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THE SWAZILAND INVESTMENT PROMOTION ACT, 1998 (1998)

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FINANCE: ACT 1/1998 (ISSUE 2) 1

THE SWAZILAND INVESTMENT PROMOTION ACT, 1998

Date of commencement: 25th March, 1998.

An act to provide for the promotion of investment in Swaziland and the establishment of an investment promotion authority and for matters incidental thereto.

Short title and commencement.

1. This Act may be cited as the Swaziland Investment Promotion Act, 1998, and shall come into force on such date as the Minister may appoint by notice in the Gazette.

Interpretation.

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

“Authority” means the Swaziland Investment Promotion Authority established under section 3;

“Board” means the Board of Directors of the Authority established under section 7;

“enterprise” means an undertaking carrying on business or commercial activity for gain or reward in any sector of the economy;

“foreign national” means —

(a) a person who is not a citizen of Swaziland;

(b) a company incorporated under the laws of any country other than Swaziland;

(c) a partnership or association in which the controlling interest is held by persons who are not citizens of Swaziland;

“investment” means a contribution of capital, in cash or in kind, made by a person to a new enterprise or to the expansion or rehabilitation of an existing business enterprise or to the purchase of an existing business enterprise;

“investor” means any person, natural or juridical, who has made an investment in Swaziland and is registered under section 26 of this Act, and where the person is a foreign national, the minimum amount of the investment shall be stipulated by the Minister from time to time by notice in the Gazette;

“manufacturing” means the substantial transformation of tangible movable property, but does not include construction, installation, assembly, transportation, power generation, or the provision of public utility services;

“Minister” means the Minister responsible for Enterprise and Employment in Swaziland, who shall, in relation to the Authority, also be the Minister responsible for the purposes of the Public Enterprises (Control and Monitoring) Act, 1989;

“simple assembly” means bringing together of components or the mixing of products which does not result in a substantial transformation of the final product.

CHAPTER ONE

ESTABLISHMENT OF THE AUTHORITY

Establishment of the Authority.

3. (1) There is hereby established the Swaziland Investment Promotion Authority ("the Authority"), which shall be a body corporate, having perpetual succession and a common seal, capable of suing and being sued in its name.

(2) The Authority may acquire, hold or alienate movable and immovable property, and, subject to this Act, do or perform all such acts or things as bodies corporate may by law do or perform.

(3) The Authority shall be a category A public enterprise for purposes of the Public Enterprises (Control and Monitoring) Act, 1989.

Objects of the Authority

4. The objects of the Authority are —

- (a) to attract, encourage, facilitate and promote local and foreign investment in Swaziland;
- (b) to initiate, co-ordinate and facilitate the implementation of Government policies and strategies on investment;
- (c) to provide a one-stop information and support facility to local and foreign investors;
- (d) to advise the Minister on investment policies, strategies, proposals and suitable incentives.

Powers of the Authority.

5. For the purpose of achieving its objects, the Authority has power to —

- (a) hold, manage, develop, let, hire, buy or subscribe for or otherwise acquire or sell or otherwise dispose of or hypothecate or otherwise deal in immovable or movable property of any sort, open and operate banking accounts and make, draw, accept or endorse negotiable instruments in the ordinary course of business;
- (b) make representations to any public official, person or Minister on behalf of an investor in cases where the Authority is not satisfied with the reasons given for a negative decision;
- (c) instruct any public official or authority to decide promptly and in accordance with written law any matter submitted to him by or on behalf of an investor or in furtherance of this Act;
- (d) investigate complaints made by investors, enquire or cause to be enquired into the reasons for a delayed or negative decision, and report cases of laxity, inefficiency and ineptitude by any public official or authority in the performance of his or its duties in connection with this Act;
- (e) with the prior written consent of the Minister (with the concurrence of the Minister for Finance), borrow such sums as it may require for its purposes and to that end mortgage, pledge or otherwise hypothecate any property as security for any such loans;
- (f) and, generally (subject to the prior written consent of the Minister), to enter into any contract and perform any act, whether in Swaziland or elsewhere, which may be necessary for or incidental or conducive to the attainment of any of its objectives;
- (g) commission any research or study which would facilitate the better attainment of the objects of this Act;
- (h) appoint such committees as it may deem necessary to advise it on its functions.

Functions of the Authority.

6. The Authority shall —

- (a) operate as a one-stop service for investors;
- (b) liaise with government Ministries and departments, local authorities, or other bodies in order to facilitate investors with timely compliance with any formalities and to help secure all necessary approvals, permits, licenses, registrations, land, and the fulfilment of all other requirements related to the investment process;
- (c) recommend to the Government changes in the statutory and administrative framework relevant to the investment climate of Swaziland and to make representations regarding any changes to such statutory or administrative frame-work;
- (d) consult widely with a view to advising the Government on strategic policies and other matters related to the improvement of the investment climate in Swaziland;
- (e) advise on the availability of the range of incentives to eligible domestic and foreign investors and to recommend additional incentives where circum-stances warrant;
- (f) develop and implement a favourable investment image of Swaziland locally, regionally, and extra-regionally through advertising and public relations campaigns, seminars, exhibitions and workshops, and any other such promotional device as may be deemed appropriate;
- (g) undertake investment promotion initiatives in Swaziland and abroad;
- (h) liaise with Swaziland Missions abroad in order to publicize Swaziland's investment prospects and to disseminate information on investment opportunities in Swaziland;
- (i) open offices in identified strategic locations abroad for the purpose of promoting investment in Swaziland;
- (j) encourage expansions and new investments by existing investors in Swaziland;
- (k) support local investment promotion institutions where necessary to encourage and facilitate increased local investment;
- (l) identify partners inside or outside Swaziland for joint venture investment opportunities in Swaziland;
- (m) liaise with local and international financial institutions for the benefit of investors;
- (n) facilitate the employment and residence of foreign nationals as senior managers, non-available experts and technical employees necessary for the success of private sector investment in Swaziland, in accordance with existing structures;
- (o) establish a data bank to provide accurate and up-to-date information on the industrial and economic environment including prevailing and projected market conditions relating to investment and on investment opportunities in Swaziland to potential investors or their agents;
- (p) interpret this Act in order to achieve its aims and objectives;
- (q) do all such things as are necessary or incidental or conducive to the functions specified in this Act.

Establishment and composition of the Board of Directors.

7. (1) There is hereby established a Board of Directors of the Authority which shall be the governing body of the Authority and shall be responsible for carrying out the objects of, and exercising the powers and functions conferred on, the Authority.

(2) The Board shall consist of not more than nine members appointed in terms of section 6 of the Public Enterprise (Control and Monitoring) Act, 1989, made up as follows —

(a) a chairman, who shall be appointed by the Minister from the private sector and shall possess such professional qualifications as are necessary for the achievement of the objects of this Act;

(b) the Principal Secretaries from the Ministries responsible for commercial enterprises, employment, economic planning, finance and agriculture or their representatives;

(c) four persons from organisations or institutions in Swaziland who shall be appointed by the Minister for their ability and experience in labour, business, finance or the legal or accountancy professions;

(d) the General Manager appointed under section 10 who shall also be the Secretary to the Board.

(3) Subject to subsection (4), a member of the Board appointed under subsections (2)(a) and (c) shall be appointed for a period of three years on such terms and conditions as the Minister may determine.

(4) In the case of the first Board appointed after the commencement of this Act, two of the members appointed under subsections (2)(a) and (c) shall be appointed for a period of two years and two of the members shall be appointed for three years.

(5) A Member, other than a Principal Secretary, may be re-appointed for only two further terms after the expiry of the initial period of appointment.

(6) The Board shall regulate its own procedure.

Procedure at meetings of the Board.

8 (1) Without prejudice to section 7(6), the procedure of the Board at meetings and any other matters relating thereto shall be governed by the provisions set out in the Schedule hereto.

(2) The Minister may, by notice published in the Gazette, amend the Schedule.

Vacation of office by Board Members.

9. A Member of the Board, other than a Principal Secretary, shall vacate his office if he —

(a) resigns from his office by letter addressed to the Secretary of the Board;

(b) becomes an unrehabilitated insolvent;

(c) becomes of unsound mind or becomes in any other way physically incapacitated;

(d) is absent from three consecutive meetings of the Board without leave of the Chairman;

(e) is convicted of an offence and is sentenced to a term of imprisonment for a period of at least three months without the option of a fine; and

(f) conducts himself in a manner which, in the Minister's opinion, would bring disrepute to the Board or prejudice to the activities of the Authority.

Appointment of the General Manager.

10. (1) The Minister shall appoint a person with extensive business experience as the General Manager of the Authority in accordance with the provision of section 8(1) of the Public Enterprises (Control and Monitoring) Act, 1989, and on such terms and conditions as the Minister may determine.

(2) The General Manager shall be:

(a) the Chief Executive Officer of the Authority;

(b) appointed for a term not exceeding four years which may be renewed for not more than two further terms; and

(c) answerable to the Board.

Duties of the General Manager.

11. (1) The General Manager shall:

(a) be responsible for the day to day administration of the Authority;

(b) carry out or perform any duties which are expedient for the achievement of the purposes of this Act, subject to any specific or general directives of the Board;

(c) prepare a budget including the staff complement for the Authority for approval by the Board;

(d) with the approval of the Board, appoint such staff of the Authority as may be necessary for the proper performance of the functions of the Authority.

(2) The salaries, wages or other remuneration of the staff shall be determined by the Board.

Termination of appointment of General Manager.

12. The appointment of the General Manager shall be terminated in the manner provided for in the Public Enterprises (Control and Monitoring) Act, 1989 where:

(a) he commits any of the acts specified in section 9(a) to (f); or

(b) he violates the terms and conditions of his appointment; or

(c) he fails to carry out his duties.

Appointment of Chief Financial Officer.

13. There shall be appointed a Chief Financial Officer as provided in section 8(2) of the Public Enterprises (Control and Monitoring) Act, 1989.

Duties of the Chief Financial Officer.

14. The Chief Financial Officer shall —

(a) keep all proper books of account and other books and records in relation to the funds, undertakings, activities and property of the Authority;

(b) prepare such statements of account as may be necessary to indicate the financial status of the Authority at the end of each financial year;

- (c) cause the accounts of the Authority to be examined, audited and reported on annually by auditors appointed by the Board under section 17;
- (d) carry out any other duties assigned to him by the General Manager; and
- (e) be answerable to the General Manager.

Termination of appointment of Chief Financial Officer.

15. The appointment of the Chief Financial Officer shall be terminated in the manner provided in the Public Enterprises (Control and Monitoring) Act, 1989 where —

- (a) he commits any of the acts specified in section 9(a) to (f) excluding (d) of this Act; or
- (b) he violates the terms and conditions of his appointment; or
- (c) he fails to carry out any of his duties.

Funds and assets of the Authority.

16. (1) The funds and assets of the Authority shall consist of all monies —

- (a) received as remuneration for its services;
- (b) appropriated by Parliament for purposes of this Act;
- (c) donated to the Authority for purposes of this Act.

(2) The Authority shall, out of its funds —

- (a) pay to the members of the Board such remuneration and allowances as approved by the Minister;
- (b) pay salaries, wages and allowances to the employees of the Authority;
- (c) pay or authorise the payment of all such sums of money as may be legally due from the Authority.

(3) The Minister shall, by notice in the Gazette, designate persons who shall be signatories to the funds of the Authority.

Appointment of auditor.

17. (1) A reputable firm of auditors shall be appointed in the manner provided in the Public Enterprises (Control and Monitoring) Act, 1989 as auditors of the Authority for such period as the Minister shall determine.

(2) No person may be appointed an auditor if —

- (a) he is a member of the Board or an employee of the Authority;
- (b) he is a partner of a member of the Board or a partner of any employee of the Authority;
- (c) he is an employer or employee of a member of the Board or of the Authority; and
- (d) he has any pecuniary interest in the Authority or in any of its activities.

Financial Year.

18. The financial year of the Authority shall be from the 1st April to the 31st March of the following year, unless the Minister indicates otherwise by notice published in the Gazette.

CHAPTER TWO

PROTECTION OF INVESTMENT AND SETTLEMENT OF DISPUTES

Freedom of investment.

19. (1) Subject to subsection (2), any person, whether or not a citizen of Swaziland, may freely and without restriction on ownership make an investment in any sector of the economy of Swaziland.

(2) Subsection (1) does not apply to the following sectors:

(a) the manufacture of firearms, ammunition, chemical and biological weapons, and other defence weapons;

(b) manufacture involving radioactive materials;

(c) the manufacture of explosives;

(d) manufacture involving hazardous waste treatment or disposal;

(e) security printing (currency notes) and minting.

(3) All investments shall be made, and all enterprises shall be conducted, in conformity with the applicable laws in force in Swaziland.

(4) The Minister may, with the approval of Cabinet and by notice published in the Gazette, increase or reduce the sectors referred to in subsection (2), but such increase or reduction shall have no retrospective effect.

Protection of investment.

20. (1) Notwithstanding anything contained in any other law, no property, or any interest in or right over property of any description which forms part of an investment shall be compulsorily acquired or subjected to measures which have similar effect, except where it is done:

(a) in accordance with applicable legal procedures;

(b) in pursuance of a public purpose;

(c) without any form of discrimination on the basis of nationality; and

(d) upon prompt payment of adequate and fair compensation.

(2) Where all the conditions laid down in subsection (1) are satisfied, the compensation shall be determined on the basis of current market value and shall be fully transferable at the prevailing current exchange rate in the currency in which the investment was originally made, without deduction of taxes, levies or other duties except where these had previously accrued.

Investment disputes.

21. Subject to any agreement previously made in writing between the investor and the Government, in the event of a dispute arising between an investor and the government the investor may elect to submit the dispute either —

- (a) to the jurisdiction of the High Court of Swaziland; or
- (b) to a process of arbitration under the Arbitration Act, 1904; or
- (c) to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law; or
- (d) in the case of a foreign investor, to arbitration under the International Convention for the Settlement of Investment Disputes Between States and Nationals of Other States.

CHAPTER THREE

GENERAL

Facilitation and non-discrimination.

22. (1) Unless otherwise required by law, the Government or the Authority shall not discriminate between investors. (2) The Authority shall ensure that work and residence permits or trading licences are processed promptly.
- (3) If the officer responsible for renewing a permit or licence fails to inform the applicant within fourteen (14) working days of his decision, the permit or licence shall be deemed to be renewed on the terms and conditions stated in the application.
- (4) The Authority shall, at the request of an investor, lodge documents for the registration of a new company with the Registrar of Companies and obtain a Certification of Incorporation on his behalf.

Prevention of corrupt business practices.

23. The Authority or the Minister shall take suitable measures to prevent and control any alleged corrupt business practice, and, where necessary, recommend appropriate sanction against the offender.

Disclosure of information.

24. (1) No person shall, without the prior written consent of the Authority, publish or disclose to any person, other 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 duties under this Act.
- (2) A person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year or a fine not exceeding one thousand Emalangeni (E1000) or both.

Exemption from personal liability.

25. No action or other proceedings shall lie or be instituted against any member of the Board or employee of the Authority for or in respect of anything done or omitted to be done in good faith in the exercise of his functions under this Act.

Register of investors.

26. (1) The Authority shall maintain a register of investors, wherein shall be shown, on the application of (and where necessary, verification by) an investor:
- (a) the name and address of the investor

- (b) the nature and location of the enterprise;
 - (c) the number, roles and nationality of senior managers resident in Swaziland;
 - (d) the total number of employees in Swaziland; and
 - (e) the amount of the investment by that investor.
- (2) The register shall be updated annually on information supplied, and where necessary verified, by the investor.

Regulations

27. The Minister may, by notice in the Gazette, make such regulations as he deems necessary for giving effect to this Act, and may prescribe such penalties as are appropriate for the contravention of the Act provided that the penalties prescribed shall not exceed the penalty prescribed in section 24(2).

SCHEDULE

(Under section 8)

Rules and procedures of the Board.

1. The Board shall meet at least four times a year for the despatch of the business of the Authority.
2. The Chairman shall convene and preside over all meetings of the Board and shall convene a special meeting whenever requested by at least three members or by the Minister.
3. At a special meeting, only the business stipulated in a written request may be trans-acted.
4. In the absence of the Chairman, but subject to the quorum, the members present shall nominate one of them to preside at the meeting.
5. The quorum for a meeting of the Board shall be five members.
6. All decisions of the Board shall be made by a simple majority of the votes of the members present and the person presiding shall only have a casting vote where there is an equality of votes.
7. The Secretary shall keep minutes of all proceedings of the Board in a minute book which shall show all details of business transacted at each meeting.
8. The Chairman, in consultation with the Board, may invite a member of the committee under section 5(h) to attend and participate in a Board meeting dealing with a specific subject of interest to or affecting the work of that committee.
9. A member invited in terms of paragraph 8 shall not have the right to vote.

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