



SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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PUBLISHED BY AUTHORITY

PART B

S1

THE CENTRAL BANK OF SWAZILAND (AMENDMENT) ACT, 2004 (Act No. 1 of 2004)



I ASSENT

MSWATI III
King of Swaziland

31st October, 2003

AN ACT entitled

An Act to amend the Central Bank of Swaziland Order, 1974.

ENACTED by the King and the Parliament of Swaziland.

Short title and Commencement.

1. This Act shall be cited as the Central Bank of Swaziland (Amendment) Act, 2004 and shall be read as one with the Central Bank Order, 1974 (hereinafter referred to as "the Order"), and shall come into operation on a date as the Minister may, by notice in the Gazette, appoint.

Amendment of Section 2.

2. Section 2 of the Order is amended by replacing the definition "rand monetary area" with the following:

"Common monetary area" means the area covered by the Multilateral Monetary Agreement between the Governments of the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and Swaziland, as amended from time to time."

Amendment of Section 4

3. Section 4 of the Order is amended by replacing it with the following new section 4:

"4. The objects of the Bank shall be to -

- (a) formulate and implement monetary policy to the end of promoting monetary stability;
- (b) issue and redeem currency which is legal tender within Swaziland under Section 23;
- (c) issue securities in its own account;
- (d) formulate and implement appropriate intervention policies in the foreign exchange market;

- (e) hold and manage the official foreign reserves of Swaziland;
- (f) promote, regulate and supervise the efficient and secure operation of payment systems; and,
- (g) supervise banks, credit institutions and other financial institutions to the end of promoting a sound financial structure."

Amendment of Section 7

4. Section 7 of the Order is amended in paragraph (a) by inserting before the word "bad" the words "the cost of printing and minting new currency".

Amendment of Section 8

5. Section 8 of the Order is amended by -

- (a) replacing subsection (2) with the following new subsection (2):
 "(2) After the appropriate allocation has been made to the general reserve under subsection (1), the remainder of the net profits for the financial year shall be applied to the redemption on behalf of the Government of any securities issued and outstanding under section 6(5) or 35(2).";
- (b) adding the following new subsection 5:
 "(5) The general reserve established under subsection (1) may only be used to offset losses of the Bank after the application of any funds made available for this purpose under section 35(4)."

Amendment of Section 11

6. Section 11 of the Order is amended by replacing subsection (1) with the following new subsection (1):

- "(1) The Governor and the Deputy Governor shall be persons of recognized qualification and experience in financial matters and shall be appointed for a term not exceeding five years."

Amendment of Section 14

7. Section 14 of the Order is amended:

- (a) in paragraph (d) by deleting the word "or" at the end of the paragraph and insert "or" at the end of the paragraph (e).
- (b) in paragraph (e) by adding the word "or" at the end thereof.
- (c) by adding after paragraph (e) the following new paragraph (f):
 "(f) has incurred an unreimbursed loss attributable to a charged-off obligation at a financial institution licensed by the Bank."

Amendment of Section 20

8. Section 20 of the Order is amended:

(a) in subsection (3) by replacing "E2000" with "E5000".

(b) in subsection (4) by replacing "E100" with "E500".

Addition of new Section 20 bis

9. The Order is amended by inserting after Section 20 bis the following new section 20 bis:

"Indemnity from personal liability"

20. bis Members of the Board, the Governor, the Deputy Governor and any officer or employee of the Bank shall not be held liable for damages for the commission of any act under this Order, the Financial Institutions (Consolidation) Order, or any law for which the Bank is acting as agent for Government, if such action or inaction was done in good faith and within the scope of duty and without gross negligence."

Amendment of Section 22

10. Section 22 of the Order is amended in subsection (3) by replacing "E10 0000" with the words "not less than E100 000 but not more than E1 000 000" and by replacing the words "seven years" with the words "not less than seven years but not more than 14 years."

Replacement of Section 25

11. Section 25 of the Order is replaced with the following new section 25 -

"Power to recall"

25. The Bank may, for the purpose of withdrawing the same from circulation, call in any notes or coins which it has issued, on payment of the face value thereof in accordance with section 26 and any such note and coins shall, notwithstanding section 23, cease to be legal tender:

Provided that any holder of such notes or coins shall be entitled within a period of not less than five years or such period as may be prescribed by the Bank to claim payment from the Bank of the face value thereof."

Amendment of Section 27

12. Section 27 of the Order is amended by replacing "E500" with "E10 000".

Amendment of Section 29.

13. Section 29 of the Order is amended by renumbering subsection (2) as (3) and inserting the following as subsection (2)

"(2) Notwithstanding the provisions of any other law any person who counterfeits, forges, or, without the permission of the Bank, photocopies or otherwise reproduces any note or coin issued by the Bank or by a foreign central bank or other monetary authority commits an offence and shall be liable on conviction to a fine of not less than E100 000 but not more than E1 000,000 or to imprisonment for a term of not less than seven years, but not more than 14 years, or to both."

Amendment of Section 32.

14. Section 32 of the Order is amended -

- (a) in subsection 1 (b) by inserting after the word "deal" the words "outright or by way of repurchase agreement".
- (b) in subsection (1) (c) by inserting after the word "deal" the words "outright or by way of repurchase agreement".

Addition of new Section 32 bis.

15. This Order is amended by adding after section 32 the following new section 32 bis -

"Issuance of Notes and Coins

32 bis (1) Any issuance of notes and coins by the Bank shall be fully covered in value by the holdings for its own account of convertible foreign exchange in any of the forms set out in section 30 (c).

(2) The Board shall, from time to time prescribe those convertible currencies that may be held for this purpose."

Replacement of Section 33.

16. Section 33 of the Order is amended by replacing it with the following new section 33 -

"Exchange of Notes and Coins for Rand.

33. As from a date to be appointed by the Minister by notice in the Gazette, the Bank shall claim compensation for any foreign currency circulating in the country on a formula to be agreed to by the Bank and on demand exchange notes and coins against payment of rand at its head office or at such other places and in such manner as shall from time to time be prescribed by the Board."

Amendment of Section 35.

17. Section 35 of the Order is amended by replacing the proviso to 35 (4) with the following new proviso:

"Provided that the governor with the approval of the board may apply part of the remaining balance to be remitted to the profit and loss account of the Bank whenever the need arises it being understood that the general reserve established under section 8 shall first absorb the losses that have given rise to such need".

Amendment of Section 37

18. Section 37 of the Order is amended in subsection (2) (c) (ii) by:

- (a) replacing the word "four" with the word "five"; and
- (b) replacing the words "to forestall the insolvency of the borrower" with the words "to meet the liquidity requirements of the borrower."

Amendment of Section 41

19. Section 41 of the Order is amended:

- (a) in subsection (5) by replacing "E1000" with "E100 000";
- (b) in subsection (6) paragraph (a) by replacing "E1000" with "E100 000"; and
- (c) in subsection (6) paragraph (b) by replacing "E100" with "E10 000".

Replacement of Section 41 bis

20. Section 41 bis of the Order is amended by replacing it with the following new section 41 bis:

"Special funds

41 bis. The Bank may enter into an agreement or make such other arrangements with the Minister of Finance for the purpose of administering or managing any special fund."

Replacement of Section 42

21. Section 42 of the Order is amended by replacing it with the following new section 42:

"Clearing facilities

42. The Bank may, at an appropriate time and in agreement with banks:

- (a) organise facilities for the clearing of cheques and other instruments for effecting payments; and
- (b) supervise clearing houses and other organised systems for the making of payments."

Additional of new Section 42 bis

22. The Order is amended by adding after section 42 the following new section 42 bis:

"Ombudsman

42 bis (1) The Bank shall establish within itself an office of an ombudsman for financial institutions and prescribe the rules that will govern controversy between financial institutions and their customers and financial institutions and the Bank.

(2) The Ombudsman shall be a person of at least 10 years working experience in banking matters and banking law."

Addition of new Section 43 bis.

23. The Order is amended by adding after section 43 the following new section 43 bis -

"Monetary Policy Consultative Committee.

43 bis. (1) There is hereby established a Monetary Policy Consultative Committee (hereinafter referred to as the "MPCC").

(2) The purpose of the MPCC shall be to consider matters relating to the monetary policy of the Bank and other matters included within the responsibilities of the Bank as set out in section 4 and to facilitate an exchange of views between the members of the MPCC.

(3) The MPCC shall be comprised of the governor, or the deputy governor and five additional members, who shall have recognized experience in monetary and financial matters.

(4) Subject to the provisions of this Act, members of the MPCC shall be appointed -

(a) by the Minister on such terms and conditions as he may determine; and

(b) for a term not exceeding three years and shall be eligible for re-appointment.

(5) The governor shall be Chairman of the MPCC.

(6) The MPCC shall meet at least once every three months and on such additional times as shall be requested by the chairman.

(7) Within thirty days following each meeting, the Chairman shall meet with the Minister to discuss issues and actions being pursued by the MPCC.

(8) Subject to the provisions of this Order, the MPCC shall regulate its own proceedings."

Amendment of Section 46.

24. Section 46 of the Order is amended by deleting the words "foreign exchange".

Amendment of Section 51.

25. Section 51 of the Order is amended by inserting the following new subsection (3) and renumbering the existing subsection (3) as subsection (4):

"(3) There shall be an audit committee of the board which shall -

(a) be chaired by a non-executive member of the board;

(b) be responsible for the review of the financial statements of the Bank and the management and audit thereof; and

(c) make recommendations to the board concerning accounting and audit policies, financial controls and appointment of auditors."

Amendment of Section 53.

26. Section 53 of the Order is amended by adding in subsection (1) after paragraph (b) the following new paragraph (c):

"(c) guarantee loans or advances for the Government, any statutory organization or any person or entity."

Amendment of Section 54.

27. Section 54 of the Order is amended by adding after subsection (3) the following new subsection (4):

"(4) Any directive issued under subsection (1) shall be published forthwith in the Gazette and the Minister shall cause to be laid before Parliament, within fifteen sitting days after the Minister has informed the Bank of the policy determined, a copy of such directive together with statements by Government and the Bank in respect of the matter on which the directive was issued."

Deletion of Section 54 bis.

28. Section 54 bis of the Order is hereby deleted.

THE BUILDING SOCIETIES (AMENDMENT) ORDER, 2004
(Kings-Order-in Council No. 2 of 2004)



I ASSENT

MSWATI III
King of Swaziland

31st October, 2003

A KINGS-ORDER-IN COUNCIL

entitled

An Order to provide for the amendment of the Building Societies Act, 1962 to make it conform to current market demands and to provide for matters incidental or connected thereto.

ENACTED by the King in consultation with the Council.

Short Title and Commencement

1. This Order may be cited as the Building Societies (Amendment) Order, 2004, shall be read as one with the Building Societies Act, 1962 (hereinafter referred to as "the principal Act") and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Amendment of section 2

2. Section 2 of the principal Act is amended:

- (a) in paragraph (b) of the definition of "building society" by deleting the word "urban";
- (b) by replacing the definition "immovable property" with the following new definition:
"immovable property" means any piece of land not exceeding fifty hectares in extent for which there is title which is registered with the Registrar of Deeds;
- (c) by replacing the definition of "Minister" with the following new definition:
"Minister" means the Minister responsible for Finance;
- (d) by replacing the definition of "Registrar" with the following new definition:
"Registrar" means the Governor of the Central Bank of Swaziland established under the Central Bank of Swaziland Order, 1974.

- (e) by replacing the definition of "savings deposit" with the following new definition:

"savings deposit" means a deposit other than a fixed deposit";

- (f) in the definition "subscription share" by deleting paragraph (b) thereof and thereafter renumbering paragraph "(c)" as "(b)".

Amendment of section 17

3. Section 17 of the principal Act is amended in subsection (1) thereof by:

- (a) replacing paragraph (b) with the following new paragraph (b):

"(b) buy in immovable property mortgaged to the society or acquire leases of land ceded to the society in security for debt and deal with such property in accordance with the rules of a building society and, with the prior consent of the Registrar, develop or otherwise improve such property for sale by the building society to any person;"

- (b) replacing paragraph (g) with the following new paragraph (g):

"(g) hold cash and place money on deposit with any bank licensed under the Financial Institutions Consolidation Order, 1975, or invest money with any other institution approved by the Registrar;"

- (c) replacing paragraph (i) with the following new paragraph (i):

"(i) lend money to:

(I) members on the security of their shares and to any other person on the security of their term deposits, or

(II) lend money to members or to any other person on the security of employer guarantees and sureties, other guarantees and sureties approved by the Registrar, term deposits placed with banks, pensions and provident funds."

- (d) replacing paragraph (j) with the following new paragraph (j):

"(j) invest in such bills, bonds, equities, certificates, debentures, shares, stock municipal loans, or any other instruments approved by the Registrar."

- (e) replacing paragraph (k) with the following new paragraph (k):

"(k) act as an insurance agent;"

- (f) replacing paragraph (l) with the following new paragraph (l):

"(l) pay pensions or gratuities to its employees or establish a pension fund or such other fund as may be appropriate or adopt a pension scheme or such or other scheme as may be appropriate for providing pensions or gratuities for its employees, or join with other societies or organizations in establishing or adopting any such fund or scheme;" and

- (g) replacing paragraph (m) with the following new paragraph (m):

"(m) receive money from the public for deposit into call accounts or such other accounts as may be determined by the society;"

Amendment of Section 26

4. Section 26 of the principal Act is amended in subsection (2) by replacing the word "Registrar" with the word "society".

Replacement of section 30

5. Section 30 of the Principal Act is amended by replacing it with the following new section 30:

"Advance on property already mortgaged"

30. (1) No building society shall advance money on the security of immovable property which is subject to an existing mortgage bond unless:

(a) the existing mortgage bond is in favour of the society; or

(b) with the consent of the holder of the existing bond, the mortgage bond to be registered in favour of the society ranks in pari passu with the existing bond.

(2) A building society may with the consent of the holder of an existing mortgage bond advance money on the security of immovable property which is subject to an existing mortgage bond:

Provided that the total amounts of the bonds do not exceed one hundred percent of the value of the mortgaged property".

Amendment of section 33

6. Section 33 of the principal Act is amended by deleting the proviso to subsection (2).

Amendment of section 36

7. Section 36 of the principal Act is amended:

(a) in paragraph (i), by replacing the word "issuance" with the word "insurance";

(b) by adding the following new paragraph (v) after paragraph (iv):

"(v) any other amounts it may have disbursed, utilized or otherwise spent in connection with the property".

Amendment of section 39

8. Section 39 of the principal Act is amended by replacing subsection (5) with the following new section (5):

"(5) Moneys standing to the credit of the statutory reserve fund shall be invested in appropriate investments or any loans or advances to members or others in terms of section 17 (1) (h) and section 17 (1) (i) of this Act."

Amendment of section 41

9. Section 41 of principal Act is amended in the proviso to subsection (2) by replacing the words "seventy-five percent" with the words "ninety-five percent".

Amendment of section 44

10. Section 44 of the principal Act is amended by adding the words "or such other date as may be prescribed in the rules of the society" at the end thereof.

Amendment of section 48

11. Section 48 of the principal Act is amended by replacing subsection (6) with the following new subsection (6):

"(6) Notice of an annual general meeting of a building society shall be given to all other members by a notice published in the Gazette and in any newspaper registered in the Kingdom of Swaziland at least twenty-one days before the date of such meeting".

Amendment of section 50

12. Section 50 of the principal Act is amended in subsection (2) by replacing the words "not exceeding twenty cents for every hundred words" with the words "as may be prescribed in the rules of a building society or in the regulations made under this Act".

Amendment of section 52

13. Section 52 of the principal Act is amended in subsection (4) thereof by replacing the words "in a newspaper having an appropriate circulation" with the words "in a registered newspaper in general circulation".

Amendment of section 53

14. Section 53 of the principal Act is amended:

- (a) in subsection (1) by deleting paragraph (d) and renumbering paragraph (e) as paragraph (d); and
- (b) in subsection (3) by replacing the words "two hundred Emalangeni" with the words "fifty thousand Emalangeni".

Amendment of section 56

15. Section 56 of the principal Act is amended in subsection (2) by replacing the words "four hundred Emalangeni" with the words "five thousand Emalangeni".

Amendment of Section 58

16. Section 58 of the principal Act is amended in subsection (3) by replacing the words "two hundred Emalangeni" with the words "two thousand Emalangeni."

Amendment of section 59

17. Section 59 of the principal Act is amended:

- (a) in subsection (2) (a) by:
 - (i) replacing the word "any" with the word "final"; and
 - (ii) adding the words "within 30 days of the conclusion of such inspection" at the end thereof;

(b) in subsection (2)(b) by deleting the words "and may cause the report to be printed and published".

Amendment of section 66

18. Section 66 of the principal Act is amended in subsection (3) by replacing the words "not exceeding one thousand Emalangeni" with the words "not exceeding five thousand Emalangeni".

Replacement of section 74

19. Section 74 of the principal Act is replaced with the following new section 74:

"Lost or destroyed share passbooks etc.

74. If any share passbook, savings passbook, fixed deposit receipt or such other document as may have been issued by a building society is lost or destroyed, the society may, upon written application by the holder thereof, in such form as may be prescribed by the society, issue a duplicate thereof which shall take the place of the original and shall constitute the sole evidence thereof."

Amendment of section 75

20. Section 75 of the principal Act is amended by:

(a) replacing paragraph (b) with the following new paragraph (b):

"(b) repayments of any advance made by a building society;"

(b) replacing paragraph (c) with the following new paragraph (c):

"(c) deposits for the credit of any account held with a building society;" and

(c) replacing paragraph (d) with the following new paragraph (d):

"(d) withdrawals from any account held with a building society".

Amendment of section 78

21. Section 78 of the principal Act is amended in subsection (4) by replacing the words "two hundred Emalangeni" with the words "twenty thousand Emalangeni".

Amendment of section 79

22. Section 79 of the principal Act is amended by replacing the words "two hundred Emalangeni" with the words "two thousand Emalangeni".

