O. Box 3533
Mbabane

I082 19-01-2007

NOTICE

ESTATE LATE: MANGALISO AUTO NDWANDWE ESTATE NO. EL42/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

GRACE KHUZWAYO NDWANDWE
P.O. Box 19
Siteki

I083 19-01-2007

NOTICE

ESTATE LATE: NICHOLAS ZWANE DLAMINI ESTATE NO. EH243/2000

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

PIET LUKHANDZA & SHIKA DLAMINI
P.O. Box 70
Mhlambanyatsi

I086 19-01-2007

038

NOTICE

Notice is hereby given that we intend applying for the cancellation of an entry in the Deeds Office Register relating to the following Mortgage Bond, namely; Surety Mortgage Bond. No. 879/1994 dated the 4th November, 1994 for the sum of E64,230.00 (Sixty Four Thousand Two Hundred and Thirty Emalangeni); passed by **THOMAS SIKELELA NKAMBULE** (born on the 21st October, 1954), in favour of Swaziland Development and Savings Bank.

Any person having an objection to the cancellation of such an entry in the Deeds Office Register is hereby requested to lodge such objection in writing with the Registrar of Deeds within three (3) weeks of the last publication of this notice.

DATED AT MBABANE ON THIS 11TH DAY OF JANUARY, 2007.

M. J. MANZINI & ASSOCIATES
Attorneys for Applicant
3rd Floor, Lilunga House
P.O. Box A204
Swazi Plaza
Mbabane

1084 2x26-01-2007

NOTICE

Notice is hereby given that we intend applying for a certified copy of Deed of Transfer No. 534/1994, dated the 4th November, 1994, made in favour of: **THOMAS SIKELELA NKAMBULE** (born on the 21st day of October 1954) in respect of the undermentioned property:

CERTAIN : Remaining Extent of Lot No. 9 Phumula Township situate in the urban area of Manzini, District of Manzini, Swaziland;

MEASURING : as such 928 (Nine Two Eight) Square Metres;

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

DATED AT MBABANE ON THIS 11TH DAY OF JANUARY, 2007.

M. J. MANZINI & ASSOCIATES
Attorneys for Applicant
3rd Floor, Lilunga House
P.O. Box A204
Swazi Plaza
Mbabane

1085 2x26-01-2007

039

NOTICE

ESTATE LATE: MICHAEL VUSI DUBE ESTATE NO. EH226/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

DUDU GLADYS DUBE
P.O. Box 407
Malkerns

1087 19-01-2007

NOTICE

ESTATE LATE: AMOS ZAKHELE DLAMINI ESTATE NO. EL186/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

THEMBISILE DLAMINI NEE MBINGO
P.O. Box 261
Siteki

1088 19-01-2007

NOTICE

**ESTATE LATE: SABELO MADUMEZULU MAHLALELA
ESTATE NO. EL119/2006**

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

MRS ANGELINE LINDIWE MAHLALELA
P.O. Box 195
Lomahasha

1089 19-01-2007

040

NOTICE

ESTATE LATE: MIDION MENZI NXUMALO ESTATE NO. ES58/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

RACHEL DELIWE SIBIYA
P.O. Box 6
Mhlambanyatsi

I090 19-01-2007

NOTICE

ESTATE LATE: DANIEL MATOLO FAKUDZE ESTATE NO. EL46/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

JOYCE G. MAPHOSA
P.O. Box 2340
Manzini

I092 19-01-2007

NOTICE

ESTATE LATE: JABULILE HAPPINES MKHIZE ESTATE NO. EP322/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

BUSISIWE NICHOLINE DLAMINI
P.O. Box 223
Mbabane

I093 19-01-2007

041

NOTICE

ESTATE LATE: MFANZILE DAVID VILANE ESTATE NO. EM180/1998

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

VINAH VILANE
Private Bag 2
Kwaluseni

I094 19-01-2007

NOTICE

ESTATE LATE: MEFIKA RICHARD DLAMINI ESTATE NO. EM179/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

SIHAWU S. DLAMINI
P.O. Box 5000
Manzini

I095 19-01-2007

NOTICE

ESTATE LATE: ELLINAH MDZAMBISA DLAMINI ESTATE NO. EM178/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

SIHAWU S. DLAMINI
P.O. Box 5000
Manzini

I096 19-01-2007

042

NOTICE

ESTATE LATE: MASHAYANE MHLABANE ESTATE NO. EP67/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

DUDUZILE MHLABANE
P.O. Box 7305
Manzini

1097 19-01-2007

NOTICE

ESTATE LATE: SABINAH GLADYS DLAMINI ESTATE NO. EL199/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

HAMILTON MABASO
P.O. Box 173
Siteki

1098 19-01-2007

NOTICE

ESTATE LATE: NONOPHILE YVONNE DLAMINI ESTATE NO. EM365/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

THANDEKA CHRISTINE DLAMINI
P.O. Box 15
Lobamba

1099 19-01-2007

043

NOTICE

ESTATE LATE: JABULILE ELSIE FAKUDZE ESTATE NO. EH241/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

CYRIL FAKUDZE
P.O. Box A860
Swazi Plaza

I100 19-01-2007

NOTICE

ESTATE LATE: DUDU GLORY MOTSA ESTATE NO. EH222/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

STANLEY B. MOTSA
P.O. Box 72
Mankayane

I101 19-01-2007

NOTICE

ESTATE LATE: MDUDUZI COMFORT KUNENE ESTATE NO. EH187/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

IRENE P. SIBANDZE
P.O. Box 3622
Manzini

I102 19-01-2007

044

NOTICE

ESTATE LATE: PAUL MANDLA MAGAGULA ESTATE NO. EM425/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

NOKUTHULA T. MAGAGULA
P.O. Box 451
Mbabane

1103 19-01-2007

NOTICE

ESTATE LATE: SARAH NHLEKO ESTATE NO. EM48/2006

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

SINDISIWE MKHONTA
Customs & Excise
Private Bag
Mbabane

1104 19-01-2007

NOTICE

ESTATE LATE: MOSES M. DLUDLU ESTATE NO. EH306/2006

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

THANDI SHONGWE
P.O. Box 3504
Mbabane

1091 19-01-2007

045

NOTICE

ESTATE LATE: JABULANI MUSA MASILELA ESTATE NO. EM517/2006

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

ESTHER NDALA KUNENE
P.O. Box 5495
Manzini

I105 19-01-2007

NOTICE

ESTATE LATE: ELMON THULANI ZWANE ESTATE NO. EP53/2000

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

ROSE ZWANE & MTHUNZI ZWANE
P.O. Box 12
Motshane

I106 19-01-2007

NOTICE

**ESTATE LATE: DRUMMOND ZWELODUMO HLATSHWAYO
ESTATE NO. ES204/2006**

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

SARAPHINAH GCINAPHI HLATSHWAYO
NEE MAGAGULA
P.O. Box 415
Hlatsi

I110 19-01-2007

NOTICE

ESTATE LATE: NHLANHLA SEBENELE TFWALA ESTATE NO. EM446/2006

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

KHANYISILE VILANE AMANDA
P.O. Box 136
Nsoko

I111 19-01-2007

046

NOTICE

ESTATE LATE: NTOMBINTOMBI MICHADINA DLAMINI ESTATE NO. EM479/2002

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

SABELO S. DLAMINI
P.O. Box 1169
Matsapha

I115 19-01-2007

NOTICE

ESTATE LATE: PEITER MAHLANDZENI MASUKU ESTATE NO. EL8/2006

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

KHANYISILE GUGU MNCINA
P.O. Box 405
Manzini

I107 19-01-2007

NOTICE

ESTATE LATE: PETROS SANELE DLAMINI ESTATE NO. ES140/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

MAKHOSI OSCAR DLAMINI
P.O. Box 1677
Nhlangano

I108 19-01-2007

047

NOTICE

ESTATE LATE: DUMSANI KUNENE ESTATE NO. ES251/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

NOKUKHANYA KUNENE
P.O. Box 14
Nhlangano

1109 19-01-2007

NOTICE

ESTATE LATE: HAZEL NOMVULA MASEKO ESTATE NO. ES62/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

DUDUZILE NHLABATSI
P.O. Box 66
Mahamba

1112 19-01-2007

NOTICE

ESTATE LATE: BUSISIWE MARIA KHULUSE ESTATE NO. EH132/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

SANELE KHULUSE
P.O. Box 1220
Mbabane

1116 19-01-2007

NOTICE

ESTATE LATE: LINAH NOKUTHULA NGCAMPHALALA ESTATE NO. ES23/2005

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

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

MUSA ABRAHAM ZWANE
C/O Zonke Magagula & Co.
P.O. Box 590
Manzini

I114 19-01-2007

NOTICE

ESTATE LATE: VUSI LESLIE HLATSHWAYO - E.M. 63/2004

Notice is hereby given that the First and Final Liquidation and Distribution Account will lie open for inspection at the office of the Master of the High Court of Swaziland at Mbabane for a period of twenty - one (21) days from the date of appearance of this Notice.

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

S. M. KUBHEKA AND ASSOCIATES
Executrix Dative's Attorneys
2nd Floor, Lqhaga Building
Nkoseluhlaza Street
P.O. Box 1301
Manzini

I118 19-01-2007

NOTICE

ESTATE LATE: ALFRED MFANUFIKILE MAZIYA ESTATE NO. EL175/2005

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

LAHLIWE MAZIYA &
PHINDILE MAZIYA
P.O. Box 1552
Mbabane

I123 19-01-2007

049

NOTICE

ESTATE LATE: VENUS EDITH BRAUN - E. 113/1994

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

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

DUNSEITH ATTORNEYS

Attorney for the Executrix
Lansdowne House
Dabede Street
P.O. Box 423
Mbabane

I119 19-01-2007

NOTICE

Notice is hereby given that **I, Jabulani Phillip Dlamini of Elangeni - Hhohho Region** intend to apply to the Honourable Minister of Justice of the Kingdom of Swaziland for authorisation to assume the surname **Magongo** 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 **Magongo** is because it is my natural surname.

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

P.O. Box 4
Lobamba

I113 4x09-02-2007

NOTICE

ESTATE LATE: JOEL BHUTANA ZWANE ESTATE NO. ES162/2006

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

NONDUMISO ZWANE &
ROCKY BONGANI ZWANE
P.O. Box 42
Lobamba

I122 19-01-2007

050

NOTICE

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3998/05

In the matter between:-

FIRST NATIONAL BANK OF SWAZILAND
t/a WESBANK

Plaintiff

And

SIBUSISO GODFREY MNGADI

Defendant

NOTICE OF SALE IN EXECUTION IMMOVABLE PROPERTY

NOTICE IS HEREBY GIVEN that the undermentioned property will be sold by Public Auction by the Deputy Sheriff for the District of Hhohho outside the High Court Building at **10:00 a.m.** on **Friday the 16th day of February, 2007.**

The property consists of:-

PROPERTY : Portion 26 of Lot No. 65 situate in Sidvashini South Township in the Hhohho Region;

MEASURING : 522 (Five Two Two) Square Metres;

HELD UNDER : Deed of Transfer No. 365 / 2001 dated this day and subject to the conditions stated therein;

IMPROVEMENTS : Three Residential structures;

RESERVE PRICE : E300,000.00 (Three Hundred Thousand Emalangeni).

The Conditions of Sale are available for inspection at the offices of the Sheriff of Swaziland at the High Court Building, Mbabane, Magistrate's Court, Manzini and at the offices of Mlangeni and Company, 3rd Floor, Lihaga Building, Nkoseluhlaza Street, Manzini.

DATED AT MBABANE ON THIS 16TH DAY OF JANUARY 2007

SHERIFF OF SWAZILAND

High Court Building
P.O. Box 19
Mbabane

051

NOTICE

Notice is hereby given that we intend applying for a certified copy of: Deed of Transfer No. 238/1976 dated the 9th day of September, 1976 in favour of **MAN (PROPRIETARY) LIMITED** in respect of:-

CERTAIN : Remaining Extent of Portion 304 (a portion of Portion 85) of Farm No. 2 situate in the District of Hhoho, Swaziland;

MEASURING : as such 1409 (One Four Zero Nine) 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 15TH DAY OF DECEMBER, 2006

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

I120 2x26-01-2007

NOTICE

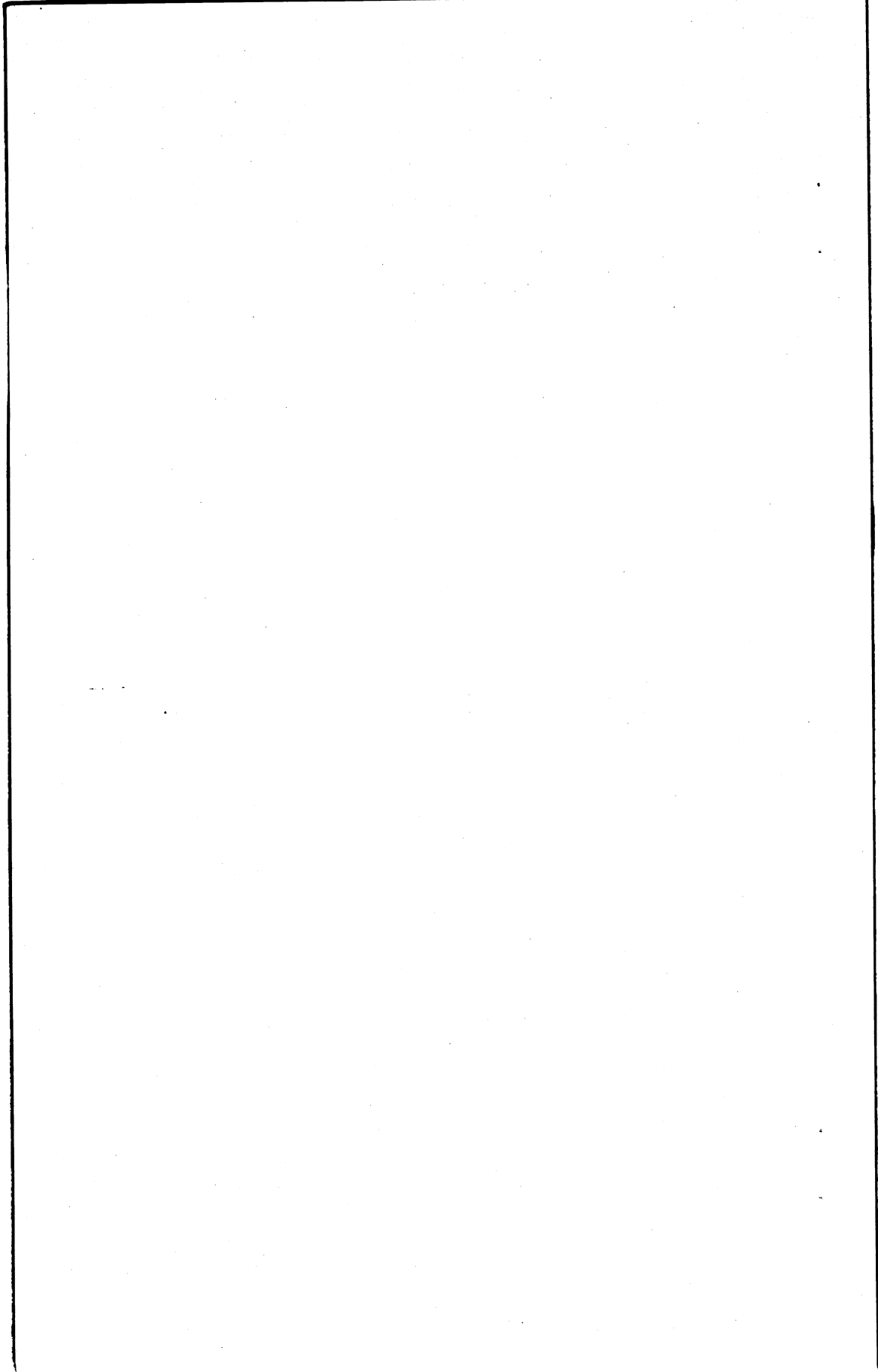
ESTATE LATE: JABULISILE HILDA DLAMINI BORN SIMELANE
ESTATE NO. EM250/2005

Notice is hereby given in terms of Section 52 bis of the Administration of Estate Act No. 28/1902 that the First and Final Liquidation and Distribution Account in the above estate 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/her objection in writing in duplicate with the Master of the High Court at any time before the expiry of the said period.

MFELANI PETROS SIMELANE
P.O. Box 174
Hlathikhulu

I121 19-01-2007



SUPPLEMENT TO THE SWAZILAND GOVERNMENT GAZETTE

VOL. XLV]

MBABANE, Friday, JANUARY 19th, 2007

[No. 8

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PUBLISHED BY AUTHORITY

PART A

S1

THE LIQUOR LICENCES BILL, 2007

(Bill No. 1 of 2007)

(To be presented by the Minister for Tourism, Environment and Communications)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this bill are to provide for the -

- (a) regulation of the liquor trade through licensing;
- (b) establishment of liquor licensing boards;
- (c) definition of different types of liquor licences;
- (d) provision of minimum requirements for licensed premises;
- (e) effective inspection of licensed premises;
- (f) issuance, transfer, removal, variation, suspension, review and cancellation of liquor licences;
- (g) repeal of the Liquor Licences Act No. 30 of 1964; and
- (h) other matters incidental to the regulation and licensing of the liquor trade.

J. M. DLAMINI
Attorney - General

A BILL entitled

AN ACT to provide for the regulation of the liquor trade through the issuance, removal, variation, suspension, review and cancellation of liquor licences and to provide for other incidental or connected matters.

ENACTED by the King and the Parliament of Swaziland.

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PRILIMINARY.

Short title and commencement.

1. This Act may be cited as the Liquor Licences Act, 2007 and shall come into force on the date of publication.

Interpretation.

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

“application” means an application for a grant, renewal, review, variation, removal, suspension, or cancellation of a liquor licence and in appropriate cases means an application for a permit from the Board or permission or approval from the Minister;

“authority” means authority, under section 10, for the grant, renewal, variation, removal, suspension or cancellation of a licence;

“bar” in relation to licensed premises, means that part of those premises in which liquor is exposed for sale, and there is a counter where liquor is served for consumption on those premises;

“blended whisky” means whisky containing not less than twenty-five per cent of malt whisky and not less than thirty parts by weight of compound ethers, calculated as ethyl acetate, point eight five parts of furfural, and one hundred and twenty parts of higher alcohols calculated as amyl alcohol, per one hundred thousand parts of alcohol;

“Board” means the Liquor Licensing Board established under section 5;

“brandy” means a distillate of an alcoholic strength not less than forty-three per cent of alcohol by volume or lower than twenty-five degrees under proof, resulting from the distillation solely of wine;

“brewer” means a person who holds a brewer’s licence issued in terms of this Act and specifying the type of liquor that person may brew and conditions of sale,

“cane spirit” means the rectified spirit of an alcoholic strength not lower than twenty-five degrees under proof, resulting from the distillation solely of the fermented juice of sugar cane or of molasses;

“chairman or chairperson” means the chairperson of the Board;

“chief health inspector” includes a senior health inspector either in Government or a Local Authority;

“compound gin” means grain or other spirits of an alcoholic strength not lower than twenty-five degrees under proof, flavoured after distillation by means of oils or essences in such a manner as to resemble gin;

“customs officer” means person employed on any duty relating to customs, fiscal excise or sales duty by order or with the concurrence of the Commissioner whether such order has been given or such concurrence has been expressed before or after the performance of the said duty;

“excise officer” means a person employed on any duty relating to customs, fiscal excise or sales duty by order or with the concurrence of the Commissioner whether such order has been given or such concurrence has been expressed before or after the performance of the said duty;

“forfeited” means forfeited to the government;

“fortified wine” means unfermented, fermented or concentrated juice of fresh grapes (including vermouth and aromatic wines) or of dried vine products, to which a wine brandy or grape brandy has been added;

“fruit fermented beverage” means a beverage of an alcoholic strength not lower than two point five per cent and not higher than fourteen per cent of alcohol by volume and a total residual sugar content (expressed as dextrose) of not higher than thirty-five grammes per litre and which shall have been obtained solely by the alcoholic fermentation of the juice of fresh fruits or the diluted concentrate of such juice or of such juice together with such diluted concentrate;

“gin” means a distillate of an alcoholic strength not lower than twenty-five degrees under proof resulting from the distillation of a fermented mash of cereal grain or the re-distillation of any class of spirits with juniper berries, either with or without the addition of common salt and harmless aromatic plants and seeds;

“grape brandy” means a distillate of an alcoholic strength not lower than twenty-five degrees under proof, resulting from the distillation solely of grape juice together with husks;

“holder of a licence” or “holder of the licence” or “holder” means the person licensed or granted a liquor licence under this Act;

“licensee” is the owner of the business;

“intemperate” means a person the subject of an order made under section 43;

“licence” or “liquor licence” means a valid and an un-expired licence granted under this Act, and

“licensed” has a corresponding meaning;

“licensed hours” means the hours prescribed for the sale or supply of liquor;

“licensed premises means premises the subject of a licence;

“liqueur” means a beverage of an alcoholic strength not lower than thirty per cent of alcohol by

volume and which contains not less than thirty grammes of sugar per litre, produced either -

- (a) by masceration in rectified spirits or in brandy, or fresh or dried fruit or peels of aromatic plants, leaves, herbs, roots or seeds, to which has been added subsequently a syrup made of pure cane sugar or honey; or
- (b) by re-distillation of a mascerated extract, prepared as described in paragraph (a), to the resulting distillate of which a syrup made of pure cane sugar or honey has been added;

“liquor” means spirits, including methylated spirits, wine, ale, beer, porter, cider, perry, traditional Swazi beer, or other fermented, distilled, spirituous or malt liquor of an intoxicating nature, or a drink with which such a liquor is mixed;

“liquor licensing inspector” means a person designated as such by the Minister under this Act or a person appointed as such under section 15;

“manufacturer” means a person who manufactures, distils, brews or makes an alcoholic beverage for gain but excludes a person who brews traditional Swazi beer of less than two hundred (200L) litres at any given time or such brewing cycle;

“liquor permit” means a permit authorising the permit holder to sell liquor -

- (a) between a specified period;
- (b) on a specified date;
- (c) on a specified premises;
- (d) in a specified place; and
- (e) subjected to certain conditions as are specified on the permit and subject to strict regulations made by the Minister;

“malt liquor” means ale, beer, porter or other malt liquor of an intoxicating nature;

“malt whisky” means whisky derived solely from malt by pot still distillation, and containing at least two of the following constituents in proportions not lower than those specified below, namely, compound ethers calculated as ethyl acetate, not less than forty-five parts by weight, furfural not less than three “point” five parts and higher alcohols (calculated as amyl alcohol) not less than one hundred and eighty parts per one hundred thousand parts of alcohol, and, where the quantity of furfural falls below the quantities specified herein, containing such a quantity thereof as is not less than one-eightieth of the quantity of higher alcohols, and, where the quantity of furfural is not less than the quantity so specified, containing a quantity of higher alcohols not less than forty times the quantity of furfural;

“member” means a person appointed by the Minister to the Liquor Licensing Board under section 5 or under section 6;

“Minister” means the Minister responsible for the administration of this Act or such Minister as the Government may notify by notice published in the Gazette;

“mixed spirits” means a mixture (other than whisky, malt whisky or blended whisky to which sherry wine has been added in terms of section 42(g) of an alcoholic strength not lower than twenty-five degrees under proof, of two or more kinds of spirituous beverages or liquors derived by distillation from different sources;

“objector” means a person who has lodged an objection in accordance with section 25;

“officer of customs” has the same meaning as in the Customs and Excise Act, No. 21 of 1971;

“off-sale” means premises offering for sale liquor for consumption off the licensed premises commonly known as “liquor bottle store”;

“orange fermented beverage” means a beverage of an alcoholic strength not lower than two point five per cent and not higher than fourteen per cent of alcohol by volume and a total residual sugar content (expressed as dextrose) of not higher than thirty-five grammes per litre and which shall have been obtained solely by the alcoholic fermentation of the juice of fresh oranges or the diluted concentrate of such juice or of such juice together with such diluted concentrate;

“proof” means the strength of proof after distillation as ascertained by Sikes’ hydrometer;

“punitive” in relation to sentencing, includes a punishment sounding in money;

“rectified spirit” means a purified spirit of an alcoholic strength not lower than twenty-five degrees under proof, obtained and purified by distillation with a rectifying or fractionating column;

“removal” in relation to a licence, means removal from the licensed premises to other premises within the region;

“restricted off-sale” means premises in a shop, store or supermarket and restricted as specified in the Regulations and offering for sale liquor for consumption off the licensed premises;

“rum” means an unrectified distillate of an alcoholic strength not lower than twenty-five degrees under proof, and not higher than forty-five degrees over proof, resulting from the distillation of the fermented juice of sugar cane or of molasses, and whereof the volatile constituents, other than water, are derived solely from those materials, and include not less than one hundred and twenty parts of compound ethers, calculated as ethyl acetate, per hundred thousand parts of alcohol;

“secretary” means the secretary to the Board;

“spirit aperitif” means rectified spirit or brandy to which herbs or any natural extract of herbs has been added, with or without the addition of any other natural aromatic flavouring substances or of cane sugar, and which has an alcoholic strength not lower than twenty-four per cent of alcohol by volume, and the taste, aroma and other qualities which are generally characteristic of spirit aperitif;

“spirit cocktail” means rectified spirit or brandy to which egg and any natural aromatic flavouring substances have been added, with or without the addition of milk or of cane sugar, and which has an alcoholic strength not lower than twenty-four per cent of alcohol by volume, and the taste, aroma and other qualities which are generally characteristic of egg cocktail;

“spirits” includes all descriptions of brandy, orange fermented beverage, whisky, liqueur, rum, cane spirit, vodka, mixed spirits, fortified wine, wine spirit, rectified spirit, spirit aperitif, spirit cocktail, or gin, or any other beverage prescribed by the Minister by notice in the Gazette to be included in this definition;

“still” means an apparatus capable of being used in the distillation of liquor, by which volatile matter is separated by means of heat from the substance in which it is contained and is then recondensed into liquid form, or a part of such an apparatus;

“traditional Swazi beer” means -

- (a) the drink commonly known as *umcombotsi* or *tjwala besi-Swati* or *Sintfu* and brewed solely from sorghum or maize or a mixture of both, and water;
- (b) the beverages known as *buganu*; and
- (c) a beverage of a proprietary nature -
 - (i) made in accordance with the directions issued by the proprietor, and
 - (ii) declared by the Minister, by notice published in the Gazette, to be traditional Swazi beer;

but does not include -

- (d) any other beer or concoction which the Minister has or may in the Minister’s discretion, specified or specify by notice published in the Gazette;
- (e) any substance, mixture of substances or beverage of whatever nature, with or without an alcoholic content the Minister has or may at the Minister’s discretion, specified or specify by notice published in the Gazette;
- (c) any substance, mixture of substances or beverage of whatever nature, with or without an alcoholic content prohibited by this Act or other law;

“transfer or application for transfer” means and may be construed as meaning a grant or an application for a grant of a licence wherein a current licence is transferred from the licence-holder to an applicant who intends to hold it;

“unfortified wine” means unfermented, fermented or concentrated juice of fresh grapes (including vermouth and aromatic wines) or of dried vine products, to which a wine brandy or grape brandy has not been added or, if added for the purpose of preservation, if the alcoholic strength of that wine is not thereby increased by more than one degree proof strength per annum, per imperial gallon (4.5 gallon);

“vodka” means rectified spirit, whether or not treated after distillation with charcoal, which has no distinctive aroma, taste or colour and has an alcoholic strength not lower than twenty-five degrees under proof;

“whisky” means spirituous liquor of an alcoholic strength not lower than twenty-five degrees under proof, derived from grain by fermentation and distillation, and whereof the volatile constituents, other than water, are derived solely from grain;

“wine” means fortified or unfortified wine;

"wine brandy (cognac type)" means a distillate of an alcoholic strength not lower than twenty-five degrees under proof resulting solely from the distillation of wine distilled at not higher than twenty-two degrees over proof, and whereof the volatile constituents, other than water, are derived from such wine and include not less than one hundred and twenty-five parts of higher alcohols calculated as amyl alcohol and three hundred parts of total secondary constituents per hundred thousand parts of alcohol.

Application.

3. (1) Subject to the provisions of this section and section 4, this Act shall apply to every person who deals in or sells liquor to another person whether for gain or not.

(2) Notwithstanding subsection (1) this Act shall, subject to any other contrary provisions and further subject to any Regulations the Minister may promulgate, not apply to a person who brews or sells traditional Swazi beer of not more than two hundred litres (200L) at any one given brewing circle.

(3) The Minister may, with the exception of the provisions contained in section 4 (2) and on just reasons, exempt certain institutions from the operations of or certain provisions of this Act after the Minister has received Cabinet approval so to do.

(4) The Minister may, with the exception of the provisions contained in section 4 (2) and on just reasons, exempt any person (being a natural person) from the operations of or certain provisions of this Act after the Minister has received Cabinet approval so to do.

(5) The Board (or an authorised member or members of the Board) and the liquor licensing inspector shall have the power to enter any place suspected of or known to be dealing in liquor with or without a licence and take appropriate measures it deems fit and lawful.

(6) The Royal Swaziland Police Service or a member thereof shall accompany and assist the Board, a member of the Board or the liquor licensing inspector whenever so requested to do in carrying out the duties under subsection (5).

(7) For purposes of this section -

"a brewing circle shall be a single process of brewing starting from the mixing of the ingredients to the state where the liquor is consumable".

Not applicable to Government training institutes.

4. (1) This Act shall not apply to any hotel, off-sale or other liquor premises where the Minister has issued a certificate that such hotel, off-sale or such other liquor premises are being conducted as a *bona fide* training institute by the Government during the currency of such certificate.

(2) Sections 3 (5), 28, 40, 42, 43, 44, 46 (5), 50, 51, 55, 66 and any regulations made by the Minister in terms of section 70 relating to the type of liquor to be sold and supplied and the imposition of licensing hours shall *mutatis mutandis* apply in the same way as if the premises were licensed in terms of this Act:

(3) The Minister shall designate a public officer to conduct such hotel, off-sale or such other liquor establishment and the officer shall for the purposes of this section be regarded as the holder of the licence under this Act.

PART II**ESTABLISHMENT, FUNCTIONS AND POWERS OF LIQUOR BOARDS*****Establishment of the Liquor Licensing Board.***

5. (1) There is, in the public administration, established a statutory body, for the regulation of sale of intoxicating liquor and for such other purposes as may be prescribed, to be known as the Liquor Licensing Board and shall be constituted in the manner provided for in this section and for each region.

(2) The Board shall have as its members the following persons -

- (a) a chairperson who shall be a public officer, an admitted officer of the High Court or so qualified to appear and practice in the High Court;
- (b) the public officer serving as tourism officer in the public service and in default, such officer's representative;
- (c) a public officer under the Ministry who shall be secretary and in default, such officer's representative;
- (d) the Regional Secretary of the region whenever the Board is sitting in that region or the Regional Secretary's representative;
- (e) such other persons who have knowledge of the liquor industry or expertise thereof, not exceeding three in any one region, who reside or carry on business in the region where the Board is sitting.

(3) If for any reason the chairperson is unable to attend a meeting or session of the Board, the chairperson or Attorney General shall designate an admitted officer of the High Court from the office of the Attorney General to represent the chairperson and such officer shall for all intents and purposes be deemed to be so appointed in terms of this section.

(4) The appointment under subsection (3) may not exceed five days of actual sittings in any one continuous period of sittings or of one continuous session unless the Minister, by notice published in the Government Gazette, so appoints such officer for the anticipated longer duration of the absence of the chairperson.

(5) The members of the Board shall be appointed by the Minister for any period, the tourism officer being excepted, not exceeding three years in any one appointment and the appointments shall be by notice published in the Government Gazette.

(6) A person appointed by the Minister to the Board may decline the appointment in writing to the Minister within fourteen (14) days upon taking notice of the appointment and a member may resign at any time by giving written notice of fourteen (14) days to the Minister.

(7) The Minister, by notice published in the Government Gazette, may cancel or revoke an appointment where the Minister believes the cancellation or revocation is just for good operations of the Board.

(8) Subject to good behaviour a member may be re-appointed by the Minister to the Board.

(9) The Minister, for purposes of continuity, when appointing or retiring members of the Board shall ensure that not all members are appointed or retired at the same time.

(10) A member of the Board shall not be sued in law for anything done, or omitted to be done, in the *bona fide* discharge of that member's duties under this Act.

(11) The Attorney General or the Attorney General's representative shall represent the Board in any court process or proceedings.

Acting appointment of members of the Boards.

6. Nothing contained in section 5 shall prevent the Minister from exercising the Minister's powers to appoint under this section a person to act as a member during a period when the member is for any reason unable to perform the duties of the office.

Quorum and voting.

7. (1) For the dispatch of business the chairperson, secretary and two other members of the Board shall constitute a quorum.

(2) Where a quorum is not formed at a sitting of a Board, the sitting shall be adjourned from day to day until a quorum shall be formed to hold the sitting.

(3) A member appointed from and representing a region may be co-opted to fill in for an absent member in order to form a quorum in a sitting held in a region other than the region the member is appointed and representing.

(4) The decision of the majority of the members present shall be the decision of the Board and, in the case of an equality of votes, the person presiding shall have the casting as well as a deliberative vote.

Rotation of members.

8. (1) On the request of any two members from one region or on the chairperson's discretion, not less than two members of one region may sit in place of two or corresponding number of members in another region as long as a quorum is formed.

(2) The arrangement in subsection (1) shall be of short duration and shall be compensatory in nature, that is to say, replacing or replaced members shall not loose on the number of sitting days they would have been entitled to were it not for this arrangement.

Disqualification for membership of the Board.

9. (1) A person shall be disqualified from becoming a member, or if the person is already a member shall cease to be a member, if that person -

- (a) is an applicant for, or the holder of, a liquor licence; or,
- (b) subject to subsection (2), has a financial interest, either direct or indirect, in any licensed premises situated in Swaziland or in an application for a licence; or
- (c) is an un-rehabilitated insolvent; or
- (d) is a person who, within or without Swaziland, has been sentenced by a court in

respect of an offence involving, in the opinion of the Minister, serious moral turpitude and in respect of which that person has not received a free pardon;

- (e) has in writing to the Minister resigned that person's membership to the Board or has in writing declined to take up the position of membership; or
- (f) has persistently, or without informing the secretary or other members after being duly informed of an intended sitting, failed without just cause to attend three consecutive sittings of the Board.
- (g) is or becomes an intemperate, a vagabond, a serving convict or leaves Swaziland or is unable to carry out the duties of member in the Board for a continuous period exceeding six months in any unbroken period of twelve months;
- (h) disrespects the decisions of the Board, a directive of the Minister or creates disaffection between any person and a member of the Board or the Board or does an act contrary to the principle of collective responsibility;
- (i) fails to take lawful orders given by the Chairperson or such other member or person having or exercising any given authority by another person or by this Act;
- (j) is contemptuous of the Board or disrupts the proceedings of the Board or that person's conduct is such that the Board resolves that the person is not fit and proper to continue as a member;
- (k) subject to subsection (5), being related within the first degree of consanguinity or affinity to an applicant for a licence, sits at the hearing of the application without first disclosing to the Board the existence of such relationship or sits without being excused by the Board.

(2) The Minister may direct that subsection (1)(b) shall not apply to particular person or member.

(3) The Minister may, on the Minister's motion, on a communication received by the Minister from the chairperson (or on a communication from the Board or Senior Tourism Officer where it is the chairperson to be removed) or the Principal Secretary, remove or revoke the appointment of a member where the member, in terms of this section or Act, has violated any of its provisions or for any just reason.

(4) A public officer may not resign but may, stating reasons in writing, request the Minister to excuse that person from membership of the Board.

(5) If a member of the Board is related within the first degree of consanguinity or affinity to an applicant, which fact the member shall disclose before the application is heard, the member shall, for the purposes of the application only, cease to be a member of the Board unless the Board otherwise directs.

(6) Failure of a member to make disclosure under subsection (5) shall render the member disqualified from the Board and the applicant shall start de novo.

Functions of the Board.

10. (1) The functions of the Board shall, in addition to other provisions of this Act, be -

- (a) to consider applications for or relating to liquor licences and liquor permits;
- (b) to issue or grant, renew, vary, review, suspend, remove, withdraw and cancel liquor licences and liquor permits;
- (c) to investigate or cause to be investigated and determine complaints relating to liquor licences and liquor permits.

(2) Subject to this Act, the Board shall be the sole authority having power to grant, renew, vary, review, suspend, remove, withdraw and cancel any liquor licence or permit specified in the Schedule and for the exercise of this power the Board shall follow the provisions of this Act and Regulations made under this Act.

(3) The Board shall whilst performing its functions do so independently of any other authority, that is to say, it shall exercise an independent and professional mind which shall be free of political or undue influence.

(4) The Board may grant or refuse -

- (a) an application for the grant or renewal of a licence;
- (b) an application for review, variation, or removal of such licence (including the confirmation or otherwise of the exercise by the chairperson of the chairperson's powers under section 23(1));
- (c) an application for suspension, withdrawal or cancellation of a licence;
- (d) an application made under section 28(7) for the approval of a Board of a proposed alteration to premises or in the use of a part thereof.

(5) In considering an application under this section the Board shall, in particular and subject to section 20, have regard to the following matters -

- (a) the character, financial standing and place of residence of the applicant and location of the premises;
- (b) sufficient knowledge of the provisions of this Act, having regard to the provisions relating to compliance and generally to high standard of service and welfare of the consumers;
- (c) consideration, where applicable, the provisions of section 39 (6);
- (d) the encouragement of tourists and the convenience of local and foreign consumers or users of the services provided or to be provided; and
- (e) the safety, health and security of the consumers and the employees.

(6) Upon determination of an application, the secretary shall issue an authority for the issuance of the requisite licence where the Board has granted the application and thereafter notify or compile a list, as the case may be, of applications granted and of those not granted for use by offices of health inspectors, liquor licensing inspector, Swaziland Royal Police, King's Office, Regional Administrators, chiefs and such other persons the secretary deems entitled to receive such list.

(7) If after lodgment of an application for the renewal of a licence in terms of section 21, and prior to the date fixed for consideration of the application, a person sells or otherwise disposes of the business in respect of which the application is made, the Board may, on application, grant the renewal of the licence in respect of such business to the person to whom it has been sold, or otherwise disposed to, and the Board may, with such conditions or directions it deems appropriate, treat such renewal as an application for a transfer.

(8) If an applicant has not erected the premises for which the licence is applied for at the date of hearing of the application, the Board shall, if it approves the application, grant provisional authority for the issuance of the requisite licence, which authority shall not entitle the holder to obtain the licence or to commence the business of liquor for which the application relates until such time as the Board is satisfied that the applicant has -

- (a) completed the building according to the plans submitted and approved by the Board; and
- (b) complied with any conditions or restrictions that may have been imposed by the Board, health inspector, building inspector, chief, Regional Administrator, Council of Chiefs and the Swaziland Royal Police; and
- (c) has complied with all the requirements for a new grant.

(9) If a Board refuses a grant, renewal, review, variation, removal, suspension or cancellation of a licence, it shall give the reason for the refusal which shall be in writing if so required by the applicant or an objector.

(10) Subject to any regulations, the Board may on application for a grant, renewal, review, variation, removal, suspension or cancellation of a licence, impose or confer upon the holder thereof such conditions and privileges as appear suitable.

(11) Any conditions and privileges imposed or conferred shall be endorsed on the licence or on the file and they shall be deemed to form part of the licence.

(12) Failure to endorse a condition or privilege upon a licence shall not relieve the holder from an obligation in respect of the condition or privilege.

Powers of the Board.

11. (1) The Board may in accordance with this Act grant, renew, vary, review, suspend, remove, withdraw and cancel any type of liquor licence or permit.

(2) The Board may carry out or cause to be carried out investigations against any person who sells, supplies or delivers liquor to another person notwithstanding whether or not that person is a holder of a liquor licence or permit.

(3) The Board may order or direct a person who sells, supplies or delivers liquor to forthwith stop or cease the manufacturing, distilling, mixing, selling, supplying, delivering of or dealing in liquor for a specified time or for purposes of compliance with an order of the Board issued or to be issued immediately for any reason relating to the operation, breach or enforcement of this Act or on the instructions or recommendations contained in a report of a health inspector, police officer or the Liquor Licensing Inspector and the Board shall give written reasons if so required for its actions.

(4) The Board may, subject to this Act, in appropriate circumstances or in circumstances it deems fit, impose reasonable penalties and fines on any person for non-compliance with any provision of this Act or Regulations, directive of the Board or for contempt of the Board.

(5) The Board may fine a person an amount not exceeding one hundred Emalangeni for abandoning, or where the Board believes that person has abandoned, an application without first withdrawing it from the Board.

(6) The Board may also order the suspension of operations or closure of licensed premises or other premises where liquor is sold, supplied, delivered or consumed where the Board reasonably believes a provision of this Act has been or is being or is about to be violated;

(7) The Board may order the closure of premises where liquor is sold, supplied, delivered or consumed where the Board receives a report from a police officer, health inspector, liquor licensing inspector or such other authority recognised in this Act recommending closure or indicating that a provision or any provision of this Act has been or is being or is about to be violated;

(8) Notwithstanding any provision to the contrary the Board shall carry out an order or directive (of national interest) from the Government (the Executive) communicated to the Board in writing by the Minister relating to the grant, renewal, suspension, removal, cancellation or revocation of a licence including the closure of any licensed premises.

(9) Where the Board has issued an order for closure of the premises it may reverse its order on receipt of new evidence tending to show that the Board should not have issued the initial order or where the reasons or circumstances giving rise to the issue of the order no longer exist or have been corrected to the satisfaction of the Board or the Government has reversed its order or directive.

(10) The Board may delegate all or some of its functions and powers to a member of the Board and its inspectorial powers to a named police officer, health inspector, Customs official, liquor licensing inspector or a Regional Secretary except the power to grant, renew, vary, review, suspend or remove a licence or permit.

(11) The Board may, without prejudice, advise a person before it on an appropriate course of action to take in relation to liquor licensing.

(12) The Board may do any thing that it may lawfully do to ensure that the objectives or purposes of this Act are carried into effect or are not defeated or compromised.

Powers of an independent person.

12. (1) Any person who witnesses a violation of any provision of this Act may notify a health inspector, the liquor licensing inspector, a police officer, a chief, a member of the Board or a Regional Secretary of that person's observation and the person to whom a complaint or notification has been made shall, if satisfied of the existence of reasonable grounds, suspicion or likelihood of the violation, investigate or cause an investigation to be made either by the Board or the Royal Swaziland Police.

(2) The Board shall, after the conclusion of the investigations mentioned in subsection (1), determine the issues giving rise to the investigations and take any appropriate action permitted in this Act or other law.

(3) Where the investigation is being carried out by the Royal Swaziland Police, it shall take any appropriate action permitted in this Act or other law.

(4) For purposes of this section, the Board may order any person to produce any document or thing the Board believes is relevant for the proper determination of the matter and the Board may also order any person to appear on an appointed day before the Board to answer any questions the Board may put to that person.

(5) A person who refuses, neglects or fails to appear before the Board after due notice or to produce a document or thing ordered by the Board or who fails to co-operate in an investigation under this section commits an offence and on conviction shall be liable to imprisonment for a period not exceeding three months or to a fine not exceeding one thousand Emalangeni or such higher or lower fine as a court may determine.

Powers of the Minister in respect of certain licenses.

13. (1) The Minister may -

(a) grant approval or permission to an applicant who has satisfied the Minister of the applicant's financial standing, capability, suitability and desirability to be granted by the Board of -

(i) a brewer's licence;

(ii) African beer manufacturing licence;

(iii) a spirits manufacturer's licence;

(iv) liquor distiller's licence;

(vii) duty-free licence in consultation with the Minister responsible for customs and excise; or

(viii) a licence of such similar nature as in sub paragraphs (i) to (vii), for such period not exceeding ten years as the Minister may deem fit,

(b) give approval or permission for -

(i) renewal for a period referred to in paragraph (a); and

(ii) subject to section 9 (7), cancellation, suspension, removal and transfer (grant), of any of the types of licences referred to in paragraph (a).

(2) The Minister may grant or refuse an application for approval or permission for a type of licence required to be made to the Minister and the Minister's decision shall be final.

Powers of chiefs and Regional Administrators.

14. (1) Any person desiring -

(a) to obtain a liquor licence;

(b) to renew, review, or vary an existing licence;

- (c) to remove an existing licence from the licensed premises to other premises; or
- (d) to suspend or cancel an existing licence,

in respect of premises situated or to be situated on Swazi Nation Land, shall first obtain written permission or approval of the chief of the area which permission or approval shall then be endorsed by the hand of the Regional Administrator or Regional Secretary of the region before lodgement with the Board as an attachment to an application.

(2) A chief shall consider a request for purposes of subsection (1) in Libandla and may grant or refuse permission or approval.

(3) A person refused permission or approval by the chief under subsection (2) or by the office of the Regional Administrator under subsection (4) may appeal to a Council of Chiefs established for the region which, applying the rules of fair hearing and policy considerations, shall decide the appeal and its decision shall be final.

(4) The Regional Administrator or Regional Secretary may, for just reasons, refuse to endorse the chief's written permission or approval and for this purpose the Regional Administrator or the Regional Secretary shall be assisted and guided by the prevailing Government policy, subsection (6) and as well as principles of law.

(5) The application shall further comply with the other provisions of this Act in respect of applications.

(6) A chief, Regional Administrator or Regional Secretary, as the case may be, shall not give permission or issue an approval or endorsement unless satisfied with the following matters -

- (a) the character, financial standing and location of the liquor premises and residence of the applicant;
- (b) the public need for a licensed liquor business or licensed premises in the locality or region;
- (c) the economic development of the area or region;
- (d) proximity or distance to the nearest clinic, health centre, school, house or place of worship, homestead other than that of the applicant, development projects or centre and, in cases of renewal, the consideration of which entity was first established on the ground or area;
- (e) Government policies applicable or affecting the sale and consumption of liquor beverages and the socio-economic development of the community.

(7) A person who has been refused a grant, renewal, review, variation, transfer, removal, or other application by the Board or an approval by a chief or Council of Chiefs, as the case may be, shall not be entitled to any compensation for loss of business or for costs and expenses of setting up the business but may sell or transfer the business to any person so approved to trade in the area."

Appointment and designation of liquor licensing inspectors.

15. (1) There shall be appointed such number of liquor licensing inspectors as may be necessary who shall be public servants.

(2) Notwithstanding subsection (1), the Minister may, on such terms and conditions as the Minister thinks fit -

- (i) designate any public officer to be a liquor licensing inspector;
- (ii) appoint a former or current Board member to be a liquor licensing inspector;
- (iii) appoint any person who has knowledge of the liquor industry or has qualifications in law, chemistry or other science discipline to be a liquor licensing inspector;

(3) The powers of a liquor licensing inspector shall be those permitted by the Act including the following -

- (a) to ensure that the provisions of this Act are adhered to and ensure compliance by both licence holders and non-licence holders;
- (b) to do any lawful act that ensures the provisions of this Act are complied with;
- (c) to carry out any lawful instruction or order of the Board or Minister;
- (d) without derogation to the powers conferred in this subsection, a liquor licensing inspector may -
 - (i) inspect and determine the validity of a licence;
 - (ii) investigate the compliance with opening, operating and closing hours;
 - (iii) investigate any report or complaint received by the inspector from any person relating to the liquor business;
 - (iv) investigate any person trading with or without a licence for any breach of this Act and other related Acts such as health and employment legislation and thereafter submit such reports to the Board;
 - (v) cause to be confiscated any liquor sold in contravention or non-conformity to the provisions of this Act;
 - (vi) confiscate any item suspected to be sold in a liquor premises not provided for under the Act unless that person produces an appropriate trading licence permitting that person so to do;
 - (vii) take or cause to be taken into possession liquor or samples of the liquor for forensic or scientific testing for verification as to whether it conforms to permitted levels or strengths of alcoholic content and the liquor licensing inspector shall cause same to be so tested by a qualified chemist or such other qualified person;
 - (viii) make or cause to be made orders as to the cleanliness, health environment and hygiene observance of the premises;
 - (ix) make or cause to be made before a magistrate an application for an order for a temporal (not exceeding seven days) closure of licensed premises for purposes of compliance with or the prevention of a breach or likely breach of any provision of this Act or any other law;

- (x) make orders respecting signs that may be posted on the premises; and
- (xi) make any order compatible with the requirements and provisions of this Act and for the hygiene, health and welfare of the users of the premises;

(4) Any person aggrieved by an act or decision of a liquor licensing inspector shall seek redress from the Minister as a matter of first instance.

Sitting of Boards.

16. (1) A Board shall sit in public at such times and places as the chairperson or the secretary under the Chairperson's directions may, by notice published in the Gazette, fix for the consideration and determination of applications, in accordance with this Act, for the grant, renewal, variation, review, suspension, removal or cancellation of liquor licences or approval of alterations to licensed premises.

(2) At least one meeting of a Board, to be known as the annual meeting, shall be held during November and December of each year and, provided that there is a matter for consideration by it, a further meeting, to be known as the mid-year meeting, shall be held during May or June of each year.

(3) Where the number of applications filed within the time limits set for the meetings under subsection (2) cannot be dealt with or finalised within the times specified under subsection (2), the chairperson after consultation with the Senior Tourism Officer may extend the times solely to complete the determination of the applications.

(4) A Board may sit at such place within Swaziland, and adjourn a sitting to such time or place, as it considers expedient

(5) The first day of hearing of an application shall be charged to the Ministry's budgeted funds and the second or any subsequent day of hearing shall be an expense to the applicant or such other person the Board so orders who shall pay for the full sitting allowance for each member and, subject to subsection (6), any travelling allowance occasioned by such sitting.

(6) Where there is more than one application falling under subsection (5) the travelling allowance payable may be pro rata, that is to say, every one of the applicants shall be refunded an equal amount of the money in excess of what the members are entitled to as travelling allowances.

(7) Where circumstances are such that the delay in finalising an application on the first day are wholly attributable to the Board or to an excuse acceptable to the Board, the Board in consultation with the Senior Tourism Officer may order that a sitting allowances to members be paid from the funds of the Ministry.

(8) In a part heard application and where the Board deems it fit it may delegate its powers or functions to the chairperson for the finalisation of the application.

Special sittings of Boards for provisional authority

17. (1) A special sitting of a Board may, subject to this Act, be convened by the chairperson in any month other than on the scheduled days of the months of May, June, November and December for the purpose of considering an application for the granting of a provisional authority in terms of this section .

(2) Any person desiring the chairperson to exercise the chairperson's discretion in terms of this section shall make a written application addressed to the secretary, accompanied by payment of the prescribed fees and sections 18 and 21 shall *mutatis mutandis* apply to such application.

(3) The applicant shall deliver to the chairperson an affidavit deposed to by the applicant or any other person in support of the application referred to in subsection (2), and the applicant shall appear before the chairperson to make oral representations and give evidence under oath.

Other special sittings of the Boards.

18. (1) On application to the chairperson (through the secretary) by a person desiring to place an application before the Board for determination which application, for any reason, could not be heard or, if heard, not finalized during the time allocated or set aside for it during the annual or mid-year meetings, the chairperson through the secretary shall advise the applicant of the chairperson's decision and the procedure to be followed.

(2) The meeting under this section shall be a special sitting of the Board and all expenses associated with the convening and the sitting of the Board shall be borne by the applicant and shall be paid in advance to the secretary.

Procedure of Boards and evidence before it.

19. (1) On the instructions of the Senior Tourism Officer or the chairperson the secretary shall place a notice in a newspaper circulating in Swaziland notifying applicants of the dates in each region of the Board's meetings and sittings and further stating the following -

- (a) the applications to be heard by the Board;
- (b) the dates for the hearings;
- (c) the types of liquor licence relating to each application;
- (d) the dates within which objections should have been received by the secretary;
- (e) the address to which the objections should be delivered; and
- (f) any other information the secretary believes to be relevant for the hearing.

(2) A notice under subsection (1) shall be sufficient notice to an applicant and to an objector or any other interested person.

(3) In addition to the provisions of subsection (1) and in the discretion of the secretary or on the instructions of the chairperson or the Board, the secretary may by written notice under the secretary's hand require the attendance before the Board of any person -

- (a) who has made an application for a new licence, renewal, review, variation, transfer, removal, suspension or cancellation of a licence;
- (b) is charged with the management of the business in the event the licence holder is not available; or
- (c) who, in the opinion of the chairman, at his own instance, or at the instance of an applicant or an objector, can testify as to any matter the Board has to determine.

(4) The secretary may on the instructions of the chairperson by written notice require that such applicant or other person to produce any book, paper or other document in that person's possession or control, and which may be relevant to the matter before the Board.

(5) If an application is made for the renewal of a licence in accordance with section 21 and no objection to the renewal is lodged in accordance with section 25, the chairperson may, in the chairperson's discretion, grant the application, if the chairperson is satisfied as to those matters respecting the application or may refer the application to the Board.

(6) Any person who refuses or fails without good cause to attend and give evidence before the Board at the time and place specified in a notice given under this section, or to produce a book, paper or other document as been required of that person by the notice, shall be guilty of an offence and liable, on conviction, to a fine not exceeding one thousand Emalangeni or, in default of payment, to imprisonment for a period not exceeding three months.

(7) If the Board considers it necessary to take evidence respecting a question to be determined by it, such evidence may, in the discretion of the Board, be given on oath (which oath the person presiding or an admitted attorney present is by this subsection authorised to administer) and a notification to that effect in the record of proceedings shall be made.

(8) The Board may of its own motion take notice of a matter or thing which in the opinion of its members constitutes an objection to the granting, renewal, removal or transfer of a licence although no person has made any objection to it:

(9) Where the Board acts under subsection (8) it shall inform the applicant of such matter or thing, and should the applicant so request, adjourn the sitting for a reasonable period as it may consider suitable in order that the applicant may have an opportunity of replying to the objection.

(10) An applicant or objector may as of right, appear in person before the Board or be represented by a person authorised in writing by him, and call evidence in support of the application or objection.

(11) Except where otherwise specially provided in this Act, the chairperson shall determine the procedure to be adopted in the case of a sitting to consider applications.

PART III

PROHIBITION ON DEALING WITHOUT A LIQUOR LICENCE.

Prohibition on operating or dealing without a licence.

20. (1) No person shall, directly or indirectly, carry on the trade or business of selling liquor, or of offering liquor for a price or for whatever promotion purposes to another person contrary to the provisions of this Act.

(2) No person shall manufacture, brew, sell or deal in liquor unless that person is exempted under this Act or has a licence or permit granted to that person by the Board as provided under this Act.

(3) A licensee, employee or agent of the licensee shall not sell or supply liquor to any person on the licensed premises whether to be consumed on or off the premises unless it is during the business hours specified in the Regulations or on the licence for the sale of liquor.

(4) A person who contravenes subsection (1) or subsection (2) commits an offence and shall, on conviction, be liable to a period of imprisonment not exceeding one year or to a fine not exceeding four thousand (E4,000) Emalangeni or both.

(5) A person who contravenes subsection (3) commits an offence and shall, on conviction, be liable to a period of imprisonment not exceeding six months or to a fine not exceeding one thousand (E1,000) Emalangeni or both.

(6) Notwithstanding anything contained in this section, a person who contravenes subsection (1), (2) or (3) shall further be liable to -

- (a) any punitive damages as may be ordered by a court or, in minor or appropriate circumstances, by the Board; and
- (b) any person who suffers damages caused by a person intoxicated by liquor bought, delivered or obtained in contravention to this section.

(7) A person who suffers another person damages as a result of that person's intoxication coming from or combined with liquor obtained in contravention to subsection (3) shall in addition to any other punishment or compensation ordered by a court be subject to punitive damages as the court deems fit.

(8) A person who persuades or incites another to contravene subsection (3) commits an offence and on conviction shall be fined an amount not exceeding two hundred Emalangeni and in default of which, sentenced, to community service not exceeding twenty-one days.

(9) A person convicted under subsection (1); (2); (3) or (8), for the first conviction, shall be liable to the sentence specified for punishment in respect of that contravention and double that punishment on the second or subsequent convictions.

(10) In the case of a duly approved renewal of a licence, a contravention shall not be deemed to have occurred until the thirty-first day of January in the year following the expiry of the period for which a licence is taken out.

(11) In the case of a renewal, a person who has not taken up a licence after the 31st of January following the expiry of a licence shall, in addition to any other sanctions, be liable to penalties as may be prescribed.

(12) Upon conviction for an offence under subsection (1) or subsection (2), all liquor found in the possession of the convicted person shall be, *ipso facto*, forfeited to the State.

(13) In the case of a person who has been duly authorised to obtain the renewal of a licence, but has omitted to do so immediately on expiry of the previous licence and as provided under subsection (10), the forfeiture of liquor shall be at the discretion of the court in which the conviction took place.

(14) The fact that an unlicensed person -

- (a) has a notice or sign upon, or in the vicinity of that person's premises purporting that the person or the premises are licensed; or
- (b) has a house or premises fitted up with a bar, or other place, containing bottles, casks or vessels, so displayed as to induce a reasonable belief that liquor is there sold or served for payment; or

- (c) keeps liquor concealed on those premises or has more liquor than is reasonably required for the persons residing in them or for *bona fide* entertainment,

shall be deemed to be *prima facie* evidence of a contravention of subsection (1) or (2) or both.

(15) Any person who purports to possess a liquor licence which its issuance was not authorised or granted in terms of this Act or by the Board shall *prima facie* be deemed to have committed an offence of fraud, forgery or a contravention of subsection (1) or (2) and shall, on conviction, be liable to imprisonment for a period not exceeding two years or a fine not exceeding ten thousand (E10, 000) Emalangeni.

PART IV

GRANT OF LIQUOR LICENCES AND PERMITS.

Applications for liquor licences.

21. (1) Any person desiring -

- (a) to obtain a new licence;
- (b) to renew, review, vary or suspend an existing licence;
- (c) to remove or withdraw an existing licence from the licensed premises to other premises;
- (d) to suspend or cancel an existing licence,

shall on or before the first day of October, if the application is to be heard at an annual meeting, or the first day of April, if the application is to be heard at a mid-year meeting, lodge a written application addressed to chairperson through the secretary at the office of the Ministry responsible for the Liquor Licensing Board and copies thereof with the Commissioner of Police and, in the case of -

- (i) a city, with the City Council Health Inspector;
- (ii) a town, with the chief health inspector;
- (iii) a Swazi Nation Land, with the chief health inspector;
- (iv) a rural farm or such other place, with the chief health inspector.

(2) The application shall be lodged together with such fees as the Minister may prescribe.

(3) The application shall disclose -

- (a) the full name and nationality of the applicant,
- (b) the full name and address of the owner of the premises,
- (c) the full name and nationality of the responsible manager if the manager is not the applicant,
- (d) the name of the region and place and, in the case of an urban area, the name of the street and number of the lot in respect of which the business is desired to be carried on,

- (e) the nature of the licence desired;
- (f) the trade name or business style;
- (g) any privilege, as to hours, desired with the licence; and
- (h) any other information the Minister may stipulate under Regulations.

(4) The application shall be supported -

- (a) in the case of a new licence, or of a removal of a licence, or of variation of a licence by a plan drawn to scale of the premises for which the licence is applied;
- (b) in the case of the renewal of a licence, by a plan drawn to scale showing any structural alteration to the premises, and any alteration in the use of any parts thereof, since the issuance of the previous licence;
- (c) in the case of any kind of new club licence, but subject to any regulations, by a copy of the rules of the club certified by the secretary thereof, and, in the case of a renewal only, such rules as have been added, altered or cancelled since the grant of the licence; and
- (d) in all cases, by a notification of the place or places at which liquor is to be stored, that is, the liquor storeroom.

(5) The application shall also be supported by -

- (a) an affidavit of the applicant fully setting forth -
 - (i) particulars of any tie by which the applicant is, or is proposed to be, bound in respect of the business conducted under the licence;
 - (ii) the name and address of a person, other than the applicant, having, or to whom it is proposed to grant, a financial interest in the business, and the nature and extent of such interest, or that no other person other than the applicant has or is to receive a financial interest, if that be the case; and,
 - (iii) in the case of any other club licence, the number of members belonging to the club at the time of the application;
- (b) a true copy of any document by which the agreement respecting any such tie or financial interest was concluded; and
- (c) a true copy of ownership, lease or contract under which the premises are held or are to be held, on which the licensed business is, or is proposed, to be carried on;
- (d) the chief's approval and the Regional Administrator's endorsement in the case of premises located or to be located under Swazi Nation Land.

(6) Subsection (4) (d) and subsection (5) (b); or (c) shall not apply to an application for an ordinary renewal of a licence if the applicant, with the applicant's application, submits an affidavit setting forth that the particulars previously supplied in terms thereof remain unchanged.

(7) Any application received after the first day of October and before the first day of November, if it is to be heard at the annual meeting or the first day of April and before the first

day of May, if it is to be heard at the mid-year meeting, may, in the discretion of the chairperson, receive consideration subject to the prior payment of the prescribed penalty and fee as calculated per working day based on a working day of the type of licence or such other amount in lieu thereof as may be prescribed.

(8) Subject to subsection (10), at least twenty-one days before the meeting of the Board, the secretary shall at the cost of the Government advertise all applications to be heard by the Board in a newspaper circulating in Swaziland and may cause a copy of the list of the applications as sent for advertisement to be posted at the office of the Regional Administrator in respect of which the application is made or such other public place deemed appropriate.

(9) An application in default of the times specified in subsection (5), that is to say, received by the secretary on or after the first day of November or on or after the first day of May shall be subject to the following -

- (i) chairperson's discretion to receive consideration;
- (ii) payment of a specifically prescribed penalty fee;
- (iii) advertisement of application on applicant's cost;
- (iv) lapse or expiration of twenty-one days from the date of advertisement to the date of hearing.
- (v) special sitting at the applicant's or objector's expense, as the case maybe, for each day and for any subsequent days for objections, inspections and any compliance requirements;

(10) Any application under section 18 shall be advertised by the secretary at the expense of the applicant in the same manner as provided in subsection (8).

(11) The Board may waive a technical defect which appears in an application for a licence if the Board is satisfied that the defect is not a material defect and it may order for its rectification.

(12) Where the Board is satisfied with the requirements of this section and the other requirements of the Act the Board may grant the application.

(13) A licence shall not be leased or hired out and any person who contravenes this subsection commits an offence and, on conviction, shall be liable to imprisonment for a period not exceeding one year or to a fine not exceeding three thousand (E3,000) Emalangeni.

(14) A licence shall be displayed in a conspicuous place in the licensed premises where it could be easily seen by an inspector, Board member or police officer and a licensee who contravenes this provision commits an offence and on conviction shall be liable to a fine not exceeding one thousand Emalangeni (E1,000) or to imprisonment not exceeding three months.

Applications for liquor permits.

22. (1) Any person above the age of twenty-one years, including a licensee or licence holder desiring to obtain a liquor permit may at any time make an application in writing to the Board, provided that the application shall be heard or approved by the Board at least seven days before the event the application relates to.

(2) An application under this section shall be supported by documentary authorisation or consent from -

- (a) a designated senior officer of the Royal Swaziland Police; and
- (b) a designated officer responsible for health and sanitary matters.

(3) The application shall be submitted together with such fees as the Minister may determine and shall state -

- (a) full names of the applicant;
- (b) the nature of the function and the date on which it shall be held;
- (c) the type and amount of liquor to be sold;
- (d) the reason for making the application;
- (e) times within which liquor shall be sold; and
- (f) the location and description of premises to be used and places in which liquor shall be sold;
- (g) security arrangements for ensuring the safety of the employees, attendees and consumers; and
- (h) such other information the Minister may stipulate in the Regulations.

(4) The Board may issue a liquor permit, if it is satisfied -

- (a) that the facts stated in the application are true;
- (b) the Royal Swaziland Police and the agency responsible for health and sanitary matters in that place or area do approve;
- (c) that the applicant's knowledge of the provisions of the Act is satisfactory;
- (d) that any objection, if any, has been determined; and
- (e) that the issuance of the permit is not contrary to public interest or public policy.

(5) The chairperson shall, for purposes of considering the application, convene, at the applicant's expense, a meeting or special sitting of the Board at such time and place as the chairperson may determine.

(6) The Board may grant with or without conditions the application or it may refuse the application.

Interim applications.

23. (1) Subject to subsection (2), the chairperson may at any time consider an application for the removal of a licence and make an appropriate order which shall be subject to approval or confirmation by the Board at its next meeting.

(2) If the chairperson considers it expedient to do so, the chairperson may direct that the application be put before the Board for consideration.

(3) An applicant who intends to have an application heard under this section shall bear all the expenses associated with the convening and sitting of the Board.

Period of licence.

24. (1) A yearly licence shall expire on the thirty-first day of December of the year for which it is issued or renewed.

(2) A half-yearly licence may be issued after the thirtieth day of June to expire on the thirty-first day of December of the same year at half the charges for a yearly licence.

(3) A two or three-year licence may be issued and it shall be subject to -

- (i) the same provisions applicable to a yearly licence with the exception of yearly renewals;
- (ii) yearly reports under sections 26 and 27;
- (iv) yearly report by the Liquor Licensing Inspector;
- (v) renewal of the licence after its expiration on the 31st of December of the second or third year as the case may be; and
- (vi) payment in advance of licence fees at the time of taking out the licence for the two or three year period.

(4) A licence issued contrary to the provisions of this Act or not issued by the Board shall not be valid *ab initio*.

Objections.

25. (1) A person may, either individually or jointly with others, object in writing to the granting, renewal, review, variation, removal or cancellation of a licence.

(2) An objector may attend before the Board for the purpose of being examined on oath as to the grounds of the objection.

(3) An objection under this section shall be lodged with the secretary and a copy of the objection sent by the objector by registered post to the applicant at least ten working days before the sitting of a Board.

(4) The Board shall hear the parties to determine the gravity of the issues involved and, where the Board believes -

- (i) it is competent to deal with the matter, the Board shall so inform the parties and thereafter hear and determine the matter; or
- (ii) it is not competent, as in cases where certain points of law have arisen, the Board shall so inform the parties and thereafter advise the parties to refer the matter to a competent court.

Report on application by the Commissioner of Police.

26. (1) The Commissioner of Police who shall delegate the Commissioner's powers and duties to a Station Commander, or such other senior officer as the Commissioner of Police may authorise, shall, not less than fourteen days before the sitting of the Board furnish the applicant and the secretary with a written report on each application for such licences as may be prescribed for the purpose, and forward a copy thereof to the Regional Administrator of the region concerned and, where applicable, the chief of the area.

(2) The report shall contain the following particulars -

- (a) a description of the house, premises and arrangement of the furniture respecting safety, congestion and easy movement between the furniture and other items;
- (b) a statement as to whether the applicant is a fit and proper person to have the licence applied for, and known to be of good character and repute;
- (c) a statement as to whether the applicant appears to be, or not to be, the true owner of the business or the premises proposed to be licensed;
- (d) if the application is for a renewal by a person having held the licence during the whole or a part of the preceding year, a statement as to the manner in which the house has been conducted during such year or part thereof;
- (e) whether any convictions or criminal charges have been recorded against the person holding the licence or against the responsible manager, if so, particulars of each conviction;
- (f) instances of violence and theft reported to the police having taken place at the licensed premises;
- (g) a statement as to the character of the persons frequenting the house;
- (h) a statement to security and safety of the premises, employees and consumers;
- (i) a statement recommending or not recommending the grant, renewal, removal, transfer or other application; and
- (j) the facts upon which are based any conclusions or expressions of opinion.

(3) If the officer submitting the report is unable to supply any of such particulars, the officer shall specifically state the reason for the inability in the officer's report.

(4) The Board shall not proceed with an application until such report is submitted to the Board and the Board shall take it into consideration before deciding on an application.

Report on application by chief health inspector.

27. (1) The chief health inspector, the regional health inspector or such authorised health inspector shall, not less than fourteen days before the sitting of the Board, furnish the applicant and the secretary with a written report on each application for such licences as may be prescribed for that purpose, and forward a copy thereof to the Regional Administrator of the region concerned and, where applicable, the chief of the area.

(2) The report shall contain the following particulars -

- (a) a description of the condition of the house, premises, furniture, crockery and cutlery, in question;
- (b) an assessment of the adequacy or otherwise of the facilities for persons visiting, lodging, frequenting or resorting, including employees of the establishment, to the house or premises,;
- (c) a list of improvements or repairs necessary to maintain the house, premises, furniture, crockery or cutlery to required or acceptable public health standards;
- (d) a statement as to the general public health standards and the health environment of the premises;
- (e) a statement recommending or not recommending the grant, renewal or approval of the application; and,
- (f) if the application is for a renewal by a person having held the licence during the whole or a part of the preceding year, a statement based on health and hygiene as to the manner in which the house and premises have been conducted during such year or part thereof.

(4) The Board or a member, a Regional Administrator, medical officer or health inspector (acting under the authority of the chief health inspector or a local authority) may, at all reasonable times, inspect any premises dealing in liquor including premises which are the subject of an application for a licence.

(5) The person in charge of the house or premises shall, for purposes of this section, open the establishment for inspection and further provide security and safety to the persons carrying out the inspections.

(6) The Board shall not proceed with an application until such report is submitted to the Board and the Board shall take it into consideration before deciding on an application

Suitability of premises.

28. (1) Before granting an application for a grant, renewal, review, variation, removal or transfer of a licence the Board shall satisfy itself that the premises in respect of which the application is made, afford suitable and satisfactory accommodation for all purposes to which they may lawfully in terms of the licence be put or satisfy the requirements and provisions of this Act and the provisions of the Schedule to this Act or any Schedule the Minister may make to this Act.

(2) A licence in respect of an hotel, lodge, resort or motel shall be granted only in respect of premises proved to the satisfaction of the Board, in addition to the requirements specified in the Schedule, to be provided with sufficient -

- (a) accommodation of a reasonable standard for travellers,
- (b) means of egress in case of fire,
- (c) suitable sanitary arrangements, and conveniences
- (d) shelter for vehicles and motor conveyances, and

(e) suitable accommodation for the staff of the establishment living on the premises.

(3) In addition to the requirements specified in the Schedule, a licence in respect of any premises where liquor shall be stored or sold shall be granted only in respect of premises proved to the satisfaction of the Board to be -

(a) by law, of permissible and acceptable ventilation and lighting;

(b) of acceptable standards of hygiene and sanitation; and

(c) tidy, clean and ordered.

(4) All kitchens, pantries, dining-rooms and other places where food is cooked, stored or served, and all bedrooms, bathrooms and lavatories of licensed premises, shall be kept clean and in a proper state of repair, and the grounds thereof shall be kept tidy.

(5) A licence in respect of an hotel, lodge, resort or motel may be granted only in respect of premises in which rooms reserved for the sale of liquor are separated from any adjacent room in which other trade is carried on by a substantial wall or partition containing no door or other opening.

(6) A licence in respect of a hotel may be granted in an urban area only in respect of premises having the bar or public entrance in or towards a public street or thoroughfare, and sufficient floor accommodation for the convenience of the public.

(7) No more than two bars in a hotel, lodge, resort, motel or such like establishment may operate under one licence but may apply for additional licences for the additional bars at nominal or reduced fees.

(8) Any other licence not specifically mentioned in this section may only be granted if a Board is satisfied that the applicant or application is in conformity with the requirements specified for that type of licence in the Schedule.

(9) The holder of a licence shall not without the prior approval of the Board make or cause any structural alteration to the premises or any alteration in the use of a part thereof.

(10) An application for approval of such alteration shall be supported by a plan, drawn to scale, indicating fully and clearly the proposed alteration.

(11) The Minister may, by notice published in the Government Gazette, amend the Schedule to this Act whenever the Minister deems fit.

(12) For purposes of this section, the Board may inspect the premises licensed or to be licensed.

Refusal, suspension, variation and cancellation.

29. Where the Board is satisfied that the licensed premises no longer satisfy the conditions for which a licence was issued it may -

(a) refuse to renew the licence;

(b) suspend the licence until those conditions are complied with or vary it accordingly with the necessary or appropriate directions and conditions; or

- (c) cancel the licence.

Refusal to renew and cancellation.

30. (1) If the Board refuses the renewal of a licence or cancels a licence held by any person and the person has not during the preceding twelve months been convicted of an offence against this or any other law relating to the sale of liquor, the licence holder shall, on payment of the proportionate part of the cost of a licence such as has been held by the licence holder, be entitled to obtain a licence for a period of three months after the expiry of the licence the renewal of which has been refused.

(2) On application and on justifiable reasons, the Board may extend the three months period specified in subsection (1) by a further and final three months, that is, making a total of six months from the date the licence first expired

Lost or destroyed licence.

31. (1) A person whose licence has been lost or destroyed may, on payment of the prescribed fee, obtain a duplicate licence on the authority of the Board.

(2) The secretary shall not issue the authority required for the issuance of the duplicate licence if the secretary is not satisfied that the licence has been lost or destroyed and where the secretary is not satisfied the secretary shall refer the matter to the Board for determination.

Review of Board's proceedings.

32. (1) On the petition of an applicant or objector, the High Court may review proceedings of the Board if it appears to it that -

- (a) in the proceedings in question the Board exceeded its powers or failed to take into consideration matters which it was its duty to consider or otherwise failed to perform a duty or exercised its powers in an arbitrary, *mala fide* or grossly unreasonable manner, or a point of law arose which such Court should determine; or
- (b) a person, who was disqualified from being a member or if a member disqualified from taking part in the proceedings in question, took part in such proceedings.

(2) Subject to subsection (3) if upon the consideration on review of the proceedings of the Board the Court finds good grounds for the review, it may -

- (a) set aside the proceedings in question; and
- (b) make such order as it considers fit, including an order that a special meeting of the Board be convened for a rehearing in accordance with the directions of the Court or reconsideration of the matter or the taking of further evidence.

(3) The proceedings shall not be set aside -

- (a) by reason of a formal or technical defect in the proceedings not, in the opinion of the Court, resulting in substantial injustice; or
- (b) in any other case unless the Court is satisfied that the matter proved or caused or was calculated to cause substantial prejudice to the petitioner.

(4) Unless substantial prejudice has been caused, the validity of a licence granted by a Board shall not be affected merely by reason of the fact that a notice required by this Act was not duly posted, published or sent.

Appeals.

33. An applicant or objector aggrieved by the decision of the Board in respect of the grant of, or refusal of a grant, renewal, review, variation, transfer, removal, suspension or cancellation of a licence or in respect of any conditions or privileges attached to a licence may, within twenty-one days of such decision, appeal to the Minister whose decision shall be final

PART V

TYPES OF LICENCES

Types of licences

34. (1) The Board may grant, renew, vary, review, remove, suspend or cancel the following licences -

- (a) a hotel liquor licence;
- (b) a tavern liquor licence;
- (c) an off-sale liquor licence;
- (d) a restricted off-sale liquor licence;
- (e) a club liquor licence;
- (f) a service canteen liquor licence;
- (g) a discotheque liquor licence;
- (h) a motel liquor licence;
- (i) a night-club liquor licence;
- (j) a lodge liquor licence;
- (k) a public bar liquor licence;
- (l) a garden beer licence;
- (m) a restaurant liquor licence;
- (n) a resort liquor licence;
- (o) a wholesale liquor licence;
- (p) a brewer's licence;
- (q) a distiller's licence;
- (r) an African beer manufacturing and wholesale licence;

- (s) a Swazi traditional beer licence;
- (t) a provisional liquor licence;
- (u) an extension liquor licence;
- (v) a wine and malt liquor licence;
- (w) a duty-free off-sale liquor licence;
- (x) a combined liquor licence (specifying the combination of two licences as one);
- (y) any other type of liquor licence the Minister may prescribe by regulations.

(2) Subject to subsection (3), the Board using its discretion may grant a combined licence where the applicant desires to have two types of licences (normally operated as two distinct licences) to operate as one under one licensed premises provided the Board is of the view that -

- (a) the two licences or the two businesses may be combined without hardship to the customers of one of the two businesses; and
- (b) the combination shall not violate the law against unfair competition.

(3) A manufacturer, brewer or a distiller shall not also hold a wholesaler's liquor licence or a licence that permits selling directly to members of the public and a holder of a wholesaler's licence shall not, except where this Act permits, sell directly to members of the public and shall further not hold a licence that permits selling directly to members of the public.

(4) A licence issued by the Board shall only be in respect of the premises specified in the licence and in respect of the applicant.

(5) The Board may impose such restriction and conditions on a licence as it thinks fit and direct that it be endorsed on the licence or on file records.

(6) A licence issued, other than at a properly constituted meeting of the Board or contrary to the provisions of this Act shall not be valid and of no effect.

Lodge, motel, resort and hotel liquor licences

35. (1) A lodge, motel, resort or hotel liquor licence authorises the licensee to sell liquor on the licensed premises to persons for consumption on those licensed premises.

(2) A holder of a licence mentioned in this section may only operate two liquor bars on the licensed premises and for any additional bar the licence holder shall have to apply for such licence, authority or privilege to the Board and pay the prescribed fees for operating additional bars.

(3) An additional licence, bar or authority to operate same shall be dependent on the existence of the main licence.

(4) The Board shall not issue or renew a lodge, motel, resort or hotel liquor licence unless it is satisfied that -

- (a) the applicant is a holder of a valid lodge, motel, resort or hotel licence obtained under the Trading Licences Order, 1975 or such other applicable law;
- (b) the applicant operates or proposes to operate on the premises in respect of which the application is made, *a bona fide* lodge, resort, motel or hotel at which full or light meals or self catering facilities and accommodation are offered to guests;
- (c) in the case of renewal, the application has not violated a condition of the licence; and
- (d) the applicant is a fit and proper person to whom a licence may properly be issued.

Restaurant liquor licence.

36. (1) A restaurant liquor licence authorises the licensee to sell liquor on the licensed premises to persons for consumption with meals on those licensed premises.

(2) The Board shall not issue, renew, review, vary, remove a restaurant liquor licence unless it is satisfied that -

- (a) the applicant is a holder of a valid restaurant licence issued under the Trading Licences Order, 1975 or such other applicable law;
- (b) the applicant keeps or proposes to keep, on the premises in respect of which the application is made a *bona fide* restaurant at which meals are or shall be served to guests.
- (c) in the case of renewal, the applicant has not violated a condition of the licence; and
- (d) the applicant is a fit and proper person to whom a licence may properly be issued.

Club liquor licence

37. (1) A club liquor licence authorises the licensee to sell liquor on the licensed premises to members for consumption on those licensed premises.

(2) The Board shall not issue or renew a club liquor licence unless it is satisfied that -

- (a) the applicant operates or proposes to operate on the premises in respect of which the application is made, *a bona fide* club; and
- (b) in the case of renewal, the applicant has not violated a condition of the licence.

Tavern, public bar, discotheque, service canteen, wine and malt, nightclub, off-sale, duty-free, garden beer and restricted off-sale liquor licence

38. (1) A tavern, public bar, discotheque, service canteen, garden beer, wine and malt or night club liquor licence authorises the licensee to sell liquor to persons on the licensed premises for consumption on those premises.

(2) An off-sale liquor licence, a restricted off-sale or duty free liquor licence authorises the licensee to sell liquor on the licensed premises in sealed containers to persons for consumption away from those licensed premises including a place adjoining or a place near those licensed premises which is in the occupation or control of the liquor licensee.

(3) The Board shall not issue, renew, vary, review, or remove a tavern, public bar, discotheque, service canteen, garden beer, wine and malt, night club, off-sale, restricted off-sale, duty free liquor licence unless it is satisfied that -

- (a) the applicant proposes to operate, on the premises in respect of which the application is made, a *bona fide* tavern, public bar, discotheque, service canteen, wine and malt, night club, off-sale or restricted off-sale business;
- (b) the applicant, where applicable, is a holder of a valid licence obtained under the Trading Licences Order, 1975 or such other applicable law in respect of the premises;
- (c) the premises in respect of which the application is made complies with the minimum requirements set out in the Schedule and are sufficiently complete to be occupied for the purpose of the licence;
- (d) that the distance between the premises and a hospital, place of worship or school is more than half a kilometre unless exempted of this requirement by the Minister or a Local Authority exercising jurisdiction over the area;
- (e) that the issue of such licence would not conflict with any approved or proposed town planning scheme;
- (f) the applicant is a fit and proper person to whom a licence may properly be issued; and
- (g) in the case of renewal, the applicant operates a *bona fide* tavern, public bar, discotheque, service canteen, wine and malt, garden beer, night club, off-sale, duty free or restricted off-sale and has not violated a condition of the licence.

PART VI

GENERAL PROVISIONS.

Certain management requirements and prohibitions

39. (1). The holder of a licence shall not permit another person to manage, superintend or conduct the business of the licensed premises during the absence of the licence holder for a longer period than ten days without the written consent of the Liquor Licensing Board.

(2) If the holder of a licence is absent, the business may, without a formal transfer of the licence, be carried on by a manager whose appointment is approved, in writing or through examination for competency of the Act, by the Board.

(3) If the manager is absent, the business may be carried on by a deputy-manager, whose appointment is approved in the manner provided in subsection (2), and such deputy, when approved, shall occupy the same position in law as the manager.

(4) A person who is, at any time lawfully managing, superintending or conducting the business of the holder of a licence as provided in this section, shall be subject to the same duties, obligations, and penalties as the holder, but nothing in this section shall be deemed to relieve such holder from any duties, obligations or penalties to which the holder may be subject to or liable to under this Act.

- (f) other person authorised for the purpose by the Minister,

may, at any reasonable time enter on any licensed premises, examine every room or part of those premises, and take stock of any liquor found there.

(2) Any officer (as defined under the Customs and Excise Act, 1971), police officer, Regional Administrator, liquor licensing inspector or other person authorised for the purpose by the Minister, may, at all times on proof or reasonable suspicion of the purchase, holding, conveyance, sale or supply of liquor, or of the possession of a still, in contravention of this Act -

- (a) enter on any premises and do all things necessary to make the search for such liquor, or money used in the purchase of such liquor, or such still, or any other thing which may be material to the charge to be or may be preferred, and such liquor, still, money or other thing may be seized by the officer conducting the search;
- (b) search any package, or other thing on any train, wagon or other vehicle or any thing being conveyed in any way from one place to another, for such liquor or still; and
- (c) call upon a person reasonably suspected to be in unlawful possession of liquor or of a still to produce it and if the person fails so to do, to search that person, clothing or other belongings of that person or any thing in the possession of that person.

(3) If, in the course of a search made under this section, liquor or a still is found for which the permit or licence required by law is not produced, the person authorised to search may seize and detain the liquor, all packages or other things in which it is contained, a wagon or other vehicle in which it is being conveyed, the still, any other things which may be material to the charge to be or may be preferred, and if the person whose premises or other property is searched is not the holder of a licence, all money, liquor bottles, corks, funnels, glasses or other utensils, used in connection with the storage or sale or distillation of liquor shall be marked, seized and detained.

(4) In the event of a conviction following upon any search and seizure made under this section any articles so seized may, in the discretion of the convicting officer, be declared forfeited.

(5) A person obstructing another person in the execution of the duties under this section shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni and in default of payment thereof to imprisonment not exceeding one year or both.

Posting of intemperate.

43. (1) The Regional Administrator, Police Station Commander or chief of the area concerned or a magistrates court may by written order prohibit the selling, delivering, or supplying of liquor to a person in the region who -

- (a) within the space of twelve months, has been three times convicted of an offence involving drunkenness; or,
- (b) having been twice so convicted, has also been convicted of an offence involving assault; or,
- (c) by excessive drinking of liquor, misspends, wastes or lessens that person's estate or greatly impairs that person's health or that of any member of that person's family or endangers the peace of that person's family.

(2) Such order shall be in force, during such time as that Regional Administrator, Police Station Commander or chief may fix, but not exceeding a total period of twelve months in the region in which it was granted and to another region into which that person may move or in which that person may be.

(3) Every order issued under this section shall be endorsed by a magistrate in chambers.

(4) The holder of a licence shall be guilty of an offence and on conviction be liable to a fine not exceeding one thousand Emalangeni or six weeks imprisonment if the holder with knowledge of such prohibition sells, gives, delivers or supplies liquor to an intemperate or allows an intemperate, on the premises, to obtain liquor directly or indirectly.

(5) Any person, not being a holder of a licence, who with knowledge of such prohibition gives to, purchases or procures liquor for an intemperate shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred Emalangeni or to imprisonment to a period not exceeding six weeks or to community service as the court may order.

(6) A person to whom the sale, delivery or supply of liquor has been prohibited under this section, and who is found in possession of liquor shall be guilty of an offence and liable, on first conviction to a fine not exceeding three hundred Emalangeni or in default of payment thereof, imprisonment not exceeding two months and on second or subsequent conviction, to a fine not exceeding five hundred Emalangeni or in default of payment thereof, imprisonment not exceeding three months or both or to both instances to community service as shall be determined by a court convicting the offender.

(7) Upon conviction under this section, any liquor found in the possession of the offender shall *ipso facto*, be forfeited.

Right of ejectment and removal.

44. (1) The holder of a licence or the employee or agent of the holder may refuse on just reasons to serve any person with liquor or admit any person to the premises in respect of which the licence is granted -

(i) any person who is violent, quarrelsome, or disorderly, whether or not drunk; or

(ii) any person whose presence on the premises would subject the holder to a penalty under this Act.

(2) Such person who, upon being requested by the holder of a licence or such employee or agent of the holder or a police officer, to quit the premises, fails or refuses to do so, shall be guilty of an offence and liable on conviction, to a fine not exceeding three hundred Emalangeni or, in default of payment thereof, to imprisonment not exceeding two months or to community work as may be ordered by the court.

(3) On the demand of the holder of the licence, employee or agent of the holder, a police officer shall expel or assist in expelling such person from the premises and may use such force as is reasonably necessary for the purpose.

(4) A police officer on duty and seeking to enforce law and order may expel or remove any person from any licensed premises.

Forfeiture of licences.

45. (1) Without prejudice to a power on any grounds to refuse a renewal of a licence, the court may, in its discretion, declare forfeited a licence held by a person twice or more convicted of an offence under this or any other law relating to liquor.

(2) Upon the second or subsequent conviction of a person under section 20 who, at the time of such conviction, does not hold a liquor licence but holds a licence or licences of another description in a region, the judicial officer presiding may order that such person shall-

- (a) forfeit the licence or licences or any of them;
- (b) during the remainder of the current year, be disqualified from taking out another licence; and,
- (c) for a term of at least three years or at any time, be disqualified from holding a licence for the sale of liquor.

(3) The penalties prescribed by this section shall be in addition to those prescribed for or by section 20.

Evidence and proof.

46. (1) If, in the course of a search undertaken pursuant to section 42, liquor or a still is found for which no valid authority is produced, the onus of proving that the liquor or still was lawfully purchased, imported, removed or held shall lie upon the owner or occupier of the premises in which it is found, or, if appropriate, the person conveying or otherwise in possession of it.

(2) If a person is charged with an offence under section 68(i), and it appears to the court before which such person is so charged that an apparatus found in that person's possession is capable of being used for some other purpose, the onus of proving that the apparatus was not used for distillation of liquor shall lie upon the person so charged.

(3) If a person is charged with dealing in liquor without a licence, the onus of proving that that person is the holder of a licence shall lie upon that person.

(4) In a trial for a contravention of section 68(i), or a matter in which it is sought to establish the alcoholic strength of liquor, or the nature of a liquid, by the evidence of an analyst, a certificate purporting to be under the hand of a qualified analyst employed by the Government or the Government of the Republic of South Africa shall be *prima facie* evidence of the fact stated in the certificate and, unless the court specially directs, it shall not be necessary to tender the oral evidence of the analyst in support of the statement made or opinions given in the certificate.

(5) If a person is charged under section 68(g) or (h), the onus of proving that that person was at the time of the alleged offence an employee at the hotel or such similar, or, as the case may be, a lodger at the hotel or a *bona fide* traveller shall lie upon that person.

Forfeitures.

47. (1) Subject to subsection (2), liquor or a still, wagon or other article or vehicle declared to be forfeited under this Act shall, in accordance with the directions of a court, the Principal Secretary responsible for the administration of this Act or such other authority, be sold and the proceeds thereof paid into the public revenue of Swaziland.

(2) The court may in the case of liquor which is adulterated or not in sealed containers or a still, in its discretion, order it to be destroyed.

Sales by sheriff or messenger.

48. Notwithstanding anything in this Act, a sheriff, messenger or other person acting upon the authority of a court, judge or an officer of customs, may in the discharge of such duty sell liquor by public auction or tender to a person who is not an intemperate or prohibited to buy or be sold liquor.

Limitation of licence-holder's liability in respect of property of customers.

49. (1) The holder of a licence shall not be liable to compensate a person in respect of a loss of or injury to the property of such person sustained while such person was a lodger in the licensed premises of such holder in a greater amount than the sum of five thousand Emalangeni unless -

- (a) the loss or injury is proved to have been caused by the wilful act or as a result of the default or negligence of the holder of the licence or of a person in the employ of the holder;
- (b) the loss or injury was sustained while the property was deposited with the holder of the licence or a person expressly or impliedly authorised by the holder of the licence to receive that deposit;
- (c) the holder of the licence refused, save in the circumstances set forth in subsection (2), to receive the property offered for deposit or failed to make adequate provision whereby the property could be deposited with the holder; or
- (d) the holder of the licence failed to comply with the requirements of subsection (3).

(2) The holder of a licence in respect of an hotel, lodge, motel, resort or other place offering accommodation to whom property is offered for deposit by a person lodging or about to lodge in the licensed premises, may require that the property shall be contained in a suitable receptacle closed and sealed by the depositor.

(3) A refusal by the holder of the licence to accept property for deposit based upon a failure of such person to comply with such requirement shall not deprive the holder of the licence of the benefits of the limitations of liability in respect of loss of or injury to such property conferred by subsection (1).

(4) The holder of a licence in respect of an hotel, lodge, motel, resort or other place offering accommodation shall exhibit a copy of subsections (1), (2) and (3) in such manner and in such part of the hall or entrance of the licensed premises that it may readily be seen and easily read by a person proposing to lodge in the premises.

(5) In so far as the liability of the holder of a licence to the amount of five thousand Emalangeni is concerned, nothing in this section shall be deemed to affect the operation of the common law.

Restriction on credit sales of liquor.

50. (1) Subject to subsection (3), no person shall, save on premises in respect of which any kind of club liquor licence is held, supply liquor on licensed premises to be consumed on the premises; or consume liquor on licensed premises, unless the liquor is paid for at the time when it is supplied.

(2) No person, except in the circumstances under subsections (3), shall sell liquor on credit to another person.

(3) Subsection (1) shall be deemed not to be contravened if the liquor is supplied -

- (a) for consumption with an ordinary meal supplied at the same time and is consumed with that meal, and the price of the liquor is paid together with the price of the meal; or
- (b) in moderate quantity to the order of a person actually boarding or lodging in the licensed premises.

(4) Except in the case mentioned in subsection (3), the holder of a licence shall not recover a sum of money or other thing on account of liquor sold by that holder on credit to a person for consumption on the licensed premises or elsewhere.

(5) A person who contravenes subsections (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni, in default of payment thereof, to imprisonment not exceeding three months.

Closure of licensed premises.

51. (1) During a riot, tumult, national event or a significant meeting taking place in a locality, licensed premises shall be closed for such time as may be specified in an order issued by, as the case may be, the Regional Administrator, a police officer of the rank of superintendent (or above) or the chief of the area under Swazi Nation Land.

(2) Any person who fails to comply with an order issued under subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding one thousand Emalangeni or in default of payment thereof, imprisonment not exceeding six months or to such community service as the court may determine.

Contracts.

52. Save as is otherwise specially provided in this Act, a contract by which a person purports to relinquish any right or forego any obligation under this Act shall be deemed to be null and void.

Injunctions.

53. (1) On the application of -

- (a) a person, of sufficient interest;
- (b) the liquor licensing inspector;
- (c) the Regional Administrator;
- (d) the chief of the region concerned;
- (e) the Minister;
- (f) the Chairperson of the Liquor Licensing Board; or
- (g) the Attorney General, on a representative capacity,

the Court may, whether or not proceedings have been or may be instituted against a licensee or other person affected by any provision of this Act, grant an injunction -

- (i) restraining a licensee or such other person from doing or causing or permitting to be done anything that constitutes a contravention of or an attempt to contravene any section of this Act; or
- (ii) requiring the licensee or such other person to take or cause to be taken such reasonable steps as the Court considers and declares to be necessary to prevent the doing of anything that would constitute a contravention of or an attempt to contravene any section of this Act.

(2) The Court shall not, as a condition of granting an interim injunction, require any undertaking as to damages.

(3) An injunction granted under this section -

- (a) shall have effect for such period as is specified by the Court; and
- (b) may be varied or rescinded by the Court.

(4) This section shall not affect any other right of a person mentioned in subsection (1) that exists in this Act or other law in relation to the administration and enforcement of this Act and shall not affect the taking of other action or proceedings against the person for or to whom the injunction is sought.

Orders to remedy cause of contravention

54. (1) The liquor licensing inspector, health inspector, Board (through its secretary) and any other person with authority may issue a compliance order to a licensee or any other person affected by the operation of this Act specifying the section or regulation which the licensee or such other person is to comply with or not to violate.

(2) A person issued with a compliance order shall comply with such order within the time which shall be specified in the order.

(3) Failure to comply with a lawfully issued compliance order shall constitute an offence and shall also be an objectionable practice of the licensee or applicant whenever an application in respect of a liquor licence is before the Board and the Board shall consider such failure against the licensee or applicant and the failure alone may justify a refusal by the Board.

(4) In any proceedings against the licensee, defendant or such other person in respect of the non-observance of or non-compliance with a requirement of the compliance order, obligation, rule or provision of this Act a court, in addition to or instead of imposing a fine, may by order require the licensee or defendant or such other person to do any specified work or to adopt any specified measures for the purpose of preventing the further non-observance of or non-compliance with that order, requirement, obligation, rule or provision and the court shall specify a time within which that order is to be obeyed.

(5) The time specified under subsection (4) of this section may from time to time be extended by the Court on the application of the licensee or defendant on just reasons.

(6) Where a Court makes an order under subsection (4) which does not immediately impose a fine, the Court shall adjourn the proceedings until the time specified in the order and if the order

is obeyed the Court may, if it thinks fit, impose no penalty in respect of the offence concerned

(7) Upon the conviction of a person of an offence under this section, the court may order that person, within a time specified in the order, to do any act that the person had failed, refused or neglected to do and a person who does not duly comply with such an order shall be guilty of an offence punishable, on conviction, by a fine or imprisonment as the Court deems fit taking into account the severity of the offending act.

PART VII

MANUFACTURING, LABELLING AND OTHER PROVISIONS

Manufacturer of liquor.

55. (1) No person, other than the holder of a spirits manufacturer's licence issued under this Act, shall distil, brew or manufacture spirits for the purpose of sale or otherwise dealing therein.

(2) Notwithstanding anything in any other law or in any licence granted under any law for the distillation, brewing (excepting tjwala besinftu), manufacturing of liquor and the sale thereof, no person shall sell or dispose of for use or consumption in Swaziland any liquor distilled, brewed, produced or manufactured by that person to any other person other than the holder of a licence under this Act:

(3) This section shall not preclude the holder of an African beer manufacturing and wholesale licence from selling malt liquor of the kind and quantity permitted to be sold under such licence to persons other than the holders of licences under this Act.

(4) Notwithstanding anything in this Act, where a person is required under the Customs and Exercise Act or other law to have a licence or permit for the distillation, brewing or manufacturing of liquor, that person shall not distil, brew or manufacture any liquor except in terms of such licence, permit or such other law.

Requirements in respect of certain classes of spirits.

56. No person shall manufacture or sell under the name of brandy, grape brandy, wine brandy (cognac type), whisky, blended whisky, malt whisky, gin, liqueur, rum, blended rum, spirit aperitif, spirit cocktail, rectified spirit, cane spirit, vodka or wine spirit, any article which does not conform to the description of the article as defined under that name in section 2.

Prohibition on use of certain names or description for brandies.

57. (1) Save as provided in subsection (2) no person shall, as from a date to be fixed by the Minister by notice in the Gazette, sell in or export from Swaziland any type of brandy whether produced in or imported into Swaziland under any name or description whereof the use in respect of brandy of that type is prohibited in such notice.

(2) The Minister may at any time withdraw or amend any notice issued in terms of this subsection by like notice in the Gazette.

(3) The Minister may by notice in the Gazette permit the use of certain names or descriptions subject to such conditions and limitations as may be specified in such notice.

Prohibition on addition of unauthorized substances to certain articles.

58. No person shall manufacture or sell blended whisky, brandy, cane spirit, compounded gin, gin, grape brandy, liqueur, malt whisky, mixed spirits, orange fermented beverage, fruit fermented beverage, rectified spirit, rum, spirit aperitif, spirit cocktail, vodka, whisky, wine brandy (cognac type) or wine spirit if any substance has been added thereto unless such addition is authorized by this Act.

Alcoholic strength of certain potable spirits.

59. (1) No person shall sell for potable purposes any spirits not referred to in section 58 of which the alcoholic strength is lower than twenty-five degrees under proof.

(2) No person shall sell any spirits not referred to in section 58 under a name or reference which includes any expression referred to in such section.

(3) The Minister may, after consultation with an appropriately qualified person in analysing the strengths of liquor of whatever name or description, prohibit the sale or importation of such liquor by notice published in the Gazette where it is found that the strength of such liquor is too high or likely to cause adverse effects on its consumers.

Labelling of brandy, whisky, rum, etc.

60. No person shall sell brandy, whisky, rum, gin, liqueur, spirit aperitif, spirit cocktail or vodka of any description, unless the bottle or receptacle containing it is labelled in large letters, easily legible, showing in the case of brandy whether it is brandy, wine brandy (cognac type) or grape brandy or in the case of whisky, whether it is whisky, blended whisky or malt whisky or in the case of rum, whether it is rum or blended rum or in the case of gin, liqueur, spirit aperitif, spirit cocktail or vodka, that it is gin, liqueur, spirit aperitif, spirit cocktail or vodka.

Labelling of mixed spirits.

61. No person shall sell mixed spirits unless the bottle or receptacle containing it is labelled in such a manner as to set forth in large letters, easily legible, of the same size, the specific spirits which have been used for the mixture.

Labelling of rectified spirit and certain other spirits.

62. No person shall sell for potable purposes rectified spirit or any other spirits not mentioned in section 60 or 61 unless the bottle or receptacle containing it is labelled in large letters, easily legible, showing the name of the raw material from which it has been derived, obtained or distilled.

Colouring, flavouring or adulteration of rum.

63. (1) No person shall manufacture or sell rum which has been coloured otherwise than by caramel or from the wood of the cask in which such rum is stored or has been flavoured otherwise than by means of sugar cane, leaves or pure fruit.

(2) The flavouring substances permitted to be used shall be placed in the still along with the mash or megass and shall not be added to the liquor after distillation.

(3) No person shall sell under the name of rum or add to rum in the manufacture thereof any silent spirit whether flavoured or unflavoured or any product of the distillation of maize, barley or other cereal grain.

five hundred Emalangeni or, in default of payment thereof, to imprisonment not exceeding three months, if the holder -

- (a) allows a person under the age of eighteen years to be in a bar or to be in another place in which liquor is stored or sold for consumption off the premises other than the premises of a general dealer licensed under a law relating to trading licences;
- (b) allows a person other than the owner of the licensed premises or a member of the holder's family or an employee of the holder to be in a bar or other place where liquor is kept or stored, during the hours when the sale of liquor is prohibited to the general public;
- (c) sells, supplies or delivers liquor to a person who is under the age of eighteen (18) years;
- (d) sells liquor to a person already in a state of intoxication;
- (e) permits drunkenness or violent, riotous or quarrelsome conduct in or on the licensed premises;
- (f) suffers any unlawful game of gambling to be carried on, in or upon the licensed premises without a licence for so doing;
- (g) knowingly harbours or suffers a police officer, doctor, nurse, fireman or a soldier (all in uniform) to remain on the licensed premises, except for the purpose of accommodation, during a time appointed for such person to be on duty, unless such officer is there for the purpose of keeping or restoring order, attending to a person in distress or otherwise in the execution of duties;
- (h) stores liquor at a place other than that stated in the application for the licence or approved by the Board or otherwise specifically approved by the Commissioner of Police;
- (i) being the holder of a licence in respect of a lodge, motel, resort or hotel fails or refuses, except for some sufficient reason, to supply at reasonable charges lodgings, meals or other foods or accommodation to travellers and shelter for their vehicles, including motor conveyances;
- (j) without having obtained the prior approval of the Board, causes a structural alteration to be made to, or a part of, the licensed premises or contrary to the plan filed with or held by the Board;
- (k) allows or permits a person under the age of eighteen years to be sold or buy liquor from the licensed premises or to consume liquor on the licensed premises;
- (r) fails to render assistance to the best of the holder's (or the person in charge) ability to a police officer or other authorised person (including a member of the Board) executing that officer's or that person's duties within or about the licensed premises or in any way attracts or hinders the police officer or such authorised person in the performance of any duties under this Act or any other law.
- (m) permits the licensed premises to be used as a brothel or habitual resort of reputed prostitutes;

(8) The holder of a licence commits an offence and shall be liable on conviction to double the penalties provided in subsection (1), if the holder -

- (a) wilfully mixes or causes water or an injurious, poisonous or deleterious ingredient or material to be mixed with liquor in order to adulterate it for sale; or
- (b) manufactures or sells any article, to which this Act assigns a meaning, if there has been added a substance the addition whereof to that article is not expressly authorised by this Act; or
- (c) sells, or keeps for sale -
 - (i) liquor with which has been mixed an ingredient or material injurious to the health of persons drinking the liquor; or
 - (ii) a concoction specified by or under paragraph (e) of the definition "Swazi traditional beer" contained in section 2.

(9) A holder of any licence other than an off-sale licence, wholesale or other off-sale liquor licence commits an offence and is liable on conviction to a fine not exceeding one thousand Emalangeni, in default of which, to imprisonment for a period not exceeding six weeks or both if the holder -

- (a) permits a person who purchases liquor from the holder's licensed premises to take or remove such liquor off the premises; or
- (b) sells or supplies to a person, a quantity of liquor more than that which may reasonably be consumed by the person on the licensed premises;

(10) A holder of an off-sale liquor licence, restricted off-sale or duty-free liquor licence commits an offence if the holder -

- (a) permits a person to consume liquor on the licensed premises;
- (b) sells, supplies or delivers to a person liquor other than in a securely sealed container;
- (c) opens or permits a person to open a container of liquor on the licensed premises; or
- (d) permits or allows, or fails to prevent the consumption of liquor bought from the licensed premises to be consumed in premises adjoining or near the licensed premises which are under the control of the holder and which premises are not licensed for the consumption of the liquor so bought;
- (e) sells or supplies to a person, a quantity of liquor more than that which may reasonably be consumed by that person, a quantity a reasonable person may conclude is bought for re-sale somewhere,

and on conviction, shall be liable to a fine not exceeding one thousand Emalangeni, in default of which, to imprisonment for a period not exceeding six months or to community service as may be determined by the court.

Offences by manufacturers and distillers.

67. Any person contravening any of the provisions of sections 55 to 65 inclusive, but with the

exception of section 64, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand Emalangeni (E10,000.00) or to imprisonment for a period not exceeding one year, or both

Offences by persons generally

68. A person who -

- (a) submits to the Board any written information which that person knows to be false, a false document or document which purports to be but which is not in fact a true copy of the original or is in any way a party to such submission;
- (b) after being duly sworn gives false evidence before the Board on any matter relevant to the question under enquiry by the Board, knowing the evidence to be false;
- (c) refuses or fails to leave the licensed premises when requested by the licensee, the servant or agent of the licensee or any member of the police to do so;
- (d) is drunk, violent or disorderly upon the licensed premises or upon or in the vicinity of -
 - (i) a road, street, lane, thoroughfare, urban area or market place, or
 - (ii) a shop, store, warehouse or public garage, or
 - (iii) a place of entertainment, cafe, eating-house, race-course, gymkhana, showground or other premises or place to which the public is granted or has access whether or not the right of admission be granted on payment or reserved to a class of persons;
- (e) purchases or obtains liquor at a time when or at a place when it is unlawful for such liquor to be sold to that person or in circumstances which are contrary to a provision of this Act; or
- (f) procures or aids a drunken person to obtain liquor;
- (g) other than the owner of the licensed premises, family member or an employee, who during the hours when the sale of liquor is prohibited to the public is found in a bar or other place where liquor is kept or stored;
- (h) by falsely representing oneself to be a lodger at a lodge, resort or hotel or a bona fide traveller buys, obtains or attempts to buy or obtain liquor on licensed premises during the hours when the sale of liquor is prohibited to the general public;
- (i) other than the holder of a spirit manufacturer's licence, is without lawful excuse found in possession of a still or part of a still or a concoction specified by or under paragraph (e) of the definition "Swazi traditional beer" contained in section 2.
- (j) consumes liquor in a street or road,

commits an offence and shall be liable on conviction to a fine not exceeding one thousand Emalangeni (E1000.00), in default of which, to imprisonment for a period not exceeding three months or both.

General penalty and status of this Part.

69. (1) This Part (Part VIII) is in addition to, not exhaustive, the other offences and penalties provided for in the other Parts or sections of this Act.

(2) A person who contravenes a provision of this Act of which no penalty is specifically provided for, commits an offence and is liable on conviction to any fine not exceeding ten thousand Emalangeni or to imprisonment for any period not exceeding three years or both depending on the gravity of the offence, its re-occurrence or prevalence.

(3) Any liquor forfeited under this Act shall be sold and the proceeds of the sale paid into the Consolidated Fund or it may be destroyed on the authority of the court which made the conviction.

PART IX

FINAL PROVISIONS.

Regulations.

70. (1) Subject to this Act, the Minister may make regulations alone or in consultation with any person or body with sufficient interest to a matter to be regulated -

- (a) as to the powers of the Board and any other authority on the grant, renewal, review, suspension, removal, variation or cancellation of a licence;
- (b) as to the conditions and privileges of the grant of a licence, including the type of liquor to be sold and supplied, the type of premises to be used and the imposition of licensed hours;
- (c) as to the affixing to licensed premises of appropriate signs in relation to the licence;
- (d) as to the fixing and payment of fees and other charges;
- (e) as to the imposition of penalties for late payment of those fees and charges;
- (f) generally, as to all matters connected with the application for a grant, renewal, variation, review, suspension, removal or cancellation of a licence and the inspection and control of licensed premises;
- (g) for the control of the use of sugar in the manufacture or manipulating of any wine, other fermented beverage or spirits;
- (h) for the keeping of records of the receipt, removal or disposal of sugar at any place or upon any premises in which any wine, other fermented beverage or spirits is manufactured or manipulated;
- (j) prescribing the quantity of sugar which may be stored at any such place or in any such premises and the times when and the circumstances in which sugar may be removed from any such place of storage;
- (k) prescribing the manufacturing processes of other fermented beverages including the treatment before, during or after the manufacture thereof;
- (l) prescribing, in the case of any kind or type of other fermented beverage, the substances which may be added thereto before, during or after manufacture thereof,

and the maximum permissible percentage that any such substances may constitute thereof or the maximum quantity of any such substance which may be so added thereto;

- (m) prescribing the composition, the alcoholic strength, the acid content or the dry extract of any kind or type of other fermented beverage;
- (n) prescribing the requirements with which spirits derived from the distillation of other fermented beverages shall comply;
- (o) prescribing any alcoholic beverages to be included under the definition of "spirits" in section 2 and the alcoholic content of such beverages, the acid content thereof and the manufacturing processes thereof, including the treatment before, during, and after the manufacture thereof.
- (p) generally, not inconsistent with this Act, prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Subject to this Act the Minister may make or amend any Schedule to this Act.

(3) The Minister may, in consultation or in conjunction with the Minister responsible for the administration of the Occupational Safety and Health Act or such other appropriate body with sufficient interest in the matter, make regulations for, or include in the Schedule, minimum standards of operations and requirements for licensed premises.

(4) The Minister shall further make regulations, after consultation with any person or body with sufficient interest in the matter describing, prescribing and specifying, as in or similar to sections 35 to 38, what may be described, prescribed or specified in any type of a licence and in particular to the following types of licences -

- (c) a wholesale liquor licence;
- (d) a brewer's licence;
- (e) an African beer manufacturing and wholesale licence;
- (f) a Swazi traditional beer licence;
- (g) a provisional liquor licence;
- (h) an extension liquor licence; and
- (i) a liquor permit.

(5) The Minister may prescribe the types of liquor that may be sold under any type of licence and the manner it shall be served or delivered to the purchaser including matters such as sealed, opened, in liquor measures and others the Minister deems fit.

Savings

71. Until regulations are made under this Act to provide for a matter that may be prescribed by regulations, the regulations made under the Liquor Licences Act, 1964 and in force immediately before the commencement of this Act shall apply, with the necessary modifications and adaptations, as if made under this Act.

Repeal.

72. The Liquor Licences Act, 1964 is repealed.

SCHEDULE
(Sections 28,35,36,37, 38 and 70)

MINIMUM REQUIREMENTS FOR PREMISES

A. MINIMUM REQUIREMENTS FOR A TAVERN

Building or structure.

1. The building shall be structurally safe and in good state of physical and decorative repair, both internally and externally and shall have a sitting room, storage room and toilet facilities.

2. At least one room shall be provided for a tavern.

3. The ceiling shall be light-coloured, smooth anti-condensation and easy to clean. If the roofing is thatched it shall be of good finish and should meet Fire and Emergency requirements.

4. The walls shall be painted with impervious, washable and light-coloured paint.

5. The floor shall be durable non-slip surface, impervious and easy to clean

6. Adequate sunlight and artificial lighting shall be provided.

7. Seating accommodation shall be of at least 15 people.

8. Chairs, benches or sofas and tables shall be in good state of repair and well arranged.

9. The tavern shall have -

(a) a service counter with foot-rest;

(b) shelves of impervious material;

(c) water supply on the premises; and

(d) separate toilets for different sexes and a urinal in men's toilet.

10. The toilets shall be conveniently located, accessible and properly designed and respectively labelled male and female.

11. The staff shall be provided with protective clothing.

12. the staff shall obtain valid health certificates, which shall be renewable after every six months.

General

13. Suitable and approved First Aid Kit shall be provided, on the premises;

14. Surroundings shall be kept clean at all times and in good repair;

15. The premises shall be fenced;
16. Provide soundproof wall and roof;
17. Make external doors to open outside;
18. Provide staff change rooms;
19. Provide enough artificial and natural ventilation;
20. Parking Bays for customers and also for loading/off-loading should be included.

B. MINIMUM REQUIREMENTS FOR AN OFF-SALES DEPARTMENT

Building or structure

- (1) The building shall be structurally safe and in good state of physical and decorative repair, both internally and externally. Be made of durable material(s) which is easily cleanable.
- (2) At least two rooms shall be provided one of which shall be a service room and a storage room.
- (3) There shall be at least two sets of toilets for staff (male and female).
- (4) Toilets should be provided with wash hand facilities.
- (5) An office shall be provided.
- (6) The building shall meet Fire and Emergency requirements.
- (7) Parking Bay for customers and also for loading/off-loading should be included.

Service room

- (8) The service room shall have a ceiling and be painted with a smooth an light coloured paint.
- (9) The walls shall be smooth and painted with impervious washable and light coloured paint.
- (10) Adequate natural and mechanical ventilation shall be provided.
- (11) The floor shall be durable non-slip surface, impervious and easy to clean.
- (12) The shelves shall be of uncracked wood and stainless steel material, and of smooth surface material(s).
- (13) A service counter shall be provided.
- (14) Refrigeration shall be adequate.

Storage room

- (15) The storage room shall have a ceiling which shall be light coloured, smooth anti-condensation and easy to clean.

- (16) The walls be smooth and painted with impervious, washable and light coloured paint.
- (17) The floors shall be of impervious material.
- (18) A cold room shall be provided in all the urban areas.
- (19) Adequate natural and mechanical lighting and ventilation shall be provided.
- (20) A raised platform shall be provided for storing goods.

C. MINIMUM REQUIREMENT FOR A DISCOTHEQUE OR NIGHT CLUB

Building or structure

1. The building shall be structurally safe and in good state of physical and decorative repair both internally and externally and made of durable easily cleaned materials, shall have a kitchenette, dancing hall, storage room, seating accommodation, dancing floor, separate toilet facilities for males and females provide with wash hand facilities, disco jockey's operating platform, provide easily accessible parking bay and loading/off-loading zone, adequate natural and mechanical ventilation, discotheque lighting, soundproof roof and walling, should meet Fire and Emergency requirements, exits and security.

Kitchenette

2. The kitchenette shall be spacious and built in such a way as to provide enough ventilation and sunlight and shall have a ceiling.
3. The ceiling shall be light-coloured, smooth, anti-condensation and easy to clean.
4. The walls shall be smooth and painted with impervious washable and light coloured paint.
5. The floor shall be of impervious material.
6. The kitchenette shall have two sinks with cold and hot running water.

Dancing hall

7. The ceiling and the walls shall be attractively decorated.
8. The floor shall be of impervious material, which will enable people to dance freely.
9. The building shall be provided with fire-exit/escape.

D. MINIMUM REQUIREMENTS FOR A SWAZI TRADITIONAL BEER LICENCE

Building or structure

1. The building shall be structurally safe and in good state of physical and decorative repair, both internally and externally and shall provide a sitting room and toilet facilities.
2. At least one room shall be provided the drinking area.
3. Where there is a ceiling, the ceiling shall be painted.

4. Walls shall be imperviously and smartly painted or smeared.
5. Floor shall be of impervious material or smartly smeared.
6. Natural ventilation and lighting shall be provided.
7. Ceiling accommodation shall be of adequate capacity.
8. At least one toilet shall be provided for different sexes.
9. Shall be provided with a storeroom or brewing room.
10. Shall have external door to open outside.

E. MINIMUM REQUIREMENTS FOR A PUBLIC BAR

Building or Structure

1. The building shall be structurally safe and in good state of physical and decorative repair, both internally and externally and shall have a sitting room, a staff change room, a storage room, external doors to open outside and toilet facilities for separate sexes.

Bar

2. The bar shall have -
 - (a) light coloured, smooth anti-condensation ceiling which is easy to clean;
 - (b) Adequate natural and mechanical lighting;
 - (c) Adequate natural and mechanical ventilation;
 - (d) Seating accommodation of 30 chairs;
 - (e) Furniture of good quality;
 - (f) Ash-trays;
 - (g) counter with foot rest and bar stools
 - (h) sofas and cocktail tables;
 - (i) two sinks with cold and hot running water;
 - (j) bar shelves;
 - (k) counter freezers;
 - (l) standard refuse bin;
 - (m) separate toilets for different sexes and a urinal in the men's toilet.

Walls

3. Walls shall be smooth and painted with impervious washable and light coloured paint.
4. The staff shall be provided with protective clothing; and shall obtain valid health certificates after every six months.
5. Fire fighting appliances, storage room, car parking and First-Aid-Kit shall be provided on the premises.
6. The car parking shall be of adequate size and easily accessible.

F. MINIMUM REQUIREMENTS FOR A DUTY FREE LIQUOR LICENSED PREMISES

Building or Structure

1. The building shall be structurally safe and in a good state of physical and decorative repair, both internally and externally and made of durable material(s) which is easily cleanable, separate toilet facilities for both male and female and should be provided with wash hand facilities, easily accessible parking bay and loading/off-loading zone, adequate natural and mechanical ventilation, fire fighting appliances, staff changing room and a storage room.

General

1. Liquor is sold in bottles or any other similar containers.
2. The liquor has to be checked at the Ports of exit.
3. Only Diplomats in Swaziland and those representing Swaziland in neighbouring countries outside the Customs Union purchase duty free liquor.
4. A Duty Free liquor outlet can be located anywhere in the country.

G. MINIMUM REQUIREMENTS FOR A WHOLESALE LIQUOR LICENCE

Building or Structure

1. The building shall be structurally safe and in good state of physical and decorative repair, both internally and externally.
2. The shall be easily accessible parking bay and loading/ off-loading zone, adequate natural and mechanical ventilation, fire fighting appliances, staff changing room.
3. At least one room shall be provided for a wholesale. Liquor shall be stored in a separate room from other commodities.
4. The ceiling shall be painted.
5. Walls shall be imperviously and smartly painted or smeared.
6. Floor shall be of impervious material or smartly smeared.
7. Natural ventilation and lighting, and fire fighting appliances shall be provided.

8. Ceiling accommodation shall be of adequate capacity.
9. At least one toilet shall be provided for different sexes.
10. Shall have external door to open outside.

H. MINIMUM REQUIREMENTS OF A BREWER'S LIQUOR LICENCE

Building or Structure

1. The building shall be structurally safe and in a good state of physical and decorative repair, both internally and externally and made of durable material(s) which is easily cleanable, separate toilet facilities for both male and female and should be provided with wash hand facilities, easily accessible parking bay and loading/ off-loading zone, adequate natural and mechanical ventilation, fire fighting appliances, staff changing room and a storage room.
2. At least one room shall be provided for a brewery.
3. The malt shall be placed on crates in the storeroom.
4. Shall have external door to open outside.
5. The premises shall be fenced.

I. MINIMUM REQUIREMENTS OF A SWAZI TRADITIONAL BEER LICENCE

Building or Structure

1. The building shall be structurally safe and in good state of physical and decorative repair, both internally and externally.
2. The shall be adequate natural and mechanical ventilation, fire fighting appliances, staff changing room.
3. At least one room shall be provided for a Swazi traditional beer outlet. Liquor shall be stored in a separate room from other commodities.
4. Where there is a ceiling, it shall be painted.
5. Walls shall be imperviously and smartly painted or smeared.
6. Floor shall be of impervious material or smartly smeared.
7. Ceiling accommodation shall be of adequate capacity.
8. At least one toilet shall be provided for different sexes.
9. Shall have external door to open towards outside.
10. The premises shall be fenced.
11. Seating accommodation of 30 chairs.

PART C

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LEGAL NOTICE NO. 4 OF 2007

THE INCOME TAX ORDER, 1975 (Order No. 21 of 1975)

INCOME TAX: TAXATION OF BENEFITS IN KIND AND CERTAIN ALLOWANCES NOTICE, 2007

In exercise of the powers conferred by Section 5 of the Income Tax (Amendment) Act, 1988 the Commissioner of Taxes hereby issues the following notice.

Citation and commencement

This notice may be cited as Practice Note No. 157, on Taxation of Benefits in Kind and Certain Allowances Arising from Employment Notice, 2007 and shall come into effect on 1 July 2007.

PART A

PRELIMINARY

Interpretation

1. For the purposes of this Practice Note, unless the context otherwise indicates -

"domestic assistant" includes a chauffeur, cook, domestic servant, gardener, housekeeper, housemaid, nursemaid, security guard, body guard, or other domestic assistant;

"educational assistance" means a contribution or financial aid or subsidy granted to the children of the employee by the employer to enable or assist such children to study at a recognized educational institution, and including school fees, boarding fees and other educational expenses paid by the employer on account of the education of the employee's children;

"employee" means any person who is an employee as defined in paragraph 1 of the Second Schedule;

"employer" means any person who is an employer as defined in paragraph 1 of the Second Schedule;

"medical expenses" includes a premium or other amount paid for medical insurance and a contribution to a medical aid fund.

"official rate of interest", in relation to a year of assessment, means the Central Bank of Swaziland discount rate as at the commencement of the year of assessment;"

"Utilities expenditure" means any expenditure for fuel, power, water, sewerage, or telephone in respect of an employee's place of residence.

PART B

THE LAW

2. *Requirements of section 7(f)*

- 2.1 The annual value of any benefit or advantage accruing by way of employment (including that of any quarters, board or residence) is part of gross income of an employee, in terms of section 7(f) of the Income Tax Order 1975, as amended.
- 2.2 The Second Schedule to the Income Tax Order 1975, as amended, makes it compulsory for employers to deduct PAYE on such benefits in kind bestowed on employees.
- 2.3 A benefit provided by an employer to an employee means a benefit that -
 - (a) is provided by an employer, by an associate of the employer, or by a third party under an arrangement with the employer or associate of the employer; and
 - (b) is provided to an employee or to an associate of the employee.

3. *Valuation*

- 3.1 The valuation of benefits for the purposes of section 7(f) of the Order shall be determined in accordance with this practice note.
- 3.2 The value of a benefit in kind is the market value of the benefit on the date the benefit is taken into account for tax purposes.
- 3.3 The market value of a benefit is determined without regard to any restriction on transfer or to the fact that it is not otherwise convertible to cash.
- 3.4 Disagreements over the valuations placed, shall be subject to objection and appeal in terms of the relevant provisions of the Income Tax Order 1975, as amended. A directive may be requested in respect of the determination of any benefit value.
- 3.5 In all cases where it appears to the Commissioner that benefits in kind are given as a part of a tax avoidance scheme or as part of a remuneration package which confers property on any person either directly or through a company controlled either by or indirectly by that person then the full market value of the benefit(s) will be used in the assessment to tax of the employee.

4. *Period of assessment*

- 4.1 If the period assessed is less than twelve months, the income shall be the ratio such period bears to twelve months.

5. *Those affected*

- 5.1 This notification will apply to all employees and company directors.

6. *Validity of this practice note*

- 6.1 This Practice Note is of application with effect from 1 July 2007. It supersedes the contents of all other Practice Notes previously issued in respect of the same subject.

PART C

TAXABLE BENEFITS

1. *Free and subsidised accommodation or housing*

- 1.1 Where a benefit provided by an employer to an employee consists of accommodation or housing, the value of the benefit is the open market rent of the accommodation or housing, reduced by any payment made by the employee for the benefit.

Provided that where the employer owns the accommodation or housing, the value of the benefit is the rental benefit value of the accommodation or housing determined in accordance with the table in schedule A, the valuations depend on the size and location of the accommodation or housing.

- 1.2 Where an employer rents from an employee the employee's private residence and then grants such employee free or cheap occupation thereof, the rental is deemed to be a taxable benefit, the value of the benefit to the employee is the rental received.
- 1.3 Where an employer provides accommodation or housing to employees on a sharing basis, the rental benefit value shall be determined *pro rata*.

2. *Private use of motor vehicles (including any aircraft)*

- 2.1 Where a benefit provided by an employer to an employee consists of the use, or availability for use, of a motor vehicle (including any aircraft or helicopter) wholly or in partly for the private purposes of the employee, the value of the benefit is calculated according to the following formula -

$$(20\% \times A \times B/C) - D$$

Where,

- A** is the market value of the motor vehicle at the time when it was first provided for the private use of the employee;
- B** is the number of days in the year of assessment on which the motor vehicle was used or available for use for private purposes by the employee for all or a part of the day;
- C** is the number of days in the year of assessment;
- D** is any payment made by the employee for the benefit.
- 2.2 The market value of the car is the cost to the employer at the time it was first provided to the employee. The market value of second-hand cars is shown in the Auto Dealer's Guide¹. For vehicles that were purchased in Swaziland this value may be adjusted to 110/114(96.5%) or 112/114(98.25%) of the Guide value, depending on the rate of sales tax in force in Swaziland at the time the vehicle was purchased.
- 2.3 Where an employee is provided with more than one vehicle, taxable benefits will be evaluated on an individual basis.
- 2.4 Employee assisted with purchase of vehicle, as part of perks from employment

Where an employee purchases a personal vehicle with assistance from the employer as part of the benefit or advantage accruing by way of employment, the fixed allowances given towards the costs of the vehicle are taxable benefits.

2.5 Employee using personal vehicle on employer's business

(1) Where an employee uses a personal vehicle on employer's business and is given fixed allowances towards the costs of the vehicle, the annual value of benefits attributable to such an employee for use of the vehicle for private purposes will be determined in accordance with the following formula -

$$A = B - \frac{(C \times D)}{E}$$

Where,

- A** is the amount to be included in taxable income;
- B** is the car allowances received (car allowance defined as all cash allowances plus market value of any free benefit i.e. free fuel);
- C** is the actual expenditure on fixed and running costs (net of any recoupments); or
is the deemed fixed and running costs, where accurate records are not kept;
- D** is the business mileage as recorded in a log book or number record; or the deemed business mileage of 6 000 kilometres where accurate records are not kept;
- E** is the total mileage; or deemed total mileage of 24 000 kilometres where accurate records are not kept.

Deemed expenditure is determined on the following basis:

- (i) **Fixed Costs:** 25 per cent of the original cost to the taxpayer of the vehicle in each year.
- (ii) **Running Costs per kilometre:**

up to 1600cc	54c per km
1600cc to 2000cc	76c per km
Over 2000cc	85c per km

(2) Monthly PAYE will be deducted on the basis of the formula using the deemed expenditure and mileage. However, since in terms of the subsequent subparagraph (3)(e) the employee is required to keep a record of the mileage in respect of business and private travel, at the year-end under FDS or periodically the actual figures can be used and the necessary adjustment made.

(3) The rule in paragraph 2.5 (1) above will only apply if -

- (a) the employee is, in terms of the written contract of employment, required to have such a vehicle for the performance of employee's duties;
- (b) the size and type of vehicle relates to the duties to be performed in terms of the written contract of employment;
- (c) the employee is, in terms of the contract of employment, required to provide the

employer with such details and evidence which would reasonably, in the circumstances, be expected of him as to the actual expenditure incurred in respect of fixed, capital and running costs;

(d) the employee uses the vehicle for the business of the employer;

(e) the employee is required to keep a record of the mileage in respect of business and private travel.

(4) For the purposes of paragraphs 2.4 and 2.5, the costs of the vehicle means the costs of the vehicles, as quoted by the manufacturer or what the purchaser paid, and includes GST and any additions and accessories such as air-conditioning, radio-tape, burglar alarm *et cetera*, excluding finance charges."

(5) Where an employee owns or leases a motor vehicle and rents it to the employer, the rental paid by the employer and any expenses borne by employer in respect of the vehicle are deemed to be an allowance in respect of travelling expenses, which has been paid to the employee.

3. *Provision of domestic assistants*

3.1 Where a benefit provided by an employer to an employee consists of the provision of a domestic assistant, the value of the benefit is the remuneration paid to the domestic assistant in respect of the services rendered to the employee.

3.2 It is expected that the value of this benefit will not be less than the minimum wages as set out in the Wages Act² or Legal Notice issued in terms thereof for the regulation of wages.

4. *Utilities*

4.1 Where a benefit provided by an employer to an employee consists of the reimbursement or discharge by an employer of an employee's utilities expenditure, the value of the is the amount of the reimbursement or discharge, if separately metered.

4.2 Where the utilities are not metered and paid separately, 10% of the housing benefit value for each service.

5. *Children's educational assistance benefits*

5.1 Where a benefit provided by an employer to an employee consists of the provision of an educational assistance in connection with the education of an employee's children, the value of the benefit is the cost of the benefit to the employer for providing such educational assistance.

5.2 In many instances, the children's educational assistance benefits are paid by employers on a lump sum basis and at irregular intervals, as for example, at the end of each academic year. Employers are permitted to use their discretion and to operate PAYE provisions in relation to such payments, after consultation with the employees concerned so as not to cause undue hardship to such employees.

5.3 Employers should ensure, however, that the full amount of PAYE due on the children's educational benefits paid to each employee is deducted within the year of assessment.

6. *Soft loans*

6.1 A taxable benefit accrues to an employee where -

- (a) a loan is granted to an employee and either the employee pays no interest on the loan or pays interest at less than the official rate of interest;
- (b) an employer has paid a subsidy in respect of capital repayment or interest on a loan; or
- (c) an employer pays a lender a subsidy in respect of capital repayment or interest on a loan to an employee.

6.2 For the purposes of subparagraph 6.1:

- (a) In respect of any other loan, the value of the taxable benefit for any year of assessment shall be the interest on the loan calculated at the official rate less the amount of interest (if any) that the employee actually incurred during the year of assessment.
- (b) In respect of a loan the term of which is two years or more in duration, and in respect of which the repayment amount is a fixed periodic or monthly instalment calculated to amortize the loan over a future period, the value of the benefit for the year of assessment shall be the difference between the redemption amount actually incurred or paid by the employee and the redemption amount that would have been payable if the redemption amount had been determined over the same future period using the official rate of interest.

7. *Meals, refreshment or entertainment*

- 7.1 Where a benefit provided by an employer to an employee consists of the provision of any meal, refreshment, or entertainment, the value of the benefit is the cost to the employer of providing the meal, refreshment, or entertainment.

8. *Debt waivers*

- 8.1 Where a benefit provided by an employer to an employee consists of the waiver by an employer of an obligation of the employee to pay or to repay an amount owing to the employer or to any other person, the value of the benefit is the amount of the payment or repayment waived.

9. *Property transfers*

- 9.1 Where a benefit provided by an employer consists of the transfer or use of property or the provision of services, the value of the benefit is the market value of the benefit, reduced by any payment made by the employee for the benefit.

10. *Miscellaneous benefits*

- 10.1 The value of any benefit provided by an employer to an employee that is not covered in the previous paragraphs is the market value of the benefit, reduced by any payment made by the employee for the benefit.

10.2 Note paragraph 10.1 above, would include inter alia, the following –

- (a) Free medical attention or allowance, or any reimbursement of an employee's medical expenses not exempt in terms of section 7(f)(i).
- (b) The value of free passages by rail, steamer or air for an employee if not exempt under

section 7(f)(ii) and (iii).

PART D

ALLOWANCES

11. Allowances

11.1 Any amount paid by an employer to an employee, as an allowance is a taxable benefit, such allowance is income in the hands of the employee as it forms part of what the employee is paid for the services.

11.2 **Reimbursive allowance:** where an allowance or advance is paid by the employer to an employee in respect of expenses of travelling, entertainment or other service, as is not actually expended for official purposes, will be regarded as taxable benefits in the hands of the employee. The value of the benefit is determined according to the following formula -

$$A = (B - C)$$

Where,

A is the taxable benefit;

B is the actual amount paid by the employer to the employee;

C is the justifiable official expense incurred by the employee.

11.3 Where an employee incurs expenditure on travel, entertainment or other service while on the employer's business and the latter reimburses such employee the precise amount of his expenditure, and where the employer pays an allowance in respect of the use of the employee's private vehicle for the employer's business at fixed rates per kilometre (which rates approximate the rates published by AA of South Africa), the amount so received is not income in the hands of the employee but merely a reimbursement of expenses, which the employee incurred on behalf of his employer.

Provided that if an employee receives a fixed allowance towards the running costs of a vehicle, and also receives a 'distance traveled allowance' as contemplated in this paragraph, then such fixed allowance shall be taxable in full.

11.4 Note that since in terms of the law, there must be clear evidence that the allowance was paid to meet or reimburse expenses incurred by the employee in the performance of employee's duties. The employee must provide such details and evidence that would, reasonably in the circumstances, be expected of such employee. This requires the employee to produce proof to the employer that such expenditure was actually incurred and has been accounted for.

PART E**EXEMPT BENEFITS****12. *Benefits not forming part of gross income***

12.1 Notwithstanding the previous paragraphs the following benefits are exempt from tax and do not form part of the remuneration of an employee -

- (i) The value of any free medical attention or any allowance, or any reimbursement of, an employee's medical expenses where the free medical, allowance or reimbursement is available to all non-casual employees on equal terms.

Provided that where a reimbursement of or cash allowance is provided for or paid to an employee in respect of medical expenses, the employee must produce proof to the employer that such expenditure was actually incurred and has been accounted for.

- (ii) Medical aid contributions paid by the employer on behalf of the employee to a benefit fund recognized by the Commissioner where such benefit is available to all non-casual employees on equal terms.

12.2 The value of any free passage by rail, road, steamer or air provided for an employee or the holder of an office or appointment:

- (i) at the commencement of such employment if the duration of such employment is two years or more or where it is less than two years, if such employment is not subject to renewal; and
- (ii) on termination of such employment where the employee or holder of an office or appointment permanently returns to his place of recruitment.

12.3 The value of any meal or refreshment provided in a canteen, cafeteria, or dining room operated by, or on behalf of, an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms.

12.4 A benefit, the value of which (after taking into account the frequency with which similar benefits are provided by the employer) is so small as to make accounting for it unreasonable or administratively impracticable.

12.5 For the purposes of paragraph (5), the value of any transportation of employee's children provided by the employer solely for the benefit of employees and which is available to all non-casual employees on equal terms.

12.6 In cases of benefits falling under paragraph 6.1(a), the benefit of low interest or no interest on loan granted to an employee is excluded from gross income in respect of any casual loan not exceeding in aggregate E3 000 at any one time during the year of assessment.

NOTE:

- (a) In terms of paragraph 5(1), Part II of the Second Schedule to the Income Tax Order 1975, as amended, any employer, who fails to make deduction or withhold the full amount of employees' tax, shall be personally liable for the payment of the amount which he fails to deduct or withhold.

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- (b) In all cases where you are uncertain as to the tax treatment of any benefit subject to this practice note, or where the value determined is considered unrealistic, you should request a directive from the Commissioner.

Revocation of legal Notice No. 003 of 2005

The taxation of benefits in kind and certain allowances Notice 2005 is revoked.

PN MSIBI
COMMISSIONER OF TAXES

Mbabane
2 January 2007

SCHEDULE A

Rental category	Floor area	Area A Taxable benefit Per month E	Area B Taxable benefit Per month E	Area C Taxable benefit Per month E
Prime location 3-5 bedrooms 2-3 bathrooms Double garage Servant quarters Secure perimeter 1 500 sq.m and above lot	250sq.m and above	4 607	3 915	2 740
As above, but smaller	200sq.m and above	4 145	3 524	2 465
3 bedrooms 2 bathrooms a garage servants quarters secure perimeter 700 sq.m and above lot	150sq.m and above	3 686	3 133	2 193
Lesser than prime location 3 bedrooms 1-2 bathrooms 700sq.m and above lot	120sq.m and above	3 190	2 710	1 899
2-3 bedrooms 1 bathroom or shower		2 393	2 033	1 422
2-3 bedrooms 1 bathroom or shower	70-100sq.m	1 612	1 370	960
2-3 bedrooms 1 bathroom or shower	40-70sq.m	1 330	1 129	790
1 bedroom	70sq.m and above	910	773	542
1 bedroom	Under 70sq.m	761	648	452
Bedsitters	Under 70sq. m	531	452	317
Quarters	Under 70sq.m	213	180	110

In this schedule, the locations are designated in categories A, B, C, and are detailed as follows:

Area A: is accommodation or housing situated in the residential areas of Mbabane Municipal area, Waterford, Pine Valley, Coates Valley, Extension 6, Madonsa Township, Thomasdale and within ten kilometers from the old Mbabane/Manzini road.

Area B: is accommodation or housing situated in the residential areas of Manzini and surrounds; except Coates Valley, Extension 6, Madonsa Township and Thomasdale.

Area C: is accommodation or housing situated in the major agricultural and industrial sectors and other towns.

EXPLANATORY NOTES

PART A PRELIMINARY

Definitions

Paragraph 1

The term "employee" for the purposes of this practice note has the meaning assigned to it in the Second Schedule to the Order. The term employee is defined in the Second Schedule to mean "any person (other than a company) who in respect of an employment, office or appointment, receives remuneration from an employer or to whom remuneration accrues and includes a former employee who receives remuneration which accrued before the termination of the contract of employment".

PART B THE LAW

Paragraph 2

In paragraph 2.1, the intention of sections 7(f) and (ff) of the Order is to tax, in addition to the income earned by an employee, all the benefits or advantages afforded to an employee from employment.

In paragraph 2.2, the definition of "remuneration", has an extended meaning in the Second Schedule to include the annual value of such benefit or benefits referred to in section 7(f) of the Income Tax Order. The inclusion of benefits in the definition of remuneration makes it compulsory for employers to deduct PAYE on such benefits.

In paragraph 2.3(a), the definition of benefit refers to benefits provided by an employer or an associate of the employer. The inclusion of an associate of the employer (for example, a related company) is to ensure that benefits provided by an associate of the employer to an employee of the employer are subject to tax in the hands of the employee. This rule is only relevant where the benefit provided by the associate is not a reward for services rendered by the employee to the associate.

In paragraph 2.3(b), a benefit is defined to include a benefit provided to an associate of the employee. The inclusion of associate ensures that benefits provided by an employer, directly to, for example, the spouse, children, or family company or trust of an employee is subject to tax.

PRACTICE

Paragraph 3

Valuations of benefits or advantages: Although the valuations placed on the benefits are not specified in the Income Tax Order 1975, section 5 of the Income Tax (Amendment) Act No. 5 of

1988 empowers the Commissioner to determine the basis for valuations of such benefits. The definition of "*remuneration*" as embodied in the Second Schedule contains the wording "... or the annual value of such benefits or benefits referred to in section 7(f) as the Commissioner may, from time to time, determine in respect of a year of assessment, ..." The foregoing wording makes it clear that the Commissioner is vested with the powers to set the basis for valuations of benefits in kind.

In accordance with the provisions of paragraph 3.2, with effect from 1 July 2003 benefits in kind coming within the purview of section 7(f) of the Order are taxed at their market values. However, the move to market value was introduced on a phased-in basis over a period of five years, the 2008-year of assessment being the fifth year. The taxation of such benefits on a phased in basis was to prevent the levying of tax on the taxable portions of the values of other benefits; especially in those cases where tax had not been levied in the past,, from imposing an unduly increased burden on those concerned.

THOSE AFFECTED

Paragraph 5

Scope of the Practice Note: The practice note applies to employees and holder of office or appointment (for example, a company director, member of board of directors, a public servant, a member of parliament, a cabinet minister etc.).

PART C TAXABLE BENEFITS

Free and subsidized housing or accommodation

Paragraph 1

Housing fringe benefit: Under paragraph 1.1, the provision of accommodation or housing by an employer to an employee is a housing fringe benefit. This is intended to cover a lease or licence granted by an employer to an employee to occupy or use a house, flat, unit, caravan, mobile home, bunkhouse or living quarters. It also includes the payment or reimbursement by an employer of hotel, guesthouse, or hostel accommodation for an employee.

The taxable value of a housing or accommodation fringe benefit is provided in paragraph 1.1 as the open market rent of the accommodation or housing. In the case of hotel or similar accommodation, the tariff charged by the hotel for the room occupied by the employee would normally be treated as the open market rent of the accommodation.

In accordance with the proviso to paragraph 1.1, where the employer owns the accommodation or housing, the value of the benefit is the rental benefit value determined on the basis of the monetary values prescribed in schedule A.

The basis for the use of the monetary values: The monetary values prescribed in schedule A are based on the Government's report on valuation of Government houses for taxation purposes of 13 February 1998. The figures have been adjusted over the years using a rate of 10 per cent to make them more realistic. With effect from 1 July 2004, the formula for determining the rental value where the employer owns the housing or accommodation is substituted for the monetary values as determined by the Government. These monetary values form the basis of values to be attached to housing benefits. The values are what is considered to be open market rental values of the Government owned houses throughout the country. The values determined by the

Government are used as a benchmark in setting taxable values in respect of housing or accommodation owned by an employer.

Employer rents housing from employee: Under paragraph 1.2, where an employer rents from an employee the employee's private residence and then grants such employee free or cheap occupation thereof. The situation would arise where the nature of the employer's trade is such that he would normally provide his employees with official housing. Although the transaction takes the form of a rental, the rent paid by the employer to the employee is in effect nothing more than a housing allowance. In this instance, the benefit to the employee is the rental he receives. Accordingly the rental received by the employee will not be taxable under the ordinary provisions of the law [see paragraph 3.4 on anti-avoidance schemes].

Private use of motor vehicles (including any aircraft)

Paragraph 2

Private use of employer's vehicles under paragraph 2.1, a motor vehicle which is provided by an employer for the private use of an employee or which is available to the employee for private use is taxable benefit. The private use by an employee of an employer's motor vehicle will include travelling between his place of residence and his place of employment. The reference to "motor vehicle" is intended to cover a motor car, station wagon, panel van, utility, or similar vehicle. Private use includes any use that is not exclusively for the business purposes of the employer. For example, the use of a motor vehicle to travel to and from the employee's place of work would be regarded as private use. An employee does not actually have to use the motor vehicle for private purposes for there to be a taxable benefit, the availability of the vehicle for private use being enough. A motor vehicle is considered to be available for private use –

- (a) if the employee is entitled to use the vehicle for private use; or
- (b) it is kept or garaged at or near the employee's place of residence; or
- (c) the employee has custody or control of the vehicle while not performing his or her duties of employment; or
- (d) where an employer places a prohibition on an employee's private use of a motor vehicle but that prohibition is not consistently enforced by the employer, the vehicle may still be treated as being used for private purposes despite the prohibition.

However, the private use of a vehicle is deemed to have no value if -

- (a) the vehicle is also used by other employees ("pool vehicles"); or
- (b) the private use thereof is infrequent or merely incidental to its business use; or
- (c) it is not kept at or near the employee's residence when not in use outside business hours; or
- (d) the employee's duties are such that he frequently uses the vehicle to perform such duties outside his normal hours of work and the private use thereof is restricted merely to travelling between his place of residence and his place of employment.

The taxable benefit value in respect of provision of a motor vehicle is determined in terms of the formula prescribed in paragraph 2.1 of Part C. The taxable value is on a phased in basis, being 16% of the market value (for the current year of assessment) of the car at the date it was first

provided for private use. This amount is prorated where the vehicle is not used for private purposes or available for such use on some part of every day of the year of assessment. For example, if a vehicle is only used or available for private use on weekends, the fraction for proration is 104/365. If the motor vehicle is used or available for private use on some part of day, then the whole of the day counts as a day of private use.

Market value: In paragraph 2.2, -

- (a) where the vehicle has been acquired by the employer under a *bona fide* agreement of sale or exchange, the market value of the car is the cost to the employer at the time it was first provided to the employee, excluding finance charges; or
- (b) where the vehicle is held by the employer under a lease or ownership thereof was acquired by him on the termination of a lease, the retail market value thereof at the time when the right of use was first obtained by the employer; or
- (c) in any other case, the market value of the vehicle at the time when the vehicle or the right to use it, was first obtained by the employer.

Meaning of cost: Paragraph 2.2 defines the market value of the car as the cost to the employer at the time it was first provided to the employee. It should be noted that no distinction must be drawn between (i) the variable costs (for example, fuel and garage requirements) and (ii) the basic non-variable costs (for example, licence, insurance, depreciation) relating to the vehicle. The principle is that, although paid by the employer, non-variable costs such as licence, insurance *et cetera* also inure to the benefit of the employee.

For the purposes of paragraph 2.1, the value of a benefit of this nature is to be determined by reference to the cost to the employer. This cost includes items such as insurance, licensing charges and depreciation – the latter, since the extent to which a vehicle is used will affect the extent to which it depreciates; and this is a cost to the employer whether it is represented by the agreed written-off portion of the purchase price in any particular year, or a genuine attempt to assess its diminished value.

The fixed or non-variable costs are equally an advantage or benefit to the employee, since he is spared having to incur them himself. It is clearly the intention of the legislature to include in the tax net all and any such benefits or advantages. Thus, the sums paid by an employer as insurance and licensing of a motor vehicle are clearly part of the cost to the employer of owning such motor vehicle, as well as whatever wastage or reduction in value flowing from depreciation.

Employee using personal vehicle on employer's business

Paragraph 2.5

As regards an employee using personal vehicle for employer's business: It is common practice amongst employers to encourage employees to purchase their own vehicles for the purpose of caring for the vehicle, as well as providing a fixed allowance in respect of running of such vehicle. The ostensible advantages to the company are that -

1. capital is not utilized in financing vehicles and can be better utilized for business purposes; and
2. savings will be made in operating costs as employees tend to look after their own vehicles better than company vehicles.

Prior to 1 July 2003, car allowances paid to employees were taxed on the same basis as the provision of a company car, in that the employee was taxed the free benefit value attributable to the company vehicle or the free benefit value attributable to the vehicle used by the employee and funded by the allowance received. Consequently, many companies introduced a car allowance scheme for employees, even when no significant business mileage was required from the employee, by reason of the significant tax savings that could be achieved consequent thereto as the allowance could be considerably greater than the taxable value attributed in terms of the Department of Taxes practice prior to 1 July 2003.

With effect from 1 July 2003 the Department of Taxes changed the departmental practice and required that vehicle allowances be taxed in full or in certain circumstances be taxed at 30% of the allowance in terms of a directive issued on 29 March 2004. The 30% rule was only applicable relative to the year of assessment ending 30 June 2004.

Commencing on 1 July 2004, the annual value of benefits attributable to employees, for use of the vehicles for private purposes shall be determined in terms of the formula prescribed in paragraph 2.5. an illustration is provided hereunder:

Example: Original cost of vehicle E200 000. Vehicle is 2000cc engine capacity. Monthly car allowance E5 000. Calculation on annual basis using deemed expenditure and mileage:

Allowance		60 000
Fixed costs (25% of E200 000)	50 000	
Running costs (24 000) @ 76c	<u>18 240</u>	
	<u>68 240</u>	
Deemed business usage (E68 240 x 6000km/24000km)		<u>17 060</u>
Taxable portion		<u>42 940</u>

Employee rents his vehicle to his employer: Where an employee owns or leases his own motor vehicle and rents it to his employer, the rental paid by the employer and any expenses borne by him in respect of the vehicle are deemed to be an allowance in respect of travelling expenses, which has been paid to the employee.

Domestic assistance

Paragraph 3

Under paragraph 3, the provision by an employer to an employee of a housekeeper, chauffeur, gardener, or other domestic assistant is a deemed benefit. An employer may provide such benefit either by meeting the cost of the domestic assistant directly or reimbursing the employee for such cost. The taxable value of a domestic assistant benefit is the total remuneration paid to the domestic assistant for services rendered to the employee.

UTILITIES

Paragraph 4

Under paragraph 4.1, the reimbursement or discharge by the employer of an employee's utilities expenditure is a benefit. Utilities expenditure is defined in paragraph 1. The taxable value of a utilities benefit as provided for in paragraph 4.1 is the amount of such expenditure that is reimbursed or discharged by the employer.

Educational assistance

Paragraph 5

Educational assistance: The educational assistance given to an employee in connection with the education of such employee's children is a taxable benefit. This is not only in keeping with the statutory provisions, but also accords with the case law position, that such payments *prima facie* meant the settlement, by the employer, of a personal liability of the employee. Paragraph 1 [of Part A] defines educational assistance to mean a contribution or financial aid or subsidy granted to the children of the employee by the employer to enable or assist such children to study at a recognized educational institution. And it covers school fees and other educational expenses paid by the employer on account of the education of the employee's children.

Excluded from the scope of paragraph 5, is the value of any transportation of employee's children provided by the employer solely for the benefit of employees where such benefit is made available to all non-casual employees on equal terms.

Bursaries: In terms of the provisions of section 12(1)(f) of the Order, a *bona fide* bursary is not subjected to tax in the hands of the recipient thereof. A bursary granted to a relative of an employee is, however, deemed to be a taxable benefit which must be taxed in the hands of the employee notwithstanding the provisions of section 12(1)(f); and as such must be taxed in accordance with the rule prescribed in paragraph 5.

SOFT LOANS

Paragraph 6

Soft loans: The granting of any loan, whether interest free or at the payment of interest at a rate which is lower than the "official rate of interest" by an employer or an associated institution to an employee is, deemed a taxable benefit. This is a loan provided by an employer to an employee at an interest rate, which is below the Central Bank of Swaziland discount rate. "Loan" is intended to be interpreted broadly covering an advance of money, provision of credit or other financial accommodation, or any transaction that in substance effects a loan of money.

Housing loans and mortgage subsidies: The provisions of paragraph (ff) of section 7 as outlined in paragraph 7 of the practice note also apply to housing loans and mortgage subsidies. Paragraph 7 therefore extends to the acquisition, erection, extension or improvement of an employee's private residence or loan subsidies granted in terms of an approved housing scheme.

In paragraph 6.1(a): The taxable benefit is the difference between the interest at official rate and the interest paid by the employee (see section 7 (ff) paragraph (a)).

In paragraph 6.1(b): A subsidy paid by an employer to an employee in terms of home ownership or house scheme in respect of amounts of interest or capital repayments payable by the employee is, deemed to be a taxable benefit (see section 7(ff) paragraph (b)). In accordance with section 7(ff)(b) a benefit arises whenever an employer has paid any subsidy in respect of capital or interest on any loan.

In paragraph 6.1(c): Is applicable in a situation where the employer pays a subsidy in respect of a loan to an employee. If the amount paid by the employer together with the interest paid by the employee exceeds the official rate of interest on the loan the full amount paid by the employer would be treated as a taxable benefit. Certain housing assistance schemes are structured in such way that an employer arranges with a third party, usually a financial institution, for a loan to be granted to his employee at a low rate of interest, subject to an additional payment by the

employer which effectively provides the third party with a market related rate of interest on the loan. In terms of section 7(ff)(c) where the interest paid by the employee and the additional payment by the employer under such a scheme together exceed the amount of interest which would be payable on the loan at the official rate of interest, the additional payment by the employer is deemed to be a subsidy. The provision will also apply to loans granted for purposes other than housing.

Meals, refreshment or entertainment

Paragraph 7

Under paragraph 7, the provision by an employer to an employee of a meal or refreshment is a benefit. This is intended to cover a meal or refreshment provided either at the employee's place of work (for example, in an executive dining room), or at a restaurant or café. "Refreshment" is intended to be interpreted broadly and would include the provision of drinks. A meal or refreshment is provided by an employer where the employer meets the cost of the meal or refreshment, or reimburses an employee for costs incurred by the employee for a meal or refreshment.

ALLOWANCES

Paragraph 11

Allowances: The salary paid to an employee is usually a fixed basic amount, but the employer may supplement it by way of further allowance. These allowances whether paid on a voluntarily basis or in terms of a contract of employment are in fact nothing else but additional remuneration or extra earnings and must be included in the employee's taxable income. These allowances represent benefits attaching to the person's office or employment, and include *inter alia*, car allowance, commuted car allowance, climatic allowance, garden allowance, cost of living allowance, housing allowance, subsistence allowance, holiday bonus, cashier's allowance, household allowance, entertainment allowance, allowance for attendance at meetings, allowance in lieu of private practice, education allowance, uniform allowance, resettlement allowance, sitting allowances/fees etc.

The tax reimbursement in respect of the income tax paid or payable by ministers; members of certain bodies like SNC or payment of an employee's income tax by employer is a taxable benefit, on the principle that if an employer pays and bears the income tax of an employee or holder of an office or appointment, this is a benefit derived from employment and the amount should be included as a bonus in the year in which the claim is made.

Reimbursive allowances: In terms of section 11(8) of the Income Tax Order if an employee fails to satisfy that he has expended the whole allowance, paid to him by his employer in connection with travelling and entertainment expenses incurred by him in the furtherance of his employer's business, the amount not spent in the course of his duties must be included in his income and subject to tax.

The classes of cases to be dealt with may be divided into the following:

- (a) Commercial travellers who receive salary and/or commission and pay their own expenses.

So as concerns the employer, portion of the claim may be disallowed only if it can be shown that the charge is from the point of view of the assessment of the employer excessive or unreasonable. The fact that the employee may make a profit out of the allowance is not itself sufficient grounds for disallowing any portion of the employer's claim. If, however, the

employee is able to make a very large profit there is prima facie evidence that the allowance has been calculated on a scale having little or no relation to actualities and if, the employee and the employer cannot be regarded as being at arm's length so much of the charges as is considered to be excessive should not be allowed as a deduction in terms of section 14(1)(a) and 15(g) of the Order.

- (b) Employees whose expenses are paid by the firm on submission of vouchers or other evidence satisfactory to the employer.

In respect of cases falling within (b) a certificate from the employer to the effect that in his opinion the allowances paid cover reasonable expenses and do not admit of a profit being made by the employee, will be accepted as conclusive proof that no portion of the allowance should be included in taxable income in terms of section 11(8).

- (c) Employees who receive salary plus allowances.

In the generality of cases falling within (c) a certificate from the employer to the effect that in his opinion the allowances paid cover reasonable expenses and do not admit of a profit being made by the employee, would be accepted. Where, however, there is reason to believe that such a certificate may not be in accordance with facts satisfactory proof should be obtained before excluding the whole or any portion of the allowances from taxable income.

- (d) Directors or employees who are in a position to influence the amounts of travelling and entertainment allowances payable to themselves.

In respect of cases falling within (d) supporting evidence would be called for.

The travelling, entertainment or other service envisaged in section 11(8) must be travelling, entertainment or other services undertaken in connection with the particular business carried on by the employer. In other words, so much of an allowance or advance in respect of transport expenses as has been expended on private travelling, for instance, travelling between a person's place of residence and the place of employment or business and other travelling done in respect of private or domestic purposes, shall be deemed not to have been expended for business purposes.

Luncheon vouchers: The value of free meal coupons represents a benefit or advantage in respect of employment and is, therefore, taxable.

Free passages to employees or holders of office or appointment

Paragraph 12.2

The exclusion of free passage from the provisions of section 7(f) is premised on the notion that the provision of such outward passages though made under a term of the contract of employment is something antecedent to the employment *per se*. It is distinct from the employment as not to be a benefit or advantage granted or enjoyed in respect of the employment.

In other words the free passage provided at the expense of the employer at commencement of employment is not a benefit or advantage to the employee. The employee is not better off as a result of it. The rationale being that the employee's remuneration starts when such an employee commences work at the place of employment. Thus, if the employer, to have such a person as an employee, has originally to take such person to the place of employment. All that the employee has enjoyed is that the employee has employment. The value of that is what the employee earns at it.

Please note that this differs from a case in which in the course of employment the employee is entitled to be taken to and from a place for the purpose of enjoying leave. Such situations are not excluded from the ambit of section 7(f), as they do not fall within the wording of the proviso.

It is evident that in the absence of this particular proviso the free passage at the commencement of employment would not have constituted a benefit or advantage as envisaged in section 7(f). So the first part of the proviso seeks to enshrine this principle. But the free passage borne by the employer, at termination of the contract of service, would have come within the purview of the definition of gross income and therefore taxable. It is in this light that the exclusion of the free passage at termination is the only benefit that is being conferred by the Order.

For the exemption to apply, the law requires that the duration of such employment, office or appointment should be two years or more. However, where the duration is less than two years such employment, office or appointment must not be subject to renewal.

EXAMPLE: *If an employee was engaged in Nigeria to serve in Swaziland (for a period of two years), was taken to Swaziland at the start, at the expense of the employer and at the termination of the contract of service permanently returns to Nigeria where such employee was recruited then both the free passages at commencement and termination of such employment would not constitute a benefit or advantage as contemplated by section 7(f) as such benefit squarely comes within the proviso to paragraph (f) of section 7 of the Order.*

If the employee at the termination of the contract does not permanently return to the place of recruitment then such allowances or free passages provided at the expense of the employer would constitute a benefit or advantage to the employee and therefore taxable under section 7(f).

As pointed out before, this is aimed at counteracting the abuse that arises with regard to free passage at the termination of the contract of service. Thus, in view of the new proviso all free passages that are availed to an employee in terms of a contract of employment for the purposes of enjoying leave or in respect of a renewal contract would fall into the scope of section 7(f) save for the free passage provided at the expense of the employer where the termination of the contract is not subject to renewal and the employee returns permanently to his place of recruitment.

EXAMPLE: *If an employee was engaged in Nigeria to serve in Swaziland (for a period of two years), was taken to Swaziland at the start, at the expense of the employer and the contract of employment provides for free passage back to Nigeria for the enjoying of leave or anywhere else – such free passage(s) would fall into gross income and be taxable. This is so notwithstanding that both the free passages at commencement and termination of the contract of service (permanently returns to Nigeria where such employee was recruited) – would not constitute a benefit or advantage under section 7(f) of the Order.*

Exemption of meals or refreshment provided in canteen or cafeteria

Paragraph 12.3

Paragraph 12.3 treats as an exempt benefit fringe benefit a meal or refreshment provided in a canteen, cafeteria, or dining room operated by or on behalf of an employer solely for the benefit of employees and which is available to all non-casual employees on equal terms. The expressions “canteen”, “cafeteria”, and “dining room” are intended to have their ordinary meaning and, in particular, “canteen” is intended to include a bar operated by the employer. It is not necessary that the facility be on employer’s business premises provided it is operated by or on behalf of the employer. The reference to “operated ...on behalf of the employer” is intended to cover, for example, a facility operated by an associate company of the employer, which is available to all employees of the corporate group. To qualify for the exemption, the facility must be available to

all non-casual employees of the employer on equal terms. As a result, a facility which is only available to senior employees will not qualify for the exemption, nor will a facility available to all non-casual employees but with entitlements depending on seniority.

Exemption of de minimus benefits

Paragraph 12.4

Paragraph 12.4 refers to benefits whose value is so small as to make it unreasonable or administratively impracticable to account for them for tax purposes. In determining whether it is unreasonable or impracticable to account for the benefit, regard must be had to the frequency with which the benefit is provided to the employee and to other employees. A small value fringe benefit provided to an employee regularly would not normally be considered an exempt fringe benefit, nor would a small value fringe benefit provided to a large number of employees (where it is not unreasonable to account for it). For example fringe benefits that may qualify for exemption under paragraph 12.4 include occasional departmental or celebratory lunches or dinners, occasional cocktail parties or firm picnics, birthday cakes for employees, or one-off private use of a car.