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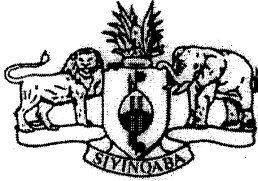
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(Act No. 15 of 2013)



I ASSENT

**MSWATI III
KING OF SWAZILAND**

01st August, 2013

**AN ACT
ENTITLED**

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**AN ACT
ENTITLED**

AN ACT to provide for the registration of architects, engineers, surveyors and allied professionals practicing as such in the Swaziland, to provide for the establishment of the Architects, Engineers, Surveyors and Allied Professionals Registration Council, to outline the powers of the Council and to provide for incidental matters.

ENACTED by the King and the Parliament of Swaziland.

**PART I
PRELIMINARY**

Short Title and commencement

1. (1) This Act may be cited as the Registration of Architects, Engineers, Surveyors and Allied Professionals Act, 2013.

(2) This Act shall come into force on a date that the Minister may, by notice in the Gazette, appoint.

Interpretation

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

“allied professional” means a construction manager, environmental manager, evaluator, project manager, town planner or any other professional that the Minister may, by notice published in the *Gazette* designate as an allied professional;

“allied professional work” means construction management, environmental management, evaluation, project management or town planning;

“Chairperson” means the Chairperson of the Engineers, Architects, Surveyors and Allied Professionals Registration Council appointed under section 7;

“Council” means the Architects, Engineers, Surveyors and Allied Professionals Registration Council established in terms of section 4;

“graduate” means an architect, engineer, quantity surveyor or allied professional who has completed a degree but is not yet a professional;

“investigation committee” means the investigation committee appointed under section 55;

“member” means a member of the Council;

“Minister” means the Minister responsible for engineers, architects, surveyors and allied professionals;
“ordinarily resident” means resident in the country for more than six months of each year for five consecutive months;

“practicing certificate” means an annual certificate issued by the Council to a registered professional engineer, architect, surveyor or allied professional, authorizing that person to engage in engineering, architectural, surveying or allied professional work in Swaziland;

“professional association” means a professional association of architects, engineers, quantity surveyors or allied professionals;

“register” means a register kept under section 20;

“registered professional architect” means a professional architect whose name is entered in the register;

“registered professional engineer” means a professional engineer whose name is entered in the register;

“registered professional quantity surveyor” means a professional quantity surveyor whose name is entered in the register;

“registrar” means the registrar of the Council appointed under section 20; and

“technician” means a person who holds a certificate or diploma in architecture, engineering, quantity surveying or a allied professional work.

Prerequisite for practicing as a professional architect, engineer, quantity surveyor or allied professional

3. (1) A person shall not practice within Swaziland as a professional architect, engineer, quantity surveyor or allied professional unless that person is registered in terms of this Act.

(2) A person desiring to be registered in terms of this Act shall apply to the registrar in the prescribed manner and pay the prescribed fee.

PART II
ESTABLISHMENT OF THE ARCHITECTS, ENGINEERS, SURVEYORS
AND ALLIED PROFESSIONALS REGISTRATION COUNCIL

Establishment of the Architects, Engineers, Surveyors and Allied Professionals Registration Council

4. There is hereby established a Council, to be known as the Architects, Engineers, Surveyors and Allied Professionals Registration Council which shall be a body corporate with perpetual succession and a common seal, with power, subject to the provisions of this Act, to sue and be sued in its corporate name, to acquire and dispose of property, both movable and immovable, and to do and perform acts and things that bodies corporate may by law perform.

Functions of the Council

5. (1) The functions of the Council are to-

- (a) regulate and control the activities of registered professional architects, engineers, quantity surveyors, allied professionals, graduates and technicians within Swaziland and to advise the Government on those matters;
 - (b) keep and maintain a register of registered professional architects, engineers, quantity surveyors, allied professionals, graduates and technicians;
 - (c) hold or arrange for the holding of examinations that the Council considers necessary for the purpose of enabling persons to qualify for registration under this Act;
 - (d) approve or reject applications for registration under this Act or to approve any application subject to any restrictions it may consider fit to impose;
 - (e) promote learning and education in connection with architecture, engineering, surveying or allied professional work, either alone or in conjunction with any professional association;-
 - (f) establish and maintain standards of professional conduct and ethics of architects, engineers, surveyors, allied professionals, graduates and technicians;
 - (g) promote and regulate inter-professional liaison between architects, engineers, surveyors and allied professionals in the public interest;
 - (h) subject to legislation governing higher education and qualifications, give advise in respect of all matters affecting the education and training of architects, engineers, surveyors and allied professionals;
 - (i) coordinate the establishment of mechanisms for registered professional architects, engineers, quantity surveyors and allied professionals to gain international recognition;
 - (j) determine, on an annual basis, the rates of fees to be charged for services rendered by registered professional architects, engineers, quantity surveyors and allied professionals;
 - (k) submit to the Minister-
 - (i) within six months of the Council coming into office, a five year strategic plan;
 - (ii) every six months, a report on the status of registered professional architects, engineers, quantity surveyors, allied professionals, graduates and technicians on matters of public importance that have come to the attention of the Council in the course of the performance of its functions under this Act; and
 - (iii) an annual report within six months of the end of the financial year;
 - (l) ensure that an annual budget for the Council is drawn up and that the Council operates within the parameters of that budget;
 - (m) determine the requirements within which a professional association should comply with to qualify for recognition by the Council;
 - (n) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons; and
 - (o) perform any other functions as may be prescribed and, generally do all other things that are necessary or expedient in order to achieve the objectives of this Act.
- (2) The Council may-

- (a) acquire, hire, or dispose of property, borrow money on the security of the assets of the Council and accept and administer any trust or donation;
- (b) consider any matter affecting the professions registrable under this Act and make representations or take any action as the Council considers necessary.

Seal of the Council

6. (1) The Council shall have a common seal, and the fixing of the seal shall-
- (a) be authorized or ratified by a resolution of the Council;
 - (b) be authenticated by the signatures of the Chairperson, or in the absence of the Chairperson, by the vice-chairperson or any other member of the Council.
- (2) The common seal shall be kept in the custody of the Chairperson.
- (3) Any document purporting to be a document duly executed under the seal of the Council shall be received in evidence in any court proceedings and shall, until the contrary is proved, be presumed to be a document validly executed.

Composition of the Council

7. (1) The Council shall consist of the following members appointed by the Minister on the recommendation of the respective professional associations-
- (a) three registered professional engineers;
 - (b) two registered professional architects;
 - (c) two registered professional quantity surveyors;
 - (d) two registered allied professionals;
 - (e) the Principal Secretary in the Ministry of Public Works or a representative of the Principal Secretary; and
 - (f) the Principal Secretary in the Ministry of Housing and Urban Development or a representative of the Principal Secretary.
- (2) Professional Associations shall recommend for appointment by the Minister as Chairperson, a person who is either a professional architect, engineer, quantity surveyor or allied professional and the members shall, at the first meeting of the Council elect the vice-chairperson from among their number.
- (3) Except for members appointed under paragraphs (e) and (f), a member of the Council shall, unless the appointment is revoked by the Minister, hold office for a period of three years from the date of appointment and shall be eligible for reappointment.
- (4) The Minister may, in consultation with the nominating professional association, revoke the appointment of any member and may appoint a new person or member as the case may be to fill any vacancy occurring on the Council.

Disqualification from membership of the Council

8. A person shall not be qualified to be a member of the Council if the person-

- (a) is neither a citizen nor a resident of Swaziland;
- (b) is an undischarged bankrupt or has made any arrangement or composition with creditors;
- (c) has been convicted of an offence involving fraud, dishonesty or any other offence implying a defect in character and is sentenced to imprisonment without the option of a fine;
- (d) is mentally disordered and incapable of managing the affairs of that person or is incapacitated by physical illness; or
- (e) has at any time after due inquiry by the Council been found guilty of improper conduct.

Filling of vacancies

9. (1) The office of a member of the Council shall become vacant if that member-

- (a) dies;
- (b) resigns or is removed from office; or
- (c) becomes in any manner disqualified for office under section 8.

(2) The Minister may, on the recommendation of the Council, remove from office any member of the Council who is absent without leave of the Council from three consecutive ordinary meetings of the Council.

(3) Any question as to whether a person has ceased to be a member of the Council shall be determined by the Minister whose decision shall be final.

(4) If any vacancy arises on the Council, the Minister shall as soon as practicable, in consultation with the nominating professional association, appoint any registered professional architect, engineer or quantity surveyor to fill that vacancy.

(5) Any person appointed to fill a vacancy shall hold office for the unexpired portion of the term for which the predecessor was appointed.

(6) The powers of the Council shall not be affected by any vacancy in its membership.

(7) No act done by or under the authority of the Council shall be invalid in consequence of any defect that is afterwards discovered in the appointment or qualification of the members.

Meetings of the Council

10. (1) Subject to subsection (2), the Council shall meet at times that are necessary or expedient for the transaction of Council business.

(2) All meetings of the Council shall be convened by the Chairperson or in the absence of the Chairperson, the vice-chairperson, who shall appoint a suitable, time, place and date for the holding of the meeting.

(3) The Chairperson, or in the absence of the Chairperson, the vice-chairperson shall convene a special meeting of the Council on a request in writing signed by not less than three members of the Council for that meeting and the meeting shall be held within 21 days of the receipt of the request.

(4) The Chairperson, or in the absence of the Chairperson, the vice-chairperson shall preside at all meetings of the Council.

(5) In the absence of the both the Chairperson and the vice-chairperson, the members present shall elect one member to preside over the meeting.

Quorum and voting at the meetings

11. (1) A majority of members of the Council shall constitute a quorum at any meeting of the Council.

(2) All acts, matters and things authorized to be done by the Council shall be decided by a resolution at a meeting of the Council at which a quorum is present.

(3) A decision of the majority of the members present and voting at a meeting of the Council shall be deemed to be a decision of the Council.

(4) A member of the Council shall have one vote and in the event of an equality of votes, the chairperson of the meeting shall have a second or casting vote in addition to the deliberative vote.

Transaction of business by circulation of papers

12. Notwithstanding section 11, where the Chairperson so directs, a decision of the Council may be made without a meeting being held, by the circulation of the relevant papers among all the members and the expression in writing of their views, except that any member shall be entitled to require that any decision be deferred until the subject matter is considered at a meeting of the Council.

Procedure of the Council

13. Subject to this Act and any regulations made under this Act, the Council may determine its own procedure.

Minutes of proceedings

14. Minutes in proper form of each meeting shall be kept and shall be confirmed by the Council at the next meeting and shall be signed by the chairperson of the meeting.

Validity of proceedings

15. Subject to the provisions of section 11 relating to quorum, the Council may act notwithstanding any vacancy in its membership and no act or proceeding of the Council shall be invalid by reason only of some defect in the appointment of a member.

Limitation of liability of members

16. Neither the Chairperson nor any member of the Council shall be personally liable for any act done or any omission of the Council done or omitted in good faith in the course of carrying out the responsibilities and functions of, or in exercise of powers conferred upon the Council by this Act.

Committees

17. The Council may appoint committees from among its members, registered professional architects, engineers, quantity surveyors or allied professionals as it considers fit to assist or advise the Council on any matters arising out of its functions under this Act or as are referred to them by the Council.

Funds of the Council

18. (1) The funds of the Council consists of any money received in terms of this Act and any other monies which may accrue to the Council from any other legal source, including fines and penalties imposed by the Council.

(2) The Council may-

- (a) collect and invest funds of the Council;
- (b) raise money by way of a loan for the purposes of effectively performing its functions;
- (c) mortgage any of its immovable property as security for a loan under paragraph (b); and
- (d) accept donations or contributions from any source, with the approval of the Minister.

(3) The Council may remunerate its members and committee members from its funds.

(4) The Council shall keep full and correct accounts of all monies received and expended by it.

(5) The Council shall annually prepare a statement of income and expenditure and a balance sheet showing the financial position of the Council at the close of the financial year and the statement and balance sheet shall be audited by a registered auditor.

(6) The Council shall, within 6 months from the end of the financial year, submit the audited accounts to the Minister.

(7) The Council shall apply due care and diligence when investing any money or incurring any expenditure from the funds of the Council.

PART III **REGISTRAR AND REGISTERS**

Appointment of registrar

19. (1) The Council shall appoint a registrar of the Council on such terms and conditions as the Council may, with the approval of the Minister determine.

(2) The registrar shall, subject to the direction and control of the Council, be responsible for the day to day administration of the Council.

(3) The registrar shall sign all certificates of registration and practicing certificates and shall record all entries of registration, cancellation and reinstatement in the register of professional architects, engineers, quantity surveyors and allied professionals and the register of technicians and graduates.

(4) The registrar shall attend all meetings of the Council and of any committee and record the proceedings but shall have no vote.

(5) The registrar shall conduct the correspondence and deal with any matters that may be assigned to the registrar by the Council.

(6) The Council may delegate to the Registrar any of its functions as it may consider necessary.

(7) The Council may appoint other staff of the Council as it considers necessary on such terms and conditions as it may determine.

Registers

20. (1) The Council shall keep and maintain-

- (a) a register of professional architects, engineers, surveyors and allied professionals in which shall be entered the names of all persons registered under this Act, the qualifications by virtue of which they are so registered and any other particulars which may be determined by the Council
- (b) a register of graduate architects, engineers, quantity surveyors and allied professionals in which shall be entered the names of persons who are registered as graduate architects, engineers, quantity surveyors or allied professionals;
- (c) a register of technicians; and
- (d) a register of recognised professional associations.

(2) There shall be indicated against the name of each person registered as a professional engineer in the register, the branch or branches of engineering the registered professional engineer is qualified to practice.

(3) All changes in the particulars registered under subsection (1) shall be entered in the register by the registrar.

Publication of register and list

21. (1) The registrar shall-

- (a) as soon as may be convenient after 1st January each year, prepare and publish in the *Gazette* a list containing the names, qualifications (including the branch or branches of engineering to which the qualification relate) and addresses –
 - (i) of all registered professional architects, engineers, quantity surveyors or allied professionals who have a practicing certificate in force; and
 - (ii) of all registered graduates and technicians; and
- (b) from time to time publish in the *Gazette* the names, qualifications and addresses of architects, engineers, quantity surveyors, allied professionals, graduates or technicians added to or removed from the register of practitioners.

(2) In any proceedings, a list published under subsection (1) shall be *prima facie* evidence that the persons whose names appear in that list are registered professional architects, engineers, quantity surveyors and allied professionals who have practicing certificates in force.

Prima facie evidence of registration

22. (1) A publication under section 21 shall be *prima facie* evidence that the persons named in the publication are registered under this Act, and the deletion from the register of the name of any person notified by the publication, or the absence of the name of any person from the publication, or the absence of the name of any person from the publication, shall be *prima facie* evidence that that person is not registered.

(2) The register, lists and all copies of or extracts from them which purport to have been certified under the hand of the registrar shall be receivable in all courts and tribunals or other bodies authorized to receive evidence as *prima facie* evidence of the facts stated.

Power to delete from and correct the register

23. (1) The Council may at any time direct that the name of a registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician be deleted from the register where the person has-

- (a) failed within 6 months from the date of an inquiry sent by the registrar by prepaid registered letter to the address appearing in the register against the name of the person, to notify the registrar of the current address of the person;
- (b) requested that the name of the person be deleted from the register, in which case that person may be required to satisfy the Council by affidavit lodged with the registrar that no criminal proceedings are being or are likely to be taken against the person;
- (c) been found by the Council to be guilty of misconduct;
- (d) been declared an un-discharged bankrupt or has a receiving order in bankruptcy against the person;
- (e) been adjudged to be of unsound mind;
- (f) been struck off the register of a professional association.

(2) The registrar shall delete from the register the name of every deceased person and shall also delete from the register any entry incorrectly or fraudulently made.

(3) Except in the circumstances specified in subsections 1 and (2), the deletion from the register of the name of any person shall be notified by the registrar to that person by prepaid registered letter to the address appearing in the register against the name immediately prior to the deletion.

(4) Subject to section 24, a person whose name has been deleted from the register under this section shall cease from the date of deletion to be registered for the purposes of this Act.

Restoration to the register

24. (1) Where the name of any person has been deleted from the register under section 23, the name of that person shall not be again entered in the register except by direction of the Council.

(2) Where the name of any person has been deleted from the register or the effect of the registration of any person has been suspended, the Council may, either on its motion or on the application in the prescribed manner of the person concerned, and in either case after holding any inquiry as the Council considers appropriate, direct that-

- (a) the deletion from the register be confirmed;
- (b) the name of that person be restored to the register; or
- (c) the suspension of the effect of the registration of that person be terminated.

(3) A direction given by the Council under subsection (2) may include provision for the date upon which a restoration to the register or the termination of a suspension of registration shall take effect and for the payment by the person concerned of a fee, not exceeding the fee payable on an application for registration, as the Council may determine.

Inspection of register

25. Any person may, on the payment of the prescribed fee, inspect the register and any document relating to any entry in the register and may obtain from the Registrar a copy of or an extract from the register of any document.

Return of registration certificate

26. Any person whose registration has been cancelled in terms of this Act shall return the registration certificate to the registrar within 30 days from the date that the registrar directs the person to do so.

Recognition of professional associations

27. (1) The Council shall, within 90 days from the date of its first meeting, submit the framework for the requirements for the recognition of professional associations to the Minister.

(2) Any professional association may apply to the Council for recognition as such.

(3) The Council may, if a professional association complies with the requirements for recognition, recognize the professional association and issue it with a certificate of recognition.

**PART IV
QUALIFICATIONS FOR REGISTRATION**

Registration as a professional architect, engineer, surveyor or allied professional

28. (1) Subject to this Act, a person shall be entitled, on making an application to the Council in the prescribed manner and on payment to the Council of the prescribed fee, to be registered under this Act and to have their name entered in the register if the person is a member of a professional association of architects, engineers, quantity surveyors or allied professionals and the professional association is recognized by the Council and the person is able to produce sufficient evidence of academic knowledge of, and practical experience of working as a professional architect, engineer, quantity surveyor or allied professional.

(2) The Council may require an applicant for registration under this Act to satisfy the Council that the professional and general conduct of the applicant has been such as, in the opinion of the Council, to make the applicant a fit and proper person to be registered under this Act, and the Council may direct the registrar to postpone the registration of an applicant until so satisfied.

Qualifications for registration as a professional architect

29. (1) The following persons shall, on payment of the prescribed fee, be entitled to register as a professional architect under this Act-

- (a) a person holding a degree of Bachelor of Architecture from a recognized university or institution;
- (b) a person holding a Bachelor of Technology or Bachelor of Architectural Studies or equivalent qualification;
- (c) a person who satisfies the Council that the person is otherwise qualified by having proper and recognized training in architecture and who passes any examination that may be prescribed; or
- (d) any person who, on the date of coming into effect of this Act, possesses the relevant qualifications and has worked as an architect for a minimum uninterrupted period of 15 years and who passes any examination that may be prescribed.

(2) A person may not be registered under subsection (1) unless the person satisfies the Council that, after obtaining qualifications as an architect, the person has acquired at least 3 years practical experience in architectural work and has passed any professional practical examination as may be prescribed by Council.

(3) The Minister may, after consultation with the Council, by order published in the Gazette, exempt, subject to any conditions, any person from the requirements of subsection (2).

(4) The Council may refuse to register any applicant who, in the opinion of the Council is not of good character and reputation or is unable to carry out the duties of a professional architect effectively.

(5) Any person whose application for registration as a professional architect is refused by the Council may appeal to the High Court within 30 days of becoming aware of the decision.

Qualifications for registration as a professional engineer

30. (1) The following persons shall, on payment of the prescribed fee, be entitled to register under this Act as a professional engineer-

- (a) a person holding a degree of Bachelor of Engineering or Bachelor of Science in Engineering from a recognized university or institution;
- (b) a person holding a Bachelor of Technology in Engineering or equivalent qualification;
- (c) any person who satisfies the Council that the person is qualified by having proper and recognized academic qualifications in engineering and who satisfies any conditions that may be prescribed ; and
- (d) any person who, on the date of coming into effect of this Act, possesses the relevant qualifications, and has worked as an engineer for a minimum uninterrupted period of 15 years and who passes any examination that may be prescribed.

(2) A person may not be registered under subsection (1) unless the person satisfies the Council that the person has, after obtaining qualifications-

- (a) acquired not less than 3 years practical experience in engineering work and at a level of responsibility as to be sufficiently competent for registration as a professional engineer under this Act; or
- (b) qualified by having proper and recognized training in engineering and has passed any examinations that may be required by Council.

(3) The Minister may, after consultation with the Council, by order published in the Gazette, exempt, subject to any conditions the Minister may consider fit, any person from the requirements of subsection (2).

(4) The Council may refuse to register any applicant who in the opinion of the Council is not of good character and reputation and is unable to carry out the duties of a professional engineer effectively.

(5) Any person whose application for registration as a professional engineer is refused by the Council may appeal to the High Court within 30 days of becoming aware of the decision.

Qualifications for registration as a professional quantity surveyor

31. (1) The following persons shall, upon payment of the prescribed fee, be entitled to register as a professional quantity surveyor under this Act-

- (a) a person holding a degree of Bachelor of Quantity Surveying from a recognized university or institution;
- (b) a person holding an equivalent qualification;
- (c) a person who satisfies the Council that the person is otherwise qualified by having proper and recognized training in quantity surveying and who passes any examinations that may be prescribed; or
- (d) any person who, on the date of coming into effect of this Act, possesses the relevant qualifications, and has worked as a quantity surveyor for a minimum uninterrupted period of 15 years and who passes any examinations that may be prescribed.

(2) A person may not be registered under subsection (1) unless the person satisfies the Council that, after obtaining qualifications as a quantity surveyor, the person has acquired at least 3 years practical experience in quantity surveying work and has passed any professional practical examination that may be prescribed by Council.

(3) The Minister may, after consultation with the Council, by order published in the Gazette, exempt, subject to any conditions the Minister may consider fit, any person from the requirements of subsection (2).

(4) Notwithstanding subsection (1), the Council may refuse to register any person who is not, in the opinion of the Council, of good character and reputation.

(5) Any person whose application for registration as a professional engineer is refused by the Council may appeal to the High Court within 30 days of becoming aware of the decision.

Qualifications for registration as an allied professional

32. (1) The following persons shall, upon payment of the prescribed fee, be entitled to register as an allied professional under this Act-

- (a) a person holding a degree of Bachelor of-
 - (i) environmental science;
 - (ii) construction management;
 - (iii) project management;
 - (iv) town planning; or
 - (v) property evaluation,from a recognized university or institution;
- (b) a person holding an equivalent qualification in the disciplines listed in paragraph (a);
- (c) a person who satisfies the Council that the person is otherwise qualified by having proper and recognized training to practice as an allied professional and who passes any examinations that may be prescribed; or

(d) any person who, on the date of coming into effect of this Act, possesses relevant qualifications, and has worked as an allied professional for a minimum uninterrupted period of 15 years and who passes any examination that may be prescribed.

(2) The Minister may, after consultation with the Council, by order published in the Gazette, exempt, subject to any conditions the Minister may consider fit, any person from the requirements of subsection (2).

(3) Notwithstanding subsection (1), the Council may refuse to register any person who is not, in the opinion of the Council, of good character and reputation.

(4) Any person whose application for registration as a professional engineer is refused by the Council may appeal to the High Court within 30 days of becoming aware of the decision.

(5) Notwithstanding subsection (1), the Council may refuse to register any person who is not, in the opinion of the Council, of good character and reputation.

Registration as a graduate architect, engineer, quantity surveyor or allied professional

33. Subject to this Act, a person shall be entitled, on making application to the Council in the prescribed manner and on payment to Council of the prescribed fee, to be registered under this Act and to have their name entered in the register as a graduate architect, engineer, quantity surveyor or allied professional if the person-

- (a) is the holder of a degree relevant to architecture, engineering, quantity surveying or allied professional work issued by a recognized university or institution;
- (b) has worked under the supervision of a registered professional architect, engineer, quantity surveyor or allied professional for a minimum period of three years; and;
- (c) is a member of a professional association.

Registration as a technician

34. Subject to this Act, a person shall be entitled, on making application to the Council in the prescribed manner and on payment to Council of the prescribed fee, to be registered under this Act and to have their name entered in the register as a technician in architecture, engineering, quantity surveying or allied professional work if the person-

- (a) is the holder of a certificate or diploma relevant to architecture, engineering, quantity surveying or an allied profession issued by a recognised institution;
- (b) has worked under the supervision of a registered professional architect, engineer, quantity surveyor or allied professional for a minimum period of three years; and;
- (c) is a member of a professional association.

Application for registration

35. Every application for registration under this Act shall be made to the Council in the prescribed form and manner.

Certificates of registration

36. Every registered professional architect, engineer, surveyor, allied professional, graduate or technician shall, on payment of the prescribed fee, be entitled to receive a certificate of registration under the hand of the registrar.

Amendment of register

37. The registrar shall-

- (a) amend the register where there is any alteration which may come to the knowledge of the registrar in the name, address or other relevant particulars of any registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician;
- (b) correct any error in any entry in the register; and
- (c) remove from the register the name of any person whose name has been ordered to be removed under any provision of this Act or who is deceased.

Removal of name and particulars from register

38. (1) The Council may order the name and other particulars of a registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician to be removed from the register if the professional architect, engineer, quantity surveyor, allied professional, graduate or technician-

- (a) has no address in Swaziland at which the professional architect, engineer, quantity surveyor, allied professional, graduate or technician can be contacted or sent any document using particulars in the register;
- (b) has not renewed the practicing certificate for a continuous period of not less than 2 years.

(2) The Council may order that the name and other particulars of a registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician be removed from the register if it comes to the knowledge of the Council that-

- (a) the registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician obtained registration by fraud or misrepresentation;
- (b) the qualification for registration has been withdrawn or cancelled by the authority through which it was acquired or by which it was awarded; or
- (c) the registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician refuses or fails to comply with an order made by a disciplinary committee.

(3) The Council shall, before exercising its powers under subsection (2), notify the registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician concerned of its intention to take such action and shall give the registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician an opportunity to submit reasons, within a period to be specified by the Council, why the name should not be removed from the register.

(4) A person aggrieved by a decision of the Council may appeal to the High Court within 30 days of becoming aware of the decision.

(5) Any registered professional architect, engineer, quantity surveyor, allied professional, graduate or technician may apply to the Council to have their name removed from the register.

(6) The Council may, upon receiving an application under subsection (5) direct the registrar to remove the name and particulars of the applicant from the register.

(7) No direction shall be made under subsection (6) if the Council is satisfied that disciplinary action is pending against the applicant or the conduct of an applicant is subject to an inquiry by the investigation committee.

Reinstatement of registration

39. (1) Any person whose names and particulars have been removed from the register shall, if an appeal to the High Court is allowed, be immediately reinstated without the payment of a fee.

(2) The Council may consider an application for reinstatement on the register after the lapse of a period of 3 years.

Temporary registration

40. (1) Where a person satisfies the Council-

- (a) that the person is not ordinarily resident in Swaziland;
- (b) that the person intends to be present in Swaziland in the capacity of a professionally qualified architect, engineer, quantity surveyor or allied professional for the express purpose of carrying out specific work or works for which the person has been engaged;
- (c) that the person, immediately prior to entering Swaziland was, in practice as a professional architect, engineer, quantity surveyor or allied professional in a capacity that satisfies the Council of the fitness of that person to serve the public as a professional architect, engineer, quantity surveyor or allied professional;
- (d) that the person has the necessary professional registration from an institution recognized by the Council; and
- (e) that the person has a valid work permit,

the Council may, if it considers it appropriate, direct that the person be registered under this section either for a period not exceeding 1 year or for the duration of any specific work or works.

(2) An application for registration under this section shall be in the prescribed form, accompanied by the prescribed fee.

(3) The Council may require an applicant to appear before it for the purposes of considering the application of the applicant and shall require every applicant to produce documentary evidence of professional qualifications and employment immediately prior to entering Swaziland.

(4) Registration of a person under this section shall continue only for the period or the duration of the work or works as directed by the Council under subsection (1) and on its termination the person shall cease to be registered.

(5) A person registered under this section shall, in relation to the period or duration of the work or works as directed by the Council under subsection (1) and to things done and omitted in the course of the work or works, be treated as registered under this Act as a registered professional architect, engineer, quantity surveyor or allied professional but in relation to other matters shall be treated as not so registered.

(6) Any professional architect, engineer, quantity surveyor or allied professional coming to work in Swaziland shall become a member of a professional association within 2 months of arrival in Swaziland and shall register with the Council within 4 months of arrival in Swaziland.

(7) Any company or organization, private or public, which recruits an expatriate professional architect, engineer, quantity surveyor or allied professional shall ensure that the professional architect, engineer, quantity surveyor or allied professional has registered with the Council within 4 months of arrival in Swaziland.

PART V
PRIVILEGES OF REGISTERED PROFESSIONAL ARCHITECTS

Illegal practice

41. (1) A person shall not draw or prepare any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part of a building in Swaziland unless the person is-

- (a) a registered professional architect who has a valid practicing certificate; or
 - (b) under the direction or supervision of a registered professional architect who has a valid practicing certificate.
- (2) A person shall not sign and submit-
- (a) any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part of a building in Swaziland; or
 - (b) any report, certificate or other document relating to the construction, enlargement or alteration of any building or part of a building which is required by any written law to be signed by an architect,

unless the person is a registered professional architect who has a valid practicing certificate.

(3) Any document signed in contravention of subsection (2) shall be invalid.

(4) Subject to this Act, a person shall not-

- (a) use verbally or otherwise the word "professional architect", "Arch" or any of its derivatives in connection with their business designation that will lead to the belief that the person is a professional architect unless the person is a registered professional architect; or
- (b) advertise or hold themselves out or conduct themselves in any way or by any means as a person who is authorized to supply architectural services in Swaziland, unless the person is a registered professional architect who has a valid practicing certificate.

(5) Subject to this Act, a person shall not supply or offer to supply architectural services in Swaziland unless the person is a registered professional architect who has a valid practicing certificate and is doing so on the own account of that person.

(6) A person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangení or to imprisonment for a period not exceeding five years or to both, and in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand Emalangení or to imprisonment for a period not exceeding ten years or to both.

Remuneration for architectural services

42. A person shall not be entitled to recover in any court any charge, fee or remuneration for any architectural services rendered in Swaziland unless the person rendering the services is authorized by this Act to supply those services.

Prohibition of employment of unregistered architect

43. (1) A person shall not employ as an architect any person who is not a registered professional architect and does not hold a valid practicing certificate.

(2) A person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni and in the case of a second or subsequent conviction, to a fine not exceeding one hundred thousand Emalangeni.

PART VI
PRIVILEGES OF REGISTERED PROFESSIONAL ENGINEERS

Illegal practice

44. (1) Subject to the provisions of this Act, a person shall not engage in any of the prescribed branches of engineering work in Swaziland or draw or prepare any plan, sketch, drawing, design, specification or other document relating to any of the prescribed branches of professional engineering work in Swaziland unless that person-

- (a) is a registered professional engineer who has a practicing certificate in force authorizing that person to engage in that branch of engineering work;
- (b) is under the direction or supervision of a registered professional engineer who has a practicing certificate in force authorizing the engineer to engage in that branch of engineering work; or
- (c) is authorised by the Council to work in collaboration (but without a right to any independent practice) with a registered professional engineer who has a valid practicing certificate authorizing the registered professional engineer to engage in that branch of engineering work.

(2) The Council may grant its authorisation to any person under subsection (1) subject to any conditions that the Council may consider necessary.

(3) Subject to the provisions of this Act, a person shall not sign and submit-

- (a) any plan, sketch, drawing, design, specification or other document relating to any engineering work in Swaziland; or
- (b) any report on or a certificate or other document relating to any engineering work in Swaziland which is required by any written law to be signed by a professional engineer,

unless that person is a registered professional engineer who has a valid practicing certificate authorizing that person to engage in engineering work, and any document that is signed in contravention of this subsection shall be invalid.

(4) Subject to this Act, a person shall not use verbally or otherwise-

- (a) the words "engineer" or any additions to or abbreviations or derivative of those words in connection with the designation of that person;
- (b) the abbreviation "Er", "Pr eng" or "Engr" as a title before the name of the person; or
- (c) any word, name or designation that will lead to the belief that the person is a registered professional engineer,

unless that person is a registered professional engineer.

(5) Where the Council has authorised any person to work in collaboration with a registered professional engineer, the Council may allow that person to use such addition to or derivative of the words “engineer” as may be approved by the Council.

(6) Subject to this Act, a person shall not advertise or hold themselves out or conduct themselves in any way or by any means as a person who is authorised to supply engineering services in Swaziland, unless the person is a registered professional engineer who has a valid practicing certificate.

(7) Subject to this Act, a person shall not supply or offer to supply engineering services in Swaziland unless the person is a registered professional engineer who holds a valid practicing certificate authorizing the person to engage in professional engineering work to which those services relate;

(8) Any person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding five years or to both, and in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand Emalangeni or to imprisonment for period not exceeding ten years or to both.

(10) In this section “prescribed branches of engineering work” means-

- (a) civil/structural engineering;
- (b) electrical engineering;
- (c) mechanical engineering;
- (d) mining engineering;
- (e) chemical engineering; or
- (f) any other branch of engineering that may be prescribed by the Council.

Prohibition of employment of unregistered engineers

45. (1) A person shall not employ as a professional engineer any person who is not a registered professional engineer.

(2) A person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding five years and in the case of a second or subsequent offence to a fine not exceeding one hundred thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Remuneration for engineering services

46. A person shall not be entitled to recover in any court any charge, fee or remuneration for any engineering services rendered in Swaziland unless the person rendering the services is authorized by this Act to supply those services.

PART VII

PRIVILEGES OF REGISTERED PROFESSIONAL QUANTITY SURVEYORS

Illegal practice

47. (1) A person shall not offer quantity surveying services unless the person is a registered professional quantity surveyor who has a valid practicing certificate.

(2) A person shall not-

- (a) use the words "quantity surveyor" or any additions to or abbreviations or derivative of those words in connection with the designation of that person;
- (b) use the abbreviation "PQS" as a title before the name of the person;
- (c) use or cause or permit to be used any written words, titles or initials or any abbreviations which are intended to cause or may reasonably cause any person to believe that the person using them is a registered professional quantity surveyor authorised to supply quantity surveying services in Swaziland; or
- (d) advertise or hold themselves out or conduct themselves in way or by any means as a person authorised to offer quantity surveying services in Swaziland,

unless at the time of doing so the person is a registered professional quantity surveyor who has a valid practicing certificate.

(3) A person shall not perform or execute any quantity surveying work or engage in any quantity surveying work in Swaziland unless that person is-

- (a) a registered professional quantity surveyor who has a valid practicing certificate;
- (b) under the direction of a person mentioned in paragraph (a).

(4) Any person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding five years, and in the case of a second or subsequent offence, to a fine not exceeding one hundred Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Prohibition of employment of unregistered surveyors

48. (1) No person shall employ as a quantity surveyor any person who is not a registered quantity surveyor.

(2) A person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding five years or to both and in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Remuneration for professional quantity surveying work

49. A person shall not be entitled to recover in any court any charge, fee or remuneration for any quantity surveying work rendered in Swaziland unless the person rendering the services is authorized by this Act to supply those services.

PART VIII

PRIVILEGES OF REGISTERED ALLIED PROFESSIONALS

Illegal practice

50. (1) A person shall not offer services as a construction manager, evaluator, environmental manager, project manager or town planner, unless the person is a registered allied professional who has a valid practicing certificate.

(2) A person shall not-

- (a) use the words “construction manager“, “evaluer“, “environmental manager“, “project manager” or “town planner” or any additions to or abbreviations or derivative of those words in connection with the designation of that person;
- (b) use or cause or permit to be used any written words, titles or initials or any abbreviations which are intended to cause or may reasonably cause any person to believe that the person using them is a registered allied professional authorised to supply services as an allied professional in Swaziland; or
- (c) advertise or hold themselves out or conduct themselves in way or by any means as a person registered to offer services as an allied professional in Swaziland,

unless at the time of doing so the person is a registered allied professional who has a valid practicing certificate.

(3) A person shall not perform or execute any service as an allied professional or engage in work as an allied professional in Swaziland unless that person is-

- (a) a registered allied professional who has a valid practicing certificate;
- (b) under the direction of a person mentioned in paragraph (a).

(4) Any person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni, or to imprisonment for a period not exceeding five years or to both and in the case of a second or subsequent offence, to a fine not exceeding one hundred Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Prohibition of employment of unregistered allied professionals

51. (1) A person shall not employ as an allied professional any person who is not a registered allied professional.

(2) A person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding five years or to both and in the case of a second or subsequent offence, to a fine not exceeding one hundred thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Remuneration for allied professional work

52. A person shall not be entitled to recover in any court any charge, fee or remuneration for any allied professional work rendered in Swaziland unless the person rendering the services is authorized by this Act to supply those services.

PART IX PRACTICING CERTIFICATES

Practicing certificates

53. (1) Where a registered professional architect, engineer, quantity surveyor or allied professional desires to engage in the practice of professional architecture, engineering, quantity surveying, evaluating, environmental management, project planning, construction management or town planning after the 31st December of any year, the professional architect, engineer, quantity surveyor or allied professional shall, not later than the 1st December of that year, apply in the prescribed form and manner for a practicing certificate authorizing the professional architect, engineer, quantity surveyor or allied professional to engage in the practice of architecture, engineering, quantity surveying work, evaluating, environmental management, project planning, construction management or town planning in the ensuing year.

(2) Notwithstanding subsection (1), where a registered professional architect, engineer, quantity surveyor or allied professional applies for a practicing certificate for the first time after registration, the application shall be in the prescribed form and may be made at any time during the year and the registered professional architect, engineer, quantity surveyor or allied professional may be issued with a practicing certificate for the remainder of the year in which the application is made.

(3) An application under this section shall be addressed to the Council and be accompanied by-

(a) a declaration in writing stating-

(i) the full name of the applicant;

(ii) the name under which the applicant practices if it is different from the name of the applicant or the name of the person employing the applicant; and

(iii) the principal and any other address or addresses at which the applicant practices in Swaziland;

(b) any evidence that the Council may require that the applicant has complied with or is exempt from the rules relating to insurance against professional liability;

(c) and the prescribed fee,

and the Council shall, subject to subsection (4), issue the applicant with a practicing certificate.

(4) The Council may refuse to issue a practicing certificate if-

(a) the applicant is an un-rehabilitated insolvent;

(b) the applicant has entered into a composition with the creditors of the applicant or a deed of arrangement for the benefit of the creditors;

(c) the applicant does not intend to practice either on the own account of the applicant or in partnership, or is not about to be employed by any person lawfully supplying architectural, engineering, quantity surveying services or allied professional work in Swaziland;

(d) the declaration under subsection (3) contains a statement that is false in a material particular; or

(e) the conduct of the applicant affords reasonable grounds for believing that the applicant will not engage in the practice of architecture, engineering, quantity surveying or allied professional work in Swaziland with honesty and integrity.

(5) Any registered professional architect, engineer, quantity surveyor or allied professional who fails to apply for a practicing certificate in the manner and within the period laid down in subsection (1) may, on making an application in the form and on payment of any additional fees that may be prescribed, be issued with a practicing certificate for-

(a) the ensuing year if the application is made during the month of December of any year; or

(b) the remainder of the year if the application is made on or after the 1st January of any year.

(6) A practicing certificate shall, unless cancelled earlier, be in force from the date of its issue until the 31st December of the year in respect of which it is issued.

(7) A practicing certificate shall specify the address of the principal place of practice and all other places of practice of the registered professional architect, engineer, quantity surveyor or allied professional in respect of whom the practicing certificate is issued.

(8) Any change in address shall be notified by the registered professional architect, engineer, quantity surveyor or allied professional concerned to the registrar within 2 weeks of the change and an endorsement of the change on the practicing certificate shall be obtained from the registrar.

(9) Where the registration of a professional architect, engineer, quantity surveyor or allied professional is canceled, the practicing certificate shall immediately cease to have effect and that date shall be entered by the registrar.

(10) Any person whose application for a practicing certificate is refused by the Council may, within 30 days of being notified of the refusal, appeal to the High Court.

Cancellation of practicing certificate

54. (1) The Council may cancel the practicing certificate of any registered professional architect, engineer, quantity surveyor or allied professional on any ground specified in section 53(4) which applies to the registered professional architect, engineer, quantity surveyor or allied professional, whether or not that good ground existed at the time when the practicing certificate was issued.

(2) The Council shall not cancel any practicing certificate under subsection (1) unless an opportunity of being heard either personally or by a legal practitioner is given to the person concerned.

(3) Any person whose practicing certificate is canceled by the Council may, within 30 days of being notified of the cancellation, appeal to the High Court.

PART X DISCIPLINARY PROCEEDINGS

Appointment of investigation committee

55. (1) The Council shall appoint an investigation committee consisting of at least 5 members who are registered professional architects, engineers, quantity surveyors or allied professionals with professional experience of at least 5 years and who are not members of the Council.

(2) A member of the investigation committee shall be appointed for a period of 2 years and shall be eligible for re-appointment.

(3) The Council may, upon good cause shown, revoke the appointment of any member of the investigation committee or fill any vacancy in its membership.

Complaints against registered architects, engineers, quantity surveyors or allied professionals

56. Any complaint concerning-

- (a) the conviction of a registered professional architect, engineer, quantity surveyor or allied professional of any offence involving fraud, dishonesty or implying a defect in character which makes the professional architect, engineer, quantity surveyor or allied professional unfit for their profession;
- (b) any improper act or conduct of a registered professional architect, engineer, quantity surveyor or allied professional in their professional capacity which brings the profession into disrepute;

- (c) any contravention by a registered professional architect, engineer, quantity surveyor or allied professional of any provision of the prescribed code of professional conduct and ethics;
- (d) the ability of a registered professional architect, engineer, quantity surveyor or allied professional to carry out the duties of a professional architect, engineer, quantity surveyor or allied professional effectively in Swaziland,

shall be made to the Council in writing and shall be supported by any evidence that the Council may require.

Review of complaints

57. (1) Subject to subsection (3), the Council shall, upon receiving any complaint refer the complaint to the registrar for review.

(2) The Council may, on its own, refer any information concerning any improper or dishonorable act or conduct of a registered professional architect, engineer, quantity surveyor or allied professional to the registrar for review.

(3) The registrar-

- (a) shall review the complaint or information referred to the registrar for the purpose of determining if there are sufficient merits to warrant the institution of disciplinary proceedings against a registered professional architect, engineer, quantity surveyor or allied professional; and
- (b) may, for the purpose of conducting the review, enlist the assistance of any registered professional architect, engineer, quantity surveyor or allied professional, as the case may be, on the investigation committee.

(4) In conducting a review under this section, the registrar may require the complainant, if any or the registered professional architect, engineer, quantity surveyor or allied professional concerned to answer any question or to furnish any document or information that the registrar considers relevant for the purpose of the review.

(5) On the completion of a review, the registrar shall-

- (a) if the registrar finds that the complaint is frivolous, vexatious, misconceived or without merit or that the information is unsubstantiated, dismiss the complaint or information;
- (b) where the complaint or information relates to the conviction, whether in Swaziland or elsewhere, of the registered professional architect, engineer, quantity surveyor or allied professional of an offence that involves fraud, dishonesty or implies a defect in character which makes the registered professional architect, engineer, quantity surveyor or allied professional unfit for the profession, recommend to the Council to refer the matter to a disciplinary committee for a formal inquiry; and
- (c) in any other case, recommend to the Council to refer the matter to an investigation committee for an inquiry.

(6) The Council may, upon accepting the recommendation of the registrar under subsection 5, appoint an investigation committee or a disciplinary committee, as appropriate, and refer the matter thereto for an inquiry or a formal inquiry as the case may be.

Appointment of Disciplinary Committee

58. (1) The Council may, from time to time, appoint one or more Disciplinary Committees comprising-

- (a) a chairperson who is a member of the Council;
- (b) a member of the investigation committee who is an architect;
- (c) a member of the investigation committee who is an engineer;
- (d) a member of the investigation committee who is a surveyor;
- (e) a member of the investigation committee who is an allied professional,

to inquire into any complaint or information received by the Council.

(2) A member of an investigation committee who has assisted the registrar in reviewing any complaint or information shall not be a member of a Disciplinary Committee inquiring into the same matter.

(3) A Disciplinary Committee shall be appointed in connection with one or more matters or for a fixed period of time as the Council considers necessary.

(4) The Council may, upon good cause shown, at any time revoke the appointment of the chairperson or any member of a Disciplinary Committee or fill any vacancy on the Disciplinary Committee.

(5) An act done by or under the authority of a Disciplinary Committee shall not be invalid on the basis of any defect that is subsequently discovered in the appointment or qualification of the chairperson or members of the Committee.

(6) The chairperson of a Disciplinary Committee shall, notwithstanding that the chairperson has ceased to be a member of the Council on the expiry of the term of office, continue to be chairperson of the Disciplinary Committee until such time that the Disciplinary Committee has completed its work.

Powers and procedure of Disciplinary Committee

59. (1) For the purposes of an inquiry, a Disciplinary Committee may require any person-

- (a) to attend at a specified time and place and give evidence before the Disciplinary Committee; and
- (b) to produce all books, documents and papers in the custody of that person or under the control of that person which may be related to or connected with the subject matter of the inquiry.

(2) Any person who, without lawful excuse-

- (a) refuses to answer or gives a false answer to any question put to that person by a member of the Disciplinary Committee,

commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni or to imprisonment for a term not exceeding 3 months or to both.

(3) A Disciplinary Committee shall have power to regulate its own procedure at an inquiry.

(4) A Disciplinary Committee shall complete its inquiry not later than 3 months from the date which the matter to be inquired into is referred to it, unless the Council, on application by the Disciplinary Committee, allows otherwise.

Findings of Disciplinary Committee

60. The Disciplinary Committee shall, at the end of an inquiry into any complaint or information, report its findings to the Council and recommend the Council to do any of the following-

- (a) order that the complaint or information be dismissed;
- (b) order that the registered professional architect, engineer, quantity surveyor or allied professional be issued with a letter of warning;
- (c) make any other order that the Disciplinary Committee considers appropriate.

Decision of Council

61. (1) The Council may, upon receiving the findings and recommendation of the Disciplinary Committee-

- (a) accept the recommendation and make the recommended order;
- (b) refer the matter back to the Disciplinary Committee for further inquiry or;
- (c) make any other order that the Council considers fit.

(2) The Council shall not-

- (a) issue any letter of warning to a registered professional architect, engineer, quantity surveyor or allied professional in accordance with the recommendation of the Disciplinary Committee; or
- (b) make any other order against the registered professional architect, engineer, quantity surveyor or allied professional in accordance with the recommendation of the Disciplinary Committee,

unless the Council is satisfied that the Disciplinary Committee gave the registered professional architect, engineer, quantity surveyor or allied professional an opportunity to be heard either personally or through a legal practitioner during the inquiry.

(3) The Council shall notify the person who made the complaint or gave the information, if any, of its decision.

(4) A registered professional architect, engineer, quantity surveyor or allied professional aggrieved by a decision of the Council may, within 30 days of becoming aware of the decision of the Council, appeal to the Minister and decision of the Minister shall be final.

(5) Where a person who made a complaint or gave information to the Council which led to an inquiry against a registered professional architect, engineer, quantity surveyor or allied professional is aggrieved by a decision of the Council, that person may, within 30 days of becoming aware of the decision, appeal to the Minister and the decision of the Minister shall be final.

(6) The Minister may, in relation to an appeal under subsection (4) or (5) make-

- (a) an order affirming the decision of the Council;

- (b) an order directing the Disciplinary Committee to reconsider the matter;
- (c) any other order that the Minister considers fit.

**PART XI
GENERAL**

Application of fees received by Council

62. (1) All fees payable under this Act shall be paid to the Council and be applied to defray expenses of registration and other expenses of the administration of this Act, including any expenses of the Council that may be allowed under regulations and thereafter to provide scholarships and promoting learning and education in architecture, engineering, quantity surveying, evaluating, environmental management, construction management, project management or town planning.

(2) The registrar shall receive all moneys payable to the Council under this Act.

(3) All fees and other moneys payable to the Council under this Act shall be deposited into a bank account approved by the Council.

(4) The Council may invest any moneys that it does not require to use immediately.

(5) The Council shall keep full and proper accounts of all moneys received and expended by it and the accounts shall be audited by an auditor appointed by the Council.

(6) The Council shall, as soon as practicable after the end of each financial year, but not less than 3 months and not more than 6 months from the end of that year, unless the Minister otherwise authorises in writing, submit a report of its activities during the preceding year.

Penalty for willful falsification of register and for wrongfully procuring registration

63. Any person who-

- (a) willfully makes or causes to be made any entry in or falsification of any register kept and maintained under this Act;
- (b) willfully procures or attempts to procure for that person or any other person a practicing certificate or to be registered as a professional architect, engineer, quantity surveyor or allied professional under this Act,

by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing or by intentionally suppressing any material fact and furnishing information which is misleading; or

- (c) knowingly aids or assists in any of the acts mentioned in paragraph (a) or (b);

commits an offence and is liable, on conviction to a fine not exceeding one hundred thousand Emalangeni or to imprisonment for a term not exceeding 6 months or to both.

Prohibition of action or proceedings in absence of bad faith or malice

64. There shall be no action or proceedings against the Council, a Disciplinary Committee, an investigation committee or any member of the Council, a Disciplinary Committee or investigation committee for any act or thing done under this Act unless it is proved to the court that the Act or thing was done in bad faith or with malice.

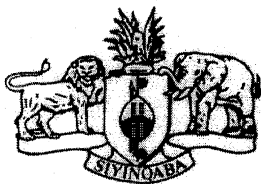
Regulations

65. (1) The Minister may, in consultation with the Council, make regulations for carrying out the purposes of this Act and for any matter which is required under this Act to be prescribed.

- (2) Without prejudice to the generality of subsection (1), the Minister may make regulations-
- (a) prescribing the forms of applications under this Act and certificates of registration, practicing certificates and licences;
 - (b) prescribing the fees payable to the Council under this Act;
 - (c) prescribing the form of the registers to be kept by Council;
 - (d) prescribing a code of professional conduct and ethics;
 - (e) requiring any registered architect, engineer, quantity surveyor or allied professional to take out and maintain insurance against liability for breach of professional duty in the course of supplying architectural, engineering, quantity surveying services or allied professional work;
 - (f) prescribing the terms and conditions of insurance against professional liability under this Act, including a minimum limit of indemnity;
 - (g) prescribing the universities, colleges or other institutions of higher learning whose certificates shall be recognized;
 - (h) prescribing the remuneration and allowances of Council and committee members; and
 - (i) prescribing anything which is permitted or required by this Act to be prescribed.

THE TOBACCO PRODUCTS CONTROL ACT, 2013

(Act No. 16 of 2013)



I ASSENT

MSWATI III
KING OF SWAZILAND

01st August, 2013

AN ACT
ENTITLED

AN ACT to give effect to the World Health Organisation's framework Convention on tobacco control and other matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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PART I PRELIMINARY

Short title and Commencement

1. (1) This Act may be cited as the Tobacco Products Control Act, 2013.
(2) This Act shall come into force on the date of publication in the gazette.

Interpretation

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

“advertisement” includes -

- (a) Any public statement, communication, presentation or reference that promotes or publicizes tobacco or a tobacco product or encourages use or draws attention to the nature, properties, advantages or use of the product;
- (b) The use of any advertisement or promotion aimed at the public of a tobacco product manufacturer’s company name where the name or any part of the name is used as or is included in a tobacco product trademark;
- (c) Product stacking and product displays of any kind or size;

“accessory” means a product that may be used in the consumption of a tobacco product and includes a pipe, cigarette holder, cigar clips, lighter or matches;

“appeal” means the ability of a product to provide physical or psychological pleasure, satisfaction, or other positive quality to the consumer;

“board” means the board established under section 3 of this Act;

“brand element” includes the brand name, manufacturer’s name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling message, recognisable colour or pattern of colours, or any other elements that is reasonably associated with or that evokes a product, a service or a brand of products or service, and includes any portion of a brand element;

“Brand preference advertising” means advertising that promotes a tobacco product by means of its brand characters;

“character” means the distinctive qualities of a tobacco product;

“cigarette” means any product which consists wholly or partly of cut, shredded or manufactured tobacco or any tobacco derivative or substitute rolled up paper or any other material and capable of being used immediately for smoking;

“composition” means the content, arrangement or combination of substances included in the processing and manufacture of tobacco products;

“distribute” means to sell, offer to sell, expose for sale, give, supply, exchange, convey, consign, deliver, furnish, or transfer possession for commercial purposes, or offer to do so, whether for a fee or other consideration or as a sample, gift, prize, or otherwise without charge;

“dwelling place” means a place where people live or work with tools or machine;

“emission” means any substance or combination of substances that is produced when a tobacco product is lighted, produced, processed or used;

“enclosed place” means any space covered by a roof or one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary;

“inspector” means a person or class of persons designated as an inspector under section 34;

“entity” includes a company, Corporation, firm, partnership, association, society, trust or other organization whether incorporated or not;

“FCTC” means the World Health Organisation Framework Convention on Tobacco Control;

“fund” means the tobacco Control Fund established under part V of this Act;

“harmful constituent” means nicotine, tar and any other constituent of a tobacco product smoke which the Minister may by notice in the gazette prescribe to be harmful constituent for purpose of this Act;

“health institution” means a hospital, nursing home, convalescent home, maternity home, primary health care centre, health care centre, dispensing or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

“illicit trade” means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of tobacco or tobacco products including any practice or conduct intended to facilitate such activity;

“ingredients” means the substances added during the manufacturing process or from agricultural practices;

“information advertising” means advertising that provides factual information to the consumer about a product and its characteristics, availability, price or brands;

“legal entity” includes a non-governmental organization and any other body recognized in law as having a separate entity form its members;

“lifestyle advertising” means advertising that associates a product with or evokes a positive or negative emotion about or image of a way of life such as one that includes glamour, sensuality, recreation, excitement, vitality, risk or daring or similar characteristics;

“manufacture” means the processing of a tobacco product to include the packaging, labeling, distribution and importation of tobacco sale in Swaziland;

“manufacturer” in respect of tobacco products includes any entity that is involved or associated with the manufacture of tobacco products, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer;

“Minister” means the Minister responsible for Health;

“minor” means a person under the age of eighteen;

“package” means the container, receptacle or wrapper in which a tobacco product is sold or displayed or distributed at retail, including a carton in which multiple packages are stored;

“prohibited smoking area” means a place in which smoking is prohibited under section 28 of this Act;

“promotion” is the practice of fostering awareness of and positive attitudes toward a product, brand or manufacturer for the purpose of selling the product or encouraging tobacco use and underestimating the dangers of tobacco consumption through various means including direct advertisement, discounts, incentives, rebates, free distribution, promotion of brand elements through related events and products through a public or private medium of communication and creating recognition of or goodwill for the tobacco manufacturer;

“public place” means any indoor, enclosed or partially enclosed area which is open to the public or to which members of the public ordinarily have access to and includes a workplace, a public conveyance or transport, any area open or enclosed to which people are invited, expressly or impliedly;

“public transport” means a vehicle having at least two wheels for the carriage of passengers or goods;

“retailer” means a person who is an entity engaged in a business that includes the sale of any tobacco product to customers;

“smoke” means to inhale, exhale hold or otherwise have control over an ignited tobacco, tobacco product, weed or plant or one producing any emission regardless of the mechanisms by which the emissions are produced;

“smoking” means inhaling or exhaling the smoke of any tobacco or tobacco product and includes the holding of, or control over, any ignited tobacco use either directly or indirectly;

“sponsorship” means a form of contribution to any event or activity with the same effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

“tobacco advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

“tobacco control” means any range of supply, demand or harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;

“tobacco industry” means tobacco manufacturers, wholesale distributors and importers of tobacco products including any re-packer or re-labeler who-

(a) manufactures, fabricates, assembles, processes or labels a tobacco products; or

(b) imports or exports a finished cigarette or smokes tobacco product for sale or distribution;

“tobacco product” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves intended for use by smoking, inhalation, chewing, sniffing, sucking or any other means of consumption and it includes cigarette papers, tubes and filters;

“tobacco related illness” means any illness, disease, or condition resulting in whole or in part from tobacco use or exposure to tobacco smoke and includes any illness, disease or condition exacerbated by tobacco use or exposure to tobacco smoke;

“workplace”

- (a) means any indoor or enclosed area in which employees perform the duties of their employment;
- (b) includes any corridor, lobby, stairway, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment; or
- (c) means any place used by one or more person during paid or voluntary work and includes all attached or associated spaces used while performing work or incidentally including work vehicles; and

“vending machine” means any machine or device that is not that is not mediated by a human being which can automatically retail any tobacco product upon the insertion of a coin, token or similar object into the machine or device.

PART II

ESTABLISHMENT OF THE TOBACCO PRODUCTS CONTROL LICENSING BOARD

Establishment and composition of the Board

3. (1) There is established a Board to be called the Tobacco Products Licensing Board.
- (2) The Board shall be appointed by the Minister and shall be composed of -
 - (a) the Chairperson, who shall not be a public officer;
 - (b) two persons with expert knowledge in pharmaceuticals, drug and tobacco related trade;
 - (c) two persons who are not public officers from institutions or bodies responsible for control of the use of tobacco products;
 - (d) a representative from the Ministry of Agriculture;
 - (e) a representative from the Ministry of Finance;
 - (f) a representative from the Ministry of Tourism;
 - (g) a representative from the Ministry of Commerce; and
 - (h) a senior public health officer.
- (4) A quorum for a meeting of the board shall be four members including the Chairperson.
- (5) Subject to subsection (4), the Board may regulate its own procedure.

Functions and Powers of the Board

4. (1) The functions of the Board is to regulate, supervise and monitor tobacco and tobacco related products in the country.
- (2) For the purpose of subsection (1), the Board has power to,

- (a) determine and consider applications for the manufacture, import, export, sale and distribution of tobacco products;
- (b) grant, renew or revoke tobacco and tobacco products licence;
- (c) authorise inspections to be conducted at such times and in such manner as it may deem necessary;
- (d) co-opt, temporarily, such persons having technical or expert knowledge of matters to be considered by the Board as the Board may consider necessary;
- (e) ensure that sums of money as may be due to the Government by the licensee are duly paid and accounted for and, for that purpose, appoint an accountant to act on behalf of the Board; and
- (f) generally, do such things as may, from time to time, be necessary for the expeditious and efficient exercise of the functions of the Board.

Vacation of office of the Board

5. (1) A member of the Board shall vacate office where the member-
- (a) becomes insolvent under any law relating to insolvency of a person in Swaziland;
 - (b) becomes of unsound mind or is in any other way physically incapacitated;
 - (c) voluntarily resigns such office;
 - (d) is convicted of an offence and sentenced to a term of imprisonment of 12 months or more without an option of fine.
 - (e) being a member of a Board who is a public officer the member ceases to be a public officer or is transferred from the position which qualified the member for appointment to the Board.

Resignation

6. A member of the Board, other than an ex officio member, may resign from office by writing through the chairperson to the Minister and the Minister may request a member to resign from office, or remove a member from office for inability to perform the functions of office as a member or for a stated misconduct or any other just cause.

Replacement in the event of vacancy

7. Where the office of a member becomes vacant for more than three months, the Minister may appoint another person for the unexpired term of office of the member.

Disclosure of Interest

8. (1) A member who has an interest in a matter to be considered by the Board shall disclose the nature of that interest to the Board and is disqualified from participating in a deliberation of the Board in respect of that matter.

(2) A member who fails to disclose an interest under subsection (1) shall cease to be a member.

PART III
TOBACCO PRODUCTS REGULATION

Manufacture of tobacco products

9. (1) A person shall not manufacture, import, sell, or distribute tobacco or a tobacco product except in compliance with this Act and any regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand Emalangeni or to a term of imprisonment not exceeding four years or both such fine and imprisonment.

Provision of information

10. A person who manufactures or imports tobacco or a tobacco product shall provide to the Board, in the prescribed manner and within the prescribed time, information about the product content and its emissions as may be required.

Information on packages

11. (1) A person shall not manufacture, sell, or import a tobacco product unless the package containing it displays, in the prescribed form and manner including through an enclosed leaflet with prescribed information-

- (a) the contents and emissions of the product;
- (b) the health hazards and health effects arising from the use of the product or from its emissions of;
- (c) advice on how to quit smoking; and
- (d) markings designed to facilitate efforts to identify illegally manufactured or distributed tobacco products or products on which tax has not been paid;
- (e) have at least two un-obscured health warning labels or health messages covering 50% of the principal display or total surface area and both located on the lower portion of the pack or package directly underneath the cellophane or other clear wrapping;
- (f) bear the word "warning" appearing in capital letters and all text shall be large, clear, visible and legible, unless the text of the label statement would occupy more than 70% of such area, in which case the text may be of a smaller but conspicuous type size provided that at least 60% of such area is occupied by the required text; and
- (g) bear text that is black on white background or vice versa in a manner that contrasts by typography, layout or colour with all other printed material on the package.

(2) The Minister may, by notice in the gazette, prescribe that the warnings, required under this section, be in the form of pictures or pictograms and may prescribe the required pictures or pictograms.

(3) Every package containing a tobacco product shall bear such statements as to the tar, nicotine and other constituents as may be prescribed and such statement shall be placed directly on the right hand side of the package underneath the cellophane or other clear wrapping in a conspicuous and prominent format and shall be limited to the disclosure of the contents and not their quantities.

Manner of packaging

12. A person shall not package tobacco or tobacco product in a manner that allows a consumer or purchaser of tobacco products to be deceived or misled concerning the character, properties, toxicity, composition, merit or safety of the product.

Health warnings

13. A person shall not sell or distribute a package of tobacco products unless it is conspicuously printed on opposite sides of the tobacco product, health warnings required under section 11.

Offences and penalties

14. A person who contravenes Part III of this Act commits an offence and shall on conviction be liable -

- (a) in the case of a natural person, to a fine not exceeding of one thousand Emalangeni or to a term of imprisonment for three months or on conviction for a second or subsequent offence under this Part, a fine not exceeding five thousand Emalangeni or to a term of imprisonment for one year; and
- (b) in the case of a body corporate or an association of persons, to a fine not exceeding thirty thousand Emalangeni or, on conviction for a second or subsequent offence under this part, to a fine not exceeding fifty thousand Emalangeni.

PART IV**BANNING OF ADVERTISEMENT, PROMOTION SPONSORSIDP OF TOBACCO***Promotion through sponsorship*

15. (1) A person shall not promote tobacco, a tobacco product or a tobacco product related brand element by means of organizing or sponsoring a sporting, cultural, artistic, recreational, educational, entertainment programme or in any other form.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable -

- (a) in the case of a natural person to a fine not exceeding ten thousand Emalangeni or imprisonment for a term not exceeding two years; and
- (b) in the case of a body corporate to a fine not exceeding thirty thousand Emalangeni.

Identical brand names

16. A person shall not sell or promote tobacco, a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an appeal or erroneous impression about the characteristics, health effect or hazards of the tobacco product emissions.

Advertisement

17. A person shall not-

- (a) advertise or use tobacco trade marks, logos, brand names or company names used on tobacco products; or,

- (b) use tobacco trade marks, logos, brand names or company names used on tobacco products,

for the purposes of advertising any organisation, service, activity or event.

Prohibited means of advertisement.

18. (1) A person or body corporate shall not advertise any tobacco product on any satellite, electronic and print media or by any other form of communication.

(2) A person who contravenes subsection (1) commits an offence and shall on conviction be liable-

- (a) in the case of a natural person, to a fine not exceeding fifteen thousand Emalangeni or to a term of imprisonment not exceeding six months; and
- (b) in the case of a body corporate or an association of persons, to a fine not exceeding thirty thousand Emalangeni.

Prohibition on promotion through non tobacco products

19. (1) A person shall not promote or sell a tobacco product if any of the brand elements are displayed on a non tobacco product or is used with a service if the non tobacco product or service is-

- (a) associated with minors or could be construed on reasonable grounds to be appealing to minors; and
- (b) associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

(2) A person shall not, with or without consideration furnish, publish, broadcast or otherwise disseminate or promote non-tobacco products bearing a tobacco related brand element.

(3) A person who contravenes subsection (1) and (2) commits an offence and is liable on conviction to a fine not exceeding fifteen thousand Emalangeni or to a term of imprisonment not exceeding three years or to both such fine and imprisonment.

Prohibition of free distribution

20. A person shall not-

- (a) offer or provide any consideration, direct or indirect, for the purpose of a tobacco product, including a gift to a purchaser or a third party, bonus, premiums, cash rebate or right to participate in a game, lottery or contest;
- (b) furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or performance of a service;
- (c) furnish an accessory that bears a tobacco product related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.

Offences and penalty

21. A person who contravenes sections 19 and 20 commits an offence and shall on conviction, be liable -

- (a) in the case of a natural person to a fine not exceeding ten thousand Emalangeni or to a term of imprisonment not exceeding two years;
- (b) in the case of a body corporate to a fine not exceeding fifty thousand Emalangeni.

PART IV
SALE AND DISTRIBUTION

Prohibition of sale and distribution to minors

22. (1) A person shall not sell or offer to sell tobacco products to any person who is under the age of eighteen years old whether for personal use or not.

(2) A person intending to sell or deliver any tobacco or tobacco related product to a person who is suspected to be under the age of 18 years shall demand to see an identity proving the age of the buyer.

(3) A person shall not sell or offer to sell any tobacco or tobacco related product where the identity of the person intending to buy appears to be altered or is otherwise unsatisfied as to the legitimacy of the document.

(4) subject to subsection (4) a person who contravenes subsection (1) and (2) commits an offence and shall on conviction be liable to a fine not exceeding fifteen thousand Emalangeni or to imprisonment for a term not exceeding three years, or both such fine and imprisonment.

(5) A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

(6) A person shall not manufacture or sell objects including but not limited to sweets, snacks, and toys that resemble tobacco products, cigarettes and which may reasonably appeal to persons less than 18 years.

Tobacco product package

23. (1) A person shall not sell or distribute tobacco products except in a package that contains quantities or number of units prescribed by regulation.

(2) A person shall not sell cigarettes except in a package that contains at least twenty cigarettes or at least a prescribed number of cigarettes which number shall not be less than ten.

(3) A person shall not sell cigarettes to any person other than in pre-packed quantities of twenty or more in the original packages.

(4) In this context "original package" means the sealed and unbroken wrap or packages in which the cigarettes were supplied for the purpose of retail sale by the manufacturer or importer.

(5) A person who contravenes any of the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding ten thousand Emalangeni or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Prohibition of sale in certain places

24. (1) A person shall not sell tobacco products on the street or store shelves or any place prescribed by regulation.

(2) Notwithstanding any regulation made under this Act, a person shall not sell or distribute tobacco products in the following places-

- (a) a health institution, including hospital, pharmacy, and health clinic;
- (b) an educational institution, including primary, secondary, and post-secondary school;
- (c) a facility with a significant portion of youth clientele, including an amusement park, movie theatre and sports stadium; and
- (d) such other places as may be prescribed by regulation.

Posting Signs

25. (1) A person shall not sell tobacco product unless it is kept in a special compartment. from the view of the general public and is not a single unit, including single cigarettes at point of sale.

(2) Notwithstanding subsection (1), retailers may post signs indicating that tobacco products are available for sale, the specific products or brands available for sale, and their respective prices.

(3) The brand elements referred to in subsection (2) shall be not visibly displayed.

Sale by handling

26. (1) A person shall not sell a tobacco product by means of a display or self-service that permits a person to handle the tobacco product before paying for it.

(2) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand Emalangeni or a term of imprisonment not exceeding two years or both such fine and imprisonment.

Restriction of sale through mail and other devices

27. (1) A person shall not sell or cause a tobacco product to be delivered or sent through mail, internet, vending machine or other delivery service that dispense tobacco products unless the delivery is between manufacturers and retailers.

(2) Notwithstanding subsection (1), tobacco products may be sold by means of a device in a-

- (a) place to which the public does not reasonably have access; or
- (b) bar, tavern or beverage room that has a prescribed security mechanism.

(3) A person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five thousand Emalangeni or to a term of imprisonment not exceeding one year or both such fine and imprisonment.

Places where smoking is prohibited

28. (1) A person shall not smoke tobacco or hold lit tobacco product or one producing emissions in enclosed public places, indoor areas of any private or public work place, any public place in specified outdoor spaces.

(2) For the purpose of this Act, private or public work places and public places include the following -

- (a) an office and office building including public area, corridor, lounge, eating area, reception area, lifts, elevator, escalator, foyer, stairway, restroom, laundry room, individual office, amenity area of such places;
- (b) Court buildings;
- (c) factory;
- (d) health institution;
- (e) an educational institution of all levels;
- (f) residential houses and any other such premises in which children are cared for whether for a fee or not;
- (g) any means of transportation used for commercial, public or professional purposes and used by more than one person;
- (h) a public transportation terminal;
- (i) a retail or wholesale establishment including a shopping mall or market;
- (j) cinema hall, theatres, video houses, such other halls or places of performance, disco halls or any other entertainment facilities at any time during which is open to the public;
- (k) a restaurant, hotel, bar and any other eating place;
- (l) a stadium, sports and recreational facilities or an amusement park;
- (m) public buildings, all government buildings, offices and gardens;
- (n) a pool and bingo hall;
- (o) a publicly owned facility rented out for events;
- (p) any other facility accessible to the public; or,
- (q) any other facilities that employ paid personnel.

Duties of the manager to display notices

29. (1) The manager or owner of a prohibited smoking place shall cause to be displayed in that place, clear and prominent notices in both Siswati and English stating that smoking is prohibited and the prescribed penalty for that offence.

(2) Every notice under subsection (1) shall be in such form and of such size, and shall be posted in such place as may be prescribed.

(3) A manager or owner of any prohibited smoking place may order any person who smokes within such place or within the immediate vicinity of the entrance to the place to cease smoking forthwith indicating the penalty for not complying and any person failing, refusing or neglecting to comply with such order may be required by the manager or owner to leave such place without delay.

(4) A person who hinders obstructs, threatens or abuses or assaults a manager or owner of a prohibited smoking place in the execution of the powers conferred by this section commits an offence and may be arrested without a warrant by such manager or by a police officer or other authorised officer.

(5) A person who commits an offence under subsection (4) shall, on conviction, be liable to a fine not exceeding five thousand Emalangeni or to imprisonment for a term not exceeding twelve months, or to both.

Designated smoking areas

30. (1) Notwithstanding the foregoing provisions of this part, the manager or owner of a prohibited smoking place may provide specially designated smoking areas within such place.

(2) Specially designated smoking areas provided pursuant to this subsection shall meet the requirements of subsection (3).

(3) A specifically designated smoking area shall be-

- (a) ventilated in such manner as to ensure that air from the area is directly exhausted to the outside and does not re-circulate or drift to other areas within the public facility;
- (b) maintained at negative pressure as compared to adjoining non-smoking areas;
- (c) such that non-smoking individuals do not have to enter the area for any purpose while smoking is occurring; and
- (d) cleaned or maintained only when smoking is not occurring in the area.

(4) A person who smokes in an undesignated area of a prohibited smoking area commits an offence and shall on conviction be liable to a fine not exceeding five thousand Emalangeni or to imprisonment for a term not exceeding one year or both such fine and imprisonment.

Signs required

31. The owner or occupier of a place where smoking is prohibited shall post signs prominently on the premises stating that smoking is not permitted.

**PART V
INSPECTIONS**

Appointment of Inspectors

32. The Board may designate, in writing, any person either by name or by office as an inspector.

Inspections

33. An inspector may, at any reasonable time, to ascertain compliance with this Act and any regulation under it, enter and inspect any of the following places-

- (a) where tobacco is manufactured, tested, stored, packaged, labelled or sold;
- (b) where anything used in the manufacture, storage, packing, labelling, promotion, sale, distribution or testing of tobacco is to be found;
- (c) where information relating to the manufacture, storage, packaging, labelling, promotion, sale, distribution or testing of tobacco is to be found.

Powers of Inspectors

34. (1) An inspector shall have the power to-

- (a) examine, open, investigate, analyse and test any equipment, tools, materials, packages or anything the inspector reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution of tobacco products;
- (b) examine any operation or process carried out on the premises;
- (c) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the inspector reasonably believes might contain information relevant to determine compliance with regulatory requirements;
- (d) interview or question any licensee or other person involved in manufacturing, importing, exporting, transporting, packaging or distributing tobacco products, any owner of the premises, or any person using the premises, an employee, an agent, a contractor or worker, all of whom shall cooperate fully and truthfully with any inspection or investigation;
- (e) take samples of tobacco products or components of products anywhere they are found and have them tested to determine the level of harmful ingredients;
- (f) stop, search, and detain any aircraft, ship, vehicle;
- (g) or other means of transport or storage in which the inspector reasonably believes tobacco products are contained or conveyed and examine, open, take samples of and have tested any tobacco products or product components found therein; and
- (h) seize and detain, or order the storage without removal or alteration of any tobacco product the inspector reasonably believes does not comply with regulatory requirements, upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any other person on the premises where the tobacco products are located, written notice of the seizure and detention and the grounds for it.

(2) If any tobacco product seized and detained under subsection (1) (h) is determined to meet the regulatory requirements, it shall be returned immediately to the premises from which it was seized.

(3) Any tobacco product seized and detained under sub section (1) (h) and determined not to meet regulatory requirements, may be confiscated and destroyed or be subject to other disposal, as ordered by the adjudicator of the case.

Enforcement

35. (1) The Minister may from time to time by notice in the gazette appoint any person or class of persons to be authorized officers for purposes of this Act.

(2) The Minister shall issue a certificate of appointment to every person appointed under this section.

(3) Notwithstanding the provisions of this section the following officers shall be deemed to be authorized officers for purposes of this Act -

- (a) public health officer;
- (b) law enforcement officer;
- (c) any person concerned with tobacco control

Issues.

(3) An authorised officer shall have similar powers as those of inspectors under this Act.

Proof of identity

36. An inspector or authorised officer who enters a place for purposes of inspection shall, on request, provide the operator of the place with proof of identity and produce a certificate of appointment signed by the Minister, or by a person designated in accordance with the regulations.

Warrant

37. (1) An inspector or authorised officer may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued in terms of the Act.

(2) Upon an ex-parte application, a magistrate or judge of the High Court, may issue a warrant authorizing the officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that -

- (a) entry to the specified place is necessary for the administration or enforcement of this Act; or
- (b) the occupant does not consent to the entry or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(3) An officer executing the warrant shall not use force unless such officer is accompanied by a police officer.

Obstruction of inspectors

38. A person shall not -

- (a) hinder in any way the performance of the duties of an inspector;
- (b) mislead an inspector by concealment or false statements;
- (c) refuse to provide an inspector with any information or document to which the inspector is entitled to under this Act, or
- (d) destroy any information or document referred to in paragraph (c).

Seizure

39. During an inspection under this Act, an inspector may seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened.

Offences and penalties

40. Any person who contravenes section 38 commits an offence and shall on conviction be liable to a fine-

- (a) in the case of an individual, not exceeding five thousand Emalangeni or to a term of imprisonment not exceeding one year or both; and
- (b) in the case of a body corporate, not exceeding fifty thousand Emalangeni.

Regulations

41. The Minister may make regulations relating to the following-

- (a) prescribing quantities of tobacco to be sold in a single package and the level of acceptable ingredients and the procedure for mandatory disclosure of the levels of ingredients by producers, manufacturers and distributors;
- (b) prescribing the maximum yields of tar, nicotine and other constituents in tobacco products;
- (c) prescribing places where tobacco products may be sold;
- (d) prescribing required signage at point of sale;
- (e) the display of tobacco products and accessories at retail;
- (f) procedure to be followed by the inspector or analyst during an inspection;
- (g) the procedure to be followed during an inspection for seizure, as well as the one to be applied in the restoration of any tobacco product;
- (h) requirements that enable the tracking and tracing of tobacco products through the distribution chain from manufacture to the point where all relevant duties and taxes have been paid including but not limited to-,
 - (i) overt or covert markings to uniquely identify each individual tobacco product or any of the packaging;
 - (ii) overt markings to clearly identify the legal intended end-market destination of tobacco products; and
 - (iii) scanning of tobacco products and their packaging or other procedures that identify their origin and passage through the distribution chain;
- (i) any matter necessary to be prescribed to give effect to this Act.

Tobacco control fund

42. (1) The Minister shall establish a special fund to be known as the Tobacco Control Fund.

(2) The Fund shall consist of-

- (a) such sums of money as may be provided by Parliament;
- (b) sums or other property received, including and not limited to fees, contribution, gift or grant from or by way of testamentary bequest by any person or persons;
- (c) such sums as may be allocated from time to time to the Fund from loan funds;
- (d) moneys earned or arising from any property, investments, mortgages and debentures acquired by, or vested in, the Fund;
- (e) any property, mortgages, debentures, or investments acquired by, or vested in, the Fund;
- (f) sums borrowed by the Fund for the purposes of meeting any of its obligations or discharging any of its functions; and

(g) all other sums or other property, which may in any manner become payable to, or vested in, the Fund.

(3) For the purposes of this section “loan funds” means such sums as may be made available from time to time by the Government by way of loan.

(4) The Fund shall be used for meeting the capital or and current expenditure relating to -

(a) research, documentation and dissemination of information on tobacco and tobacco products;

(b) promoting national cessation and rehabilitation programs; and

(c) any other matter incidental to (a) and (b) of this subsection.

(5) Subject to the provisions of this Part, the Fund shall be administered by the Board.

(6) The Board may, with the approval of the Minister responsible for finance, invest or place on a deposit account any of the moneys of the fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

(7) The Board shall -

(a) impose conditions as to the use to be made of any expenditure authorized by the Board and such conditions may impose any reasonable prohibitions, restrictions or requirements concerning such use or expenditure;

(b) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund; and

(c) transmit to the Auditor-General in respect of each financial year and within four months after the end of such financial year, a statement of account relating to the Fund.

(8) The Board shall advise the Minister on such matters as may be referred to the Board by the Minister, relating to the administration of the Fund and any other matter incidental to or relating to the functions of the Board.

Minister's responsibility

43. (1) The Minister shall, through the Ministry of Education and Training, integrate instruction on health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke in subjects taught in public and private schools, including formal, non-formal and indigenous learning systems.

(2) The Minister, in consultation with the Board, shall ensure that tobacco control education and information dissemination forms part of healthcare services provided by health care providers.

(3) The Minister shall, in consultation with the Ministry for Agriculture, establish policies to promote and ensure economically viable alternative crops for tobacco products.

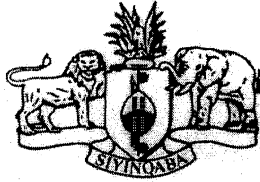
(4) The Minister may, in consultation with all responsible ministries in government, formulate policy frameworks in relation to -

(a) the multidisciplinary and multi-sectoral implementation of this Act; and

(b) any other matter which may be necessary or expedient to prescribe in order to achieve and promote the objects of this Act.

THE VETERINARY PUBLIC HEALTH ACT, 2013

(Act No. 17 of 2013)



I ASSENT

MSWATI III
KING OF SWAZILAND

01st August, 2013

AN ACT
ENTITLED

AN ACT to make provision for ensuring high level of consumer protection with regard to food safety and improving the quality of life for the public by facilitating advanced methods of primary production in the food chain of food of animal origin.

ENACTED by the King and the Parliament of Swaziland.

ARRANGEMENT OF SECTIONS

PART I

1. short title and commencement
2. interpretation
3. application of the Act

PART II

4. establishment of the veterinary public health unit
5. functions of the director
6. delegations of powers and assignments
7. termination of appointment of authorized persons
8. approval of site designs and drawings in respect of slaughter facilities

PART III

9. approval of slaughter facilities or establishment
10. transitional period
11. inspections
12. powers of veterinary public health officers
13. food hygiene laboratory

PART IV

14. general requirements for animal health rules
15. general obligations and hygiene provisions for primary production
16. general requirements for slaughter facilities and establishment
17. specific requirements for slaughter facilities and establishment
18. specific requirements for equipment
19. specific requirements for wrapping and packaging of food
20. specific requirements for transportation
21. derogations
22. import procedures
23. inspection procedure for import
24. export procedure
25. permission of Imports and certification of Exports
26. confidentiality
27. appeals
28. offences and penalties
29. limitation of liability
30. regulations
31. precedence of this Act

PART I

Short title and commencement

1. (1) This Act may be cited as the Veterinary Public Health Act 2013.

(2) This Act shall come into force on a date to be appointed by the Minister and published in the gazette.

Interpretation

2. In this Act unless the context otherwise requires-

“animal” means stock in terms of the animal disease Act, 1965;

“animal product” means a product of animal origin edible and non edible;

“ante mortem inspection” means any procedure or test conducted by an officer or authorized person on live animals for the purpose of judgment of safety and suitability and disposition; before slaughter or processing;

“approved slaughter facility or establishment” means a slaughter facility or establishment in respect of which a certificate of approval by the competent authority; has been issued;

“audit” means a systematic and independent examination to ascertain if determined activities and related results are in conformity with legislation, standards or guidelines and if these are enforced adequately;

“authorised person” means a competent person who has the training, knowledge, skills and ability to perform an assigned task, and who is authorized by the competent authority to perform this task;

“competent authority” means the Director of Veterinary Services or his or her representative in the Ministry of Agriculture in Swaziland, competent to ensure compliance with the requirements of this Act or any other authority to which the Director of Veterinary Services has delegated that competence;

“consignment” means a quantity of animal products covered by relevant veterinary documents or other documents provided for by veterinary legislation, as and when applicable, conveyed by the same means of transport from one location to another;

“contaminant” means any biological or chemical agent, foreign matter, or other substance not intentionally added to food that may compromise food safety or suitability;

“control measures” means any action and activity that can be used to prevent or eliminate a food safety hazard or reduce it to an acceptable level;

“cutting plant” means an establishment used for deboning or cutting up meat;

“Director” means a Veterinary Officer designated as Director of Veterinary and Livestock Services;

“dressing” means the progressive separation of the body of an animal into a carcass and other edible and inedible parts;

“documentary check” means the examination of the veterinary health certificate(s) or veterinary document(s), or other document(s) accompanying a consignment;

“eggs” means eggs in shell other than broken, incubated or cooked eggs -that are produced by farmed birds and are fit for direct human consumption or for the preparation of egg products;

“establishment” means any premises other than a slaughter facility, and including among others cutting plants and milk production holding, that is approved or registered by the competent authority in which food of animal origin and their products -are prepared, handled, packed or stored;

“feed” means any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral feeding to animals;

“fish” means any of the coldblooded (ectothermic) aquatic vertebrates and includes, among others, crayfish, prawns and shellfish;

“food” means food of animal origin including meat, milk, eggs, fish, honey and their products;

“food hygiene”, means the measures and conditions necessary to control hazards and to ensure fitness for human consumption of a food of animal origin taking into account its intended use, hereinafter called “hygiene”;

“food production” means all stages of production, processing and distribution of food of animal origin;

“hazard” means a biological, chemical or allergen or physical agent in, or a condition of, an animal or animal product with the potential to cause an adverse health effect to animals or humans; means a mark indicating that, when it was applied, official controls had been carried out in accordance with this Act;

“health mark” the official name of a symbol found on meat or milk products required by food safety standards;

“humane killing” means the process of rendering an animal insensitive instantaneously and remaining insensitive to pain until there is complete loss of brain responsiveness due to bleeding;

“killing” means any procedure which causes the death of an animal;

“identity check” means a check by visual inspection for consistency between the documents or certificates and the animal products, and for the presence and conformity of the marks which must appear on the animal products;

“inspection” means the examination of slaughter facilities or establishments, of animals and food, and the processing thereof, of food businesses, and their management and production systems, including documents, finished product testing and feeding practices, and of the origin and destination of production inputs and outputs, in order to verify compliance with the legal requirements in all cases;

“Inspector” means a Veterinary Public Health Officer authorized or appointed by the competent Authority;

“manager” in relation to a slaughter facility or establishment includes any person for the time being responsible for the management of the slaughter facility or establishment;

“meat” means the edible part of the animals within the scope of this Act and includes edible offal and blood;

“milk production holding” means an establishment where one or more farmed animals are kept to produce milk with a view to placing it on the market as food;

“maladies” means malpractices or a disorder;

“official control” means all types of control according to this Law made by the competent authority to verify the compliance with the rules and regulations on food products including animal health and animal welfare;

“officer” means any Veterinary Officer or para-veterinarian that passed an approved training course employed with the Ministry of Agriculture;

“official veterinarian” means a veterinarian qualified to act in that capacity appointed or authorized / delegated by the competent authority;

“owner” in relation to an animal, slaughter facility or establishment means a person -

(a) in whom the ownership of this animal or premises is vested; or

(b) in respect of which the right of general control is vested in a person other than the person in whom ownership thereof is vested, that other person;

“para-veterinarian” means a person in the field of veterinary services who has undergone an approved special training programme, other than a fully qualified veterinarian, and includes qualified meat inspector;

“Person” means a natural person or a legal person;

“physical check” means a check on the animal product itself, which may include checks on packaging and temperature and also sampling and laboratory testing;

“potable water” means water that is pure and wholesome at the point of usage in accordance with requirements contained in WHO publication guideline for drinking water quality;

“post mortem inspection” means any procedure or test conducted by an officer or authorized person on all relevant parts of slaughtered/killed animals for the purpose of judgment of safety and suitability and disposition;

“primary production” means those steps in the food chain up to and including harvesting, slaughter, milking, fishing, hunting, egg and honey collection as well as their processing, storage and preparation for wholesale;

“processed food of animal origin” means food of animal origin after processing, it may contain ingredients that are necessary for manufacture purposes or to give some specific characteristics which are not detrimental to health of the consumer;

“processing” means any action that substantially alters the initial product, including heating, smoking, curing, maturing, drying, marinating, extraction, extrusion or a combination of those processes;

“raw milk” means milk produced by the secretion of the mammary gland of farmed animals that has not been heated to more than 40 °C or undergone any treatment that has an equivalent effect;

“milk” means secretion from mammary gland of farmed animals;

“regional veterinary officer” means a veterinary officer in charge of a region;

“regulation” means a regulation made under this Act;

“residues” means residues of veterinary drugs, pesticide residue and contaminants, as defined for the purpose of the Codex Alimentarius;

“safe for human consumption” means a food of animal origin that has been produced by applying all food safety requirements appropriate to its intended end-use which meets risk-based performance and process criteria for specified hazards and does not contain hazards at levels that are harmful to human health;

“sell” includes agree to sell or offer, advertise, keep, expose, transmit, send, convey or deliver for sale or to exchange or to dispose of in any way for any consideration;

“senior veterinary officer - veterinary public health (SVOVPH)” means the senior veterinary officer responsible for the Division under this Act “slaughter” means any humane procedure which causes the death of an animal by bleeding;

“slaughter” means any humane procedure which causes the death of an animal by bleeding;

“slaughter animal” means an animal intended for slaughter within twenty four hours, under the control of the relevant authority;

“slaughter facility” means any premises or place used for slaughtering and dressing animals, the meat of which is intended for human consumption, and that is approved or registered by the competent authority;

“stunning” means any approved mechanical, electrical, chemical or other procedure which causes immediate loss of consciousness which lasts until death;

“third country” means a country, other than Swaziland, which is trading with Swaziland;

“this Act” includes any regulations and control measures hereunder;

“unfit for human consumption” any food of animal origin which is-

(1) unsafe, taking into account -

- (a) the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and
- (b) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods;

(2) Injurious to health, taking into account -

- (a) not only the probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, but also on subsequent generations;
- (b) the probable cumulative toxic effects;
- (c) the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers.

“veterinary health certificate” means a certificate describing animal and public health requirements, which are fulfilled by the exported animal products, in accordance with international or national sanitary standards;

“Veterinary Officer” means a qualified Veterinarian appointed by the competent authority;

“Veterinary Public Health Division” means a unit under Animal Disease Act, 1969 harmonize it the Department of Veterinary Services of the Ministry of Agriculture in Swaziland responsible for hygiene supervision in primary production of food of animal origin as well as import and export of food of animal origin;

“VO - VPH” means a qualified veterinary officer responsible for veterinary public health;

“Veterinary public health officer” means an officer employed by the Ministry of Agriculture under the department of veterinary services authorized to carry out veterinary public health duties.

Application of this Act

3. (1) This Act shall apply to unprocessed and processed animal products for human consumption at the level of primary production at national level and those imported from third countries.

(2) This Act shall not apply in relation to -

- (a) primary production for private domestic use;
- (b) the domestic preparation, handling or storage of food for private domestic consumption; and

(c) traditional slaughter or ritual slaughter.

(3) This Act shall apply without prejudice to:

(a) relevant animal and public health regulations,

(b) animal welfare requirements; and

(c) requirements concerning the identification of animals and the traceability of animal product.

PART II

Establishment of the Veterinary Public Health Unit

4. (1) There is established in the Ministry of Agriculture a unit to be called the veterinary public health unit.

(2) The unit shall be under the Director for Veterinary Services.

(3) The unit shall have such departments as determined by the Director.

Functions of the Director

5. (1) All applications shall be made to the Director, who may in his discretion, grant or refuse such an application.

(2) The Director may when considering an application or request lodged -

(a) require the applicant to provide such additional information as may be required;

(b) make any investigation or inquiry in connection therewith which may be deemed necessary;

(3) Whenever a regulation, control measure or scheme specifies a period within which anything relating to the powers or duties of the Director is to be done or performed, the Director may on application extend the period concerned, either before or after such period has expired.

(4) When an application or request is refused, the Director shall notify the applicant concerned in writing of the decision and of the grounds on which the refusal is based.

(5) The Director shall issue a written permit, certificate, authority, consent or other proof of assent or approval to a person whose application or request has been approved.

Delegation of Powers and Assignments

6. (1) The Director may delegate or assign any of his powers and duties -

(a) to an officer under his subordination;

(b) to an authorised person;

(2) The Director shall issue to each person referred to in subsection (1) a written authority stating that the person mentioned therein is authorised to exercise the power and perform the duties specified therein, either in general or in cases of a particular nature or in respect of specified slaughter facilities or establishments in a specified area.

(3) Such officer or authorised person shall produce the authority concerned as proof of identity when requested to by a person who is affected by the exercise of the powers or the performances and duties vested in him.

(4) The Director shall ensure that the person appointed in terms of sub section (1) has the knowledge, experience, qualifications, equipment and means which would be required for the execution of the duties.

Termination of appointment of authorized persons

7. Where the Director is satisfied that the authorized person -

- (a) is negligent in carrying out assigned duties;
- (b) did not comply with procedure or practice; or
- (c) is involved in malades;

the Director may -

- (a) terminate the appointment of the authorised person concerned;
- (b) determine the amount of fruitless expenditure of State money resulting from action concerned and recover it from the authorised person;
- (c) instruct the authorised person to reimburse the state in accordance with tariffs in existing laws or by an estimation of the Minister.

PART III
OFFICIAL CONTROLS IN RESPECT OF SLAUGHTER FACILITIES
AND ESTABLISHMENTS

Approval of site designs and drawings in respect of slaughter facilities and establishments

8. (1) Any person who intends to -

- (a) erect a slaughter facility or an establishment used for primary production of food of animal origin;
- (b) alter the lay-out of a slaughter facility or establishment;
- (c) demolish, replace or substantially alter any building, structure or permanent equipment forming part of a slaughter facility or establishment; or
- (d) erect any building or structure or install any permanentequipment at such slaughter facility or establishment;

shall, in writing, submit an application accompanied with -

- (e) designs, drawings, plans or (sketches) in respect of which have been drawn up in accordance with the prescribed requirements to the Director for approval, before commencing with such erection, alteration, demolition, replacement or installation;
- (f) an approved environmental impact assessment;

(2) The Director shall not approve such an application unless the proposed erection, alteration, demolition, replacement or installation shall be carried out in accordance or in compliance with any conditions which the Director deems fit to impose.

(3) When considering the application for approval of site, designs and drawings the Director shall ensure that the facility or establishment shall -

- (a) comply with the requirements of an approved slaughter facility or establishment;
- (b) shall be fit to be approved as slaughter facility or establishment in terms of section 8.

Approval of slaughter facility or establishment

9. (1) Upon completion of the erection of the new structure, or demolition of substantial alteration of the slaughter facility or establishment, the owner shall, in writing submit an application for approval of the slaughter facility or establishment and the application shall be accompanied by the relevant document from the local authority.

(2) Upon receiving the application for approval, the Director or his representative, shall make an on-site inspection of the slaughter facility or establishment.

(3) Notwithstanding any other law the Director shall issue a certificate of approval in respect of a slaughter facility or establishment used for primary production, if the Director is satisfied that the place to which the application concerned relates, has been erected or altered or that the demolition, replacement, alteration, installation or erection of any building, structure or permanent equipment at such premises, has been carried out in accordance with the design drawings, sketches or plans which were approved in terms of section 8.

(4) The Director may, in his discretion, give a provisional approval for a period not exceeding twelve months and the approval shall become definitive only after a new on-site inspection during which the slaughter facility or establishment complies with all the necessary requirements.

(5) When issuing a certificate of approval the Director shall, give each approved slaughter facility and establishment, including those with provisional approval, an approval number, to which codes may be added to indicate the types of products of animal origin produced.

(6) The Director or an officer shall re-examine the approval status of slaughter facilities or establishments during official control on a regular basis.

(7) The Director may -

- (a) withdraw the approval when requirements are no longer met and the owner is not able to guarantee adequately for future production; or
- (b) suspend the approval if the owner can not guarantee to overcome the problem and ensure that the lacking requirements are in place within a reasonable period of time.

(8) The Director shall maintain an updated list of approved slaughter facilities and establishments.

Transitional period

10. (1) From the date of coming into force of this Act, a period of three years is established as a transitional period, during which an owner or manager of slaughter facilities or establishments shall comply with the rules concerning approval and hygiene of slaughter facilities or establishments referred in this Act and in guidelines provided by the competent authority.

(2) Any new slaughter facility or establishment constructed during the transitional period shall be in compliance with the requirements of this Act.

(3) During the transitional period slaughter facilities or establishments shall be registered by the competent authority and the authority shall maintain a list of registered slaughter facilities and establishments.

(4) A compliance plan shall be submitted by the owner or manager of the slaughter facility or establishment to the Director for approval, specifying the lapse of time needed for its implementation.

(5) Before approval of the registered slaughter facilities or establishments, the Director or an officer shall make an on-site visit to confirm that all requirements are met.

GENERAL POWERS FOR OFFICIAL CONTROLS IN RESPECT
OF ALL PRODUCTS OF ANIMAL ORIGIN FALLING WITHIN THE SCOPE
OF THE VETERINARY PUBLIC HEALTH ACT

Inspections

11. (1) An officer or authorized person may, whenever it is deemed necessary for the exercise of the powers or the performances of the duties conferred upon the officer or authorised person by or under this Act -

- (a) enter upon any premises, slaughter facility, establishment or mechanical conveyance to search, inspect, ensure compliance;
 - (b) proceed over any land, premises in order to reach land, premises, a place, slaughter facility, establishment or a conveyance referred to in sub paragraph (a);
 - (c) stop any food production or mechanical conveyance at any time and any place within Swaziland and take control of such food production or conveyance.
- (2) When acting under subsection (1) the officer or authorised person may-
- (a) take along officers, assistants, conveyances, implements, equipment, instruments and other aids as may be required in order to exercise the powers concerned or perform the duties concerned;
 - (b) demand from the owner or person in charge of the land, place, premises, slaughter facility, establishment or, conveyance concerned -
 - (i) any live animal or animal product or other article, documents concerned, which is present;
 - (ii) all reasonable assistance and co-operation which is required to exercise or perform the powers or duties concerned in connection with that land, place, slaughter facility, establishment or conveyance or anything kept thereon or therein;
 - (c) search for any live animal, animal product or any other article to which this Act applies and if it is on reasonable grounds suspected to be present on or in such land, place, slaughter facility, establishment or conveyance require the owner or person in charge thereof to produce it;
 - (d) examine or cause to be examined any live animal, animal product or other article referred to in sub paragraph (c);

- (e) that was in fact or is suspected of having been slaughtered, dressed, treated, prepared, graded, classified, packed, marked, labelled, kept, removed, transported, exhibited, sold or offered to sell there;
 - (f) inspect the operations or processes in connection with any action referred to in paragraph(e) and demand from the owner or person in charge of a live animal, animal product or other article or from the person supervising such operations or processes any information or explanation regarding that operation, process, live animal, animal product or other article;
 - (g) take samples of the relevant live animal, animal product or other article as may be deemed necessary and for this purpose, open any container in which a live animal, animal products or other articles are contained and test, examine or analyse such sample or cause it to be tested, examined or analysed;
 - (h) ascertain whether anything required to be done in terms of this Act has been or is being done;
 - (i) inspect or supervise the procedure of anything which a person is in terms of this Act required to do;
 - (j) examine any register, book or other document which the person concerned is in terms of this Act required to keep or have or which is on reasonable grounds suspected to relate to the matter regulated by this Act and make copies of or take extracts there from;
 - (k) demand from the owner or person in charge of such register, book or other document an explanation regarding any record or entry therein;
 - (l) make in or on such register, book or other document such notes as may be deemed expedient in respect of any entry appearing therein or which is required to appear therein or which in the opinion of an officer or authorised person is inaccurate or false; and
 - (m) carry out any other investigation connected with any matter which is regulated by or under this Act.
- (3) An Officer or authorised person may in any manner deemed to be appropriate without prior notice to any person-
- (a) seize any live animal, animal products or other article which-
 - (i) is concerned or is on reasonable grounds suspected of being concerned in the commission or suspected commission of any offence under this Act;
 - (ii) may afford evidence of the commission or suspected commission of any such offence;
 - (iii) is intended or is on reasonable grounds suspected to be intended for use in the commission of any such offence;
 - (b) seize any food which is or on reasonable grounds suspected of being unfit for human consumption and any live animal, animal product or other article, which is infected or on reasonable grounds suspected of being infected;
 - (c) seize any register, book, other document or records kept on a data storage device which may afford evidence of the commission or suspected commission of any offence under this Act;

- (d) remove anything thus seized from the place, slaughter facility, establishment or conveyance where it has been seized or leave it thereon and if deemed necessary attach any identification mark or seal thereto or to the container thereof;
- (e) seize any conveyance in or on which any live animal, animal product or other article referred to in paragraph (a) is found;
- (f) in case of seizure, detention, condemnations, relevant certificates shall be issued by the authorized person attesting to the latter.

(4) Except where expressly provided otherwise in this section an officer or authorised person shall without delay deliver anything seized under subsection (3) to any by-product plant, incinerator, any place of safe disposal.

(5) inspectors or authorized officers may where necessary be assisted by the police when conducting their inspections up to the point when they dispose off the condemned or seized materials.

(6) The officer or authorized person shall ensure that the specimen mentioned in sub paragraph (5) is stored safely under suitable conditions until the issue is disposed off.

(7) The officer or authorised person shall ensure that specimen from materials seized is taken in as evidence.

(8) The official controls of section (11) shall include-

- (a) audits of good hygiene practices and hazard analysis and critical control point (HACCP)-based procedures, when implemented;
- (b) official control on fresh meat, meat products, milk and milk products, fish, honey and other products of animals origin as provided in the Guidelines on Official Control; which guidelines?
- (c) official control on other products of animal origin as will be specified by the Director.

(9) Audits of good hygiene practices shall verify that in a slaughter facility or establishment, procedures are continuously and properly applied, which include -

- (a) the design and maintenance of premises and equipment;
- (b) pre-operational, operational and post-operational hygiene;
- (c) personal hygiene;
- (d) training in hygiene and work procedures;
- (e) pest control;
- (f) temperature control;
- (g) elimination and proper disposal of specified risk materials, in case of fresh meat;
- (h) controls on food entering and leaving the establishment and any accompanying documentation;
- (i) health of meat handlers; and

(j) stock control.

(10) Audits on HACCP-based procedures, when implemented, shall verify that such procedures shall be applied continuously and properly, in accordance with procedures set out in the guidelines of the application of HACCP principles.

(11) When carrying out auditing tasks, the official veterinarian shall take samples for laboratory analysis as necessary.

(12) The Director may allow staff of a slaughter facility or establishment to assist with official controls by carrying out certain specific tasks, under the supervision of the official veterinarian, the staff carrying out such tasks shall -

- (a) be qualified and undergo specific training, approved by the Director;
- (b) act independently from production staff;
- (c) report any deficiency to the official veterinarian.

Powers of Veterinary Public Health Officers (VPH)

12. (1) An Officer has the power to -

- (a) apply sanitation procedures;
- (b) recommended restriction or suspend trade, import or export of animal products;
- (c) withdraw or destroy animal products;
- (e) temporary suspend or close production or close the slaughter facility or establishment;
- (f) recommend withdrawal of the approval of the slaughter facility or establishment;
- (g) confiscate, destroy or send back products for food of animal origin coming from third countries;
- (h) carry out other measures deemed necessary by the Director.

(2) In carrying out the mandate in subsection (1) the officer shall report promptly to the Director for conformation of the corrective measures.

(3) The inspector shall, in writing, notify the owner or person in charge of the slaughter facility or establishment the reasons for taking any of the measures mentioned in sub section (1).

(4) In case of imported food of animal origin, the Director shall notify in writing the competent authority of the third country of origin.

Food Hygiene Laboratory

13. (1) The Director shall appoint reference food hygiene laboratories to support the examination and testing of food of animal origin and to perform official control.

(2) The Director shall determine the tasks and duties of the reference food hygiene laboratory.

(3) The Director may authorize other public or private laboratories, within or outside the slaughter facilities and establishments, to perform tests on food of animal origin.

(4) The Director shall ensure the implementation of a national control program in order to protect the public against exposure to unwanted substances in food of animal origin.

PART IV
GENERAL AND SPECIFIC REQUIREMENTS

General requirements for animal health regulations

14. (1) The competent authority shall adopt all control measures of primary production during the different stages of primary production to -

- (a) prevent the diffusion of animal diseases and zoonoses;
 - (b) prevent the introduction and spread of contagious diseases transmissible to humans through food;
 - (c) take precautionary measures when new animals are introduced in a farm; and
 - (d) report all suspected outbreaks of animal diseases and zoonoses.
- (2) The competent authority shall -
- (a) control and monitor the prudent use of feed additives, veterinary drugs and medicinal substances,
 - (b) enforce the use of plus keeping of records concerning their use and withdrawal periods during production.

(3) Animal products shall be obtained from animals complying with health rules laid down in the Animal Disease Act no. 7 of 1965 and with international sanitary standards.

(4) The Director may by regulation issue guidelines to detail the procedures concerning general and specific animal health and hygiene requirements, covering sections from 15 to 21.

General obligations and hygiene provisions for primary production.

15. (1) The owner or person in charge of a slaughter facility or establishment shall ensure that all stages of production, processing and distribution of food under their control satisfy the relevant hygiene requirements laid down in this Act.

(2) As far as possible, the owner or person in charge of a slaughter facility or establishment shall ensure that primary products are fit for human consumption and, in particular, protected against contamination arising from the air, soil, water, feed, fertilizers, veterinary drugs and medicinal substances, plant protection products and biocides and the storage, handling and disposal of waste.

- (3) The owner or person in charge of a slaughter facility or establishment shall-
- (a) keep any facility used in connection with primary production clean and, where necessary, disinfected;
 - (b) keep clean and, where necessary disinfect, equipment, containers, crates, vehicles;
 - (c) as far as possible ensure the cleanliness of animals going to slaughter, taking into account the measures included in the Animal Disease Act no. 7 of 1965;
 - (d) use potable water, or clean water;

- (e) ensure that staff handling foodstuffs are in good health, and medically cleared by a qualified medical officer and have undergone appropriate training;
- (f) ensure that all persons working in a food handling area shall maintain a high degree of personal hygiene and cleanliness, and wear suitable, clean protective clothing;
- (g) ensure that a person suffering from, or being a carrier of a disease likely to be transmitted through food or afflicted, for example, with infected wounds, skin infections, sores or diarrhea shall not be permitted to handle food or enter any food handling area.
- (h) prevent animals and pests from entering operational places or premises or causing their contamination;
- (i) store and handle waste so as to prevent contamination, in particular food waste, non -edible by-products and other refuse are to be deposited in closable containers, removed from rooms where food is present as quickly as possible, so as to avoid their accumulation, and eliminated in a hygienic and environmentally friendly way so that they do not constitute a direct or indirect source of contamination;

(4) The owner or person in charge of a slaughter facility or establishment shall use national guidelines on good hygiene practices or the application of HACCP to ensure the maintenance of the minimum hygiene standards nationally.

General requirements for slaughter facilities and establishments.

16. (1) Slaughter facilities and establishments shall be kept hygienically clean and maintained in good condition and state of repair.

(2) The owner or person in charge shall ensure that -

- (a) there is adequate maintenance, cleaning, disinfections, avoid or minimize contamination and provide adequate working space to allow for the hygienic performance of all operations;
- (b) there should be no slaughter without meat inspection;
- (c) there is provision of an adequate number of -appropriate lavatories and hand washbasins;
- (d) where necessary ,adequate changing facilities for personnel is provided;
- (e) provision of cleaning agents, and disinfectants; and
- (f) hazardous substances shall be stored in areas where food is not handled.

Specific requirements for slaughter facilities and Establishments.

17. (1) An owner or person in charge of a slaughter facility or establishment shall ensure that the facility or establishment complies with the following specific requirements -

- (a) floor surfaces should be maintained in a sound condition, be easy to clean and to disinfect as necessary, and allow adequate surface drainage;
- (b) wall surfaces shall be maintained in a good condition, be easy to clean and, to disinfect as necessary, and washable up to a height appropriate for the operations;
- (c) windows shall be fitted with insect-proof screens;

- (d) doors shall be self-closing, easy to clean and to disinfect; as necessary;
- (e) working surfaces, including surfaces of tables and equipment, in areas where food is handled shall be maintained in good condition be easy to clean and to disinfect.

Specific requirements for equipment

18. All articles, fittings and equipment with which food comes into contact shall be -

- (a) effectively cleaned and, where necessary, disinfected;
- (b) so constructed, be of such materials and be kept in such good order, repair and condition as to minimise any risk of contamination; and
- (c) installed in such a manner as to allow adequate cleaning of the equipment and the surrounding areas.

Specific requirements for the wrapping and packaging of food

19. (1) Materials used for wrapping and packaging shall not be a source of contamination.

(2) Wrapping materials shall be stored in such a manner that they are not exposed to a risk of contamination.

(3) Wrapping and packaging operations shall be carried out so as to avoid contamination of the products.

(4) Wrapping and packaging material re-used for foodstuffs shall be easy to clean and, where necessary, to disinfect.

Specific requirements for transport

20. (1) Conveyances or containers used for transporting food shall be kept clean and maintained in good condition and state of repair so as to protect food from contamination and where necessary, should be designed and constructed to permit adequate cleaning or disinfections.

(2) Receptacles in vehicles or containers shall not be used for transporting anything other than food.

(3) Where conveyances or containers are used for transporting anything in addition to food or for transporting different foods at the same time, there should be effective separation of products.

(4) Bulk foodstuffs in liquid, granulate or powder form shall be transported in receptacles, containers or tankers reserved for the transport of such foodstuffs.

(5) Containers used to transport liquid, granulate or powder shall be marked in a clearly visible and indelible fashion, to show that they are used for the transport of food, or are to be marked "for food only".

(6) Where conveyances or containers have been used for transporting anything other than food or for transporting different foods, the container shall be thoroughly cleaned between loads to avoid the risk of contamination.

(7) Foods in conveyances or containers shall be so placed and protected as to minimise the risk of contamination.

(8) Where necessary, conveyances or containers used for transporting perishable foods shall be capable of maintaining foodstuffs at appropriate temperatures and allow such temperatures to be monitored accordingly.

Derogations

21. The Director may in his discretion authorise derogations from the requisites referred from section 16 to 21 for purposes of-

- (a) enabling the continued use of traditional methods, at any of the stages of production, processing or distribution of food;
- (b) accommodating the needs of food businesses situated in regions that are subject to special geographical constraints.

PART V
IMPORT PROCEDURES

Conditions and application for importation

22. (1) A person shall not import into Swaziland, for any purpose, any product of animal origin, except in compliance with the requirements of this Act.

(2) A person shall not import into Swaziland any animal product without a written permission from the Director.

(3) An application for a permit to import animal products shall be considered only if submitted to the Director, and for commercial purposes, such a permit can only be considered for local business operators;

(4) The applicant shall prove the availability of skill in the food business, necessary storage capacity or respective processing conditions in an approved food premises as far as food of animal origin is concerned.

(5) Where the need arises, the SVO -VPH inspect the receiving place before issuing a permit if the need arises.

(6) The applicant shall prove that he has the necessary means for transport and, as appropriate, quarantine or storage facilities.

(7) The Director may issue such permit subject to such conditions as may deem necessary to impose in accordance with sanitary standards and which shall be specified.

(8) The Director may refuse to issue an import permit if the conditions referred to in section 22 are not met, or if he deems it necessary to protect Swaziland from any other risk.

(9) Where appropriate, a further written permission should be issued by other relevant bodies of Swaziland, like the Swaziland Dairy Board according to Act no. 8 of 1968, National Agriculture Marketing Board according to Act No. 13 of 1985.

(10) Animal products shall originate from -

- (a) a third country without restriction to export such animal products due to animal disease, in accordance with the Animal Disease Act no. 7 of 1965 and international sanitary standards;

(b) a slaughter facility or establishment included in a list approved by the Director. The list shall specify which type of animal products are approved for import.

(11) Animal products shall be accompanied by a veterinary health certificate issued by the competent authority of the third country, in one of the official languages of Swaziland.

(12) The veterinary health certificate shall bear an official stamp on every sheet of the certificate if it consists of more than one page;

(13) The veterinary health certificates under subsection (1) shall bear a unique identifying number which shall appear on all pages;

(14) The veterinary health certificate shall be issued before the consignment to which it relates leaves the control of the competent authority of the third country of dispatch.

Inspection procedure for import

23. (1) Animal products shall not be admitted into Swaziland unless -

(a) the respective consignment enters Swaziland through the approved border inspection post;

(b) such consignment is accompanied by the import permit in its original and a veterinary health certificate issued by the country of origin, complying with requirements specified under section 22;

(c) the animal products are properly identified and marked;

(d) each consignment has undergone official veterinary checks in the border inspection post including, at least, a systematic documentary check, identity check and, as appropriate, a physical check.

(2) An officer may take samples from each consignment presented for importation for further inspection or examination if necessary.

(3) The owner of a consignment shall pay for sampling and testing.

(4) A consignment submitted for inspection, which is found to comply with these regulations shall be passed by the inspecting officer and admitted into Swaziland.

(5) A consignment submitted for inspection, which is found not to comply with this Act shall be sent back, or destroyed at the expense of the owner of the consignment.

(6) The Director may issue guidelines to describe the procedures to be applied by the officers at the Border Inspection Posts.

Export procedures

24. (1) Animal products exported or re-exported from Swaziland for placing on the market of a third country shall comply with the relevant laws, regulations, standards, codes of practice and other legal and administrative procedures as may be in force in the importing country.

(2) Each person intending to export animal products shall be made to the Director in writing for approval and shall prove that there has been competence with sanitary standards and conditions.

(3) If the Director is satisfied that all the necessary requirements are met he shall issue a, which certificate may be made subject to such conditions as the Director may determine.

(4) A person shall not export any meat or animal product intended for human consumption, unless such food has been derived from animals or produced in an approved export establishment and which have been inspected by the officer or authorised person, health marked and passed for human consumption.

(5) An establishment authorized to export but fails to comply with Sanitary standards and export conditions shall have its approval withdrawn or suspended.

(6) In each case the Director shall notify such establishment in writing about the reasons for suspension withdrawal and the necessary requirements for reinstatement of the export status.

(7) The Director may prohibit the exportation of a particular consignment of animal products if-

- (a) from a veterinary point of view the export would be detrimental to public health or animal health status of the importing country;
- (b) the product is unfit for human or animal consumption;
- (c) it is not possible to certify that the requirements specified in an import permit have been complied with.

Permission of Imports and Certification of Exports for Animal products.

25. (1) The Director may -

- (a) amend existing forms; or
- (b) design new ones, to ensure compliance with national or international sanitary standards.

(2) The Director may designate an authorized person to issue import permits or to sign veterinary health certificates for food of animal origin.

(3) An application for an import permit as well as a veterinary health certificate shall be lodged with a designated officer notours before the consignment concerned is imported or is to be shipped from Swaziland.

(4) The issuing authority shall keep records of the following documents, each one of which shall carry a registration number-

- (a) certificates of approval;
- (b) veterinary import permits;
- (c) veterinary health certificates; and
- (d) all documents as the Director may determine.

PART VI
MISCELLANEOUS

Confidentiality

26. A person shall not disclose any information which relates to the business or affairs of a person that was acquired by him through the exercising of powers or the performing of duties in terms of this Act, except

- (a) as far as it may be necessary for the proper application of the provisions of this Act;
- (b) for the purpose of any legal proceedings under this Act,
- (c) when required to do so by any competent court or authority; or
- (d) where the Minister authorises the disclosure.

Appeals

27. (1) Any person who feels aggrieved by a decision, action or omission by an officer or authorised person may appeal against such decision, action or omission to the Director.

(2) Any person who feels aggrieved by a decision, action or omission by the Director may appeal against such decision, action or omission to the Minister.

(3) An appeal should be submitted in the prescribed manner within the prescribed period and the prescribed fee shall be payable in respect thereof.

(4) The Minister or the Director respectively may where necessary designate one or more officers or authorised persons other than the involved officers to investigate and report on an appeal.

(5) The Director, an appellant or an officer who was involved in the relevant decision, action or omission may request or be requested to appear at an investigation referred to in subsection (4) to be heard or questioned.

(6) The Minister or the Director respectively may, after consideration of a report and other documents relating to an appeal confirm, set aside or amend the relevant decision, action or omission or issue, subject to the provisions of this Act.

(7) Where the Minister or Director respectively sets aside a decision, action or omission which is the subject of an appeal or amends it in favour of an appellant the fee referred to in subsection (3) or such portion thereof as the Minister may determine shall be refunded to the appellant concerned.

Offences and penalties

28. (1) Any person who contravenes any provision of this Act commits an offence and shall on conviction be liable to a fine not exceeding twenty five thousand Emalangeni or to a term of L imprisonment not exceeding five years or to both.

(2) The Minister shall by notice in the gazette increase the amount of the penalties under this Act.

Limitation of liability

29. A person, including the Government, shall not be liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty under or by virtue of this Act.

Regulations

30. The Minister may make regulations to carry out the purpose of this Act regarding-

- (a) any matter which in terms of this Act is required or permitted to be prescribed in respect of primary production of food of animal origin;
- (b) the payment of fees payable if an animal, meat, or any other animal product is examined by an officer or authorised person in terms of this Act;
- (c) the keeping of records and furnishing of returns in connection with any matter relating to registered slaughter facilities and establishments, animals brought to such facilities to be slaughtered there, the meat and animal products derived from such and other animals producing food and importation and exportation of animals and animal products;
- (d) the standards and procedures for examination of animals, animal products and other articles concerned in terms of this Act;
- (e) the taking of samples for the purpose of this Act and the testing, examination and analysis of such samples;
- (f) the presence and slaughter of animals of specified kind at a registered or approved slaughter facility;
- (g) the manner in which and periods within which specified applications shall be submitted, the documents which shall accompany such application and the fees which are payable in respect of such applications;
- (h) any fees which may be needed in the execution of this Act which may include but not limited to application fees, export fees;
- (i) matters pertaining to the importation and exportation of food; and
- (j) regarding any other matter which the Minister considers necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

Precedence of this Act.

31. A person shall not, in the exercise of his authority under any law dealing with food hygiene applicable at the primary production of food of animal origin, deal with it under any such law, unless the person has fulfilled the requirements of this Act.

LEGAL NOTICE NO. 116 OF 2013**THE BUILDING ACT, 1968
(Act No. 34 of 1968)****THE APPOINTMENT OF ADDITIONAL MEMBERS OF A LOCAL
AUTHORITY FOR A CONTROLLED AREA (BUHLENI) NOTICE, 2013
(Under Section 2)**

In exercise of the powers conferred by Section 2 of the Building Act, 1968, the Minister for Housing and Urban Development issues the following notice;

Citation and Commencement

1. This notice may be cited as The Appointment of Additional Members of a Local Authority for a Controlled Area (Buhleni) Notice, 2013 and shall be read as one with Legal Notice No. 60 of 2013.

Appointment of additional members of a Local Authority

2. The following persons are appointed additional members of the local authority of Buhleni -

- | | | |
|------------------------------|---|--------|
| a) Jane Magongo | - | Member |
| b) Ndukuyabo Kunene | - | Member |
| c) Hhohho Regional Secretary | - | Member |
| d) Simon Ndwandwe | - | Member |

LINDIWE T. DLAMINI
MINISTER FOR HOUSING AND URBAN DEVELOPMENT

