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Limitation of Legal Proceedings against the Government Act, 1972 Act 21 of 1972

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Limitation of Legal Proceedings against the Government Act, 1972
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Limitation of Legal Proceedings against the Government Act, 1972

Act 21 of 1972

Assented to on 7 August 1972

Commenced on 18 August 1972

[This is the version of this document at 1 December 1998.]

An Act to prescribe limitations of time in connection with the institution of legal proceedings against the Government.

1. Short title

This Act may be cited as the Limitation of Legal Proceedings against the Government Act, 1972.

2. Limitation of time in connection with the institution of legal proceedings against the Government of Swaziland

- (1) Subject to [section 3](#) no legal proceedings shall be instituted against the Government in respect of any debt—
 - (a) unless a written demand, claiming payment of the alleged debt and setting out the particulars of such debt and cause of action from which it arose, has been served on the Attorney-General by delivery or by registered post:

Provided that in the case of a debt arising from a delict such demand shall be served within ninety days from the day on which the debt became due;
 - (b) before the expiry of ninety days from the day on which such demand was served on the Attorney-General unless the Government has in writing denied liability for such debt before the expiry of such period;
 - (c) after the lapse of a period of twenty-four months as from the day on which the debt became due.
- (2) For the purpose of subsection (1)—
 - (a) legal proceedings shall be deemed to be instituted by service on the Attorney-General of any process of a court (including a notice of an application to court, a claim in reconvention, a third party notice referred to in any rules of court and any other document by which legal proceedings are commenced) in which the claimant of the debt claims payment thereof;
 - (b) a debt shall, if the Government prevents the claimant thereof from coming to know of its existence, not be regarded as due before the day on which such claimant becomes aware of its existence;
 - (c) a debt nor arising from contract shall not be regarded as due before the first day on which the claimant thereof has knowledge that the debt is due by the Government or the first day on which he could have acquired such knowledge by the exercise of reasonable care, whichever is the earlier day;
 - (d) a period prescribed in such subsection shall, in the case of a debt of which the due date is postponed by agreement between the Government and the claimant, be calculated afresh as from the day on which the debt again becomes due.

3. Non-applicability

- (1) Section 2 shall not apply in respect of—
 - (a) a debt for which the Government has unequivocally in writing acknowledged liability to the person instituting legal proceedings in respect of such debt;
 - (b) a counter claim in any legal proceedings instituted by the Government;
 - (c) a claim under the Motor Vehicle Insurance Act, No. 19 of 1946;
 - (d) a claim in respect of which any of the provisions of the Workmen's Compensation Act, No. 4 of 1963 apply.
- (2) Section 2(1)(a) shall not—
 - (a) affect the issue of a rule nisi against the Government during such period of ninety days.
 - (b) apply to any urgent application made to court during the period referred to in such period of ninety days.

4. Granting of special leave

- (1) The High Court may, on application by a person debarred under section 2(1)(a) from instituting proceedings against the Government, grant special leave to him to institute such proceedings if it is satisfied that—
 - (a) he has a reasonable prospect of succeeding in such proceedings;
 - (b) the Government will in no way be prejudiced by reason of the failure to receive the demand within the stipulated period; and
 - (c) having regard to any special circumstances he could not reasonably have expected to have served the demand within such period:

Provided that the Court in granting such leave may impose such conditions as it deems fit (including the payment of any costs) and notwithstanding section 2(1)(c) stipulate the date by which such proceedings shall be instituted.
- (2) The High Court may, on application by the Government, and if it is satisfied that Government has a reasonable prospect of succeeding in such proceedings, on good cause shown, grant special leave to extend the period of ninety days referred to in section 2(1)(b):

Provided that the Court in granting such application, may impose such conditions as it deems fit (including the payment of any costs), and at the same time shall extend the period of twenty-four months referred to in section 2(1)(c) to such extent as it may deem fit.

5. Provisions of Act to be raised in Court

- (1) A court shall not of its own motion take notice of a failure to comply with section 2 or with any conditions imposed by the High Court under section 4(1).
- (2) In the event of a person who has instituted legal proceedings against the Government having failed to comply with section 2 or any conditions imposed by the High Court under section 4(1), the court in which the legal proceedings have been instituted may on application made by the Government

before or at the time of lodging its plea or any other documentary reply to the claim against it, dismiss such proceedings:

Provided that such court may allow the Government to make such application at any other stage in such proceedings if it is satisfied that—

- (a) the Government could not have reasonably been expected to have invoked such section before or at the time of the filing of its plea or other documentary reply; and
- (b) no prejudice will be suffered by the person who has instituted such proceedings which could not be cured by a suitable order of costs against the Government.

6. Transitional proceedings

This Act shall not apply to legal proceedings in respect of a debt which arose before the commencement of this Act.

7. Repeal

Any law which is inconsistent with this Act is hereby repealed to the extent of such inconsistency.