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PUBLISHED BY AUTHORITY

THE FINANCE AND AUDIT (AMENDMENT) BILL, 1996

(Bill No. 4 of 1996)

(To be presented by the Minister for Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend the Finance and Audit Act, 1967 so as provide that in authorising total advances the Minister shall do so after obtaining Cabinet's approval.

S. H. ZWANE
Attorney-General

A BILL entitled

An Act to amend the Finance and Audit Act, 1967

ENACTED by the King and the Parliament of Swaziland

Short title.

1. This Act may be cited as the Finance and Audit (Amendment) Act, 1996 and shall be read as one with the Finance and Audit Act, 1967 (hereafter referred to in this Act as the "principal Act.")

Amendment of Section 7.

2. Section 7 of the principal Act is amended by replacing sub-section (2) with the following new sub-section -

- "(2) The total advances under sub-section (1) (c) and (d) shall not at anytime exceed such amount as may be authorised from time to time by the Minister with Cabinet's approval after repayments have been deducted."

THE PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGN BILL, 1996

(Bill No. 5 of 1996)

(To be presented by the Minister for Justice)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to protect inventions, utility models and industrial designs and to provide for matters incidental thereto.

S. H. ZWANE
Attorney-General

A BILL

entitled

An Act to protect inventions, utility models and industrial designs.

ENACTED by the King and the Parliament of Swaziland.

Short title and commencement.

1. This Act may be cited as the Patents, Utility Models and Industrial Designs Act, 1996 and shall come into force on a date to be appointed by the Minister by Notice in the Gazette.

Interpretation.

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

“ARIPO”; means the African Regional Industrial Property Organisation,

“ARIPO Protocol”; means the Protocol on Patents and Industrial Designs within the framework of ARIPO,

“Court” means the High Court of Swaziland established under the High Court Act, 1954;

“Minister” means the Minister responsible for Patents, Utility Models and Industrial Designs;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property of March 20, 1883 last revised.

“Priority date” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“Registers” means the Registers referred to in section 28;

“Registrar of Patents” means the Registrar of Patents appointed under section 27;

“Regulations” means the Regulations referred to in section 34.

PART 1, PATENTS

Definition of Patents and of Invention and Matter Excluded from Patents Protection

3. For purposes of this Act -

a “Patent” means the title granted to protect an invention;

“invention” means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology and may be or may relate to a product or a process; but the following, even if they are inventions, shall be excluded from Patent protection -

- (a) discoveries, scientific theories and mathematical methods;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (c) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised on the human or animal body; but this provision shall not apply to products for use in any of those methods.

Patentable Inventions.

4. (1) Subject to sub-section (5), an invention is patentable if it is new, involves an inventive step and is industrially applicable.

(2) (a) invention is new if it is not anticipated by prior art.

(b) Prior art consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use of or in any other way, prior to the filing or, where appropriate, the priority date, of application claiming the invention.

(c) For the purposes of paragraph (b) disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title.

(3) An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention it would not have been obvious to a person having ordinary skill in the art.

(4) (a) An invention shall be considered industrially applicable if it can be made or used in any kind of industry.

- (b) "Industry" shall be understood in its broadest sense and it shall cover, in particular, handicraft, agriculture, fishery and services.

(5) Inventions that are contrary to public order or morality shall not be patentable.

Right to Patent, Naming of Inventor.

5. (1) The right to a patent shall belong to the inventor.

(2) If two or more persons have jointly made an invention, the right to the Patent shall belong to them jointly.

(3) If and to the extent to which two or more persons have made the same invention independent of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date and leads to the grant of a Patent shall have the right to the Patent.

(4) The right to a Patent may be assigned, or may be transferred by succession.

(5) Where an invention is made in execution of an employment contract, the right to the Patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

- (a) The inventor shall be named as such in the patent, unless in a special written declaration signed by him and addressed to the Registrar of Patents he indicated that he wishes not to be named.

- (b) Any promise or undertaking by the inventor made to any person to the effect that he will make such a declaration shall be without legal effect.

Application.

6. (1) (a) The application for a patent shall be filed with Registrar of Patents and shall contain a request, a description, one or more claims, and one or more drawings, where required, and an abstract.

- (b) An application under this section shall be subject to the payment of the prescribed application fee.

- (2) (a) The request shall contain a petition to the effect that a Patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention.

- (b) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the Patent.

(3) The description shall disclose the invention in a matter sufficiently clear and complete for the invention to be evaluated and to be carried out by a person having ordinary skill in the art and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention.

- (4) (a) The claim or claims shall determine the scope of the protection or define the matter for which protection is sought, and the description and drawings may be used to interpret the claims.

(b) Claims shall be clear and concise and shall be fully supported by the description.

- (5) Drawings shall be required when they are necessary for the understanding of the invention.

(6) The abstract shall merely serve the purpose of technical information, in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection.

- (7) The applicant may withdraw the application at anytime during its pendency.

Unity of Invention, Amendment and Division of Application.

7. (1) The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

(2) The applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment shall not go beyond the disclosure in the initial application.

- (3) (a) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications ("divisional application") provided that each divisional application shall not go beyond the disclosure in the initial application.

(b) Each divisional application shall be entitled to the filing date and where applicable, the priority date of the initial application

(4) The fact that a Patent has been granted on an application that did not comply with the requirement of unity of invention under subsection (1) shall not be a ground for the invalidation of the Patent.

Right of Priority.

8. (1) The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national, regional or international application filed by the applicant or his predecessor in title in or for any State Party to the said Convention.

(2) Where the application contains a declaration under subsection (1), the Registrar of Patents may require that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the office with which it was filed.

- (3) The effect of the said declaration shall be as provided in the Paris Convention.

(4) If the Registrar of Patents finds that the requirements under this section and the Regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

Information concerning Corresponding Foreign Application for Patents or other Titles of Protection.

9. (1) The applicant shall, at the request of the Registrar of Patents, furnish him with the date and number of any application for a patent or other title of protection filed by him abroad ("foreign application") relating to the same or essentially the same invention as that claimed in the application filed with the Registrar of Patents.

(2) (a) The applicant shall, at the request of the Registrar of Patents, furnish him with the following documents relating to one of the foreign applications referred to in subsection (1)

(i) a copy of any communication received by the applicant concerning the results of the search or examination carried out in respect of the foreign application;

(ii) a copy of the patent or other title of protection granted or refusing the grant requested in the foreign application;

(iii) a copy of the patent or other title of protection granted or refusing the grant requested in the foreign application.

(b) The applicant shall at the request of the Registrar of Patent, furnish him with a copy of any final decision invalidating the patent or other title of protection granted on the basis of the foreign application referred to in paragraph (a).

Filing Date, Examination.

10. (1) (a) The Registrar of Patents shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains -

(i) an express indication that the granting of a patent is sought,

(ii) indications allowing to establish the identity of the applicant,

(iii) a part which, on the face of it, appears to be a description of an invention.

(b) If the Registrar of Patents finds that the application did not, at the time of receipt, fulfil the requirements referred to in paragraph (a), he shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

(2) Where the application refers to drawings which in fact are not included in the application, the Registrar of Patents shall invite the applicant to furnish the missing drawings and if the applicant complies with the invitation, the Registrar of Patents shall accord as the filing date the date of receipt of the missing drawings, otherwise the Registrar of Patents shall accord as the filing date the date of receipt of the application and shall treat any reference to the drawings as non-existent.

(3) After according a filing date, the Registrar of Patents shall examine whether the application complies with the requirements of section 6 (1) and (2) and the Regulations pertaining thereto and those requirements of this Act and the Regulations which are designated as formal requirements for the purpose of this Act.

(4) Where the Registrar of Patents is of the opinion that the application complies with the requirements indicated in subsection (3), he shall cause the application to be examined as to whether the requirements of sections 3, 4 and 6 (3), (4) and (5), 7 and 9 and the Regulations pertaining thereto are fulfilled.

(5) The Regulations may prescribe that, in respect of some categories of inventions, the examination shall not cover the requirements of novelty and inventive step under section 4 (2) and (3).

GRANT OF PATENTS

11. (1) Where the Registrar of Patents finds that, subject to section 10 (5), the conditions referred to in section 10 (3) and (4) are fulfilled, he shall grant the patent, otherwise he shall refuse the application and notify the applicant of that decision.

(2) When he grants a patent, the Registrar of Patents shall -

- (a) publish a reference to the grant of the Patent,
- (b) issue to the applicant a certificate of the grant of the Patent and a copy of the Patent,
- (c) record the Patent,
- (d) make available copies of the Patent to the public, on payment of the prescribed fee.

(3) The Registrar of Patents shall, whenever possible, reach a final decision on the application not later than two years after the commencement of the examination referred to in section 8 (4).

(4) The Registrar of Patents shall, upon request of the owner of the Patent, make changes in the text or drawings conferred thereby, provided that the change would not result in disclosure contained in the initial application on the basis of which the patent was granted.

Rights Conferred by Patent, ARIPO Protocol Patents, Exploitation by Government or Person thereby Authorised.

12. (1) The exploitation of the patented invention in Swaziland by persons other than the owner of the patent shall require the latter's agreement.

(2) For the purposes of this Act, "exploitation" of a patented invention means any of the following acts -

- (a) when the patent has been granted in respect of a product -
 - (i) making, importing, offering for sale, selling and using the product;

- (ii) stocking such products for the purposes of offering for sale, selling or using;
- (b) when the patent has been granted in respect of a process -
 - (i) using the process;
 - (ii) doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process.
- (3) The owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to subsection (4) and (6) and section 14, to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.
- (4) The rights under the patent shall not extend to -
 - (a) acts in respect of articles which have been put to the market in Swaziland by the owner of the patent or with his consent,
 - (b) the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of swaziland, or
 - (c) acts done for experimental purposes relating to a patented invention;
 - (d) acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of application on which the patent is granted and in Swaziland, was using the invention or making effective and serious preparations for such use, to the extent such acts do not differ in nature or purpose from the actual or envisaged prior use and provided that the right of prior user referred to herein may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business in which the use or preparations for use have been made.
- (5) A patent in respect of which Swaziland is a designated State, granted by ARIPO by virtue of the ARIPO Protocol, shall have the same effect in Swaziland as a patent under this Act unless the Registrar of Patents has communicated to ARIPO, in respect of the application therefor, a decision in accordance with the provisions of the Protocol, that if a Patent is granted by ARIPO that Patent shall have no effect in Swaziland.
- (6) (a) Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires, the Minister may decide that, even without the agreement of the owner of the patent, a government agency or a third person designated by the Minister may exploit the invention, subject to the payment of an equitable remuneration to the said owner therefor.
- (b) The decision of the Minister may be appealable before the court within 3 months from the date it was made.

Duration Annual Fees.

13. (1) Subject to subsection (2), a patent shall expire 20 years after the filing date of the application for the patent.

- (2) (a) In order to maintain the patent or patent application, an annual fee shall be paid in advance to the Registrar of Patents for each year starting one year after the filing date of the application for grant of the Patent.
- (b) A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.
- (c) If an annual fee is not paid in accordance with this subsection, the patent application shall be deemed to have been withdrawn otherwise the patent shall lapse.
- (3) The grant of the non-voluntary licence shall not exclude the -
 - (a) conclusion of licence contracts by the owner of the patent or the grant of other non-voluntary licences; or
 - (b) exploitation of the patented invention under section 12 (6).

Invalidation.

14. (1) Any interested person may request the court to invalidate a patent if -

- (a) the person requesting the invalidation proves that any of the requirements of sections 3, 4 and 6 (3), (4) and (5) and the Regulations pertaining thereto are not fulfilled; or
- (b) if the owner of the patent is not the inventor or his successor in title.

(2) Any invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent.

(3) The final decision of the court shall be notified to the Registrar of Patents who shall record it and publish a reference thereto as soon as possible.

PART 11: UTILITY MODEL CERTIFICATES

Application of Provision Relating to Patents.

15. (1) Subject to section 16, the provisions of Part 1 shall apply, **mutatis mutandis**, to utility model certificates or applications therefor.

(2) Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in section 5 (3), that section shall apply as if the word "patent" were replaced by the word "patent or utility model certificate".

Special Provisions Relating to Utility Model Certificates.

16. (1) (a) An invention qualifies for a utility model certificate if it is new and industrially applicable.
- (b) Section 4 (1) and (3) shall not apply in the case of inventions for which utility model certificates are requested.
- (2) Section 10 (4) shall not apply in the case of application for utility model certificates.
- (3) (a) A utility model certificate shall expire, without any possibility of renewal, at the end of the seventh year after the date of the filing of the application.
- (b) With the exception of subsection (3) thereof, section 13 shall not apply in the case of utility model certificate.
- (4) (a) In proceedings under section 14, the Court shall invalidate the utility model certificate on the following grounds -
- (i) that the claimed invention did not qualify for a utility model certificate, having regard to subsection (1) (a) and to section 4 (2), (4) and (5);
 - (ii) that the description and the claims do not comply with the requirements prescribed by section 6 (3) and (4) and the Regulation pertaining thereto.
 - (iii) that any drawing which is necessary for the understanding of the invention has not been furnished;
 - (iv) that the owner of the utility model certificate is not the inventor or his successor in title.
- (b) Section 14 (2) shall not apply in the case of utility model certificates.

Conversion of Patent Applications or Applications for Utility Model Certificates.

17. (1) (a) At any time before the grant or refusal of a patent, an applicant for a patent may, upon payment of the prescribed fee, convert his application for a utility model certificate, which shall be accorded the filing date of the initial application.
- (b) At the time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee, convert his application into patent application, which shall be accorded the filing date of the initial application.
- (2) An application may not be converted under subsection (1) more than once.

PART 111, INDUSTRIAL DESIGNS

Definition of Industrial Design.

18. (1) For the purpose of this Act, any composition of lines or colours or any three-dimensional form, whether or not associated with lines or colours, is deemed to be an industrial design, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.

(2) The protection under this Act does not extend to anything in an industrial design which serves solely to obtain a technical result.

Registrable Industrial Designs.

19. (1) An industrial design is registrable if it is new.

(2) (a) An industrial design shall be new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

(b) Section 4 (2) (c) shall apply **mutatis mutandis**.

(3) Industrial designs that are contrary to public order or morality shall not be registrable.

Right to Registration of Industrial Design, Naming of Creator.

20. Section 5 shall apply **mutatis mutandis** with regard to the right to registration of an industrial design and the naming of the inventor.

Application for Registration of Industrial Design.

21. (1) (a) The application for registration of an industrial design shall be filed with the Registrar of Patents and shall contain a request, drawing, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used.

(b) The application may be accompanied by a specimen of the article embodying by the industrial design and shall be accompanied by the payment of the prescribed application fee.

(2) Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to the registration of the industrial design.

(3) Section 8 shall apply **mutatis mutandis**.

(4) The applicant may withdraw the application at any time during its pendency.

Examination, Registration of Industrial Design.

22. (1) (a) The Registrar of Patents shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains the name of the applicant and drawings, photographs or other adequate graphic representations of the article embodying the industrial design.

(b) Section 10 (1) (b) shall apply *mutatis mutandis*.

(2) (a) After according a filing date, the Registrar of Patents shall examine whether the application complies with the requirements of section 21 (1) and (2) and the Regulations pertaining thereto and whether the application fee has been paid.

(b) The Registrar of Patents shall examine whether the industrial design complies with the requirements of section 18 and 19 (3) and the Regulations pertaining thereto.

(3) Where the Registrar of Patents finds that the conditions referred to in subsection (2) are fulfilled, he shall register the industrial design, publish a reference to the registration and issue to the applicant a certificate of registration of the industrial design, otherwise, he shall refuse the application.

Rights conferred by Registration, Duration, Renewal, ARIPO Protocol, Industrial Designs.

23. (1) The exploitation of a registered industrial design in Swaziland by persons other than the registered owner shall require the agreement of the latter.

(2) For the purposes of this Act, "exploitation" of a registered industrial design means the making, selling or importation of articles incorporating the industrial design.

(3) Section 12 (4) (a) shall apply *mutatis mutandis*.

(4) In addition to any other rights, remedies or action available to him, the registered owner of an industrial design may institute court proceedings against any person who infringes the industrial design by performing, without his agreement, any of the acts referred to in subsection (2) or who performs acts which make it likely that infringement will occur.

(5) (a) The registration of an industrial design shall be for a period of five years from the filing date of the application for registration.

(b) The registration may be renewed for two further consecutive periods of five years through the payment of the prescribed fee.

(c) A period of grace of six months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge.

(6) An industrial design in respect of which Swaziland is a designated State, registered by ARIPO by virtue of the ARIPO Protocol, shall have the same effect in Swaziland as an industrial design registered under this Act unless the Registrar of Patents has communicated to ARIPO, in respect of the application therefor, a decision, in accordance with the provisions of the Protocol, that if a registration is made by ARIPO that registration shall have no effect in Swaziland.

Invalidation.

24. (1) Any interested person may request the Court to invalidate the registration of an industrial design.

(2) The court shall invalidate the registration if the person requesting the invalidation proves that any of the requirements of section 18 and 19 are not fulfilled or if the registered owner of the industrial design is not the creator or his successor in title.

(3) Section 14 (3) and (4) shall apply **mutatis mutandis**.

PART IV, GENERAL PROVISIONS

Changes in ownership, License Contracts.

25. (1) (a) Any change in the ownership of a patent, a utility model certificate, or the registration of an industrial design, or in the ownership of an application therefor, shall be in writing and shall, at the request of any interested party to the Registrar of Patents, be recorded except in the case of an application, published by the Registrar of Patents,

(b) A change referred to in paragraph (a) shall have no effect against third parties until the recording is effected.

(2) Any Licence contract concerning a patent, a utility model certificate, or a registered industrial design, or an application therefor, shall, on pain of invalidity, be submitted to the Registrar of Patents who shall keep its contents confidential but shall record it and publish a reference thereto.

Agents.

26. Where an applicant's ordinary residence or principal place of business is outside Swaziland, he shall be represented by a legal practitioner resident and practising in Swaziland.

Appointment and Functions of Registrar of Patents.

27. (1) The Minister shall, subject to the laws governing the public service, appoint a Registrar of Patents, Utility Models and Industrial Designs who shall be entrusted with all functions relating to the procedure for the grant of patents and utility model certificates and the registration of industrial designs and for the administration of granted patents and utility model certificates and registered industrial designs, as specified in this Act and the Regulations.

(2) The Registrar of patents shall have the authority to carry out studies, programs or exchanges of items or services regarding domestic and International Industrial Property Law.

(3) Decisions of the Registrar of Patents shall be signed by him or an official designated by him.

Registers, Gazette.

28. (1) (a) The Registrar of Patents shall maintain separate Registers for patents, utility model certificates and industrial designs and all the recordings provided for in the Act shall be effected in these Registers.

(b) The Registers may be consulted by any person, and any person may obtain extracts there from, under the conditions prescribed in the Regulations.

(2) The Registrar of Patents shall publish in the Gazette all the publications provided for in this Act.

Correction of Errors, Extension of Time.

29. (1) The Registrar of Patents may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registrar of Patents or in any recording effected pursuant to this Act or the Regulations.

(2) (a) If the Registrar of Patents is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act and the Regulations upon notice to the parties concerned upon such terms as he may direct.

(b) The extension may be granted though the time for doing the act or taking the proceeding has expired.

Exercise of Discretionary Powers.

30. The Registrar of Patents shall give any party to a proceeding before him an opportunity of being heard before exercising adversely to that party any discretionary powers vested in the Registrar of Patents by this Act or Regulations.

Appeals.

31. Any decision taken by the Registrar of Patents under this Act, in particular the grant of a patent or of a utility model certificate or the registration of an industrial design, or the refusal of an application for such a grant or registration, may be the subject of an appeal by any interested party before the High Court and such appeal shall be filed within 3 months of the date of the decision.

Infringement, Unlawful Acts, Offences.

32. (1) Subject to sections 12 (4) and (6), 14 and 24 (3), an infringement shall consist of the performance of any act referred to in section 12 and 23 in Swaziland by a person other than the owner of the title of protection and without the agreement of the latter.

(2) On the request of the owner of the title of protection, or of a licensee if he has requested the owner to institute court proceedings of a specific relief and the owner has refused or failed to do so, the court may grant an injunction to prevent infringement, or an imminent infringement, award damages and grant any other remedy provided for in the Common Law.

(3) Any person who performs an act which constitutes an infringement as defined in subsection (1) hereof shall upon conviction be guilty of an offence punishable by a fine not exceeding ten thousand Emalangeni (E10,000) or imprisonment for a term not exceeding five years (5) or by both.

(4) Any person who -

- (a) makes or causes to be made false entry in the Register, knowing the entry to be false, or
- (b) makes or causes to be made, or produces or tenders or causes to be produced of tendered in evidence, entry in the Register, knowing the writing to be false, shall be guilty of an offence.

(5) Any person who -

- (a) for the purpose of deceiving the Registrar of Patents or any other officer of his office in the execution of the provisions of this Act, or
 - (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or the repealed legislation or any matter thereunder;
- makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence.

(6) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or commission of matter thereunder and who, on becoming aware that such statement or representation was false, fails to advise the Registrar of Patents forthwith of such falsity, shall be guilty of an offence.

(7) Any person who, after having been sworn or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar of Patents or the court concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

(8) (a) Any officer of the Registrar of Patents who buys, sells, acquires or trafficks in any invention or patent or any right under a patents industrial design or utility model certificate shall be guilty of an offence.

(b) Every purchase, sale or acquisition and every assignment of any invention, patents industrial design or utility model certificate by or to any officer of the Registrar of Patents, shall be null and void.

(c) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution in law.

(9) Any person who falsely and without reasonable cause, the proof whereof lies on him, represents that -

(a) any article sold by him is a patented article, industrial design or utility model or;

(b) an application has been made for a patent industrial design or utility model in respect of any article sold by him; shall be guilty of an offence.

(10) Any person, other than a person appointed under section 27, who uses on his place of business or on any document issued by him or otherwise the words "Registrar of Patents" or any other words suggesting that his place of business is, or is officially connected with the Registrar of Patents, shall be guilty of an offence.

(11) Any person who is guilty of an offence under subsection 4, 5, 6, 7, 8, 9 and 10 shall be liable to a fine not exceeding five thousand Emalangeni (E5,000) or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Application of International Treaties.

33. The provisions of any international treaty in respect of industrial property to which Swaziland is a party shall apply to matters dealt with by this Act and, in case of conflict with provisions of this Act, shall prevail over the latter.

Regulations.

34. The Minister may issue Regulations prescribing details for the implementation of this Act and, in particular, providing for -

(a) the payment of fees in connection with applications for the grant of patents and utility model certificates;

(b) the registration of industrial designs; and

(c) matters related thereto.

Repeal, Savings, Transitional Provisions.

35. (1) The Patents, Designs and Trade marks Act, 1936, is hereby repealed.

(2) Notwithstanding the repeal of the Patents, Designs and Trade Marks Act, 1936, patents and industrial designs registered thereunder shall remain in force but shall, subject to subsection (3), be deemed to have been granted or registered under this Act.

(3) Patents and industrial designs registered under the Patents, Designs and Trade Marks Act, 1936, shall remain in force for the unexpired portion of the period of protection provided thereunder subject, respectively, to the payment of annual maintenance fees or renewal fees provided for in this Act.

(4) A person who in the date of entry into force of this Act -

(a) is the owner of a patent granted in the United Kingdom or has filed an application for the grant of a patent in the United Kingdom, or

(b) is the proprietor of an industrial design registered in the United Kingdom or has filed an application for registration of an industrial design in the United Kingdom,

may, within 12 months of the entry into force of this Act, file an application for the grant of a patent for the same invention or for the registration of the same industrial design under this Act and such application shall be accorded the filing date or priority date accorded to the grant or registration in the United Kingdom.

(5) Notwithstanding the repeal of the Patents, Designs and Trade Marks Act, 1936, applications for the registration of patents and industrial designs filed in Swaziland between 20th November, 1936, and the date of entry into force of this Act, shall be processed in accordance with the provisions of that Act and, upon being granted, shall be subject to the provisions of this Act.

(6) Within 18 months from the entry into force of this Act, the Minister may by Regulations make any further transitional or savings provisions which appear to him to be necessary or desirable.

THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 1996

(Bill No. 6 of 1996)

(To be presented by the Minister for Justice)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend the Prevention of Corruption Order, 1993 so as to -

- (a) provide for the qualifications of the Commissioner and Deputy Commissioner of the Commission;
- (b) require the Commissioner to furnish reasons for the termination of the appointment of an officer of the Commission;
- (c) empower the officers of the Commission to arrest without warrant, a person reasonably suspected of having committed an offence under this Act; and
- (d) any other matter incidental thereto.

S. H. ZWANE
Attorney-General

A BILL

entitled

An Act to amend the Prevention of Corruption Order, 1993 and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Prevention of Corruption (Amendment) Act, 1996 and shall be read as one with Prevention of Corruption Order, 1993 (hereafter referred to as "the principal Order").

Amendment for section 2.

2. Section 2 of the principal Order is amended by defining the following terms

"Minister" means the Minister responsible for Justice;

"Spouse" includes concubine, cohabitant, fiancée, or lover.

Amendment of section 3.

3. Section 3 of the principal Order is amended by deleting subsection (2).

Amendment of section 4.

4. Section 4 of the principal Order is amended -

(a) in subsection (1), by replacing the words "Prime Minister" with the word "Minister";

(b) by replacing subsection (2) with the following new subsection -

"(2) The King in consultation with the Minister, may appoint the Deputy Commissioner for a period of five (5) years and on such terms and conditions as the King may determine";

(c) in subsection (4), by replacing the words "Prime Minister" with the word "King";

(d) by replacing subsection (5) with the following new subsection -

"(5) In the performance of their functions and the carrying out of their duties, the Commissioner and Deputy Commissioner shall do so independently, professionally and judiciously;"

Amendment of section 5

5. Section 5 of the principal Order is replaced with the following new section -

"5. (1) A person shall not qualify for appointment as Commissioner unless he is a person of integrity and proven administrative competence and is qualified to be appointed as a judge of the High Court of Swaziland.

(2) A person shall not qualify for appointment as Deputy Commissioner unless he is a person of integrity and proven administrative competence and has qualifications in law, economics, accounting, police and criminal investigation or any other related profession relevant to the functions of the Commission."

Amendment of section 6.

6. Section 6 of the principal Order is replaced with the following new section -

"6. The King may, after consultation with the Minister, remove the Commissioner and the Deputy Commissioner from office for misbehaviour or inability to perform the functions of their office whether such inability arises from infirmity of body or mind or from any other cause."

Amendment of section 7.

7. Section 7 of the principal Order is amended -

(a) in subsection (1), by replacing the words "Prime Minister" with the word "King";

(b) in subsection (2), by replacing the words "Prime Minister, shall subject to section 5" with the words "King, may subject to section 4 and 5."

Amendment of section 8.

8. Section 8 of the principal Order is amended by replacing it with the following new section -

"8. (1) The Commissioner may appoint such investigating and other officers of the Commission to assist in the performance of his functions under this Act as may be necessary.

(2) Without prejudice to subsection (1), the Civil Service Board, the Judicial Service Commission, the Teaching Service Commission or their successors may, at the request of the Commissioner, cause to be seconded or transferred from the public service of such other Commission to the Commission, such officer as it may deem necessary for the efficient discharge of the functions of the Commission.

(3) Officers of the Commission appointed by the Commissioner, shall be employed on such terms and conditions as the King, in consultation with the Commissioner, may determine.

(4) The Commissioner may, subject to the relevant applicable law, terminate the appointment of an officer of the Commission if the Commissioner is satisfied that it is in the interest of the Commission to terminate such appointment and the Commissioner shall assign reasons for such termination:

Provided that if the officer was seconded, such officer shall be dealt with in terms of the laws applicable to officers in the Civil Service or the relevant Commission from where such officer was seconded."

Amendment of section 9.

9. Section 9 of the principal Order is amended by inserting the words "or Regulations" between the word "order" and "the" occurring in line 1.

Amendment of section 10.

10. Section 10 of the principal Order is amended -

(a) in subsection (1) (c), by putting a full stop after the word "practices" and deleting the words "and to submit a report of such investigation to the Prime Minister";

(b) deleting subsection (2) and numbering subsection (3) as subsection (4) as subsection (3).

Amendment of section 12.

11. Section 12 of the principal Order is amended -

(a) in subsection (1), by -

(i) deleting the words "apply to Court for an order" occurring in line 3;

(ii) adding the following new paragraph after paragraph (e) -

"(f) require any person who is being investigated to furnish the investigating officer, with a sworn affidavit containing any information referred to in paragraphs (a) and (b);"

(b) replacing the word "authorising" occurring in line 3 with the word "authorise";

(c) inserting the following new subsection immediately after subsection (3) -

"(4) The information referred to in subsection (1) (f) shall be admissible in evidence during the trial of that person and if he tenders himself as a witness, such information may be used in cross examination and for purposes of impeaching his credibility."

Amendment of principal Order.

12. The principal Order is amended immediately after section 12 by inserting the following new section -

"Power of arrest.

12bis. (1) An investigating officer of an officer authorised by the Commissioner may, without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence under this Act.

(2) If, during an investigation by the Commission of a suspected offence under this Act, another offence is disclosed, any such officer may, without warrant, arrest a person if he reasonably suspects that such person has committed that other offence.

(3) The officer may -

(a) use force as is reasonably in the circumstances in affecting the arrest under subsections (1) and (2);

(b) for the purpose of effecting such arrest, enter and search any premises or place, if he has reason to believe that there is in the premises or place a person who is to be so arrested.

(4) Premises or places shall not be entered under subsection (3), unless the officer has first stated that he is an officer of the Commission and the purpose for which he seeks entry and produces his identity card to any person therein, requesting its production.

(5) A person arrested under this section shall be brought before court within a reasonable time which time shall not exceed forty eight (48) hours."

Amendment of Section 19.

13. Section 19 of the principal Order is amended -

(a) in subsection (1), by replacing the words "Prime Minister" with the word "Minister" and by adding the following proviso -

"Provided that the report of the Commissioner shall not contain the facts and findings of any pending investigation that may have been carried out by the Commission during that year."

(b) in subsection (2), by replacing the words "Prime Minister" with the word "Minister";

Replacement of section 38.

14. The principal Order is amended by replacing section 38 with the following section -

"Consent of the Attorney-General required for prosecuting offence under Part III.

38. No prosecution for an offence under Part III of this Order shall be instituted by the Director of Prosecutions except with the prior consent and advice of the Attorney-General having been given."

Amendment of section 39.

15. Section 39 of the principal Order is amended by replacing the words "Prime Minister" with the word "Minister".

LEGAL NOTICE NO. 59 OF 1996

THE CONSTITUTION OF SWAZILAND, 1968
(Act 50 of 1968)

APPOINTMENT OF JUDGE PRESIDENT OF THE SWAZILAND COURT OF APPEAL
(Under Section 106)

In exercise of the powers conferred upon me by Section 106 of the Constitution of Swaziland, 1968, I, MSWATI III, KING OF SWAZILAND, hereby appoint:-

GERHARDUS PETRUS CHRISTIAAN KOTZE

to be Judge President of the Court of Appeal of Swaziland with effect from 25th March 1996.

THUS DONE UNDER MY HAND AT LOZITHEHLEZI THIS 2ND DAY OF
APRIL 1996.

MSWATI III
KING OF SWAZILAND