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Land Speculation Control Act, 1972

Act 8 of 1972

Legislation as at 1 December 1998

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Land Speculation Control Act, 1972

Act 8 of 1972

Assented to on 8 February 1972

Commenced on 1 December 1972

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

An Act to provide for the control of speculative land transactions involving persons who are not citizens of Swaziland, and matters incidental thereto.

Part I – Preliminary

1. Short title and commencement

This Act may be cited as the Land Speculation Control Act, 1972, and shall come into effect on a date to be appointed by the Minister by notice published in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“**a Board**” means the Land Control Board or the Land Control Appeals Board;

“**appellant**” means an applicant who appeals to the Land Control Appeals Board in accordance with [section 13](#);

“**applicant**” means a person who applies for consent in respect of a controlled transaction in accordance with [section 10](#);

“**Attorney-General**” includes a law officer deputed by him to carry out the functions of the Attorney-General under this Act;

“**condition of development**” means a condition as to time and manner of development which is specified by a Board in accordance with [section 12\(2\)](#);

“**controlled transaction**” means—

- (a) the sale, transfer, lease, mortgage, exchange or other disposal of land to a person who is not—
 - (i) a citizen of Swaziland;
 - (ii) a private company or co-operative society all of whose members are citizens of Swaziland;
 - (iii) a person listed in the Schedule to this Act;
- (b) the issue, sale, transfer, mortgage or any other disposal of or dealing with any share in a private company or co-operative society which for the time being owns land in Swaziland, to or with a person who is not a Swaziland citizen,

but does not include—

- (a) the transmission of land or shares by virtue of the will or intestacy of a deceased person;
- (b) a donation by a parent to his descendants;
- (c) a sale in execution of a judgment of any court;

- (d) a sale by a trustee of an insolvent estate or the liquidator of a company or co-operative society in liquidation;

“**co-operative society**” means a society registered as a co-operative society under the Co-operative Societies Act, [No. 28 of 1964](#);

“**development**” means, in relation to land, the improvement of land for agricultural, industrial, commercial or residential purposes;

“**land**” includes any right, title or interest in immovable property, but shall not include—

- (a) any land, including minerals and mineral oils, which is vested in the Ngwenyama in trust for the Swazi Nation;
- (b) the rental or lease of a room or cottage by an hotel, inn or boarding house;
- (c) the rental or lease of residential or business premises to a resident of Swaziland or a company which is registered in Swaziland for a period not exceeding three years or a renewal of the period of such rental or lease for a period not exceeding three years;

“**Land Control Appeals Board**” means the Land Control Appeals Board established in terms of [section 3](#);

“**Land Control Board**” means the Land Control Board established in terms of [section 3](#);

“**Minister**” means the Minister for Agriculture;

“**private company**” means a private company within the meaning of the Companies Act, [No. 7 of 1912](#);

“**Registrar**” means the Registrar of Deeds or any person charged by law with the registration of dealings in land or, in relation to shares, the person keeping the register of the shares;

“**resident of Swaziland**” means the holder of a residence permit issued under the Immigration Act, [No. 32 of 1964](#);

“**share**” means a share within the meaning of the Companies Act, [No. 7 of 1912](#) or the Co-operative Societies Act, [No. 28 of 1964](#).

Part II – Boards

3. Establishment of Boards

There is established—

- (a) a Land Control Board; and
- (b) a Land Control Appeals Board.

4. Members of Boards

- (1) The Land Control Board shall consist of six persons nominated by the Minister.
- (2) The Land control Appeals Board shall consist of the Chief Immigration Officer and five other persons nominated by the Minister.
- (3) The Attorney-General shall serve as adviser to the Land Control Board and the Land Control Appeals Board.
- (4) The members of a Board other than the Chief Immigration Officer shall hold office for such period and if they are not public officers shall be paid such remuneration and allowances as the Minister may, after consultation with the Minister for Finance, fix.
- (5) The Minister shall designate one member of a Board to be chairman.

5. Procedure of Boards

- (1) If the chairman of a Board is absent from a meeting of the Board, the members present at the meeting shall elect one of their number to be chairman at that meeting.
- (2) A quorum shall consist of four members.
- (3) The decision of the majority of the members of a Board present at a meeting shall constitute the decision of the Board.
- (4) The chairman of a Board shall have a casting vote as well as a deliberative vote.
- (5) The Minister shall appoint a public officer as secretary to a Board.
- (6) Subject to any regulations which may be made, a Board may regulate its own procedure.

6. Power to order attendance

- (1) A Board may—
 - (a) require an applicant or an appellant or a person interested in or affected by the application or appeal to attend before it;
 - (b) require an applicant or appellant to adduce evidence on oath;
 - (c) require any person to produce any document or other evidence relating to the land or shares in issue.
- (2) A Board may depute one or more of its members or appoint another person to visit and report on any land to which the application or appeal relates.
- (3) The chairman of a Board may administer an oath to a person appearing before it.

7. Power to inspect land

A member of a Board or a person authorized in writing by a Board may, at any reasonable time after giving at least forty-eight hours' notice to the owner or occupier, and on production of his authority to any person reasonably requiring it, enter upon and inspect any land for a purpose relating to proceedings before a Board.

Part III – Controlled transactions

8. Requirement of consent

- (1) A controlled transaction shall be void unless the Land Control Board has granted its consent in respect of that transaction in accordance with this Act.
- (2) An agreement relating to a controlled transaction shall be void—
 - (a) at the expiry of three months after the conclusion of the agreement, if an application for the Land Control Board's consent has not been made within that time; and
 - (b) if an application for the Land Control Board's consent has been refused—
 - (i) at the end of thirty days from the date of such refusal; or
 - (ii) where a party has appealed under [section 13](#) against such refusal, on the dismissal of his appeal.

9. Recovery of consideration

If any money or other valuable consideration has been paid in respect of or in relation to an agreement that is void by virtue of [section 8](#), that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to [section 17](#).

Part IV – Granting of consent

10. Application for consent

An application for consent in respect of a controlled transaction shall be made to the Land Control Board, and the Board shall, within sixty days of receipt of such application, either give or refuse its consent in respect of the transaction, and be subject to the right of appeal conferred by [section 13](#), but no appeal shall lie from the decision of the Land Control Board to any court.

11. Decision by Land Control Board

In deciding whether to grant or refuse consent to any application made under [section 10](#), the Land Control Board shall—

- (a) subject to [section 12](#), grant such consent if it is satisfied that such transaction is, or is likely to be, sufficiently beneficial to Swaziland to warrant such consent:

Provided that such Board shall be obliged to grant its consent to any such application on production of a certificate under the hand of the Minister that he considers it to be, or likely to be, sufficiently beneficial to Swaziland in which case it shall impose such conditions to its consent as the Minister may have stated in such certificate; or

- (b) refuse such consent if, having regard to the Long Title to the Act, it is satisfied that such controlled transaction is either wholly or partly speculative in character:

Provided that if it has a reasonable doubt as to whether or not such transaction is either wholly or partly of a speculative character, it may, without derogating from its rights under [section 12\(2\)](#), grant such application subject to the imposition of such special conditions which in its view will curb or prevent any speculation in the land in respect of which such application has been made.

[Amended K.O-I-C. 29/197]

12. Form of decision

- (1) A decision of a Board shall be given in writing and shall be signed by or on behalf of the chairman, and where consent is refused or an appeal is dismissed the reasons for the refusal or dismissal shall be stated.
- (2) A decision of a Board granting consent shall specify the use or development in respect of which such consent is granted, as well as such conditions of development as the Board may think fit.
- (3) A copy of a decision by the Board shall be given to or served on the applicant and, in the case of an appeal, to the Land Control Board.

Part V – Appeal

13. Appeal to Land Control Appeals Board

- (1) Any person whose application for consent has been refused by the Land Control Board may within thirty days of the copy of the Board's decision being given or served under [section 12\(3\)](#), appeal to the Land Control Appeals Board.

- (2) An appeal shall be in writing and shall state separately each of the grounds of the appeal.
- (3) The Land Control Appeals Board shall hear and determine an appeal made to it under subsection (1) within thirty days of receipt of such appeal, and no appeal shall lie therefrom to any court.
- (4) If the Land Control Appeals Board decides that consent should be granted, the provisions of [sections 12\(2\) and \(3\)](#) shall with the necessary modifications apply to such decision, and the Land Control Board shall within fourteen days of receipt thereof grant such consent in accordance with such decision.

Part VI – Miscellaneous

14. Registration of land owners who are non-citizens

- (1) Within ninety days of the entry into force of this Act, or within thirty days of acquiring ownership of land in Swaziland, whichever occurs later, any person who is not—
 - (a) a citizen of Swaziland; or
 - (b) a private company or co-operative society all of whose members are citizens of Swaziland, and who for the time being is the owner or who acquires ownership of land in Swaziland shall notify the Land Control Board of the fact of his ownership of such land.
- (2) Upon receiving a notification under paragraph (1) the Board shall enroll the person in registers to be kept for this purpose by the Board and the Registrar of Deeds.
- (3) The Registrar of Deeds shall notify the Board in each case when a person enrolled in the registers has ceased to be the owner of land in Swaziland, and the Board shall record the amendment in the registers.

15. Registration of documents

- (1) The Registrar shall refuse to register a deed or instrument effecting a controlled transaction unless he is satisfied that any consent required by this Act to be obtained in respect of the transaction has been given, or that no consent is required.
- (2) If the Registrar contravenes subsection (1) in relation to a share, he shall be guilty of an offence and liable on conviction to a fine of three hundred emalangeni or in default of payment thereof to imprisonment for six months.

16. False statements

Any person who knowingly makes any false statement in an application or appeal under this Act, or who knowingly gives any false information to any person in connection with the determination of an application or appeal under this Act, shall be guilty of an offence and liable on conviction to a fine of five hundred emalangeni or in default of payment thereof to imprisonment for eighteen months.

17. Act in furtherance of void transaction

If a controlled transaction, or an agreement relating to a controlled transaction, is avoided by [section 8](#), and any person—

- (a) pays or receives any money; or
- (b) enters into or remains in occupation of any land;

in such circumstances as to give rise to a reasonable presumption that the person pays or receives the money or enters into or remains in occupation in furtherance of the avoided transaction or agreement or of the intentions of the parties to the avoided transaction or agreement, such person shall unless

such presumption be rebutted be guilty of an offence and liable on conviction to a fine of five hundred emalangeni or in default of payment thereof to imprisonment for eighteen months.

18. Refusal to give or produce evidence

Any person who, without reasonable excuse, refuses or neglects to attend before a Board or to produce within the time allowed, any document or evidence having been required to do so under [section 6](#), shall be guilty of an offence and liable on conviction to a fine of three hundred emalangeni or in default of payment thereof to imprisonment for six months.

19. Penalties

- (1) Any person to whom consent has been granted by a Board and who fails to comply with any condition of such consent shall be liable to a penalty of one thousand emalangeni per month, payable monthly in arrears, and such penalty shall continue to be paid until such condition has been fulfilled to the satisfaction of the Board.
- (2) Any person who fails to notify the Land Control Board under [section 14](#) shall be liable to a penalty of one hundred emalangeni per month until such notification has been sent to the Board.
- (3) If a penalty remains unpaid for more than ninety days, it shall be recoverable at the instance of the Land Control Board as a debt to the Government in the same manner as if it were income tax recoverable by the Collector of Income Tax, and the provisions of section 60 of the Income Tax (Consolidation) Proclamation (Cap. 105) shall apply, with the necessary modifications.
- (4) The Land Control Board may for good cause remit any penalty payable under subsections (1) or (2).
- (5) Upon compliance with all conditions of such consent, a person to whom consent has been granted shall be entitled to a certificate signed by the chairman of the Land Control Board setting out the date of such compliance, and as from such date that person shall be exempt from payment of further penalties in respect of such conditions.

20. Exemptions

The Minister may, by notice published in the *Gazette*, exempt—

- (a) any land or share, or any class of land or share; or
- (b) any controlled transaction, or any class of controlled transaction; or
- (c) any person in respect of controlled transactions or a class of controlled transaction;

from all or any of the provisions of this Act, on such conditions as he may deem fit to impose.

21. Regulations

The Minister may make regulations, not inconsistent with this Act—

- (a) as to the forms to be used and the fees to be paid for things to be done under this Act;
- (b) as to the procedure for the making of applications and appeals under this Act, and the particulars and material to be furnished to a Board;
- (c) as to the allowances to be paid to members or representatives of Boards (other than public officers);
- (d) generally, as to all matters for which he deems it necessary or expedient to make regulations in order to carry into effect the purposes hereof.

Schedule

1. The Swaziland Development and Savings Bank.
2. A building society registered under the Building Societies Act, [No. 1 of 1962](#).
3. Barclays Bank Ltd. or any finance or development corporation under its control.
4. Standard Bank Ltd. or any finance or development corporation under its control.
5. The Swaziland Railway.
6. The Swaziland Electricity Board.
7. Any Municipality, Town Council or Management Board established under the Urban Government Act, [No. 8 of 1969](#).
8. The University of Botswana, Lesotho and Swaziland.
9. The Swaziland National Industrial Development Corporation.
10. The Small Enterprises Development Company.