

**AN INVESTMENT PROMOTION ACT  
FOR SWAZILAND**

**FINAL REPORT**

**U.S. Agency for International Development**

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## Executive Summary

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### Background

The laws governing investment in Swaziland are set out in multiple Acts of Parliament dealing with, *inter alia*, treatment of foreign capital, repatriation of assets, guarantees against expropriation, taxation, issuance of work permits, and compliance with zoning and building regulations. The Foreign Investment Advisory Service (FIAS) of the World Bank, UNIDO, the Government of Swaziland, and the Swaziland Chamber of Commerce, have in various reports and in various fora, called for the codification of these laws to clarify the regulations for investors, provide transparency for the investment process as it is practised in Swaziland, and remove ambiguities. The multiplicity of investment-related laws, and the laws' lack of clarity and transparency have resulted in significant constraints on domestic and foreign investors alike. Further recommendations call for the establishment of an investment promotion agency in Swaziland to promote and facilitate investment through the implementation of the regulations espoused in a new investment code.

The Ministry of Finance, with USAID funding, requested assistance to develop and draft legislation for an Investment Code for Swaziland through a review of existing legislation and secondary reports dealing with investment issues, interviews with relevant officials in the public and private sectors, and development of a consensus on policies to be adopted.

### *Legal Framework*

Swazi law is based on South African law, and, in the opinion of the Attorney General's Office, an Investment Code that selectively compiles relevant parts from existing legislation is not a feasible option within this jurisdiction. An Investment Law with the same objectives is also not feasible since it is not possible to re-enact laws that are already in existence.

There is a consensus within the government that an Investment Promotion Centre is needed (a) to market Swaziland internationally as a desirable investment location, and (b) to facilitate both domestic and foreign investors in complying with Swaziland's regulatory requirements for investment projects. With the concurrence of the Ministry of Finance, the Ministry of Commerce and the Central Bank, legislation to establish an Investment Promotion Centre by means of an Investment Act could, as is the case in other countries, contain miscellaneous provisions that would compile relevant portions from existing laws detailing the legal position regarding issues such as the treatment of foreign capital, investment incentives, repatriation of profits, dividends and assets,

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and guarantees against expropriation. The Attorney General's Office has agreed, subject to further research, that this may be an acceptable format.

**Policy Issues in the Draft Legislation**

The proposed legislation as set out herein pre-emptly certain policy issues, primarily related to the establishment of the Investment Promotion Centre, tax incentives, and residency status for foreigners. The basis for the proposals are the recommendations from the Foreign Investment Advisory Service of the World Bank, UNIDO, and the Government's own Development Plan, together with a distillation of best practices currently in effect in neighboring countries that compete with Swaziland for foreign direct investment.

In preparing the legislation, the main contribution of the proposals will be to concentrate on determining and defining policy issues that will generate a conducive environment for local and foreign investment. The legislation itself, after passage by Parliament, may be used as a promotional document to influence manufacturing companies and others to invest in Swaziland.

***Investment Promotion Centre***

An investment promotion centre for Swaziland should be an autonomous statutory body under the Ministry of Finance, with a Board of Directors that combines the best talents in both the public sector and the private sector. The investment promotion centre should:

- Be adequately financed through government or donor funds in the initial years;
- Be staffed by motivated personnel who are rewarded with salaries that are related to private sector levels;
- Have clearly defined objectives for promoting and facilitating investment in Swaziland.

Technical assistance to set up the organisation and to run it for at least the first two years of operation will be essential.

***Freedom to Invest***

In a liberalized investment regime, investors should be free to invest in any sector of the economy without restriction, except for certain activities specified in a short negative list. Control over prospective investments based on case-by-case approvals unnecessarily restricts investors and delays investment projects. The manufacturing licenses issued by the Ministry of Commerce to some extent represent case-by-case control, as does the approval process by the

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Ministry in relation to the allocation of plots in the Matsapha Industrial Estate. Zoning regulations and the controls exercised in relation to environmental concerns by the newly-organised Swaziland Environment Authority are sufficient to ensure that the objectives of the Manufacturing License, at least, are met.

In order to provide foreign investors with an additional degree of assurance regarding their ability to repatriate their assets should this become necessary, the Central Bank should provide a further guarantee in the form of a Registration of Foreign Capital Certificate.

Changes necessary in the repatriation of profits, dividends, wages, salaries and savings relate to the extent of such funds that are repatriable.

#### *Investment Guarantees*

Foreign investors need to be assured that their assets are safe when they make an investment in a foreign country, and such assurances need to be spelled out in an Investment Act, as do the conditions under which they will be reimbursed in the event of nationalization or other form of appropriation, and the recourse they will have to international fora for the settlement of investment disputes.

#### *Tax Incentives*

Investment incentives generally revolve around fiscal considerations. In this context, Swaziland currently grants five year tax holidays to new investors, but this incentive (as in many other countries where it is used) has proven to be inefficient, lacking in transparency, and discriminatory in its application to local investors. To redress this situation, tax holidays should be discontinued, in line with the trend in other countries in the region and elsewhere, and should be replaced by a low corporate tax rate for manufacturing industry. In order to compete directly with neighboring countries and to provide a competitive tax incentive so that existing industries remain in Swaziland, this rate would need to be pegged at 15%. In view of the financial difficulties currently being experienced, the revenue effects of this proposal (as well as the recommendations provided by the Taxation Advisory Committee) need to be formally studied prior to legislation. In order to help compensate for the loss of revenue associated with a lower income tax rate, taxation on dividends that are not reinvested should be increased and a capital gains tax introduced.

#### *Export Provisions*

Incentives for exporting companies should concentrate on establishing a level playing field through the efficient workings of bonded warehouse/factories and duty drawback. Export licenses should be abolished, as should import licenses, within the constraints imposed by SACU. While foreign exchange is readily

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available, a foreign exchange retention scheme should allow exporters to retain up to 50% of their foreign exchange remittances in external bank accounts for approved purposes.

### *Work Permits*

Work permits for foreigners continue to provide cause for concern among foreign investors. In order to redress this issue, Swaziland needs to revise the temporary residence law to allow for permanent residence status for owners and senior managers who are also shareholders in Swazi companies. Automatically-renewable five year temporary residence permits should be available to non-shareholding managerial and technical staff.

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### **Implementation Steps**

In order to place Swaziland in a competitive position from the perspective of foreign investors, a wide range of tasks need to be carried out. The tasks identified in order to implement the Investment Act are as follows:

- Establish a Task Force to be headed by a senior officer from the Ministry of Finance (Assistant Principal or higher) to assume responsibility for implementing the recommendations herein.
- In cooperation with the Industrial Policy Steering Committee or the Technical Working Group of the Cross Border Initiative, set up a workshop to be held in early November, 1994, for the purpose of reviewing the proposed recommendations with the private sector. Towards this end, copies of this document should be distributed to appropriate private sector representatives prior to the workshop.
- Initiate research on the revenue effects of the proposed change from a tax holiday system to a flat tax rate for manufacturing industries. The research should also address the desirability of increasing the tax on dividends paid and of taxing capital gains.
- Augment the drafting capability within the Attorney General's Office by obtaining the services of a legal draftsman for one year to prepare the Investment Act for legislation. Necessary work on the ongoing revision of the Companies Act could be accomplished by the same person.
- Carry out discussions with representatives from the African Development Bank, the European Union, the

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UNDP, the World Bank, and bilateral donors for the purpose of determining potential avenues for funding the Investment Promotion Centre for the first five years of operation.

- Draw up Terms of Reference for a consulting company to develop an organizational plan for the establishment of the proposed Investment Promotion Centre. The same consulting company should thereafter be required to provide consulting assistance for at least the first two years of operation of the Centre.
- Establish a Trust Fund within the Ministry of Housing and Urban Development for the purpose of acquiring and servicing industrial plots.
- Develop procedures for the allocation of plots in industrial estates that will circumvent any conflict between the Ministry of Commerce and Industry and the Ministry of Housing and Urban Development in connection with the distribution of such plots.
- Develop guidelines for the efficient operation of a system to monitor the need for environmental impact assessments.
- Strengthen the system used to provide proof of ownership of foreign capital by developing a Registration of Foreign Capital Certificate to be issued by the Central Bank of Swaziland on proof of inward receipt of foreign capital for investment purposes.
- Develop a process to effectively set out the procedures involved in resolving investment disputes so that investors are adequately compensated in a timely manner in the event of appropriation of property.
- Liberalize the system of providing work permits to foreigners by extending permanent residence status to owners and senior managers who are shareholders in an enterprise, extending the duration of work permits for other workers, and reducing the time needed for approval to a minimum level.
- Abolish the Manufacturing License.

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- Extend the Duty Drawback system to indirect exporting companies.
  - Abolish Export Licenses and investigate the possibility of removing the need for an Import License.
  - Improve the Labour Laws to minimise the threat of labour unrest.

## Background to the Investment Promotion Act

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### Introduction

**A**t the request of the Ministry of Finance, Government of Swaziland, Coopers and Lybrand on behalf of the United States Agency for International Development carried out a study in July/August 1994 for the purpose of developing an Investment Code for Swaziland. This document presents a draft Investment Act in lieu of an Investment Code. The document was reviewed by representatives of the Ministry of Finance, the Ministry of Commerce and Industry, the Ministry of Economic Planning and Development, the Central Bank of Swaziland, the Attorney General's Office, and USAID Swaziland and subsequently revised to implement the recommendations resulting from the review. This final report contains the proposed Investment Act together with a commentary on significant issues requiring the attention of the Government in order to improve the enabling environment for both foreign and local investment in Swaziland.

### *Terms of Reference*

The objective of the project is to develop and draft legislation for an Investment Code for Swaziland by carrying out the following activities:

- Reviewing recent reports and recommendations of MIGA, UNIDO, et al;
- Interviewing officials from the Ministries of Commerce, Finance and Home Affairs, and the Attorney General to identify all relevant existing legislation;
- Based on the results of tasks (a) and (b) above, developing a consensus within the government on the policies to be adopted;
- With the Attorney General, drafting amendments to the relevant legislation to achieve the objectives set out in task (c);
- Compiling an Investment Code comprising the pertinent sections of the relevant legislation.

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*Arrangement of Sections*      This report is divided into two sections.

Section 1 is a commentary on the recommendations emerging from the study and contains recommendations for further actions that the Government needs to initiate and support investment.

Section 2 is the proposed Investment Promotion Act.

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## Background and Commentary

### *Background to the Recommendations in the Promotion Act*

The main assumption underlying the recommendations contained herein is that Swaziland needs both foreign and local investment in productive enterprises for the purpose of generating employment, increasing output and exports, and earning foreign exchange.

In the past, certain incentives - primarily the provision of a five-year tax holiday, together with low wage rates, a relatively open market-driven economy, a stable political climate and the opportunities that arose from the uncertain political and economic situation in South Africa - were sufficient to attract a limited number of manufacturers to Swaziland. With an improved political and economic climate and a consequent renewed interest in South Africa as an industrial location, the Government of Swaziland has increasingly come under pressure to grant more favorable conditions to existing industry under the very real threat of disinvestment and consequent loss of jobs, output and tax revenue.

In addition, Swaziland faces severe competition for direct foreign investment not only from South Africa, but from other neighbouring countries who also see investment as a necessity for boosting national well-being. Such competition features increasingly proficient marketing organisations dedicated to international promotion to publicise a particular country's advantages as a location for manufacturing, as well as a thrust toward facilitating the investment process domestically and away from regulation and control over the activities of investors.

In other countries, this push toward simplification, and elimination of regulations, licenses, permits and other approvals, is generally reinforced by other improvements in the incentive regime. These improvements are primarily geared towards transparency and the elimination of practises that discriminate between foreign and local

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investment. In particular, tax holidays are being phased out and increasingly being replaced by flat rates of corporate tax that deliver benefits to all manufacturers equally.

Accordingly, Swaziland must compete for foreign investment in a formidable and competitive marketplace in terms of how international investment promotion is practised, as well as in terms of the range of incentives offered to potential investors. Other factors with which the country must contend include limitations on the size of the domestic market, both in terms of numbers and the level of disposable income. Swaziland therefore must attract export industry, an option that is diminished by the landlocked nature of the country, which represents a serious constraint on product shipments into overseas or other distant markets. Additional constraints on investment include: limitations on the availability of serviced sites in industrial estates and an apparent lack of resources for developing the infrastructure; a labour force that is becoming more militant and thereby eroding Swaziland's wage-rate advantage; well-publicized difficulties with work permits for foreign workers; poorly-trained middle management and workforce; and uncompetitive and discriminatory incentives. These are further compounded by a lengthy and complex investment approval process that is often unnecessarily complicated by bureaucratic controls.

More positively, Swaziland has duty-free access to the large South African market through its membership in the Southern Africa Customs Union (SACU), and other market advantages such as membership in the PTA and SADC as well as preferential access to European markets through the Lome Convention. In addition, Swaziland continues to offer investors a positive investment climate in terms of political stability and a relatively positive attitude towards private sector development.

Although no national strategy currently exists for promoting and facilitating inward or domestic investment, policy measures espoused in the National Development Plan point to the need for investment promotion and an investment code setting out all rules and regulations pertaining to investment and industrial development.

The underlying assumption is that both foreign and local investment are viewed as a necessity by the Government and achieving this objective is strongly correlated with institutional development and the facilitation of the investment process. The recommendations herein are devised to help achieve this objective.

*Major Recommendations  
From Recent Reports*

The main recent reports dealing with industrial policy and investment promotion in Swaziland are the following:

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**"Development Plan 1994/95-1996/97" (April 1994) produced by the Economic Planning Office of the Ministry of Economic Planning and Development;**

**"National Industrial Policy Issues in the Context of a National Development Strategy" (April, 1994) produced by UNIDO; and**

**"Issues Paper on Investment in Swaziland: Managing the Transition" (June, 1994) produced by the Foreign Investment Advisory Service of the World Bank.**

Following an analysis of the current situation, both internally and externally, as it affects economic growth in Swaziland, each of the foregoing recommends setting up a one-stop shop to promote investment, and developing an Investment Code for Swaziland. These objectives are also viewed by the Government as an integral component of industrial policy.

*Statement of  
Industrial Policy*

Policy measures espoused by the Government in the Development Plan for improving Swaziland's investment environment are:

- Providing appropriate physical infrastructural facilities in the industrial estates/parks;
- Improving the prevailing investment climate by reviewing the existing incentives package;
- Establishing a clearly-defined set of industrial priorities;
- Encouraging increased local entrepreneurs' participation in the manufacturing sector;
- Playing a leading role in core industries;
- Providing proper training to Swazi nationals in managerial and industrial skills such as engineering and technology;
- Providing a separate package of incentives for encouraging local entrepreneurs involved in manufacturing;
- Establishing an Investment Promotion Agency in order to improve investment information services. The main task of this agency would include:

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- Providing a one-stop investment promotion service to investors to speed up the establishment of productive activities;
  - Providing information on investment opportunities and incentives to investors; and
  - Maintaining an industrial land register;
  - Developing small, medium and informal industries;
  - Intensifying efforts to publicize Swaziland's favourable investment climate through publicity campaigns and seminars as well as participating in international trade fairs and exhibitions;
  - Formulating an investment code setting out all rules and regulations pertaining to investment and industrial development;
  - Recommending ways and means of encouraging appropriate technology transfer; and
  - Facilitation of cross-border trade, payments and investment in East and Southern Africa.

*An Investment Code  
Versus an Investment Act*

The Government's own Development Plan 1994/95-1996/97 clearly establishes the formulation of an Investment Code setting out all rules and regulations pertaining to investment and industrial development as an objective of industrial policy. However, the opinion rendered by the Attorney General's office is that the compilation of an Investment Code as envisaged which would extract relevant parts of existing laws is not a feasible option under the Swaziland jurisdiction. Such extracts would have no force in law. While they could function as a type of guide for investors, they could not be termed an Investment Code.

A feasible option along similar lines would be to compile all relevant laws in their complete form into a single volume which could be used to hand out to interested parties by relevant authorities. This however, could not be termed an Investment Code, and could not be considered to fulfill the spirit of the requirements and objectives of an Investment Code as recommended.

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The FIAS report makes three main recommendations:

- **Creation of an Investment Act, legally codifying all relevant regulations in a single document, including, if desired, those dealing with company registration, required permits and licenses, taxation, incentives, customs duties, exports, remittances, expatriate work and residence permits, land access and building regulations; and including guidelines on the treatment of foreign investment, describing government policy on:**
  - scope of application
  - admission of investment
  - treatment of investment
  - expropriation and unilateral alterations, termination of contracts; and
  - settlement of disputes;
- **Establishment of an Investment Promotion Centre as a separate organization with strong private sector input, and adequate funding over five-year periods both to assist investors and to promote Swaziland; and**
- **Creation of a new automatic approval system, by eliminating all special incentives that require case-by-case approval, particularly all tax holidays, in favour of general incentives available to all manufacturers, local and foreign, effectively eliminating the need for tax holidays.**

In regard to the creation of an Investment Act that would integrate components from existing laws into a comprehensive investment law it was also the opinion of the Attorney General's Office that no new investment law could compile relevant extracts from existing laws which would supersede the existing laws, since existing laws cannot be re-enacted in another law.

An Investment Act, however, could be formulated which would establish an Investment Promotion Centre for Swaziland. With the concurrence of the Ministry of Finance, the Ministry of Commerce and Industry and the Central Bank, this approach was formalized and drafted as an Act to establish an Investment Promotion Centre which would also contain, in a section entitled "General Investment Provisions" an integrated compilation of components from existing laws dealing with investment. This approach is commonly practised in other jurisdictions. The Attorney General's Office, at the stage that this document was completed, was unable to render an opinion

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as to the admissibility of including a section dealing with general investment provisions in the Investment Act.

The Investment Promotion Act as set out herein includes provisions for the treatment of foreign capital, taxation provisions, work permits, and repatriation of capital. These provisions will be a positive factor in attracting investment in that the guarantees provided are more credible to potential investors as substantive, legislated benefits rather than simply a generally encouraging or supportive stance on the part of government toward the business environment.

Based on the perception that Swaziland needs investment, particularly foreign direct investment, the provisions of the Act as set out herein are directed toward establishing an investment environment in Swaziland that is competitive with other countries in the region. It therefore ostensibly pre-empts and updates components of laws or policies that are currently in force, particularly in relation to corporate tax and work permits. Many laws however, in particular the Companies Act of 1912, are outmoded and long overdue for revision. The proposed Investment Act is designed to encourage Swaziland towards an equitable, transparent, competitive investment environment based on the recommendations from various reports, the Government's Development Plan, and current best practices in relation to investment in other countries in the region. The following steps need to be taken to provide further impetus towards legislation:

- The Ministry of Finance, the Ministry of Commerce, the Central Bank and the Attorney General's Office need to convene a meeting with representatives of the private sector to discuss in an open forum the implications of the proposed Act. An appropriate vehicle for this would be through the Industrial Policy Steering Committee or the Technical Working Group of the Cross Border Initiative. Distribution of this document would be necessary prior to such a meeting or meetings.
- Carry out relevant research, particularly in relation to the net effects on tax revenue from changing from a system of tax holidays to a flat rate of corporation tax for manufacturing companies.
- It is critical that the Government undertake necessary reforms and/or modifications to the laws identified in the Miscellaneous Provisions section of the proposed Investment Act before Swaziland can

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effectively broaden its appeal to local and foreign investors. Since the Attorney General's Office has limited staff for the research necessary in drafting new legislation, there is a likelihood that one legal draftsman will be required for up to a year to work solely on preparing the Investment Act for legislation if it is to be legislated within a reasonable time period.

***Establishment of an  
Investment Promotion  
Centre***

Investment promotion agencies are a regular feature in countries that need investment, whether domestic or foreign. Swaziland has not formally organised an institution devoted to investment promotion. The function is currently - to a limited extent - carried out by SIDC and Tibiyo Taka Ngwane, primarily as a marketing tool for their own purposes, but with an element of national promotion involved.

The proposed Investment Promotion Centre represents the ideal - an autonomous statutory body with a Board that is private-sector oriented, and a staff that is professional and capable of carrying out the Centre's mandate, and a budget that is adequate for the purpose.

This statement is consistent with the FIAS report, which defines an investment promotion centre with the greatest chance of success as:

- An independent quasi-governmental organization, i.e., an agency under the responsibility of a Ministry, but clearly separated from it;
- Having strong private sector input, preferably with a majority interest on the board of directors;
- Enjoying sufficient funding; and
- Having strong initial technical assistance focused on marketing and training.

In light of the size of the country and the limitations on government finances, the cost effectiveness of an Investment Promotion Centre for Swaziland is a serious consideration. The need for an investment promotion body has been well established, and there may be some merit to strengthening the already-existing foreign investment promotion function within SIDC, and local investment promotion within Tibiyo. On balance, where adequate funding is available, an independent Investment Promotion Centre is the preferred option.

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A further issue that requires discussion is the Ministry to which the proposed Centre will report. Although investment promotion is, to a very minor extent, practised within the Ministry of Commerce and Industry, most of the key functions related to investment promotion - foreign exchange, taxation, and customs - fall within the Ministry of Finance.

Further work that needs to be carried out in relation to the proposed Investment Promotion Centre is as follows:

- The Government of Swaziland will be expected to provide some of the financing for the Centre. In addition, meetings will need to be held with UNDP, the World Bank, the EC, the African Development Bank, and bilateral donors to determine how the proposed Centre can be adequately financed for at least an initial five-year period;
- A consulting company with strong experience in investment promotion needs to be engaged to develop an appropriate organization plan that will establish the city in which the Centre will be located, a mechanism for setting up the institution, the organizational structure, the number of posts, job descriptions, location of premises within the city, and other matters related to establishing the Centre. On establishment, the same consulting company will be required to provide technical assistance for a two year period to ensure the efficient operation of the Centre, develop a Corporate Plan and provide training to the staff of the Centre.

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### **Policy Issues and Recommendations**

There are a number of specific issues related to improving the investment climate in Swaziland which require attention. These are discussed briefly below, along with recommendations for addressing each issue. In the actual draft legislation, these specific proposals are treated where appropriate.

#### *Freedom to Invest*

In many developing countries, investment agencies were set up as instruments of control over investment. As such they had the authority to screen all investments, and often required extensive feasibility studies to prove the viability of a project. This approach has largely been abandoned in favour of very limited screening. Many countries now operate a simple registration procedure where no evaluation is performed by the authorities, based on the principle that private investors are in a better position than official organizations to judge the potential of projects in which they are

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risking their own funds. Accordingly, most countries now do not require approval for investments not seeking incentives. Despite this trend towards liberalization, nearly all countries restrict investment in certain sectors by specifying what industries may not be entered into without strict Government screening and approval.

*Negative List*

Additionally, there are often policy or other considerations which prevail when a country may wish to confer advantages such as fiscal incentives which may be accorded under the investment law. For these cases, it is also preferable to specify the activities that do not qualify for incentives in the negative list rather than to include all allowable activities in a positive list, or to evaluate all applications on a case-by-case basis according to often vague criteria. Limiting the application of an investment law or incentives is a legitimate function which Swaziland may wish to state clearly in the law. This has been done in the proposed draft where prohibited industries are clearly identified in a Negative List, and incentives are restricted to manufacturing industry. Although a case could be made for extending certain benefits, such as a uniform low rate of corporate tax to all business entities, many countries elect not to confer tax and other incentives on purely commercial or trading activities, but reserve them for industrial, agricultural, or certain other activities that generate added value. This is more easily accomplished by stating the excluded activities, rather than specifying the qualifying activities in a manner that would include all potentially desirable investments.

While certain industries have been nominated for inclusion in a negative list, further consultation will be required to determine what, if any, other industries or activities should be included on the list, with the stipulation that restrictions should be as few as possible.

*Registration of Inward Capital Flow*

The Central Bank's procedures for the treatment of inward flows of capital are straightforward. To improve the perception that Swaziland is friendly towards such flows, and to provide an additional measure of assurance to investors, it is proposed that the Central Bank issue a Registration of Foreign Capital Certificate to be utilized as proof of ownership of assets underwritten by foreign capital in the event that such assets are sold or otherwise disposed of at a later date.

*Guarantee Against Expropriation Without Due Compensation*

Foreign investors need guarantees that their assets will not be taken over by the government without due redress in terms of compensation at market rates and access to appropriate international fora for the settlement of investment disputes. The Government needs to ensure that access to such international fora are present to provide such guarantees to investors.

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### *Investment Incentives*

Investment incentives most prominently feature tax breaks for investors. In the past, investors generally were provided with tax holidays of varying lengths, but the trend now is to replace these with flat rates of corporate taxation applicable to manufacturing industry as a more equitable, more transparent and less cumbersome incentive. In light of current difficulties caused by revenue shortfalls and the possible reduction in SACU receipts in the future, considerable debate and further study are needed prior to the adoption of the proposed flat rate of 15% for manufacturing industry. Other proposals, notably those of the Tax Advisory Committee, which is believed to advocate a reduced rate of corporate tax for all businesses, will need to be considered for policy purposes.

It should be noted however, that a competitive incentive regime is important for attracting foreign direct investment; this is the basis for the proposals herein. The FIAS report in particular, in addition to other studies, indicates that a 15% corporate tax rate is a key incentive to manufacturers and/or exporters in Zambia, Malawi, Lesotho, and Mauritius. It is important for Swazi policymakers to consider that a competitive corporate tax rate is not only an incentive for attracting new industry but may also be necessary to retain existing manufacturers. The fiscal implications of implementing a 15% corporate tax rate for manufacturing industry are beyond the scope of this report, but a study to determine such implications is necessary. It is understood that EC funding under the Cross Border Initiative may be made available to carry out such a study.

In order to recoup some of the revenue lost through a reduction in corporate taxes for manufacturers, an increase could be considered on taxes on dividends paid, while providing tax-free status to reinvested dividends as an incentive to expansion. Consideration should also be given to taxing capital gains, which are currently untaxed.

Incentives for export industries are routinely provided and feature mechanisms to enable exporters to avail of raw materials at border prices by means of duty drawbacks, bonded warehouses, and in the future, an Export Processing Zone. It is also proposed that similar incentives be provided to indirect exporters, i.e., those domestic producers who do not directly export but supply materials which are used as inputs that may be further processed and exported by other domestic companies.

### *Export/Import Licenses*

Export and Import licenses are currently required for every cross-border transaction. Export licenses, in particular, perform no useful function and should be abolished forthwith. Import licenses should

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also be abolished, but SACU regulations limit the Government's ability to implement this recommendation immediately.

*Industrial Land*

As the situation currently stands, investors appear to face considerable delays in acquiring plots of land in any of the industrial estates. There is a degree of confusion between the Ministry of Commerce and Industry and the Ministry of Housing and Urban Development regarding the procedures involved in providing plots in industrial estates. While the Ministry of Commerce and Industry has the responsibility for the allocation of plots, the Ministry of Housing is responsible for providing title deeds. In some cases plots which were purchased and paid for in mid-1993 still have not been approved by the Ministry of Housing.

Specific procedures for land allocation need to be drawn up. In particular, these procedures should facilitate investment by making plots available within three months from the initial application.

A further bottleneck relates to the growing shortage of serviced industrial plots. The main estate at Matsapha is close to capacity, and while adjacent land has been acquired, the funds needed to create the infrastructure are not available to the Ministry of Housing and Urban Development.

Revenue from the sale of industrial plots goes directly to the treasury rather than to any central fund dedicated to further development of industrial sites. Servicing plots thus depends on the ability of the Ministry of Housing and Urban Development to obtain the necessary funds from the Ministry of Finance, which does not usually have funds readily available. To address this deficiency, it will be necessary to evaluate the desirability of setting up a Trust Fund that, on a revolving basis, could be utilized for further purchase of plots for industrial use and the development of services for such plots.

*Environmental  
Impact of Projects*

The Swaziland Environment Authority is a new institution within the Ministry of Natural Resources. It is currently establishing environmental standards, and will have a significant impact on industrial development because of its regulatory responsibilities. These responsibilities encompass monitoring each project that could have negative effects on the environment. Any such project proposal may require the promoter to carry out an environmental impact assessment, with the depth of analysis depending on the complexity of the project.

Guidelines are currently being developed to define the relationship that will exist between Swaziland Environmental Authority and the Ministries of Commerce, Finance, and Housing and Urban

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Development; the type of industries that will be required to carry out an environmental impact assessment; at what point the Authority will be notified of potentially sensitive projects or otherwise be involved in the investment process; the elements of what such assessments should contain; and how they should be carried out.

Creation of the Swaziland Environment Authority represents a significant step in protecting Swaziland's environment. However, it also potentially represents a time-consuming and excessively-controlling influence over industrial development if it is allowed to dominate the investment process. At this early stage of its development, it is important for all the principal Ministries and the Authority to work out modalities among themselves that will ensure that the system for monitoring and approving environmentally-sensitive projects is designed to work smoothly and with the least disruption to the overall investment process.

### *Manufacturing Licenses*

Under the Trading Licenses Order, 1975, manufacturing companies are required to obtain a Wholesaler's License from the Ministry of Commerce if they sell to the trade, and a General Dealer's License if they sell directly to the public. Beginning on May 1, 1994, as a result of a revision to the order, manufacturing companies must also acquire a Manufacturing License, which must be renewed annually at a cost of E300. In order to obtain a Manufacturing License, a company must indicate the extent of the capital employed, comply with health standards through the issuance of a certificate from the Ministry of Health, and provide a copy of any lease agreement involved in the property.

Apart from its revenue-generating capability, the Manufacturing License appears to fulfill no useful purpose. It furthermore represents an undesirable control over investment that is contrary to the elimination of case-by-case approval of new industry. The main purpose behind the License - i.e., to control the type of activity so that no environmental, health or other hazards are present - is adequately covered through other means. No further use is made of the information gathered, nor are any services provided to manufacturers in return. Furthermore, a Manufacturing License is not, and should not be a requirement for accessing other services such as export incentives.

Thus, consideration should be given to abolishing the Manufacturing License. Streamlining of the system for providing Wholesaler's and General Trading Licenses is also needed so that such licenses are available no later than seven days from the date of application.

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### *Work Permits*

The issue of work permits is contentious, but there is no doubt that the limitations on expatriate workers currently in force constitute an impediment to investment, particularly foreign direct investment. Steps are now proposed to extend from two years to five years the period for which work permits will be available. It is understood, however, that this proposal has been in existence for many years without any action being taken on it.

The management knowledge and technical skills available in Swaziland are such that severe restrictions on the importation of such skills is not only a shortsighted policy but is also detrimental to developing the skills of Swazi workers, which is a stated Government goal. In light of the strong competition for foreign investment, the experience in other countries, and the practicalities of managing a business enterprise profitably, there is no reason to expect that Swaziland will be overrun by expatriate workers taking jobs away from Swazi residents. On the contrary, the skills imparted by expatriate workers to local workers is an important by-product of foreign investment.

Liberalization of the system should be based on issuance of permanent residence status to owners and senior managers who are also shareholders in companies, similar to the "Green Card" system employed by U.S. immigration authorities (with appropriate provision made to exclude undesirable foreign persons such as those with criminal records) and the issuance of five-year permits to technical workers and managers. Furthermore, the latter should be issued without undue delays.

### *Labour Relations*

The labour laws are deficient by current international standards in that they do not provide for workers or trade unions to participate as part of employer/employee negotiating teams and do not provide for sufficient security for the payment of wages (Employment Act, 1980). The Industrial Court is restricted in its powers under the Industrial Relations Act in matters of reinstatement of wrongfully-dismissed workers and extent of compensation payable on termination of employment. The legal options available in trade disputes are insufficient (e.g., mediation and arbitration are not available) and there is no provision for secret balloting to determine whether a strike or terms offered are acceptable to workers. The Workmen's Compensation Act is deficient in that it does not take account of inflation or family circumstances in allocating compensation, nor is there sufficient provision for reporting of accidents by employers.

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**These deficiencies, together with low wage rates in manufacturing industry compared to other countries in the region<sup>1</sup>, have led to labour unrest, which in some cases has resulted in violence. In order to avoid a general deterioration in employer/employee relations, the relevant laws governing labour relations need to be brought up to date to reflect international standards.**

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<sup>1</sup> Swaziland has no national minimum wage. Wage levels are regulated by sector under the Wages Act, 1964.

## **The Investment Promotion Act, 1994**

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An Act to make provision in the law relating to local and foreign investments in Swaziland by according enhanced status and providing more favourable conditions for investment; to establish the Investment Promotion Centre of Swaziland as an autonomous statutory body, and to define its functions and powers in relation to the promotion and facilitation of foreign and local investment; and to provide for matters incidental thereto and connected therewith.

### **Part I General**

#### *Short Title*

This Act may be cited as the Investment Promotion Act and shall come into operation on such a date as the Minister may, by notice in the Gazette, appoint.

#### *Definition of Terms*

In this Act, unless the context requires otherwise:

"Board" means the Board of Directors of the Investment Promotion Centre of Swaziland, established under Part 3 of this Act;

"capital" means currency, negotiable instruments, plant, machinery, equipment, buildings, spare parts, raw materials and other business assets;

"Central Bank" means the Central Bank of Swaziland established under the Monetary Authority of Swaziland Order, 1974;

"Centre" means the Investment Promotion Centre of Swaziland established under Part 3 of this Act;

"Chairman" means the Chairman of the Board of the Investment Promotion Centre of Swaziland;

"enterprise" means a business or undertaking in which any form of capital is employed, whether in the field of agriculture, industry, commerce, services, or otherwise;

"existing enterprise" means an enterprise existing immediately prior to the commencement of this Act;

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**"Export Processing Zone"** means a demarcated geographic area in Swaziland outside the national customs territory and duly restricted by controlled access. Any part of the national territory shall be eligible for EPZ designation. An EPZ may also consist of a demarcated geographic area which is one and the same as the area occupied by an individual enterprise and its facilities; it shall then be referred to and designated as a "Single-Factory EPZ";

**"foreign assets"** includes freely-convertible foreign currency and any negotiable instrument, credits, rights, benefits or property including plant, machinery, equipment, buildings, spare parts, raw materials and other business assets obtained by the expenditure of foreign currency or, except as regards currency of Swaziland which has not been obtained by the expenditure of foreign currency, transferred from abroad and owned by either Swazi nationals or foreign nationals, and the returns derived from such currency, credits, rights, benefits, or property;

**"foreign investor"** means:

- a person who is not a citizen of Swaziland who has, or is considering investing assets in Swaziland;
- a company incorporated under the laws of any country other than Swaziland who has, or is considering investing assets in Swaziland;
- company incorporated within Swaziland in which the majority of the issued share capital is owned by foreign nationals;
- a partnership in which the majority of partners are not citizens of Swaziland;

**"investor"** means a foreign national or company or a Swazi national or company who has made or is considering making an investment of assets in Swaziland;

**"investment"** means contribution of capital or foreign capital by an investor in an existing enterprise, or to a new enterprise or to rehabilitation or expansion of an existing enterprise;

**"joint venture"** means an association, whether incorporated or unincorporated, between foreign investors and local co-operatives or parastatal organizations, foreign investors and local private investors, domestic private investors and local parastatal and, or co-operative organizations, for the purpose of making an investment jointly in an enterprise;

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"manufacturer" or "manufacturing company" means any person or organization, either public or private, set up and duly registered as a company in Swaziland, for the purpose of changing the character of, processing, manufacturing, or otherwise substantially transforming material inputs, the output of which may be exported or sold on the domestic market;

"Minister" means the Minister responsible for Finance;

"new enterprise" means an enterprise established after the effective date of this Act;

"prescribed" means prescribed by regulations made under this Act;

"registration" means registration of a new or existing enterprise with the Investment Promotion Centre;

"regulations" means regulations made under this Act;

"Swazi" means a citizen of Swaziland and includes a company incorporated under the laws of Swaziland in which the majority of the share capital is owned by Swazis within the meaning of this definition.

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## Investment Promotion and Facilitation

The Government of Swaziland considers productive investment in the economy as essential for improving the national well-being by generating employment, increasing national output and earning foreign exchange for the country.

Accordingly, every public officer and any public agency in Swaziland engaged in exercising or performing powers, duties or functions in connection with or concerning the commitment of the Government in promoting and facilitating investment in Swaziland as declared in this Act, shall, in the exercise of his or her powers or the performance of his or her duties or functions, treat the intent of this Act as ranking preeminent and shall further consider it to be his or her duty to act with all due diligence and dispatch in taking such action as is required or necessary to give effect to this Act.

Nothing contained in this Act shall be construed as exempting any person, any investor, any public official, or any authority in Swaziland from complying with the requirements of the written laws of the country.

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The Investment  
Promotion Centre  
of Swaziland

There is hereby instituted a statutory body to be known as the Investment Promotion Centre of Swaziland (in this Act otherwise referred to as the ("Centre").

The Investment Promotion Centre shall be a body corporate by that name, having perpetual succession and a common seal and which shall be capable of suing and being sued and of acquiring, holding and disposing of property and of doing or performing all such acts or things as bodies corporate may by law do or perform subject to the provisions of this Act.

The investment Promotion Centre shall be an autonomous organization, having its own Board of Directors (hereinafter referred to as the "Board") which shall be responsible to the Minister for Finance.

*Mandate and Functions*

The Government considers that the private sector can most appropriately make its own investment decisions. Accordingly, the Board or the Centre shall have no sanctioning, regulatory or other approval authority over the activities of foreign or local investors, or over the investment process.

As the focal point for the implementation of Government policy for the promotion of foreign and local investment, the general objective of the Centre shall be to promote, attract, encourage, facilitate and monitor local and foreign investment in Swaziland by carrying out the following functions:

- Provide accurate and up-to-date information on the industrial and economic environment relating to investment and investment opportunities in Swaziland to all who request it;
- Develop and implement a favourable investment image of Swaziland locally, regionally, and extra-regionally through investment promotion missions, advertising and public relations campaigns, seminars, exhibitions and workshops, and any other such promotional device as may be deemed appropriate;
- Liaise with Swazi missions abroad in order to publicize Swaziland's investment prospects and to disseminate information on investment opportunities in Swaziland;
- Encourage expansions and new investments by existing investors in Swaziland;

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- Identify partners inside or outside Swaziland for joint venture investment opportunities in Swaziland;
  - Implement a simplified registration process for private sector investment projects involving domestic and/or foreign capital that qualify for incentives, and issue Certificates of Registration;
  - Develop and maintain an industrial land register;
  - Ensure the provision of the full range of incentives to eligible domestic and foreign investors;
  - Consult periodically with Ministries, Government departments, local authorities, or other bodies responsible for the delivery of facilities and services in order to facilitate investors with timely compliance with any formalities and to help secure all necessary approvals, land, licenses, permits, registrations, and the fulfillment of all other requirements related to the investment process;
  - Facilitate the employment of foreign nationals as managers, experts and technical employees necessary to the success of private sector investment in Swaziland;
  - Ensure that the Government's commitment to investment is promptly and practically facilitated by: receiving queries and complaints by an investor against any public official or authority regarding any matter submitted to the public official or authority by, or on behalf of the investor; summoning or requesting any public official or authority to promptly decide, in accordance with the relevant written law, on any matter submitted thereto by or on behalf of an investor; inquiring into the reason for a negative decision by any public official or authority on any matter submitted by, or on behalf of an investor, and making representations to the public official, authority, or the appropriate Minister on behalf of the investor in those cases where the Board is not satisfied with the reasons provided; reporting to the Minister cases of laxity, inefficiency, and ineptitude by any public official or authority in the performance of his or its duties and functions bearing on the provision of prompt responses to investors in the furtherance of the objectives of this Act;

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- Consult with private sector entities with a view to enabling the Board to advise the Government on policies and other matters related to the improvement of the investment climate in Swaziland, especially in relation to the needs of small and medium-scale enterprises;
  - Advise the Government in regard to all international treaties or other facilities to achieve the purposes of this Act;
  - Interpret this Act in order to achieve its implementation and objectives;
  - Do all such things as are necessary or incidental or conducive to the functions specified in this Act.

For the purposes of this Act, the Centre shall accord priority to investment in:

- All manufacturing including the further processing of agricultural produce;
- Such other productive sectors as the Board of the Investment Promotion Centre may, from time to time, determine with approval of the Minister.

*Head Office*

The Head Office of the Centre shall be at Mbabane, and the Board may establish branch offices at other such locations in Swaziland or abroad as it considers necessary.

*Organization and Administration*

The governing body of the Investment Promotion Centre shall be the Board of Directors which shall be responsible for the management policies of the organization. The Board shall not exceed nine members and shall consist of:

- A Chairman, who shall be nominated by the Chamber of Commerce and appointed by the Minister;
- A Vice-Chairman, who shall be the Principal Secretary, Ministry of Finance;
- The Principal Secretary, Commerce and Industry;
- The Governor or Deputy Governor, Central Bank;

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- The General Manager, Tibiyo Taka Ngwane;
  - The General Manager, Swaziland Industrial Development Co. Ltd;
  - A representative from a commercial bank who shall be appointed by the Minister;
  - A representative of the Swaziland Federation of Employers;
  - A representative of the Swaziland Federation of Trade Unions.

A Board member shall hold office for two years from the date of appointment and shall be eligible for renomination to the Board.

A Board member may resign office by giving one month's notice in writing to the Minister.

Ordinary meetings of the Board shall be held at least six times a year. An extraordinary meeting may be convened by the Chairman at any time within fourteen days following receipt of a written request from any two members of the Board specifying the purpose of the extraordinary meeting.

A member who is aware of a personal, proprietary or financial interest in a matter which is to be, or is being considered by the Board shall declare this interest to the Chairman and shall be further prohibited from participating in the deliberations or voting on the matter.

The Secretariat to the Board shall consist of the General Manager and other officers and staff of the Investment Promotion Centre of Swaziland as may be necessary.

The Board may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it deems fit.

The Board may appoint as members of a committee persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

Board members may be paid such remuneration or allowances as the Board may determine, with regard to normal market terms for such services.

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*Appointment of the  
General Manager*

No action or other proceedings shall lie or be instituted against any member of the Board or any committee for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his/her functions under this Act.

The General Manager shall be appointed by the Board with the terms and conditions of service determined by the Minister on the recommendation of the Board.

The General Manager shall be a person of recognized standing, education or professional qualifications who has the experience necessary for achievement in private sector management, and be a person of proven integrity.

The General Manager shall:

- Be the chief executive officer of the Centre, and shall be responsible for the day-to-day administration of the Centre, and shall be answerable to the Board of Directors;
- Serve as secretary to the Board, convene meetings of the Board and compile minutes of Board meetings. As such, he or she, or in lieu, a designated officer of the Board, shall be entitled to attend all Board meetings and meetings of all committees appointed by the Board;
- Carry out or perform any thing or act which he or she considers expedient for the purpose of the Centre, subject to the special or general directions of the Board.

Such other staff of the Centre subordinate to the General Manager shall be appointed by the Board. The Board may delegate to the General Manager the appointment of certain categories of the staff of the Centre.

The salaries, wages, or other remuneration of the General Manager and other staff of the Centre shall be determined so as to be competitive with those in the private sector in Swaziland.

No person shall, without the prior written consent of, or on behalf of the Centre, publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of his/her duties under this Act.

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***Funding***

The funds of the Centre shall consist of:

- Such sums as shall be appropriated annually by the Government;
- Such sums as may be paid to the Centre by way of grants or donations;
- Any other sums and assets as may vest in or accrue to the Centre, whether in discharging its functions or otherwise;
- Such fees as may be collected from time to time in respect of publications, programmes, seminars, consultancy and other services provided by the Centre.

The financial year of the Centre shall be a period of twelve months determined by the Board.

The Centre shall:

- Keep and maintain proper books of accounts which shall be examined by auditors appointed annually by the Board and approved by the Minister;
- Submit accounts on a quarterly basis to the Minister;
- Submit a report to the Minister within six months after the end of every financial year that shall contain information on the financial affairs of the Board which shall include an audited balance sheet and statement of income and expenditure, and a report on its activities during that financial year;
- Provide an estimate of its required income and expenditure for the following year.

***Corporate Planning***

The Centre shall develop and implement a Corporate Plan as the primary tool for the management of the institution. The Corporate Plan shall be revised on an annual basis.

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## General Investment Provisions

### *Equal Treatment Between Foreign and Local Investment*

The benefits and facilities provided for in this Act shall be automatically available equally to all enterprises which qualify for the specific benefits or facilities regardless of whether they are domestic investors or foreign investors.

### *Freedom to Invest In any Sector of the Economy*

Investors, both domestic and foreign, may freely invest in any sector of the economy of Swaziland, with no restriction on ownership. No sanctioning or approval of investments on a case-by-case basis shall be required, except for those industries on a short negative list. Further there are no restrictions on the size of the investment, the source of funds or whether products are destined for export or for the domestic market. Local investors are encouraged to join with foreign investors to pursue joint venture investment opportunities in Swaziland.

### *Utilization of a Negative List*

The composition of the negative list of reserved or prohibited activities will be decided by the Government and issued by the Minister of Commerce and Industry. The list will specify those activities considered essential for security and thereby reserved exclusively to the Kingdom or to domestic investors, and activities likely to be hazardous to the national well-being. The list may be revised and updated periodically. Industries on the negative list, and therefore requiring an industrial license from the Minister for Commerce and Industry, are:

- Firearms, ammunition and chemical and biological weapons, and other defence equipment and machinery;
- Manufacturing involving radioactive materials;
- Manufacture of explosives;
- Manufacturing involving hazardous waste treatment or disposal;
- Security printing (currency notes) and minting.

### *Company Formation and Registration*

Procedures for company formation and business registration *Business* shall be in accordance with the provisions made in the Companies Act of 1912 (under revision). All new foreign companies and local companies must register with the Registrar General; this process shall be required to take no more than one week.

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***Registration of Trademarks,  
Patents, Copyright, and  
Designs***

The Government is a member of the World Intellectual Property Organization, and recognizes the importance to investors of strict conformity to international standards of protection for trademarks under the Trademark Act of 1994. All laws relating to the protection of patents, copyright and designs shall be updated to reflect international standards.

***Registration with the  
Investment Promotion  
Centre***

No approval shall be required for any projects involving business activities covered under this law if they are not on the negative list of reserved or prohibited activities, are not expected to pose unacceptable health or other risks to workers, consumers or the environment, and seek no special Government concessions, facilities or privileges beyond those usually provided by other public entities.

Registration with the Investment Promotion Centre is not required other than for those investors who:

- Will require the Centre's facilitation services to obtain necessary approvals, licenses and permits, and to comply with all regulatory requirements related to investment in manufacturing or other productive activity;
- Wish to avail of the incentives offered to investors under the provisions of this Act.

A Certificate of Registration shall be provided to investors by the Centre within five working days of completion of a simple registration form which shall contain the following information:

- The name and address of the proposed business enterprise, its legal form, its bankers, the name and address of each director or partner;
- The nature of the proposed business activity and the proposed location where the activity is to be carried on;
- The proposed capital structure, amount of the investment, and the projected growth over the initial three years of the enterprise;
- The number of persons expected to be employed;
- The incentives for which the company expects to qualify and the details of such qualifications;

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- Any other information relating to the viability of the project or other matters that the applicant considers relevant.

***Guaranteed Access  
to Foreign Exchange***

The Government recognizes that the availability of foreign exchange is critical to investors, and especially to exporting companies, both for paying for imports and for transferring financial payments abroad. The Government will therefore ensure through the Central Bank that foreign exchange is available for business transactions and remittances. The Central Bank has granted, and will continue to grant commercial banks the authority, as foreign exchange dealers, to approve such transactions and remittances according to the procedures laid down in the Manual of Exchange Control Rulings.

***Treatment of Foreign  
Capital***

Swaziland's Exchange Control regulations are administered by the Central Bank under the Exchange Control Order (1974). All foreign exchange transactions are implemented through authorized dealers who are the commercial banks.

Government policy encourages the inward flow of capital for investment in productive enterprises. To avoid inconvenience on subsequent repatriation of interest, dividends, profits and the income from disposal of assets, prior approval of the Central Bank is necessary for all capital transfers into Swaziland. Such transfers include equity investments, as well as debentures and other forms of borrowing. Upon submission of satisfactory evidence that the capital has been transferred into a bank account established in Swaziland, a Registration of Foreign Capital Certificate will be issued by the Central Bank to the investor. The terms and conditions of international loans, management contracts, licensing and royalty arrangements and similar technology transfers require Central Bank approval.

***Repatriation of Profits,  
Dividends, Royalties,  
Fees and Assets***

Notwithstanding the provisions of the Exchange Control Regulations, 1975, or any other written law relating to the externalization of funds investors shall be entitled in respect of an enterprise registered in Swaziland to transfer in foreign currency and after payment of relevant taxes:

- Dividends or net profits of up to 100% of the annual after-tax profit attributable to paid up foreign capital;
- The principal and interest of any foreign loan obtained with the approval of the Central Bank;
- Royalties and fees arising from the use of designs, licences, patents, technology transfers, trademarks, and other charges approved by the Central Bank;

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- Approved fees for management contracts;
  - The net after-tax proceeds arising from the sale or liquidation of part or all of the enterprise attributable to foreign investment or retained earnings based on the relative proportions of foreign and local capital;
  - Any proceeds arising from an arbitration award as a result of proceedings under this Act.

*Externalization of Wages,  
Salaries and Savings  
Accounts of Foreign  
Workers*

Foreign nationals employed temporarily by companies registered in Swaziland may transfer up to 75% of their monthly after-tax wage or salary into an external account. At the end of their stay in Swaziland, 100% of the accumulated savings of a foreign national may be externalized subject to satisfactory compliance with Swazi income tax regulations.

*Protection of Foreign  
Investment*

The Government is committed to ensuring that security of their assets is maintained for all investors. Existing laws and regulations provide that no property of any description shall be compulsorily acquired, and no interest in or right over property of any description of an investor shall be compulsorily acquired except for legitimate national interest.

Before property is compulsorily acquired prompt arrangements shall be made to assess and pay adequate and fair compensation. Any compensation payable under the provision of this section shall be made promptly at the market value and shall be fully transferable at the ruling exchange rate in the currency in which the investment was originally made, without deductions for taxes, levies, and other duties except where these are due.

*Settlement of Disputes*

Where any dispute arises between a foreign investor and the Government in respect of compensation for compulsorily acquired property, all efforts shall be made by mutual discussion to reach an amicable settlement within sixty days from the initial date of the dispute.

Where any dispute between the foreign investor and the Government is not amicably settled, the dispute may be referred to an arbitration panel comprising:

- One person representing the investor;
- One person appointed by the Government; and

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- One person appointed by the two parties to the dispute.

The arbitration board shall make its decision within 30 days from the date of receipt of the dispute. Such decision shall be final and not subject to further referral to any other court.

Where the arbitration board fails to settle the dispute within the specified time period, the dispute may be referred to:

- The International Centre for the Settlement of Investment Disputes;
- The United Nations Commission on International Trade Law;
- The framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties; or
- Any other international machinery for the settlement of investment disputes agreed to by the parties in the dispute.

*Access to Local Financing*

Both local and foreign investors shall have equal access to local financing facilities. Commercial banks and financial institutions shall use their own procedures in granting credit.

*Treatment of Securities*

The Government encourages the development of the securities market. There shall be no restrictions on issues of securities to the public. Furthermore, there shall be no restrictions on private placement of securities to Swaziland residents. Transfer of securities to non-Swazi residents shall be allowed without restriction, but such transactions must be registered with the Central Bank.

*Investment Incentives*

To further enhance Swaziland's climate for investment the Government is committed to providing incentives to local and foreign investors that shall be at least competitive with those offered elsewhere in the region. Such incentives shall also be transparent, equitable and equally accessible by local and foreign investors.

Manufacturing companies, whether locally-owned or foreign-owned shall be entitled to avail of an enhanced range of incentives.

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- **Priority in the Allotment of Land for Industrial Purposes.** New manufacturing companies or companies restructuring their enterprises shall be allocated priority in the allotment of land by the relevant authorities for the construction of manufacturing premises;
  - **Priority in the Provision of Services.** New manufacturing companies or companies restructuring their enterprises shall have priority access to electricity, water, communications and transportation at such rates as those accorded to Government enterprises;
  - **Access to Plots in Industrial Estates.** The Government is committed to expanding the available supply of serviced sites in the industrial estates at Matsapha, Nhlangano, and Ngwenya. Such plots shall be available to all investors for purchase or lease in perpetuity.
  - **Duty Exemption on Capital Goods.** An investor shall be exempt from customs duty, excise duty, duty surcharge, and sales tax on all machinery, equipment and parts required for the establishment, rehabilitation or expansion of an enterprise for use exclusively in that enterprise. All spare parts required for such machinery and equipment for a period of two years thereafter shall be imported free of such taxes.
  - **Import Licenses.** No import license shall be required to import goods into Swaziland from outside the Southern Africa Customs Union except those on a negative list.
  - **Export Licenses.** No export license shall be required to export goods from Swaziland.
  - **Dry Port Usage.** Importers have the option to clear goods through regional ports or through the Dry Port established at Matsapha;
  - **Income Taxes.** Swaziland's rate of corporate tax is established at 37.5% subject to an array of allowances and deductions.

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To encourage new investment, the addition of economic value to local or imported raw materials, and economic modernization, all new enterprises engaged in manufacturing industry shall hereinafter be subject to a corporate income tax rate of 15%;

A manufacturing enterprise operating on the date of coming into force of this Act that brings into operation a new sub-unit, or restructures an existing enterprise shall qualify for incentives under this Part for such sub-unit or restructured enterprise if separate accounts are maintained for a reliable separation of its activities from that of the main enterprise;

All existing manufacturers will enjoy a phased reduction from the current level of 37.5% to 15% over a five-year period according to the following schedule:

First tax year following	33.0%
Second tax year following	28.5%
Third tax year following	24.0%
Fourth tax year following	19.5%
Fifth tax year following and thereafter	15.0%

Manufacturing companies currently exempted from payment of corporate taxes under Section 12 (5) (a) of the Income Tax Order 1975 may continue this exemption until the end of the agreed five-year tax holiday period, upon the termination of which they shall pay corporate tax at the rate of 15%;

- Incentives for Exporters. To encourage the development of exports the following additional incentives shall be available to all companies exporting all or part of their output, in addition to the incentives generally available under this Act:

Priority access to foreign exchange in proportions and according to such conditions as may be determined through consultations with the Central Bank;

Retention of 50% of gross foreign currency earnings in an external bank account, provided that the earnings retained shall be used to acquire raw

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materials, equipment, and spare parts, and for overseas remittances in respect of debt servicing, profit repatriation and dividend payments to non-resident shareholders, and settlement of external obligations of the business;

**Availability of Funds for Marketing and Promotion in External Markets.** There shall be no limit on the amount of funds an exporter may utilize for the purpose of marketing and promotion in export markets, including payments for airline tickets, hotel accommodation and living expenses on marketing trips, and for such purposes as market research, hiring of marketing consultants, participation in trade fairs, advertising and public relations campaigns, and other such marketing and promotional programmes normally used to increase sales of commodities, or consumer or industrial products;

**Bonded Warehouse/Factory.** Upon registration with the Commissioner of Customs, factories exporting greater than 80% of their production shall be accorded Bonded Warehouse/Factory status, whereby raw materials may be imported and warehoused duty-free under the supervision of the Commissioner of Customs. To avail of this incentive a bond equal to the duty payable on the largest shipment of imported materials in any one-year period must be lodged. Bonded warehouses shall be maintained separately from the main factory. An office shall be provided for the use of a customs official to monitor movement of goods into and out of the factory. Exporting companies using a bonded warehouse/factory facility shall be allowed to dispose of up to 20% of substandard or less than export quality goods on the domestic market with the consent of the Commissioner of Customs. Duty shall be paid at the established rate for final goods on goods sold in this manner.

**Duty Drawback.** For those exporting companies electing not to avail of bonded warehouse/factory facilities, or who are less than 100% exporters, imported raw materials and domestic raw materials that are subsequently processed and exported outside the Common Customs Union area shall be eligible for duty drawback on all customs duty,

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excise duty, sales tax and duty surcharge. Refunds under the duty drawback system shall be paid within ten days of application;

Extension of duty drawback to indirect exporters. Duty drawback privileges shall be extended to domestic suppliers of raw materials that are subsequently processed and exported by other companies;

Export Credit Guarantee Scheme. The Government, through the Credit Guarantee Fund operated by the Central Bank guarantees commercial bank credit for small and medium-scale exporters including traders for working capital under the Pre-Shipment Finance Scheme which covers 75% of the lender's risk, and the Post-Shipment Finance Scheme which guarantees 85% of the risk to a maximum of E2.5 million.

Export Processing Zones. The Minister may by statutory instrument designate any area in Swaziland as an Export Processing Zone. Where an area has been designated as such, any investment made in such area shall be accorded such incentives as may be prescribed by the Minister, which incentives shall not be less favourable than those available to investors generally under this Act.

- Double Taxation Agreements. Swaziland has entered into Agreements for the Avoidance of Double Taxation with the following countries:

- South Africa
- Great Britain and Northern Ireland
- Mauritius.

The Government shall take steps to develop further such agreements with the country's other trading partners as appropriate.

*Purchase or Lease of Industrial Plots*

Foreign or local investors may acquire serviced plots in an industrial estate through purchase or lease or may acquire freehold plots for the purpose of erecting premises to carry out manufacturing or other investment activity authorized under this Act.

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Freehold land in urban areas may be purchased without restriction on the investment activity to be pursued subject to the regulations governing zoning of such activity.

***Labor Relations***

The Government of Swaziland is committed to maintaining peaceful industrial relations in the country while conforming to worldwide labour standards and practices as defined by the International Labour Organization, of which Swaziland is a member. Labour relations in Swaziland are governed by the provisions of the Employment Act, 1980, which sets out the rights of workers and employers in relation to terms and conditions of employment; the Industrial Relations Act, 1980, which provides for the collective negotiation of terms and conditions of employment and for the establishment of an Industrial Court for the settlement of disputes arising out of employment; and the Workmen's Compensation Act, 1983, which provides for the compensation and medical treatment of workers who have been injured or contract disease in the course of their employment.

***Employment of Foreign Nationals***

Enterprises shall have the right to receive all work and residency permits and visas for foreign employees that are considered necessary to the success of the project in accordance with the legal provisions governing these matters.

A company must be registered with the Registrar General prior to making application for a permanent residence or work permit.

All new and existing investors who are owners or senior executives shall be provided with permanent residence status through the issuance of a Green Card which shall automatically permit them to live and work in Swaziland on a permanent basis;

All permanent resident applications shall be processed within three months of receipt of application;

All senior executives who are not shareholders shall be eligible for work permits for a minimum of five years;

Non-managerial technical expatriate staff considered essential for initially setting up an operation, for training of workers, or for work on processes considered sensitive by the manufacturer shall be provided with two-year work permits on application. Where necessary, such work permits shall be automatically renewable.

All work permit applications shall be processed within five (5) working days of their receipt. The Investment Centre shall assist enterprises in resolving any problems that arise in obtaining such work and residency permits.

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Non-managerial expatriate technical staff, the duration of whose assignment in Swaziland will be less than three months shall not require a work permit.

Every expatriate shall be exempted from the payment of import duty and sales tax payable on the following items imported within twelve months from the date of first arrival:

- One motor vehicle for personal use;
- Personal and household effects.

*Environmental Protection Regulations*

An investor may be required to carry out an environmental impact assessment which shall be submitted for approval to the Swaziland Environment Authority prior to commencement of construction of the project under the Swaziland Environment Authority Act, 1992. Subject to satisfactory compliance with the regulations set out in the Act, an Environmental Compliance Certificate shall be issued to the investor stating that the project under consideration will not have an unacceptable environmental impact and that the proponent has complied with the requirements of the regulations formulated under the Swaziland Environment Authority Act.

*Zoning Rules and Building Regulations*

The Government is committed to the orderly development of industry in Swaziland and industrial sites shall be zoned in accordance with guidelines set out by the Ministry of Housing and Urban Development, which Ministry, in conjunction with local planning authorities, shall also be responsible for approving architectural plans for buildings to be erected in industrial estates and on freehold property outside industrial estates, and for their inspection in the course of construction, pursuant to the regulations set out in the Housing and Building Act, 1969. The process of approval for architectural plans for buildings shall take no more than six weeks from the time an application is received by the local authorities until the approval is granted.

*Completion Certificates*

Registration and inspection is required prior to occupation or use of any premises under the Factories, Machinery and Construction Works Act, 1972. Such registration and inspection shall be carried out by the Factories Inspectorate of the Ministry of Labour in conjunction with the local Town or City Council, and the Fire and Emergency Services Department on submission of an application form containing particulars of the premises.

Certification of Completion shall be provided by the Factories Inspectorate within two weeks of receipt of application.

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The Land Disposal Act

The Land Speculation Board Act

The Income Tax Order

The Sales Tax Act

The Trading Licenses Order

The SACU Agreement

The Wages Act

The Workmen's Compensation Act

and other enactments relating to the functions of the Investment Promotion Centre as provided under this Act shall have effect with such modifications as may be necessary to give full effect to this Act.

Except as herein in this Act expressly provided, this Act shall be supplementary to but not in derogation of any other law applicable to an investor or his enterprise, and the compliance by an investor with the provisions of this Act shall not absolve him from his obligations to comply with the provisions of any other law except to the extent repealed by this Act.

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## Annex

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### LIST OF CONTACTS

#### Government of Swaziland:

##### **Central Bank of Swaziland:**

Mr. J. Nxumalo, Governor  
Ms. E. Magagula, Manager, Exchange Control  
Ms. N. Tshabalala, Exchange Control Department  
Mr. L. Mambo  
Mr. P.M. Mhlongo

##### **Ministry of Commerce and Industry:**

Ms. P. Mkhonza, Principal Secretary  
Dr. T.A. Dlamini, Deputy Secretary  
Mr. A. Khumalo, Director, Trade Promotion Unit  
Mr. A. Hlope, Commercial Officer  
Ms. C. Nxumala

##### **Department of Customs and Excise:**

Mr. A.T. Mdluli, Deputy Commissioner

##### **Ministry of Economic Planning and Development:**

Mr. G.P. West, Chief Economic Planning Officer

##### **Ministry of Finance:**

Ms. N. Maphalala, Deputy Principal Secretary  
Ms. J. Dlamini, Undersecretary, Fiscal and Capital Markets  
Mr. J. Jackson, Director, Public Enterprise Unit  
Mr. W. Ndlovu, Acting Director, Public Enterprise Unit

##### **Ministry of Home Affairs**

Mr. E. Bhembe, Principal Secretary  
Mr. D. Mavimpela, Under Secretary

##### **Ministry of Housing and Urban Development**

Ms. L. Mkhabela  
Mr. K. Masuku

##### **Income Tax Department**

Mr. T. Mbelu, Commissioner of Taxes

##### **Ministry of Justice**

Mr. S. Zwane, Attorney General of Swaziland  
Mr. M. R. Fakudze, Principal Draftsman

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Ms. F. Dlamini, Principal Draftsman  
Mr. A.M. Mathebela, Registrar General

**Ministry of Labour:**

Mr. C.P.N. Shilla, Assistant Commissioner  
Mr. E. V. Dlamini, Legal Advisor

**Ministry of Natural Resources and Energy:**

Mr. J. Vilakati, Director, Environmental Protection Unit

**International Development Agencies**

**European Union:**

Mr. G. Lee, Delegate  
Mr. R. Schroder, Economic Adviser

**United Nations Development Programme:**

Ms. T. Nishimoto, Deputy Resident Representative

**United States Agency for International Development:**

Ms. V. Dickson-Horton, Director  
Mr. E. Baker  
Ms. J. Raile  
Ms. G. Masuku  
Mr. D. Foster-Gross  
Mr. J. Royer

**Other Organizations**

**KPMG Aiken & Peat:**

Mr. J. Hayter, Partner  
Mr. A. Fandam, Partner

**The Swaziland Chamber of Commerce and Industry:**

Mr. H. Bird, Executive Director

**Swazi Industrial Development Company, Ltd:**

Mr. T.J. Ramushu, Controller of Operations  
Ms. Lura Xaba, Senior Operations Executive

**Swazi Stockbrokers Limited:**

Mr. A. McGuire, Chief Executive Officer

**Tibiyo Taka Ndlami:**

Mr. T.A. Dlamini, Managing Director